

FILOZOFSKI VESTNIK

2/1994

Fictions



SLOVENSKA AKADEMIJA ZNANOSTI IN UMETNOSTI

ZNANSTVENORAZISKOVALNI CENTER SAZU

FILOZOFSKI INŠTITUT



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ISSN 0353-4510

*FILOZOFSKI VESTNIK / ACTA PHILOSOPHICA*

Volume / Letnik XV, number / številka 2/1994

*FILOZOFSKI VESTNIK / ACTA PHILOSOPHICA* is included in: *Arts & Humanities  
Cit. Index, Current Conts./Arts & Humanities, Bulletin signalétique – Philosophie,  
IBZ (Internationale Bibliographie des Zeitschriften).*

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*FILOZOFSKI VESTNIK* is a journal of philosophy with an interdisciplinary and international orientation. *FV* is published in association with the Slovenian Academy of Sciences & Arts. The Journal is edited by members of the Institute of Philosophy in the Centre for Scientific Research of the Slovenian Academy of Sciences & Arts.

Editorial correspondence and enquiries, business correspondence and books for review should be addressed to the Editorial Office, *FILOZOFSKI VESTNIK*, ZRC SAZU, Gosposka ul. 13, 61000 Ljubljana, Slovenia.

Tel.: + 386 61 125 6068 – Fax: +386 61 125 5253 – E. Mail: FI@ZRC-SAZU.SI

The Journal is published semi-annually, two issues constitute one volume.

Annual subscription: 18 \$ for individuals, 36 \$ for institutions.

Single issue: 10 \$ for individuals, 20 \$ for institutions. Back issues available.

Send cheques payable to: ZRC SAZU, Ljubljana. Access / Master Card / Eurocard and VISA accepted. Credit card orders must include card number and expiration date.

*FILOZOFSKI VESTNIK* is published with grants from The Ministry of Science and Technology and The Ministry of Culture of the Republic of Slovenia.

Printed in Slovenia by VB&S d.o.o., Ljubljana

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**ACTA PHILOSOPHICA**

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LJUBLJANA

REPUBLIKA SLOVENIJA  
MINISTRSTVO ZA KULTURO  
LJUBLJANA, 2004

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MINISTRSTVO ZA KULTURO  
LJUBLJANA, 2004

2004

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# Contents

## Fictions

- 9 *Ernesto Laclau*, Subject of Politics, Politics of the Subject
- 27 *Aletta J. Norval*, The Politics of Homecoming: Contending Fictions of Identity in Contemporary South Africa
- 45 *Kate Nash*, Women and the Fictive Individual of Liberalism
- 61 *Sue Golding*, Virtual Derrida
- 67 *Jelica Šumič-Riha*, Fictions of Justice
- 81 *Alenka Zupančič*, La logique de l'apparence
- 97 *Peter Klepec*, Kant's Transcendental Ideal as Fiction
- 111 *Steven Lukes*, Five Fables About Human Rights
- 127 *Tomaž Mastnak*, Fictions in Political Thought: Las Casas, Sepúlveda, the Indians, and the Turks
- 151 *Gorazd Korošec*, The Role of Fictions in Law: Hume, Adam Smith and Bentham
- 169 *Peter Burke*, Historical Facts and Historical Fictions
- 187 *Oto Luthar*, »White Men Can't Jump...«: Objectivity and Fiction
- 199 *Paul Crowther*, The Logic Structure of Pictorial Representation
- 211 *Aleš Erjavec*, Mountain Photography and the Constitution of National Identity
- 235 *Marina Gržinić Mauhler*, Fiction Re-constructed
- 247 Interview – Entretien avec *Jacques Rancière*
- 257 Notes on Contributors
- 259 Abstracts



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*Fictions*





# Subject of Politics, Politics of the Subject

Ernesto Laclau

The question of the relationship (Complementarity?, Tension?, Mutual exclusion?) between universalism and particularism occupies a central place in the current political and theoretical agenda. Universal values are seen either as dead or – at the very least – as threatened. What is more important, the positive character of those values is no longer taken for granted. On the one hand, under the banner of multiculturalism, the classical values of the Enlightenment are under fire, and considered as little more than the cultural preserve of Western imperialism. On the other hand, the whole debate concerning the end of modernity, the assault on foundationalism in its various expressions, has tended to establish an essential link between the obsolete notion of a ground of history and society, and the *actual contents* which, from the Enlightenment onwards, have played that role of ground. It is important, however, to realize that these two debates have not advanced along symmetrical lines, that argumentative strategies have tended to move from one to the other in unexpected ways, and that many apparently paradoxical combinations have been shown to be possible. Thus, the so-called postmodern approaches can be seen as weakening the imperialist foundationalism of Western Enlightenment and opening the way to a more democratic cultural pluralism; but they can also be perceived as underpinning a notion of »weak« identity which is incompatible with the strong cultural attachments required by a »politics of authenticity«. And universal values can be seen as a strong assertion of the »ethnia of the West« (as in the later Husserl), but also as a way of fostering – at least tendentially – an attitude of respect and tolerance vis-à-vis cultural diversity.

It would certainly be a mistake to think that concepts such as »universal« and »particular« have exactly same meaning in both debates; but it would also be mistaken to assume that the continuous interaction of both debates has had no effect on the central categories of each. This interaction has given way to ambiguities and displacements of meaning which are – I think – the source of a certain political productivity. It is to these displacements and interactions that I want to refer in this essay. My question, put in its simplest terms is the

following: What happens with the categories of »universal« and »particular« once they become tools in the language games that shape contemporary politics? What is performed through them? What displacements of meaning are at the root of their current political productivity?

### *Multiculturalism*

Let us take both debates successively and see the points in which each cuts across the central categories of the other. Multiculturalism, first. The question can be formulated in these terms: is a pure culture of difference possible, a pure particularism which does away entirely with any kind of universal principle? There are various reasons to doubt that this is possible. In the first place, to assert a purely separate and differential identity is to assert that this identity is constituted *through* cultural pluralism and difference. The reference to the other is very much present as constitutive of my own identity. There is no way that a particular group living in a wider community can live a monadic existence – on the contrary, part of the definition of its own identity is the construction of a complex and elaborated system of relations with other groups. And these relations will have to be regulated by norms and principles which transcend the particularism of *any* group. To assert, for instance, the right of all ethnic groups to cultural autonomy is to make an argumentative claim which can only be justified on universal grounds. The assertion of one's own particularity requires the appeal of something transcending it. The more particular a group is, the less it will be able to control the global communitarian terrain within which it operates, and the more universally grounded will have to be the justification of its claims.

But there is another reason why a politics of pure difference would be self-defeating. To assert one's own *differential* identity involves, as we have just argued, the inclusion in that identity of the other, as that from whom one delimits oneself. But it is easy to see that a fully achieved differential identity would involve the sanctioning of the existing status quo in the relation between groups. For an identity which is purely differential vis-à-vis other groups has to assert the identity of the other at the same time as its own and, as a result, cannot have identity claims in relation to those other groups. Let us suppose that a group *has* such claims – for instance, the demand for equal opportunities in employment and education, or even the right to have confessional schools. As far as these claims are presented as rights that I share as a member of the community with all other groups, they presuppose that I am not simply different from the others but, in some fundamental respects, equal to them. If it is asserted that all particular groups have the right to the respect of their own particularity, this means that they are equal to each other in some respects.

Only in a situation in which all groups were different from each other and in which none of them wanted to be anything other than what they are, the pure logic of difference would exclusively govern the relations between groups. In all other scenarios the logic of difference will be interrupted by a logic of equivalence and equality. It is not for nothing that a pure logic of difference – the notion of separate developments – lies at the root of apartheid.

This is the reason why the struggle of *any* group that attempts to assert its own identity against a hostile environment is always confronted by two opposite but symmetrical dangers for which there is no logical solution, no square circle – only precarious and contingent attempts of mediation. If the group tries to assert its identity *as is at that moment*, as its location within the community at large defined by the system of exclusions dictated by the dominant groups, it condemns itself to a perpetually marginalized and ghettoized existence. Its cultural values can be easily retrieved as »folklore« by the establishment. If, on the other hand, it struggles to change its location within the community and to break with its situation of marginalization, it has to engage in plurality of political initiatives which take it beyond the limits defining its present identity – for instance, struggles within the existing institutions. As these institutions are, however, ideologically and culturally moulded by the dominant groups, the danger is that the differential identity of the struggling group will be lost. Whether the new groups will manage to transform the institutions, or whether the logic of the institutions will manage to dilute – via cooptation – the identity of those groups is something which, of course, is not decided beforehand and depends on a hegemonic struggle. But what is certain is that is no major historical change in which the identity of *all* intervening forces is not transformed. There is no possibility of victory in terms of an *already acquired* cultural authenticity. The increasing awareness of this fact explains the centrality of the concept of »hybridization« in contemporary debates.

If we look for example of the early emergence of this alternative in European history, we can refer to the opposition between social-democrats and revolutionary syndicalists in the decades preceding the First World War. The classical Marxist solution to the problem of the disadjustment between the particularism of the working class and the universality of the task of socialist transformation, had been the assumption of an increasing simplification of the social structure under capitalism: as a result, the working class as a homogeneous subject, would embrace the vast majority of the population and could take up the task of universal transformation. With this type of prognostic discredited at the turn of the century, two possible solutions remained open. Either to accept a dispersion of democratic struggles only loosely unified by a semi-corporative working class, or to foster a politics of pure identity by a working class

unified through revolutionary violence. The first road led to what has been depicted as social-democratic integration: the working class was coopted by a State in whose management it participated but whose mechanisms it could not master. The second road led to working class segregationism through violence and the rejection of all participation in democratic institutions. It is important to realize that the myth of the general strike in Sorel was not a device to keep a purely working class identity as a condition for a revolutionary victory. As the revolutionary strike was a regulatory idea rather than an actual possible event, it was not a real strategy for the seizure of power: its function was exhausted in being a mechanism endlessly recreating the workers separate identity. In the option between a politics of identity and the transformation of the relations of force between groups, Sorelianism can be seen as an extreme form of unilateralization of the first alternative.

If we renounce, however, to a unilateral solution, then the tension between these two contradictory extremes cannot be eradicated: it is there to stay, and the strategic calculation can only consist of the pragmatic negotiation between them. Hybridization is not a marginal phenomenon but the very terrain in which contemporary political identities are constructed. Let us just consider a formula such as »strategic essentialism« which has been much used lately. For a variety of reasons, I am not entirely satisfied with it, but it has the advantage of bringing to the fore the antinomic alternatives to which we have been referring and the need for a politically negotiated equilibrium between them. »Essentialism« alludes to a string identity politics, without which there can be no bases for political calculation and action. But that essentialism is only strategic – i.e. it points out, at the very moment of its constitution, to its own contingency and its own limits.

This contingency is central to understanding what is perhaps the most prominent feature of contemporary politics: the full recognition of the limited and fragmented character of its historical agents. Modernity started with the aspiration to a limitless historical actor, who would be able to ensure the fullness of a perfectly instituted social order. Whatever the road leading to that fullness – an »invisible hand« which hold together a multiplicity of disperse individual wills, or a universal class who would ensure a transparent and rational system of social relations – it always implied that the agents of that historical transformation would be able to overcome all particularism and all limitation and bring about a society reconciled with itself. This is what, for modernity, true universality meant. The starting point of contemporary social and political struggles is, on the contrary, the strong assertion of their particularity, the conviction that none of them is capable, on its own, of bringing about the fullness of the community. But precisely because of that, as we have seen, this particularity cannot be constructed through a pure »politics of difference« but

has to appeal, as the very condition of its own assertion, to universal principles. The question that at this point arises is to what extent this universality is the same as the universality of modernity, to what extent the very idea of a fullness of society experiences, in this changed political and intellectual climate, a radical mutation that – while maintaining the double reference to the universal and the particular – entirely transforms the logic of their articulation. Before answering this question, however, we have to move to our second debate, that related to the critique of foundationalism.

### *Contexts and the critique of foundationalism*

Let us start our discussion with a very common proposition: that there is no truth or value independent of a context, that the validity of any statement is only contextually determined. In one sense, of course, this proposition is uncontroversial and a necessary corollary of the critique of foundationalism. To pass from it to assert the incommensurability of context and to draw from there an argument in defence of cultural pluralism seems to be only a logical move, and I am certainly not prepared to argue otherwise. There is, however, one difficulty that this whole reasoning does not contemplate, and it is the following: how to determine the limits of a context? Let us accept that all identity is a differential identity. In that case two consequences follow: (1) that as in a Saussurean system, each identity is what it is only through its differences with all the others; (2) that the context has to be a closed one – if all identities depend on the differential *system*, unless the latter defines its own limits, no identity would be finally constituted. But nothing is more difficult – from a logical point of view – than defining those limits. If we had a foundational perspective we could appeal to an ultimate ground which would be the source of all differences; but if we are dealing with a true pluralism of differences, if the differences are *constitutive*, we cannot go, in the search for the systematic limits that define a context, beyond the differences themselves. Now, the only way of defining a context is, as we said, through its limits, and the only way of defining those limits is to point out what is beyond them. But what is beyond the limits can only be other differences, and in that case – given the constitutive character of all differences – it is impossible to establish if these new differences are internal or external to the context. The very possibility of a limit and, *ergo*, a context, is thus jeopardized.

As I have argued elsewhere<sup>1</sup> the only way out of this difficulty is to postulate a beyond which is not more difference but something which poses a threat (i.e.

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<sup>1</sup> See Laclau, Ernesto, »Why do Empty Signifiers Matter to Politics« in *The Lesser Evil and the greater Good*, Edited by Jeffrey Weeks, Rivers Oram Press, London 1994.

negates) to all the differences within that context – or, better, that the context constitutes itself as such through the act of exclusion of something alien of a radical otherness. Now, this possibility has three consequences which are capital for our argument.

1) The first is that antagonism and exclusion are constitutive of all identity. Without limits through which a (non-dialectical) negativity is constructed we would have an indefinite dispersion of differences whose absence of systematic limits would make any differential identity impossible. But this very function of constitution differential identities through antagonistic limits is what, at the same time, destabilizes and subverts those differences. For it the limit puts an equal threat to all the differences, it makes them all equivalent to each other, interchangeable with each other as far as the limit is concerned. This already announces the possibility of a relative universalization through equivalential logic, which is not incompatible with a differential particularism, but is required by the very logic of the latter.

2) The system is what is required for the differential identities to be constituted, but the only thing – exclusion – which can constitute the system and this make possible those identities, is also what subverts them. (In deconstructive terms: the conditions of possibility of the system are also its conditions of impossibility). Contexts have to be internally subverted in order to become possible. The system (as in Lacan's object *petit a*) is that that the very logic of the context requires but which is however impossible. It is present, if you want, through its absence. But this means two things. First, that all differential identity will be constitutively split; it will be the crossing point between the logic of difference and the logic of equivalence. This will introduce into it a radical undecidability. Second, that the fullness and universality of society is unachievable, its need does not disappear: it will always show itself through the presence of its absence. Again, we see here announcing itself an intimate connection between the universal and the particular which does not consist, however, in the subsumption of the latter in the former.

3) Finally, if that impossible object – the system – cannot be represented but needs, however, to show itself within the field of representation, the means of that representation will be constitutively inadequate. Only the particulars are such means. As a result the systematicity of the system, the moment of its impossible totalization, will be symbolized by particulars which contingently assume such a representative function. This means firstly, that the particularity of the particular is subverted by this function of representing the universal, but secondly, that a certain particular, by making of its own particularity the signifying body of a universal representation comes to occupy – within the system of differences as a whole – a hegemonic role. This anticipates our main

conclusion in a society (and this is finally the case of *any* society) in which its fullness – the moment of its universality – is unachievable, the relation between the universal and the particular is a hegemonic relation.

Let us see in more detail the logic of that relation. I will take as an example the »universalization« of the popular symbol of Peronism in the Argentina of the 1960s and 1970s. After the coup of 1955 which overthrew the Peronist regime, Argentina entered a long period of institutional instability which lasted for over 20 years. Peronism and other popular organizations were proscribed, and the succession of military governments and fraudulent civilian regimes which occupied the government were clearly incapable of meeting the popular demands of the masses through the existing institutional channels. So, there was a succession of regimes less and less representative and an accumulation of unfulfilled democratic demands. These demands were certainly particular ones and came from very different groups. The fact that all of them were rejected by the dominant regimes established an increasing relation of equivalence between them. This equivalence, it is important to realize, did not express any essential a priori unity. On the contrary, its only ground was the rejection of all of them by the existing regimes. In terms of our previous terminology, their unification within a context or system of differences was the pure result of all of them being antagonized by the dominant sectors.

Now, as we have seen, this contextual unification of a system of differences can only take place at the price of weakening the purely differential identities, through the operation of a logic of equivalence which introduces a dimension of relative universality. In our example, people felt that through the differential particularity of their demands – housing, union rights, level of wages, protection of national industry, etc. – something equivalent present in all of them was expressed, which was the opposition to the regime. It is important to realize that this dimension of universality was not at odds with the particularism of the demands – or even of the groups entering into the equivalential relation – but grew out of it. A certain more universal perspective, which developed out of the inscription of particular demands in a wider popular language of resistance, was the result of the expansion of the equivalential logic. A pure particularism of the demands of the groups, which had entirely avoided the equivalential logic, would have only been possible if the regime had succeeded in dealing separately with the particular demands and had absorbed them in a »transformistic« way. But in any process of hegemonic decline, this transformistic absorption becomes impossible and the equivalential logic interrupt the pure particularism of the individual democratic demands.

As we can see, this dimension of universality reached through equivalence is very different from the universality which results from an underlying essence

or an unconditioned a priori principle. It is not either a regulative idea – empirically unreachable but with an unequivocal teleological content – because it cannot exist apart from the system of equivalences from which it proceeds. But this has important consequences for both the content and the function of that universality. We have seen before that the moment of totalization or universalization of the community – the moment of its fullness – is an impossible object which can only acquire a discursive presence through a particular content which divests itself of its particularity in order to represent that fullness. To return to our Argentinian example, this was precisely the role that, in the 1960s and 70s, was played by the popular symbols of Peronism. As I said earlier, the country had entered into a rapid process of de-institutionalization, so the equivalential logic could operate freely. The Peronist movement itself lacked a real organization and was rather a series of symbols and a loose language unifying a variety of political initiatives. Finally, Peron himself was in exile in Madrid, intervening only in a distant way in his movement's actions, being very careful not to take any definitive stand in the fractional struggles within Peronism. In those circumstances, he was in the ideal conditions to become the »empty signifier« incarnating the moment of universality in the chain of equivalences which unified the popular camp. And the ulterior destiny of Peronism in the 1970s clearly illustrates the essential ambiguity inherent in any hegemonic process: on the one hand, the fact that the symbols of a particular group assume at some point a function of universal representation gives certainly a hegemonic power to that group; but, on the other hand, the fact that that function of universal representation has been acquired at the price of weakening the differential particularism of the original identity, leads necessarily to the conclusion that this hegemony is going to be precarious that threatened. The wild logic of emptying the signifiers of universality through the expansion of the equivalential chains means that no fixing and particular limitation of the sliding of the signified under the signifier is going to be permanently assured. This is what happened to Peronism after the electoral victory of 1973 and Peron's return to Argentina. Peron was no longer an empty signifier but the President of the country, who had to carry out concrete politics. Yet the chains of equivalences constructed by the different factions of his movements had gone beyond any possibility of control – not even by Peron himself. The result was the bloody process which led to the military dictatorship in 1976.

The previous developments lead us to the following conclusion: the dimension of universality – resulting from the incompleteness of all differential identities – cannot be eliminated as far as a community is not entirely homogeneous (if it *was* homogeneous, what would disappear is not only universality but also the very distinction universality/particularity). This dimension is, however, just an

empty place unifying a set of equivalential demands. We have to determine the nature of this place both in terms of its contents and of its function. As far as the content is concerned it does not have a content of its own but just that which is given to it by a transient articulation of equivalential demands. There is a paradox implicit in the formulation of universal principles, which is that all of them have to present themselves as valid without exception, while, even in its own terms, this universality can be easily questioned and can never be actually maintained. Let us take a universal principle such as the right of nations to self-determination. As a universal right, it claims to be valid in any circumstance. Let us suppose now that within a nation genocidal practices are taking place: in that case has the international community the duty to intervene, or is the principle of self-determination unconditionally valid. The paradox is that the principle has to be formulated as universally valid and however there are always to be exceptions to that universal validity. But perhaps the paradox proceeds from believing that this universality has a content of its own, whose logical implications can be analytically deduced, without realizing that its only function – within a particular language game – is to make discursively possible a chain of equivalential effects, but without pretending that this universality can operate beyond the context of its emergence. There are innumerable contexts in which the principle of national self-determination is a perfectly valid way of totalizing and universalizing a historical experience.

But in that case, if we always know beforehand that no universalization will live up to its task, if it will always fail to deliver the goods, why does the equivalential aggregation have to express itself through the universal? The answer is to be found in what we said before about the formal structure on which the aggregation depends. The »something identical« shared by all the terms of the equivalential chain – that which makes the equivalence possible – cannot be something positive (i.e. one more difference which could be defined in its particularity), but proceeds from the unifying effects that the external threat puts to an otherwise perfectly heterogeneous set of differences (particularities). The »something identical« can only be the pure, abstract, absent fullness of the community, which lacks, as we have seen, any direct form of representation and expresses itself through the equivalence of the differential terms. But, in that case, it is essential that the chain of equivalences remains open: otherwise its closure could only be the result of one more difference specifiable in its particularity and we would not be confronted with the fullness of the community as an absence. But in that case, the open character of the chain means that what is expressed through it has to be universal and not particular. Now, this universality needs – for its expression – to be incarnated in something essentially incommensurable with it: a particularity (as in our example of the right to national self-determination). This is the source of the

tension and ambiguities surrounding all these so-called »universal« principles: all of them *have* to be formulated as limitless principles, expressing a universality transcending them; but they all, for essential reasons, sooner or later become entangled in their own contextual particularism and are incapable of fulfilling their universal function.

As far as the function (as different from the content) of the »universal«, we have said enough to make clear what it consists of: it is exhausted in introducing chains of equivalence in an otherwise purely differential world. This is the moment of hegemonic aggregation and articulation and can operate in two ways. The first is to inscribe particular identities and demands as links in a wider chain of equivalences, thereby giving each of them a »relative« universalization. If, for instance, feminist demands enter into chains of equivalence with those of black groups, ethnic minorities, civil rights activist, etc., they acquire a more global perspective than in the case where they remain restricted to their own particularism. The second is to give a particular demand a function of universal representation – that is, to give a particular demand the value of a horizon giving coherence to the chain of equivalences and, at the same time, keeping it indefinitely open. To give just a few examples: the socialization of the means of production was not considered as a narrow demand concerning the economy but as the »name« for a wide variety of equivalential effects irradiating over the whole society. The introduction of a market economy played a similar role in Eastern Europe after 1989. The return of Peron, in our Argentinian example, was also conceived in the early 70s as the prelude to a much wider historical transformation. Which particular demand, or set of demands, are going to play this function of universal representation is something which cannot be determined by a priori reasons (if we could do so, this would mean that there is something in the particularity of the demand which predetermined it to fulfil that role, and that would be in contradiction of our whole argument).

We can return to the two debates which were the starting point of our reflexion. As we can see there are several points in which they interact and in which parallelism can be detected. We have said enough about multiculturalism for our argument concerning the limits of particularism to be clear. A *pure* particularistic stand is self-defeating because it has to provide a ground for the constitution of the differences *as* differences, and such a ground can only be a new version of an essentialist universalism. (If we have a *system* of differences A/B/C, etc. we have to account for this separation – to be separated is also a form of relation between objects – and I am again entangled as Leibniz knew well, in the positing of ground. The pre-established harmony of the monads is essential a ground as the Spinozean totality.) So, the only way out of this

dilemma is to maintain the dimension of universality but to propose a different form of its articulation with the particular. This is what we have tried to provide in the preceding pages through the notion of the universal as an empty but ineradicable place.

It is important, however, to realise that this type of articulation would be theoretically unthinkable if we did not introduce into the picture some of the central tenets of the contemporary critique of foundationalism (it would be unthinkable, for instance, in a Habermasian perspective). If meaning is fixed beforehand either in a strong sense, by a radical ground (a position that less and less people would sustain today) or, in a weaker version, through the regulative principle of an undistorted communication, the very possibility of the ground as an empty place which is politically and contingently filled by a variety of social forces, disappears. Differences would not be constitutive because something previous to be their play *already* fixes the limit of their possible variation and establishes an external tribunal to *judge* them. Only the critique of a universality which is determined in all its essential dimensions by the metaphysics of presence, opens the way for a *theoretical* apprehension of the notion of »articulation« that we are trying to elaborate – as different from a purely impressionistic apprehension, in terms of a discourse structured through concepts which are perfectly incompatible with it. (We always have to remember Pascal's critique of those who think that they are already converted because they have just started thinking of getting converted.)

But if the debate concerning multiculturalism can draw clear advantages from the contemporary critique of foundationalism (broadly speaking, the whole range of intellectual developments embraced by labels such as »postmodernism« and »post-structuralism«), these advantages also work in the opposite direction. For the requirements of a politics based on a universality compatible with an increasing expansion of cultural differences, are clearly incompatible with some versions of postmodernism – particularly those which conclude from the critique of foundationalism that there is an implosion of all meaning and the entry into a world of »simulation« (Baudrillard). I don't think that this is a conclusion which follows at all. As we have argued, the impossibility of a universal ground does not eliminate its need: it just transforms the ground into an empty place which can partially be filled in a variety of ways (the strategies of this filling is what politics is about). Let us go back for a moment to the question of contextualization. If we could have a »saturated« context we would indeed be confronted with a plurality of incommensurable spaces without any possible tribunal deciding between them. But, as we have seen, any such saturated context is impossible. Yet, the conclusion which follows from this verification is not that there is a formless dispersion of meaning

without any possible kind of even a relative articulation but, rather, that whatever plays such an articulating role is not predetermined to it by the form of the dispersion as such. This means first that all articulation is contingent and, second, that the articulating moment as such is always going to be an empty place – the various attempts at filling it being transient and submitted to contestation. As a result, at any historical moment, whatever dispersion of differences exists in society is going to be submitted to contradictory processes of contextualization and de-contextualization. For instance, those discourses attempting to close a context around certain principles or values, will be confronted and limited by discourses of *rights*, which try to limit the closure of any context. This is what makes so unconvincing the attempts by contemporary new-Aristotelians such as McIntyre at accepting only the contextualizing dimension and closing society around a substantive vision of the common good. Contemporary social and political struggles open, I think, the strategies at filling the empty place of the common good. The ontological implications of the thought accompanying these »filling« strategies clarifies, in turn, the horizon of possibilities opened by the anti-foundationalist critique. It is to these strategic logic that I want to devote the rest of this essay.

We can start with some conclusions which could easily be derived from our previous analysis concerning the status of the universal. The first is that if the place of the universal is an empty one and there is no a priori reason for it not to be filled by *any* content, if the forces which fill that place are constitutively split between the concrete politics that they advocate and the ability of those politics to fill the empty place, the political language of any society whose degree of institutionalization has, to some extent, been shaken or undermined, will also be split. Let us just take a term such as »order« (social order). What are the conditions of its universalization? Simply, that the experience of a radical disorder makes *any* order preferable to the continuity of disorder. The experience of a lack, of an absence of fullness in social relations, transforms »order« into the signifier of an absent fullness. This explains the split we were referring to: any concrete politics, if it is capable of bringing about social order, will be judged not only according to its merits in the abstract, independently of any circumstances, but mainly in terms of that ability to bring about »order« – a name for the absent fullness of society. (»Change«, »revolution«, »unity of the people«, etc. are other signifiers which have historically played the same role.) As for essential reasons we have pointed out that fullness of society is unreachable, this split in the identity of political agents is an absolutely constitutive »ontological difference« – in a sense not entirely unrelated to Heidegger's use of this expression. The universal is certainly empty and can only be filled, in different contexts, by concrete particulars. But, at the same time, it is absolutely essential for any kind of *political* interaction, for if

the latter took place without universal reference, there would be no political interaction at all: we would only have either a complementary of difference which would be totally non-antagonistic, or a totally antagonistic one, one where differences entirely lack any commensurability, and whose only possible resolution is the mutual destruction of the adversaries.

Now, it is our contention that politico-philosophical reflexion since the ancient world has been largely conscious of this constitutive split, and has tried to provide various ways of dealing with it. These ways follow one or the other of the logical possibilities pointed out in the previous analysis. To suggest how this took place we will briefly refer to four moments in the politico-philosophical tradition of the West in which images of the ruler have emerged which combine in different ways universality and particularity. We will successively refer to Plato's philosopher-king, to Hobbes' sovereign, to Hegel's hereditary monarch and to Gramsci's hegemonic class.

In Plato the situation is unambiguous. There is no possible tension or antagonism between the universal and the particular. Far from being an empty place, the universal is the location of all possible meaning, and it absorbs within itself the particular. Now, there is for him, however, only *one* articulation of the particularities which actualize the essential form of the community. The universal is not »filled« from outside, but is the fullness of its own origin and express itself in all aspects of social organization. There can be here no »ontological difference« between the fullness of the community and its actual political and social arrangements. Only *one* kind of social arrangement, which extends itself to the most minute aspects of social life is compatible with the community in its last instance is. Other forms of social organization can, of course, factually exist, but they have not the status of alternative forms among which one has to choose according to the circumstances. They are just degenerate forms, pure corruption of being, derived from the obfuscation of the mind. As far as there is true knowledge only particular form of social organization realizes the universal. And if ruling is a matter of knowledge and not of prudence, only the bearer of that knowledge, the philosopher, has the right to rule. Ergo: a philosopher-king.

In Hobbes we are apparently in the antipodes of Plato. Far from being the sovereign who has the knowledge of what the community is, before any political decision, his decisions are the only source of the social order. Hobbes is well aware of what we have called the »ontological difference«. As far as the anarchy of the state of nature threatens society with radical disorder, the unification of the will of the community in the will of the ruler (or rather, the will of the ruler as the only unified will that the community can have) will count as far as it imposes order, whatever the contents of the latter could be.

Any order will be better than radical disorder. There is here something close to a complete indifference to the *content* of the social order imposed by the ruler, and an exclusive concentration of the *function* of the latter: ensuring order as such. »Order« becomes certainly an empty place, but there is in Hobbes no hegemonic theory about the transient forms of its filling: the sovereign, the »mortal God«, fill the empty place once and forever.

So, Plato and Hobbes are apparently at the antipodes of the theoretical spectrum. For Plato, the universal is the *only* full place; for Hobbes, it is an absolutely empty place which has to be filled by the will of the sovereign. But if we look more closely at the matter, we will see that this difference between them is overshadowed by what they actually share, which is not to allow the particular any dynamics of its own vis-à-vis the full/empty place of the universal. In the first case the particular has to actualize in its own body a universality transcending it; in the second case equally, although by artificial means, a particular has detached itself from the realm of particularities and has become the unchallengeable Law of the community.

For Hegel, the problem is posed in different terms. As for him the particularism of each stage of social organization is *Aufhebung* at a higher level, the problem of the incommensurability between particular content and universal function cannot actually arise. But the problem of the empty place emerges in relation to the moment in which the community has to *signify* itself as a totality – i.e. the moment of its *individuality*. This signification is obtained, as we know, through the constitutional monarch, whose physical body represents a rational totality absolutely dissimilar to that body. (This representation, in Hegel, of something which has no content of its own through something else which is its exact reverse has been very often stressed by Slavoj Žižek, who has contributed several other examples such as the assertion, in the *Phenomenology of Spirit*, that »the Spirit is a bone«.) But this relation by which a physical body, in its pure alienation of any spiritual content, can represent this last content, entirely depends on the community having reached, through successive sublation of its partial contents, the highest form of rationality achievable in its own sphere. For such a fully rational community no *content* can be added and it only remains, as a requirement for its completion, *the signification of the achievement of that functional rationality*. Because of that, the rational monarch cannot be an elected monarch: he has to be a hereditary one. If he was elected, *reasons* would have to be given for that election, and this process of argumentation would mean that the rationality of society would not been achieved independently of the monarch, and that the latter would have to play a greater role than a pure function of ceremonial representation.

Finally Gramsci. The hegemonic class can only become such by linking a

particular content to a universality transcending it. If we say – as Gramsci did – that the task of the Italian working class is to fulfil the tasks of national unification that the Italian people had posed to itself since the time of Machiavelli and, in this way, to complete the historical project of the *Risorgimento*, we have a double order of reference. On the one hand, a concrete political programme – that of the workers – as different from those of other political forces; but, on the other hand, that programme – i.e. that set of demands and political proposals – is presented as a historical vehicle for a task transcending it: the unity of the Italian nation. Now, if this »unity of the Italian nation« was a concrete content, specifiable in a particular context, it could not be something which extended over a period of centuries and that different historical forces could bring about. If this, however *can* happen, it is because »unity of the Italian nation« is just the name or the symbol of a lack. Precisely because it is a *constitutive* lack, there is no content which is a priori destined to fill it, and it is open to the most diverse articulations. But this means that the »good« articulation, the one that would finally suture the link between universal task and concrete historical forces will never be found, and that all partial victory will always take place against the background of an ultimate and unsurpassable impossibility.

Viewed from this perspective the Gramscian project can be seen as a double displacement, *vis-à-vis* Hegel and *vis-à-vis* Hobbes. In one sense it is more Hobbesian than Hegelian, because, as society and State are less self-structures than in Hegel, they require a dimension of political constitution in which the representation of the unity of the community is not separated from its construction. There is a remainder of particularity which cannot be eliminated from the representation of that unity (unity = individuality in the Hegelian sense). The presence of this remainder is what is specific to the hegemonic relation. The hegemonic class is somewhere in between the Hegelian monarch and the Leviathan. But it can equally be said that Gramsci is more Hegelian than Hobbesian, in the sense that the political moment in his analysis presupposes an image of social crises which is far less radical than in Hobbes. Gramsci's »organic crises« fall far short, in terms of their degrees of social structuration, from the Hobbesian state of nature. In some senses, the succession of hegemonic regimes can be seen as a series of »partial covenants« – partial because, as society is more structured than in Hobbes, people have more conditions to enter into the political covenant; but partial also because, as the result of that, they also have more reason to substitute the sovereign.

These last points allow us to go back to our earlier discussion concerning contemporary particularistic struggles and to inscribe it within the politico-philosophical tradition. In the same way that we have presented Gramsci's

problematic through the displacements that he introduces vis-à-vis the two approaches that we have symbolized in Hobbes and Hegel, we could present the political alternatives open to multicultural struggles through similar displacements vis-à-vis Gramsci's approach. The first and most obvious displacement is to conceive a society which is more particularistic and fragmented and less amenable than Gramsci's to enter into unified hegemonic articulations. The second, is that the *loci* from which the articulation takes place – for Gramsci they were locations such as the Party, or the State (in an expanded sense) – are going to be also more plural and less likely to generate a chain of totalizing effects. What we have called the remainder of particularism inherent in any hegemonic centrality grows thicker but also more plural. Now, this has mixed effects from the viewpoint of a democratic politics. Let us imagine a jacobinical scenario. The public sphere is one, the place of power is one but empty, and a plurality of political forces can occupy the latter. In one sense we can say that this is an ideal situation for democracy, because the place of power is empty and we can conceive the democratic process as a partial articulation of the empty universality of the community and the particularism of the transient political forces incarnating it. This is true, but precisely because the universal place is empty, it can be occupied by *any* force, not necessarily democratic. As is well-known, this is one of the roots of contemporary totalitarianism (Lefort).

If, on the contrary, the place of power is not unique, the remainder, as we said, will be weightier, and the possibility of constructing a common public sphere through a series of equivalential effects cutting across communities will be clearly less. This has ambiguous results. On the one hand, communities are certainly more protected in the sense that a jacobinical totalitarianism is less likely. But, on the other hand, for reasons that have been pointed out earlier, this also favours the maintenance of the status quo. We can perfectly well imagine a modified Hobbesian scenario in which the Law respects communities – no longer individuals – in their private sphere, while the main decision concerning the future of the community as a whole are the preserve of a neo-Leviathan – for instance a quasi-omnipotent technocracy. To realize that this is not at all an unrealistic scenario, we only have to think of Samuel Huntington and, more generally, of contemporary corporatist approaches.

The other alternative is more complex but it is the only one. I think, compatible with a true democratic politics. It wholly accepts the plural and fragmented nature of contemporary societies, but, instead of remaining in this particularistic moment, it tries to inscribe this plurality in equivalential logic which make possible the construction of new public spheres. Difference and particularism are the necessary starting point, but out of it, it is possible to open the way to a

relative universalization of values which can be the basis for a popular hegemony. This universalization and its open character certainly condemns all identity to an unavoidable hybridization, but hybridization does not necessarily mean decline through a loss of identity: it can also mean empowering existing identities through the opening a new possibilities. Only a conservative identity, closed on itself, could experience hybridization as a loss. But this democratico-hegemonic possibility has to recognize the constitutive contextualized/decontextualized terrain of its constitution and fully take advantage of the political possibilities that this undecidability opens.

All this finally amounts to saying is that the particular can only fully realize itself if it constantly keeps open, and constantly redefines, its relation to the universal.



# The Politics of Homecoming

## *Contending Fictions of Identity in Contemporary South Africa*

Aletta J. Norval

### *Introduction*

*home*: n., a., & adv. OED 1.n. Dwelling-place; fixed residence of family or household ... 2. Native land of oneself or one's ancestors, esp. Britain (sic). 3. Place where thing is native or most common ... *come ~ to*, become fully realised by...

In April 1994, with the singular, unrepeatable event of the election, South Africa once again has come to occupy a space in the imaginary of the West which is both unique and exemplary.<sup>1</sup> In a world torn apart by ethno-nationalist struggles, in the absence of the stabilising influence of the Cold War, South Africa almost effortlessly moved from being a pariah state, to becoming a symbol of hope and unity, of what can be achieved in the name of democracy. However, reading this event from the standpoint of the spectator alone, will not do. For the election not only reaffirmed that which the West desired but also, and perhaps more importantly, it instituted a new imaginary, a horizon within which for the first time, a fluid, open South African identity became a possibility for all those denied it before.

### *Institution*

The election acted as the moment of institution of a new social imaginary, signifying a beginning, an origin, as well as a completion. That is to say, the delineation of the horizon within which a newly articulated South African identity originated, also prefigures the space of its own fulfilment. What is instituted as radically new, serves as an always already given origin, marking out the space of the possible. Such is the paradox of all beginnings. However, this is not to say, in Hegelian fashion, that such beginnings are determined by developments to follow. To the contrary, the element of paradox on which I

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<sup>1</sup> This argument is elaborated in Norval (1994b).

want to focus here emphasises the contingency and impurity of all beginnings which, while far from determining its forms of identification, cuts out a space open to contestation and subversion, at the same time as it sets limits to that identification.

In South Africa, the radical institution of a new imaginary happened before our very eyes:

*The abiding image of the day that South Africa began to become one nation, all together, was in the orange, autumn sun rising over a new country teeming with extraordinary, renewed people. It rose over a country with a new flag, a new anthem, a new map, and a profound new human mood. When the people began to form those lines they became a new people, spontaneously and unintentionally. The tiny seed first glimpsed on the national peace day last year, giving life to the otherwise lifeless political slogan »non-racial«, burst into resplendent flower. Black South Africans learnt what whites already knew: how to vote. White South Africans learnt what blacks knew: how to wait. They did it together, in marvelous straggly multi-coloured queues... (Johnson, 1994, emphasis added).*

The question remaining to be addressed in this respect is the following: how do we think this moment of institution? The most obvious candidate for this in the tradition of political theory is, of course, the social contract tradition which attempts to theorise the moment of inauguration and establishment of society. The paradox we encounter here is well known: in order to institute society, we already need to have in place that which can only be brought about as a result of the very act of institution. As Connolly (1991:465) argues with reference to Rousseau, »(f)or a general will to be brought into being, effect (social spirit) would have to become cause and cause (good laws) would have become effect«. As we know, Rousseau resolved this problem in an interesting fashion. He argued that the legislator being unable to employ either force or argument, »must have recourse to an authority of another order«, must claim his own contingent wisdom to be that of the Gods (Rousseau, 1968: 87). In order to establish the purity of the law, the lawgiver in fact has to resort to the impure mechanism of deception. In this sense, Rousseau not only »solves« his own problem, but sets into place a radical argument for the »ignobility of all origins«, even that of the Law, so introducing an ineliminable element of arbitrariness into political life.

This act of institution is always *retroactively* realised, constituted after the fact. Analogously, it could be argued that the real constitution of the South African nation took place not so much in the actual act of queueing, as in the retrospective viewing of that act, emphasising the moment it entered the gaze, making the actor simultaneously spectator of her own acts. And in this very

moment of elation, of birth, was enacted the contractual paradox: it foreshadowed the very thing which would make the nation possible. It established a South African *identité à venir*. It provided a vision of tolerance, of fusion, and one might say, of precarious unity, which everyone full well knows is patently absent in the present.<sup>2</sup> To put it differently, the very conditions of possibility for democracy was instituted in a context scarred by their very absence.

*Empty spaces, barred subjects*

While the act of institution always contains a paradox, this does not mean that the paradox is eradicated with the full institution of a democratic social order. As I have pointed out earlier, there is an ineliminable element of in the ignoble, arbitrary moment of institution which continues to mark the political space. In order to understand why this is the case, we need to look more closely at two further dimensions of this institution: that of the space itself, and of the subject of democracy. Let us start with the former.

*»Democratic society could be determined as a society whose institutional structures includes, as part of its »normal«, »regular« production, the moment of dissolution of the symbolic bond, the movement of the irruption of the Real: elections«.* (Žižek, 1989:147)

In his seminal work on the democratic imaginary, Lefort argues that in a democratic society the place of power is an *empty* one (1988:17). That is, democracy involves the institutionalisation of the markers of uncertainty. What is sacrificed here is precisely the possibility of a given and certain content filling, without question, the place of power. But with this sacrifice, as with all sacrifices, something crucial is gained. The empty space of power, in fact, secures in its very nature, the space of contestability. Far from being a safe and merely bourgeois phenomenon, democracy shows the radical incompleteness of all forms of identification.

The third dimension of the paradox of this institution concerns the nature of

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<sup>2</sup>The extent of the intolerance characterising the South African political landscape, most recently, has been visible in the extreme violence in the PWV-region as well as kwaZulu-Natal. Other indicators can be used here as well. For example, a survey of the Western Cape region showed that 61% of Africans and 45% of Coloureds would not allow a political party they oppose to make political speeches on their home turf (Collins, 1994). Shortly before the elections, voter education programmes were reportedly being thwarted in kwaZulu-Natal by both the Inkatha Freedom Party and the African National Congress. Several incidents in the rest of the country was reported where speakers were violently prohibited from addressing political meetings. These more recent indicators should, of course, not overshadow the fact that the political history of South Africa as a whole can be described as a severely intolerant one.

the subject to complement this empty space. We can ask with Žižek, »who is the subject of democracy?« The answer? The subject of abstraction, »the empty punctuality we reach after subtracting all the fullness of particular contents« (Žižek 1991:190) As both Laclau and Žižek, following Lacan, have argued, the important point here is not simply the empty point of reference, the »all people *without regard* to...« which forms the preamble to every democratic credo (Žižek 1991:190). Rather, what is crucial is the fact that the non-substantiality of subjectivity, or to put it in Lacanian terms, the subject of a constitutive lack, the barred subject, inaugurates the need for *identification*.

However, here the further paradox, or perhaps *the* paradox of democracy emerges. For democracy, in order to be democracy at all, has to be anti-humanistic in that it has to abstract from specificity. Yet, it also has to engender acts of identification which will always threaten the very moment of abstraction itself, which will »smear« democracy with particularity (Žižek, 1991:192). This is the very space in which the recent debate between liberals and communitarians is constituted, with liberals focussing exclusively on the abstraction of the subject from all context – exemplified in the Rawlsian »veil of ignorance« – while communitarians, in what had to amount to anti-democratic gestures, tended to solidify the subject, cementing it for ever in the bonds of community. Neither of these options will do, and while it is not possible here to discuss the matter in detail, it is necessary to signal our disquiet with these »either-or« options, both of which misrecognises the complexity as well as the essential finitude, not only of the subject, but of the very space of democracy itself.

### *Minimal remainders*

Instead of seeing this »smearing« of democracy with singularity as a disaster, it is necessary to recognise that democracy arises in the very *tension* of this empty space. Or perhaps, it could better be designated as a non-full space, a space marked forever with a radical impossibility. The questioning of forms of universality by the emerging particularisms of our time should thus not lead to a simplistic reassertion of universality as such. It is in the terrain of the tension between the emptiness of universalism, and the particularistic smearing of the democratic space, that we will be able to renegotiate not only spaces for the democratic recognition of particularity, but also for the revalorization of quasi-transcendental universalisms. We will return to the theoretical nuances of this phenomenon. However, in order not to be accused of excessive theoreticism, let us address these issues in the concrete-historico setting of the transition we are witnessing in South African politics.

## Closures

It is a truism to say that changes in the political imaginary structuring South African politics are taking place against the grain of developments in world politics. It is almost *passé* to remark that since 1989, with the end of globalising ideologies, we have entered the realm of a vicious proliferation of particularistic forms of identification. In the absence of a single principle of division of international frontiers, with the present undermining of universalistic forms of thought, the new South Africa appears almost as an anachronism, out of place in the contemporary world. But precisely for this reason, South Africa now also acts as a crucial signifier in the imaginary of the West. In contrast to its earlier pariah status, it now is a site invested with the most extreme of hopes. We will explore this dimension further. However, let me first consider the role played by 1989 in the South African context, for it is in the precise manner of its articulation, that its significance is to be found. It is of course well known that the February 2, 1990 FW de Klerk speech, unbanning the ANC, SACP and other political organisations, very much took its cue from the series of events marked by 1989:

*»The year 1989 will be known in history as the year of the death of Stalinist communism. The effects of these events for Europe are unpredictable, and they will also be of decisive importance for Africa... The implosion of the Marxist economic system of Eastern Europe stands as a warning against all those who want to persevere with this in Africa.«* (Hansard, 2 February 1990, kol.3, my translation)

Thus, setting the scene for the reconstruction of South Africa, the creation of a »just political order in which every will have equal rights... [and] opportunity« (Hansard 2 February 1990, kol.2). It is important that the moment of the death of »Stalinism« and »Marxism«, coincides with the death of apartheid.

This, of course, does not come as a surprise. Indeed in the contemporary international political context referred to earlier, the end of grand narratives inevitably had to mark the project of apartheid. Let us forget, let us reflect for a moment on the nature of this project. Elsewhere I have characterised the *logic* of apartheid as an identitary logic, one in which the closure and purity of identity took primacy.<sup>3</sup> The complicated vicissitudes of this project should not be allowed to obscure the centrality and specificity of its logic in the shaping of the South African political landscape. I will not dwell on the nature of apartheid here. However, it is necessary to reflect briefly on the lingering effect this discourse of closure may have on the longer term prospects for a

<sup>3</sup> My argument concerning the logic of apartheid is elaborated in Norval (1994b).

democratic settlement in South Africa. Three areas of identity formation are crucial in this respect. They are, the struggles around Inkatha and the Zulu monarchy; the question of coloured identity, and the role of the far-right.<sup>4</sup> We will focus only on the third: the grouping of forces aligned around the far right Afrikaner Volksfront and the Freedom Front under the leadership of General Constand Viljoen.<sup>5</sup> The reasons for this choice are the following. Literature on these groupings is scant and largely journalistic accounts written either by sympathisers or scaremongers. Academic accounts are few and far between and tend to subscribe to simplistic views of history, locating the re-emergence of the radical right in the 1980s and 1990s as a straight-forward continuation of a certain tradition of »Afrikaner nationalism«.<sup>6</sup>

Very little attention has been given to the precise *imaginary* feeding into the constitution of these groupings. It has been all too easy to pigeonhole these groupings in a rather simplistic fashion as just one more manifestation of the sort of extreme racist discourse which informed segregation as well as apartheid discourses, resulting, once again in a left impotence in front of the values espoused by these forces. This evaluation may not be entirely out of place. Especially the Afrikaner Volksfront makes no effort to conceal their overt racist criteria of inclusion and exclusion contained in their conception of the »Afrikaner *volk*«.<sup>7</sup> The situation with regard to the Freedom Front, however, is

<sup>4</sup> The struggles between Inkatha and the ANC is well documented and analysed in the existing literature. This is not the case with reference to the question of Coloured identity and the far right. I have discussed some of the problems with regard to the former in Norval (1994c).

<sup>5</sup> The Freedom Front (*Vryheidsfront*) was formed in March 1994 when General Constant Viljoen decided to break away from the Afrikaner Volksfront, and to participate in the April elections. A considerable amount of overlap in terms of membership affiliation continued to exist between the two organisations.

<sup>6</sup> See, for example, the recent study by Van Rooyen (1994) on the »hard right« where he argues that »as the NP expanded its narrow ethnic origins to incorporate a broader white nationalism in the 1960s and 1970s, and an even broader territorially based South African nationalism in the late 1980s and early 1990s, it was left for the right wing to take up the cause of Afrikaner nationalism« (1994:3). Van Rooyen's account leads him into two difficulties. The first is the tendency to assume the existence of an »Afrikaner ethnicity«, even if he tends to emphasize its non-homogeneity insofar as it is expressed in Afrikaner nationalism. Drawing on Horowitz in this respect, Van Rooyen assumes a highly questionable naturalistic account of the »psychological tendencies inherent in ethnicity«, such that ethnic conflict should be understood in terms of the collective drive by ethnic groups to obtain or maintain social status and power (1994:201). The second is that, in spite of his emphasis on disunity within Afrikaner nationalist circles, he ends up affirming a continuist view of history which holds to the idea that the right can only be explained as a continuation of that tradition. Such a simplistic affirmation of continuities is precisely what, I would argue, is questionable if we are to understand the contemporary right in South Africa today.

<sup>7</sup> An Afrikaner Volksfront spokesperson, for example, suggested that the issue of membership of the *volk* may easily be decided by applying the »d/jakkals« test (Aucamp, 1994). Should a

markedly more complicated by the precise articulation and contextualisation of the demand for a *volkstaat*. Here is articulated a second time what seems, at first glance, a tragic enactment of apartheid discourse, a yearning for a territorially sovereign state where the »Afrikaner people« can be at home. However, it is important not to proceed too quickly here. We need to investigate more closely what and whom exactly is designated by the notion of the »Afrikaner volk«. In this respect, it is necessary to investigate the functioning of »1989« in the discourse of the Freedom Front (FF), and the role it plays in the distancing of their discourse from that of traditional apartheid. This distancing occurs in the discourses of most of the far right groupings organising themselves around the notion of a *volkstaat*. Across most of the spectrum of far right discourses, apartheid is not regarded as the saviour-ideology of the Afrikaner. Rather, it is seen as that which ruined their case for a territorially sovereign state. It is argued that while much has been written on »the effects of apartheid on Africans, Coloureds and Indians, on the ecology, white rhino (*sic!*) and whatever else«, no study has been done of the effects of apartheid on the Afrikanervolk (Bruwer, 1992).<sup>8</sup>

Apartheid, here reduced to an ideology which entrenched white privilege on a racial basis, is regarded as »the opium of the masses« in that it created a false illusion that the Afrikaner had a »land of its own« (Bruwer, 1992), blinding them to the »blackening« (*verswarting en verbruining*) of »white South Africa«. In fact, apartheid's legacy for the »Afrikaner people« is that it left them in the position of »a people without a country«, a homeless people. Moreover, by conflating the retention of political power and the uplifting of the volk, apartheid created a nation of servile civil servants, particularly vulnerable to any change in regime. It stripped the Afrikanervolk from its territorial basis and work ethic, leading to moral and territorial decay.<sup>9</sup> Already from this, it is clear that the contemporary right cannot be seen as a simple continuation of the extreme, dogmatic forms of Afrikaner nationalism. However difficult to swallow politically, it must be emphasized that there is a certain distancing from apartheid which makes it untenable to conflate it with earlier forms of rightwing ideology. Simply to regard the right as a spent force, built on outdated and

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person pronounce the Afrikaans word »jakkals« on its »standard« pronunciation (»jakkals«) then s/he clearly is a member of the *volk*. Should it be pronounced »djakkals« instead, such a person is excluded from membership. This racist »test« is clearly designed to exclude Coloured Afrikaners from the *volk*, and is reminiscent of the various tests employed in the early apartheid years to establish a person's »race«.

<sup>8</sup> The series enumerated here reads like the one Borges allegedly took from a Chinese dictionary. Its principle of intelligibility is well-nigh unintelligible to us.

<sup>9</sup> Here one already sees the »moralism« of the far right emerging. It has to be stressed that it, in this case, is also coupled with a clear anti-semitic thrust.

discredited ideological structures would be a mistake, both in theoretical and political terms, for the rearticulation effected in their discourse may have far-reaching and unforeseen resonances in a changed international context.

This brings us to the signifying force which the post-1989 world has in the discourse of the *volkstaat* ideologues. The most sophisticated version of this articulation is to be found in the analysis of the Freedom Front, also making it a »milder« version of the argument, compared for example to the position of the Afrikaner Volksfront. Distinguishing between the illegitimate *racial* basis of apartheid, and legitimate *ethnic* forms of identification in our contemporary world, it is argued by Corne Mulder – constitutional expert of the Freedom Front – that South Africa's problems are not unique.<sup>10</sup> As in the rest of Africa, colonial boundaries created artificial entities; in the case of South Africa, the non-existent »South Africans«.<sup>11</sup> Having left the *uhuru* phase behind, Africa is now in a »democratising« phase. For Mulder, what is important to remember in this context is that emerging demands for »ethnically« based democracies cannot be separated from the increasing globalisation of the world economy. Economic interdependence is coupled everywhere with demands for territorial separatism. Here once again, the current ideologists of the right are distancing themselves from the tradition of Afrikaner separatism, as it was, for example, found in the early SABRA demands for »total apartheid«, which meant apartheid both in the political and economic spheres.<sup>12</sup>

Such demands for a sovereign Afrikaner territory can be pursued in two ways: via conflict or via constitutional settlement. Referring to the recently won »selfgoverning status« of Palestine, the Freedom Front holds that their struggle today, far from being anachronistic, is wholly in step with developments in our contemporary world. While Palestine acts as positive referent here (and it is interesting to note here that Palestine has replaced the role given to Israel by apartheid ideologues), the former Yugoslavia serves as the negative pole. This is especially the case for the Afrikaner Volksfront who holds that they are simply biding their time. On this reading, the theory and practice of non-racialism will fail in South Africa – witness Inkatha – and the far-right will be ready to step in at the point in which the conflict in South Africa reach Bosnian

<sup>10</sup> Contrast this with the *ad nauseam* argument by apartheid ideologues on the uniqueness of the South African situation!

<sup>11</sup> The debate on the existence or not of »South Africans« is a long one. I have discussed this in a historical context in Norval (1994c).

<sup>12</sup> During the late 1950s and early 1960s, the issue of »total« versus »partial« apartheid was a key debating point in Afrikaner nationalist circles. The concern primarily was whether apartheid should be enforced only on the political terrain, or whether it also had to be brought about in the economy. Elements within SABRA (Suid-Afrikaanse Buro vir Rasse Aangeleentede) came out in favour of »total« apartheid, as the only »moral« form which apartheid could take.

proportions.<sup>13</sup> In keeping with the rest of the world, South Africa is bound to travel the road to inevitable disintegration into ethnic territories.

In contrast to the Afrikaner Volksfront, the Freedom Front is, for the moment, intent on pursuing the constitutional path to the achievement of its goals.<sup>14</sup> In this respect it is important to note that they are already working on what is called the »internationalisation of the Afrikaner question«, and have embarked upon a programme of establishing contacts with senior members of the United Nations (Boutros-Boutros Ghali), of the Commonwealth, and the Organisation for African unity in order to create the climate in which the 54th independent state in Africa may be created via constitutional means. Shortly before the election, General Constand Viljoen negotiated a deal to the effect that the issue of self-determination be written into the constitution. The 34th (34.1) constitutional principle entails that the *right of the South African people as a whole to self-determination, shall not be construed as precluding, within the framework of said right, constitutional provision for a notion of the right to self-determination by any community sharing a common cultural and language heritage, whether in a territorial entity within the Republic or in any other recognised way.*

This concession is described by the Freedom Front as »wrenching open a door for the continuation of ethnic politics in Sout Africa« (Vryheidsfront, »Beginsel 34 en die Volkstaatraad«, 1994). Article 34 further states that self-determination may be established should there be substantial support from within the particular community for such a form of self-determination.<sup>15</sup>

This, of course, immediately raises the vexed question as to who the members of such an »Afrikaner volk« may be? While members of the Afrikaner

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<sup>13</sup> The Afrikaner Volksfront seem to hold an apocalyptic belief in the eventual failure of the discourse of non-racialism. In this sense, their »strategy« is simply to bide their time, and to continue to foster alliances with forces which may, under such circumstances, act as allies in the search for territorial autonomy on »ethnic« grounds (Aucamp, 1994).

<sup>14</sup> It is a well-known fact that the Freedom Front can muster considerable military and paramilitary force behind them. These forces, in contrast to those of the Afrikaner Weerstandsbeweging (AWB) who were responsible for the battle for Boputhatswana, are highly trained and disciplined. For the moment, however, they remain loyal to General Constand Viljoen and the strategy of constitutional negotiation.

<sup>15</sup> The question of how this support is to be tested is a vexed one. During the election it was suggested that the share of the regional vote gained by the Freedom Front would act as a fair indicator of their support. Regionally this vote ranged from 6% in the Freestate and Northern Cape to 0,5% in Natal. However, the more serious issue concerns the determination of those eligible to participate in the decision for/against a *volkstaat* since a considerable proportion of »Afrikaners« would under no circumstances associate themselves with the »Afrikaner *volkstaat*« and the Freedom Front.

Volksfront (and presumably also other far right organisations affiliated to them) are quite clear about the need for a racial component to this identity, the Freedom Front is less forthcoming on this point. They insist on the fact that the Vryheidsfront is a »non-racial« organisation (simply not taking »race« as a criterion of qualification) and that it therefore is quite at home in contemporary South Africa (Mulder 1994). However, when pushed on the issue, they argue that the »volk« will have to decide the issue of membership, leaving the door open to racial politics.<sup>16</sup> This suspicion is further reinforced by the emphasis in their discourse on »nonartificial«, that is »organic«, forms of ethnicity and community (Mulder 1994), as well as in their open denial of full citizenship rights to »others« who may find themselves within the boundaries of such a *volkstaat*.<sup>17</sup>

Situated then in the double context of the failure of apartheid and the emergence of ethno-nationalism in our contemporary world, the far right continues the tradition of identity politics found in its most extreme form in apartheid. It remains to be seen whether their strategy of distancing themselves from apartheid will succeed. For our purposes, however, it is important to stress the ever-present dimension of closure and exclusivity articulated in this discourse. A discourse in which identity can be seen to pretend to be fully at home with itself, coinciding with itself, externalising all difference into otherness which, quite literally, has to be externalized beyond the borders of the *volkstaat*.

### *Tensional openings*

Exactly how out of step this discourse is with the instituted myth now animating the discourse of a new South African identity becomes clear when it is contrasted to the discourse of non-racialism. Non-racialism, of course, has an

<sup>16</sup> Here, of course, it is clear that the real issue concerns the position of Afrikaans-speaking Coloureds. The Freedom Front, in line with its distancing of itself from the racialism of apartheid, have great difficulty in dealing with this question. They seem to want to have it both ways: an ethnic »Afrikaner« community which nevertheless does not include Coloureds. Thus, the strategy of not making pronouncements on their stand on the »race«-issue, leaving it to the »members« of the *volk* to decide. It is, moreover, interesting to note that »democracy« does not feature prominently in their discourse, if at all. However, legitimacy as to the »membership« of the group is to be bestowed by »democratic« decision-making procedures – as if that would make the result any more palatable!

<sup>17</sup> Further problems arise from the very idea of a *volkstaat*, should one take seriously their principles as stated in their »Core Manifesto«. Whilst maintaining that the *volkstaat* should exist within a broader non-racial South Africa, no concessions are to be made as to the inalienable and »fundamental right of the Afrikanervolk... to self-determination«, including the right »to govern themselves in their own state«. This immediately raises the issue of the extent of the limitation of the rights of »others« / »non-volk residents« in such a state.

illustrious and venerable history in South Africa, informing generations struggling against apartheid, and is perhaps captured best in Mandela's oft-quoted words spoken during his 1964 trial:

*»I have fought against white domination and I have fought against black domination. I have cherished the ideal of a democratic and free society in which all people live together in harmony and with equal opportunities.«* (1990: 217)

It is a theme which has continued to structure and inform the voice of the African National Congress, becoming more and more infused with a discourse on national reconciliation during the 1990s and which reached its most eloquent expression in the Presidential inaugural address of the 10 May 1994:

*»Out of the experience of an extraordinary human disaster that has lasted too, too long, must be born a society of which all humanity will be proud... The time for the healing of wounds has come... We have, at last, achieved our political emancipation. We pledge to liberate all our people from the continuing bondage of poverty, deprivation, suffering, gender and other discrimination... We enter into a covenant that we shall build the society in which all South Africans, both black and white, will be able to walk tall, without any fear in their hearts... – a rainbow nation at peace with itself and the world... Never, never and never again shall it be that this beautiful land will ever again experience the oppression of one by another...«* (Mandela, inauguration speech, 10 May 1994, reproduced in The Star, 11 May 1994)

Or as a more irreverent commentator put it: »Miracle-man Mandela« is now president of all South Africans: »the bald-headed and the bearded, housewife and servant, capitalist and unemployed, archbishop and squatter... white and black... (Breytenbach, 1994, my translation). However one puts it, in Mandela's words is contained a vision which is constitutive of the new imaginary which will shape the identities of generations to come, a vision of a »rainbow nation«, one nation constituted of many cultures. While this may hold up a positive vision of a new »nationhood« or South African identity, much depends on exactly how the relation of identification is understood and is given concrete expression.<sup>18</sup>

As I have argued elsewhere, if it is simply a matter of a recognition of the plurality of the South African population, it is possible that the discourse of non-racialism may reproduce identitary logics.<sup>19</sup> On this reading, the bringing

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<sup>18</sup> Much depends here on the concrete expression given to non-racialism and the extent to which it will, of necessity, be limited with respect to the application of »affirmative action« programmes. For a fuller discussion, see Norval (1994a and 1994c).

<sup>19</sup> This possibility has been discussed in greater depth in Norval (1993a).

together of the African, white, coloured and Indian groups, presumes the existence of differential and homogenous communities. While the need for a discourse on unity clearly is urgent in the current South African context, the question at stake here is exactly how that may be thought. If non-racialism is understood on the model of a unification of pre-existing homogenous communities, then several problems may arise in terms of the institution of a democratic form. The most important of these would be precisely the tendency to treat differential communities as internally homogenous, thus obliterating more complex forms of identification which may arise. In its turn, this may lead to difficulties in constructing a South African identity, for if positive identification is attributed to the level of the group, it is difficult to see how an »overarching« identity will be construed, an identity which will of necessity make competing claims to identification.

Quite the reverse may of course also take place. The fact that so much emphasis is placed on »reconciliation« and »nationbuilding« may very well lead to stifling discourses on the »unity« of the nation. However, it is my contention that the tension inherent in the discourse of non-racialism with its simultaneous recognition and subversion of a certain category of »race« will make this very unlikely. This brings me to another possible reading of the discourse of non-racialism, namely one which has as a project the articulation of a terrain of a tension. This can be understood most clearly if one focusses on the problematisation and weakening of discourses of »racialism« inherent in *non*-racialism. In positing it as a question, thus not attempting to suppress the problematics of race – as has been the case so often in »progressive« politics – it subverts all naturalising discourses on race. In addition, the form of identification which is to be characteristic of South African identity, does not function at the level of a positive specification of a set of elements. Rather, it tends to emphasise the negative. Put differently, »South African« identity is given precisely in the problematisation of the racial as an ordering principle.

Here I would like to focus for a moment on the question of a negatively constituted identity. This would entail that no positively specified set of elements in principle can exhaust the content of an identity. In fact, one may put it even stronger and argue that such a form of identification recognises the fact that an identity can only be formed in the process of differentiating itself from something else. The essence of an identity is thus not given in positive characteristics, but in and through the moment of exclusion, in what it externalises as other. In the case of non-racialism, the role of the other is taken by naturalising discourses on race, of which apartheid is the exemplary case. Non-racialism thus articulates itself in this field of denial of the other; it recognises the absence of a natural community of identity, and consequently

the need to construct a community as a project.<sup>20</sup> This project animates an identity never quite at home with itself.

Inherent in this discourse is thus the possibility of coming to terms with the contingency and fluidity of forms of identification, of taking the non-closure of identity seriously. This, of course, takes us directly back to our earlier remarks on the form of the subject appropriate to the democratic form. Following Žižek, I have argued that the subject of democracy has to be a non-substantial subject. However, before proceeding any further, a number of further specifications, not made by Žižek, have to be added. The problem of remaining at the level of addressing the question of a democratic subjectivity at the level of the »empty subject«, is the following. The lack inherent in all identities inaugurates the *general* need for identification. But, and this cannot be over-emphasised, there is *nothing* in the form of lack as such, which in and of itself will lead to a »democratic« form of identification. To put it differently, nothing can be read off from the subject of lack.

What then is one to make of my remarks concerning the discourse of non-racialism and its »negative«, non-substantial form? Here the notion of non-racialism which has been articulated in the South African context has to be fleshed out in greater detail. Two remarks in terms of its relation to a discourse on democracy are particularly pertinent here. The first is that this signifier acted as a nodal point in the discourses of resistance, »stitching« together many other signifiers, of which the demand for democracy, was one of the most central ones. The discourse of non-racialism thus acted as a signifier designating a whole series of demands. But secondly, and more to the point here, is the fact that the discourse of non-racialism, though it is a negatively formulated discourse, is nevertheless »smeared« with a certain particularity. That is to say, it is not simply a discourse emptied of all concreteness. It articulates itself precisely in a *context*. It is marked by this context. It cannot be absolutely abstracted from this context. And it is this »stain«, the fact of its non-total emptiness that allows in the final instance for its articulation to a democratic project. While holding off essentialist and identitarian conceptions of identity with its emphasis on the negatory character of non-racialism, it nevertheless contains a certain contextual particularity which gives a democratic content to forms of identification. It opens and delineates a certain space of identification, and the combination of these two elements – the holding open of a space of identification in principle on the one hand, and the provi-

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<sup>20</sup> This may amount to an overestimation of the extent to which the African National Congress in fact views this community. Some would argue that it rests on a »given« and »common humanity« basis.

sional filling of that space on the other – is what characterises the democratic space, what makes of identity always to an extent an *identité à venir*. That is, the realisation of the impossibility of ever fully occupying the space of power.

### *Spectral desires*

At this point it is necessary to return to the wider context in which this imaginary has been instituted. The events sparked off by the unbanning of the African National Congress, the South African Communist Party and other proscribed organisations in February 1990, also played an important role in the imaginary of the West in the post-1989 context. South Africa has become a signifier of hope in an international political landscape which increasingly is torn apart by ethno-nationalist struggles. Against such violent and aggressive particularisms, the formation of a new South Africa, a country for »all its people's« stand as a reminder of the power of the universalism or »anti-humanist humanism« of discourses of democracy. In this sense, the new South Africa acts out what is lacking in the »post-historical« West itself: a sense of optimism, engagement and hope. This investment by the spectating West, however, is not without its difficulties, for it could involve a refusal to come to terms with some of the problems which may be created by an unabashed universalism in the South African context.<sup>21</sup> Moreover, the colonial legacy has to make one somewhat suspicious of the »good intentions« of the other.

This problem can be discussed, metaphorically, through the imminent re-turn to South Africa of the collection of artworks »*contre/against apartheid*«. <sup>22</sup> This collection of works took the form of a traveling exhibition to be presented as a *gift* to the first democratically elected government of South Africa.

*»But it is also that God who, in the action of his anger ... annuls the gift of tongues, or at least embroils it, sows confusion among his sons, and poison the present.«* (Gift-gift) (Derrida 1991:246)

As is well known in the wake of Derrida's writings on the subject, the structure of the gift is a dual one: indicating both a giving without demand and the possibility of a poison (Derrida 1985:246). What is at stake here then are the various dimensions and implications of this gift to the new South Africa: the gift as recognition of the accomplishments of generations struggling for a democratic settlement in the country which has become the signifier of oppression in the international world; the gift coming home, to its original place; the

<sup>21</sup> See Norval (1993b).

<sup>22</sup> This moving exhibition came to »academic« public knowledge with the publication in *Critical Inquiry* of Derrida's piece originally written for the catalogue accompanying the exhibition.

effects of this homecoming, of the coming to rest of a moving, fluid exhibition; the gift poisoning the present...

We can only touch upon some of these dimensions. For our present purposes, it is perhaps the most important to concentrate upon what is given in the gift of the »*contre/against apartheid*« exhibition. To do this, one has to clarify what this exhibition signified in the first place. It had to serve as a reminder in the world at large of the presence of the heinous crime of apartheid. Lest we forget.<sup>23</sup> In addition, it also had to serve as a signifier of hope. The exhibition would travel the cities of the world until such time as it could return home to take its rightful place in a democratic South Africa. That time is now. But, a question remains. This question concerns the homecoming of the exhibition. What could it possibly mean for an exhibition to come home to a place where it never was at home, to a place which never was its native land, to take up its birthright, its residency in a dwellingplace foreign to it? Moreover, could an exhibition, born to dwell restlessly, come home, come to rest? Would that signify its »full realization«?

Different possibilities are opened up here. One would certainly be to argue that this exhibition, insofar as it signifies an abhorrence with the thing itself, with racism as such, and insofar as it therefore carries a significance far wider than the historically existent state of apartheid, should never come to rest. Not in South Africa. Not anywhere. Lest we forget. It should continue to circulate in the capitals of the world. Especially now, when we are faced with the full horrors of an explosion of ethno-nationalisms and fundamentalisms in a post-cold war world.

Another possibility would be to argue that it *should* come to South Africa, for South Africa now is the place where it belongs. But to repeat the questions raised earlier: how can something whose very nature was conceived as being in movement, come to belong anywhere? Would it not be better to leave it as a signifier of racism in general? Again, various possible modes of thinking »belonging« are possible. The most common-sensical and most dangerous (poisonous) would be simply to argue that since apartheid has come to an end, has been superseded once and for all, that the rightful place of the exhibition is inside the geographical boundaries of the new South Africa. Such a rendering of »belonging« would, to my mind, be completely out of touch and against the ethos of the exhibition; it would force it to rest, force it into a definitive mould. Moreover, such a definition, a location, a placement would signify politically that it is possible to end completely, to create an absolute and unequivocal

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<sup>23</sup> I treated the complicated question of the role of the memory of apartheid today in Norval (1994a).

break with the past. It is precisely that which has to be problematised, for such a rendering would simply reinforce identity logics once again.

### *Deferred homecomings*

What then are the alternatives? Another way of conceiving of the exhibition would be neither to deny its legitimate place in South Africa, nor to confine it to that geographical and signitive space, but combining its specific and universal value, its necessary content and that which escapes all content. Indeed, one could think it along the lines of a never-ending movement, or space of identification proper to the democratic space and its articulation in the discourse of non-racialism. That is, the exhibition »*contre/against apartheid*« could be argued to have the character of the negative attributed to non-racialism earlier. In that case, a break with apartheid will not be able to function as an absolute one, not yet, in any case. Apartheid, for the time being, will remain its other. It will keep open the democratic space. Its homecoming will always be a radically delayed one. A deferred homecoming. A coming home which never quite reaches home. The tension characteristic of the democratic space will be replicated there. In conclusion: if it could find its home, once and for all, if the gap between identity and identification could be closed, »society would have found its final form and democratic interaction would be impossible. It is because the gap cannot be filled that society can be constructed as that political management of its own impossibility that we call democracy« (Laclau 1994:12).

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# Women and the Fictive Individual of Liberalism

Kate Nash

In recent years feminists have made extensive criticisms of the ostensibly universal categories of modern political theory on the grounds that they have been constructed from a masculine perspective and as such are necessarily exclusive of the concerns of women.<sup>1</sup> This represents a significant break with previous feminist work which tried to *use*, as well as criticise, modern political theory. The break builds on a new understanding of sexual difference as both more intractable and more positive than earlier feminists had supposed (Barrett and Phillips 1992, 4). The argument is that insofar as political theory fails to recognise sexual difference, positing its categories as universal, it actually smuggles in a masculine norm such that women, with their specifically female embodiment and historically constructed feminine concerns, have not been, and can not be, represented in its terms. The individual of liberal political theory is a prime target of this critique. Supposedly abstract and disembodied such that any person is, or at least could be, an individual, it has been taken as exemplary of a masculine perspective. It is argued that to be an individual in liberal theory one actually has to have a male body and do masculine things in the public sphere and furthermore that the category of the liberal individual can not be extended to women because it is premised on a denial of everything that women represent. It is not just that women happen to be different from the men who have traditionally been positioned as individu-

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<sup>1</sup> The literature on this topic is now extensive. See the following: A. Phillips, »Universal Pretensions in Political Thought« in Barrett and Phillips 1992; C. Pateman and E. Gross, *Feminist Challenges: Social and Political Theory*, Allen and Unwin, London 1986; C. DiStefano, *Configurations of Masculinity: A Feminist Perspective on Modern Political Theory*, Cornell University Press, Ithaca 1991; S. Benhabib, »The Generalised and the Concrete Other« in E. Kittay and D. Meyers (eds.) *Women and Moral Theory*, Rowman and Littlefield, Totowa, New Jersey 1987; C. Pateman, *The Disorder of Women*, Polity Press, Cambridge 1989; I. Young, »Impartiality and the Civic Public« in *Throwing Like a Girl and Other Essays in Philosophy and Social Theory*, Indiana University Press, Bloomington 1990; M. Gatens, *Feminism and Philosophy: Perspectives on Difference and Equality*, Polity Press, Cambridge 1991.

als: the argument is that the individual is meaningful only insofar as it is opposed to the feminine. In the words of Carole Pateman:

*»The masculine, public world, the universal world of individualism, rights, contract, reason, freedom, equality, impartial law and citizenship ... gains its meaning and significance only in contrast with and in opposition to, the private world of particularity, natural subjection, inequality, emotion, love, partiality – and women and femininity ...«* (Pateman 1986, 6)

The feminist critique of political theory as masculinist has been enormously influential in recent years but it is not the only possibility for feminist theory. In response to the arguments of these »difference« feminists it is possible to argue from a post-structuralist perspective that the problem can not be that women are not, and can not be represented in the categories of modern political theory since women can not be represented at all. On this argument »women« is a fiction. In this paper I want to deal with two different, but related, senses in which women may be said to be fictional. Firstly, women can not be represented because the category itself is unstable: it »is« not. On the Derridean account »women« is a fiction because, like any other identity it is never fully present to itself but is always undecidable, disrupted by the way it is constituted in relation to other equally unstable terms.<sup>2</sup> »Women«, like any other apparently self-present category is fictional because it »is« not fully any one thing, and certainly not itself. Secondly, women is a fiction which fictions reality: it produces »effects of truth«.<sup>3</sup> In this sense »women« is fictional because it does not represent the truth of the constituency women as they really are »out there« in the world. How could it represent a pre-given reality if as a term it is constituted only in unstable relations to other terms in discourse? Or rather, what is there to say about that reality, and its representation, that is not already caught in the term of discourse? But it is a fiction which may fiction reality insofar as it is a term which we use to describe ourselves and with which we identify. In this sense it is a fiction which constitutes its own object, which makes it work as that which we think of and enact as reality.

If women is a fiction, so too is the individual. Firstly, as a discursive category the individual »is« not. The liberal category of the individual purports to

<sup>2</sup> The instability of identity is a central theme in all Derrida's work. For a general statement see J. Derrida, *Positions*, tr. A. Bass, The Athlone Press, London 1981.

<sup>3</sup> Foucault uses the term fiction in this sense. At the end of an interview on the *History of Sexuality* he says: »I am well aware that I have never written anything but fictions. I do not mean to say that the truth is therefore absent. It seems to me that the possibility exists for fiction to function in truth, for a fictional discourse to induce effects of truth, and for bringing it about that a true discourse engenders or »manufactures« something that does not as yet exist.« (Foucault 1980, 183)

represent what is pre-social or not social in each human being. It can only do so, however, in opposition to society, to what it is not. As Derrida has shown, since the privileged term of such a binary opposition – in this case the individual – is always dependent on the inferior term – society – for its very identity, there will be an undecidability, an oscillation of determinate possibilities between the two such that neither can finally be distinguished from the other (Derrida 1981, 43). Dependent on society for its very identity the liberal category of the individual is ultimately undecidable between the non-social to which it would like to refer and the social from which it would like to be clearly distinguished. Here we will develop this analysis in a deconstruction of the liberal philosophy of John Stuart Mill. Secondly, the individual is a fiction insofar as, under certain determinate circumstances, it is productive of our understanding of ourselves as individuals: it fictions reality. It is in this respect that I take issue with the feminist critique of the liberal individual as always and necessarily masculine. Women as well as men have been described and have described themselves as individuals, most particularly under the influence of feminism itself. This is particularly evident in the case of nineteenth century feminism which we will look at here. The undecidability of »individual« has permitted it to be used to represent women in their specific embodied difference from men such that individuals need not always be masculine.

There is a sense in which the feminist critique of the liberal individual as masculine anticipates, and refutes, the possibility that women may be described as liberal individuals. After all, it is undeniably the case that liberalism has been used to describe and to counter women's subjection to men and that to do so it has extended its terms beyond the constituency to which it was originally applied. While for Locke, although ostensibly every human being was to be considered free and equal but in fact only propertied heads of households were to be granted political rights, for J. S. Mill humanist principles must be extended to women, and to slaves too. In other words, what had only ostensibly been universal rights should, in Mill's terms, become genuinely universal. According to the feminist critique of liberalism as masculinist, however, it is not possible to extend these principles to women *as* women; their inherent masculinity will always prevent their application to women in their specifically feminine situation. According to Carole Pateman, then, Mill's attempt to extend liberal principles to women fails because, for him, as for liberalism generally, the very meaning of the individual links it to men's capacities and activities in the public sphere and opposes it to women's capacities and activities in the private sphere. Mill uses liberalism to argue that, as rational individuals, women should have the same opportunities as men for self-determination: they should have the vote and be permitted to

follow a profession and interests in the public sphere. However, he assumes that most women will not choose actually to work outside the home, they will prefer to marry, have children and take on the management of a household, a choice which, he argues, will necessarily restrict their activities outside it (Mill, 164-5). On Pateman's account women will not then be full individuals since for Mill to realise one's potential as »a moral, spiritual and social being« an individual must participate in the political and economic activities of the public sphere, something women who »choose« the activities of the private domestic sphere will not be able to do (Pateman 1989, 129-31). For Pateman a woman can not be the individual of liberal theory because this individual gets its identity as a fully rational being concerned with the universal good only by its opposition to the feminine world of care for particular others. According to Pateman, for Mill »Women will thus exemplify the selfish, private beings, lacking a sense of justice, who result ... when individuals have no experience of public life« (p. 130).

Pateman's reading of Mill clearly brings out the opposition between public and private domestic, masculine and feminine in a way that has been neglected by political theorists for whom it is only what takes place in the public sphere that is of significance. It clearly brings out the dependence of the public sphere on the care of women in the home and the difficulties of simply extending liberal principles to women on the understanding that all can participate in the public sphere on equal terms. However, I want to take issue with her reading on two points. Firstly, she reifies the binary oppositions of Mill's texts, treating them as if they actually are what they pretend to be: oppositions between mutually exclusive and self-present categories. In order to do so she has to neglect the inconsistencies of the text, the different, and incompatible ways in which the terms of these oppositions are used precisely in order to assure their apparent integrity. And secondly, to argue that for Mill the individual is only possible in the public sphere she has to ignore what is probably the most central opposition in his work, that between the individual and society. Focusing on this, unstable, opposition will allow us to see how it is that Mill is able to position women, even the feminine woman in the private sphere, as an individual. For Mill the individual can be either masculine or feminine.

Let us, then, examine the inconsistencies in Mill's use of the term »women«. The women of *The Subjection of Women* are not simply the opposite of men, they are many, incompatible things. There are at least three ways in which women are described in the text. Firstly, women are unknown and unknowable under the present conditions of their subordination to men:

»What is now called the nature of women is an artificial thing – the result of

*forced repression in some directions, unnatural stimulation in others.*» (Mill 1989a, 138-9).

Secondly, women are essentially the same as men. »Women« are subsumed under the generic category »human« and it is argued that like men their desire for individual freedom overrides virtually every other consideration: »After the primary necessities of food and raiment, freedom is the first and strongest want of human nature.« (Mill 1989a, 212) Finally, women are different from men in their current character and capacities. Despite Mill's closely argued claim that men can not know women so long as women are subordinate to them because in such a situation women are unlikely to reveal their true characters (p. 140-3) he nevertheless makes extensive generalisations concerning women's interests (p. 132-3), their concern for the feelings of individuals over the general good (p. 204), their intuitive grasp of details (p. 173-5) and so on. For Mill there is a feminine character which is clearly distinguishable from the masculine. And this feminine character is indeed positioned as antithetical to the principles of justice of the public sphere in the way that Pateman describes. While participants in the public sphere learn to think in terms of considerations wider than their own selfish interests, women in the private sphere are taught to be concerned only with members of their families. They are taught that:

*»the individuals connected with them are the only ones to whom they owe any duty – the only ones whose interest they are called upon to care for; while, as far as education is concerned, they are left strangers even to the elementary ideas which are presupposed in any intelligent regard for higher interests or higher moral objects.«* (Mill 1989a, 193)

And this is in contrast to individuals in the public sphere, who it should be noted, may also be women:

*»Whatever it has been said or written, from the time of Herodotus to the present, of the ennobling influence of free government – the nerve and spring which it gives to all the faculties, the larger and higher objects which it presents to the intellect and feelings, the more unselfish public spirit, and calmer and broader views of duty, that it engenders, and the generally loftier platform on which it elevates the individual as a moral and spiritual being – is every particle as true of women as of men.«* (Mill 1989a, 213)

The question is, then, given the inconsistencies that we have seen in Mill's use of the term »women«, is it the case, as Pateman argues, that only the »masculine« woman in the public sphere, the woman who participates in the political and economic activities traditionally reserved for men, can be considered a full individual? Or are the oppositions of the text less clear cut than Pateman

would have it so that the liberal individual is not exclusively positioned as masculine in the public sphere but may also be feminine in the private sphere?

In order to examine this question we will look at what is probably the most important, certainly the most obvious, opposition in Mill's work, the opposition between society and the individual. It is this opposition on which the central principle of his liberal philosophy depends: »Over himself, over his own body and mind, the individual is sovereign.« (Mill 1989b, 13) Despite the masculine pronoun, I will argue that this abstract individual is actually without sex and can be embodied in both men and women.

Mill begins *On Liberty* with a strong statement of intent. The subject of the essay is, he says, »the nature and limits of the power which can be legitimately exercised by society over the individual.« (Mill 1989b, 5) His intention is to determine where this limit should be placed, »how to make the fitting adjustment between individual independence and social control« (p. 9). He is attempting to draw a strict opposition between the individual and society. This subject he sees as of the utmost importance since the individual is currently in great »danger« from society: »society has now fairly got the better of individuality« (p. 61) and this is an »evil«, both for society and for the individual (p. 57). The great danger for the individual from contemporary society is a result, according to Mill, of democracy or popular sovereignty: it lies in the laws that are passed by a popularly elected government and also in public opinion which he sees as having a force independently of the law (p. 8). In fact, he begins *On Liberty* by arguing that the power of public opinion over the individual is *more* dangerous than that of the law: »it leaves fewer means of escape, penetrating much more deeply into the details of life, and enslaving the soul itself.« (p. 8) Initially, then, in *On Liberty*, public opinion is posited as most dangerous for the individual, as more dangerous than the law. It is to public opinion that the sphere of freedom of the individual must be opposed:

*»There is a limit to the legitimate interference of collective opinion with individual independence: and to find that limit, and maintain it against encroachment, is as indispensable to a good condition of human affairs, as protection against political despotism.«* (p. 8-9)

Almost immediately, however, Mill runs into problems with the opposition he wants to make between the individual and society. How is it to be maintained? He sets out the principle by which »the dealings of society with the individual« are to be governed, whether it is a matter of legal penalties or »the moral coercion of public opinion«:

*»That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection.«* (p. 13)

But how is this principle to be effective? How can it be used to maintain a separation between the individual and society if public opinion – which is on the side of society and oppressive of individuality – in everywhere, leaving no means of escape, penetrating every detail of life and »enslaving the soul itself«? (p. 8) Mill faces this question directly. The forces against individuality are, he argues, formidable – »it is not easy to see how it can stand its ground.« (p. 73) It may be that it will not be able to do so:

*»It will do so with increasing difficulty, unless the intelligent part of the public can be made to feel its value – to see that it is good there should be differences...«* (p. 73)

Here we have the claim that the opposition between society and the individual can only be made if it is supported by the public, or at least by part of it. Individuality is not threatened by the public in this instance, it is sustained by it. In this sense, society can not simply be opposed to the individual in the definitive way Mill initially intends because the public which is on the side of society opposing the individual is also necessary to the opposition of the individual to society; it is on the side of society and also on the side of the individual as it were. In Derridean terms the »public« is a hymen which is both »society« and »individual«; by its play between »identity« and »difference«, between the inside and the outside, it makes possible the opposition between the society and individual as two rigorously separated, self-identical categories at the same time as it makes the opposition between them impossible to maintain.<sup>4</sup>

In order to see how the play of »public« between individual and society makes the opposition between them both possible and impossible in Mill's text we need to look more closely at how he uses the term. In the first place, as we have seen, he uses it in strict opposition to the individual. In this sense »the public« is one, unified against the individual:

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<sup>4</sup> »Hymen« is an undecidable which Derrida takes from his reading of Mallarme's »La Mimique«. It has the double meaning in Latin (as it has been translated from the original Greek) of both »membrane« and »marriage«; it means »between« both in the sense of fusion and of separation. As such it describes the neither/nor of the mime with which Mallarme is concerned in this text; neither original, nor imitation »it is located between present acts that don't take place.« (Derrida 1981b, 220) In this respect it works like other undecidables – like *pharmakon*, *supplement*, *differance* and others, which have a double contradictory meaning – to describe the way in which apparent self-presence is produced out of a play of identity and difference. In fact, Derrida suggests, the double meaning of »hymen« is useful only for economy; it could be replaced by »identity« or »difference« (that is by both of them together – perhaps it would be better to write »identity/difference«) with no loss except that of economic condensation or accumulation: »It is the »between«, whether it names fusion or separation, that carries the force of the operation.« (p. 220)

*»The ... tendencies of the times cause the public to be more disposed than at former periods to prescribe general rules of conduct, and endeavour to make everyone conform to the approved standard.« (1989b, 69)*

In a second usage, however, the public is not unified; it may *include* different individuals within it. It is in this sense that Mill uses it to oppose the individual to society from the side of the individual. He says that the forces hostile to individuality can only be opposed if:

*»the intelligent part of the public can be made to feel its value – to see that it is good there should be differences ... If the claims of Individuality are ever to be asserted, the time is now, while much is still wanting to complete the enforced assimilation... The demand that all other people shall resemble ourselves grows by what it feeds on. If resistance waits till life is reduced nearly to one uniform type, all deviations from that type will come to be considered impious, immoral, even monstrous and contrary to nature. Mankind speedily become unable to conceive diversity, when they have been for some time unable to see it.« (p. 73-4)*

In this use of »public«, then, individuals are not separate from it, opposed to it as they are to society. They are part of the public, included within it; the public includes the individuals which it opposes to society.

It is this second sense of »public« that Mill uses when he proposes in *The Subjection of Women* that the individuality of women in the private domestic sphere can be supported by public opinion. Here he uses public opinion on the side of the individual and opposes it to the law which, in this instance, stands for society against the individual. The point he wants to make is that freeing women as individuals will not lead to irreconcilable conflict in the household, as he anticipates conservatives will fear:

*»But how, it will be asked, can any society exist without government? In a family, as in a state, some one person must be the ultimate ruler. Who shall decide when married people differ in opinion? Both cannot have their way, yet a decision one way or the other must be come to.« (Mill 1989a, 155)*

Mill deals with the problem of differences in opinion in the private domestic sphere if both men and women are self-determining, not by agreeing with previous liberals, notably Locke, that ultimately women must submit to their husbands, but by arguing that it is not actually a real problem because »by general custom« there is a division of labour in the home which is such that each will have their tasks and will make the decisions needed accordingly: each will be »absolute in the executive branch of their own department« and any overall change »of system and principle« will require the consent of both (p. 156). Here Mill uses public opinion as supportive of the individual in

opposition to law which stands for society. He argues that the division of labour between the sexes must not be established by the law since that would pre-empt the freedom of the individual to live according to their own »capacities and suitabilities« (p. 156). But it is acceptable to him that a traditional or customary division of labour should be maintained by public opinion:

*»When the support of the family depends, not on property, but on earnings, the common arrangement, by which the man earns the income and the wife superintends the domestic expenditure, seems to me in general the most suitable division of labour between two persons... But the utmost latitude ought to exist for the adaptation of general rules to individual suitabilities; and there ought to be nothing to prevent faculties exceptionally adapted to any other pursuit, from obeying their vocation notwithstanding marriage; due provision being made for supplying otherwise any falling-short which might become inevitable, in her full performance of the ordinary functions of mistress of a family. These things, if once opinion were rightly directed on the subject, might with perfect safety be left to be regulated by opinion, without any interference of law.« (p. 164-5)*

Here, then, opinion is no longer on the side of society opposed to the individual; it is on the side of the individual and opposed to the law which is now seen as dangerous in the way that public opinion was in *On Liberty*. The »tyranny of the prevailing opinion and feeling« that elsewhere Mill sees as especially damaging to women's individuality (1989a, 8) is here replaced by a public opinion which is supportive of that individuality against the state.

Public opinion is, then, an undecidable in Mill's text. Sometimes it is used on the side of society opposed to the individual, sometimes it is used on the side of the individual, to support it against society as it is represented in the law. Most notably from our point of view here public opinion supports a division of labour which allows for individuality but which also marks a difference between men and women. The individual is unsexed for Mill, but the public opinion which supports it in the domestic division of labour is not. On the contrary, Mill's use of public opinion, as we have seen, distinguishes »duties and functions« for the sexes that will permit them to complement each other, to live together without conflict. In this respect public opinion distinguishes between men and women, masculine and feminine. It is here, in the public opinion that is, as we have seen, undecidable between individual and society, that the undecidability of women between unsexed individual and feminine woman in the home comes into play.

Within the terms of this undecidability femininity is not, and can not be necessarily and always opposed to individuality. It is true that for Mill men are more likely to develop their individuality than women – they are more self-

regarding and less constrained by the demands of others (1989b, 193 and 189-91); they would seem to have more scope to exercise their individual freedom since they have more choice in their occupations and more freedom to pursue their own interests and beliefs than women in the domestic sphere (even if on Mill's account, women initially choose housewifery as an occupation); and as individuals in the public sphere they are much more able to cultivate the public spiritedness which seems to denote a kind of »higher« individuality than women confined to domestic duties. But the individual is not always tied to a masculine way of life, the feminine woman may also be an individual on Mill's scheme. The implications of his treatment of women as both feminine and individuals in public opinion are drawn out in two important points he makes concerning women's status in the private domestic sphere. Firstly, as individuals women in the home must have »the same rights, and should receive the protection of law in the same manner, as all other persons« (Mill 1989a, 104-5). As self-determining individuals they must not be subject to the »almost despotic power« of husbands (p. 105). In this case it is the rights of women in their position as *feminine* women in the domestic sphere who are also the rational and free individuals of his philosophy that are to be protected: as feminine women they may *also* be free and equal individuals. And secondly, he argues that the reform of society that is necessary in order to make it more just – not least as regards the rights of women – requires a reformed family. Although men may adopt in principle what Mill calls »the law of justice«, that the weak should have equal right with the strong, because of the way they learn that superiority in the home is their birthright they will be working against it »in their inmost sentiments« (Mill 1989b, 196-9). According to Mill, rather than being a »school of despotism« the family should be a »school of the virtues of freedom« (1989b, 160), it should teach its members to live together according to the moral rule that should govern human society in general:

*»the true virtue of human beings is fitness to live together as equals; claiming nothing for themselves but what they as freely concede to every one else... The family, justly constituted would be the real school of the virtues of freedom.«* (p. 160)

It would seem that what the family should teach is the practice of living together according to Mill's first principle, as laid out in *On Liberty* that the freedom of the individual should not be interfered with so long as his/her actions do not harm others (Mill 1989a, 13). To this end, women must have equal rights to freedom in the home, and must exercise their judgement to ensure that their rights and those of other members of the family are not infringed. In both cases, *contra* the feminist critiques of liberalism as essentially masculinist, the individual is genuinely unsexed, it is not exclusively masculine: the feminine woman in the home may also be an individual.

We have seen, then, how in Mill's liberalism the individual is fictional in the first sense in which we are using it here: it »is« not in the Derridean sense since it can not fully constitute itself as a determinate category. Dependent on »society« and on the undecidability of »public« which keeps both the individual and society in their hierarchically opposed places it can never achieve self-presence as itself. And we have seen how women, distinguished from men in their duties and functions in public opinion, thereby participate in the undecidability of »public« and in the fictive being of the individual. Both »women« and the »individual« are, on this account, fictions: neither »is« itself, fully present to itself; constituted only in their illusory being by their relations to other illusory beings neither can ever – necessarily – be anything but fictional. But what is the relationship between fictional in this sense and fictional in the second sense in which we are using it here, the sense in which fiction »fictions« reality by producing »effects of truth«? Here I want to discuss and compare two versions of this relationship, that of Judith Butler on performativity and that of Laclau and Mouffe on hegemony. Both theories understand identity as fictional in the Derridean sense and both see the necessary instability of identities as a condition of possibility of fictioning reality but the latter is, I want to argue, more satisfactory in theorising the determinate condition under which this may be realised.

For Butler the link between fiction and reality is »performativity« which she defines as »that reiterative power of discourse to produce the phenomena that it regulates and constrains...« (Butler 1993, 2). This formulation draws on Derrida's essay »Signature, Event, Context« in which he discusses the concept of the performative in the work of John Austin. On Derrida's reading of Austin some speech acts are performative insofar as making a statement with serious intent in a specified context does more than simply communicate meaning or state facts, it is to act, to produce or transform a situation in the world (Derrida 1988, 13-14). Saying the words, »I do« in a marriage ceremony, for example, is performative. Derrida is in agreement with Austin on the performativity of speech acts but he takes issue with the theory on the grounds that since it is necessary to the structure of language that words can be repeated in different contexts and with different intentions Austin's performatives always depend on »citation«, on the possibility of non-serious speech acts which will invariably risk »contaminating« the serious (p. 15-18). It is as if, in saying the words »I do« there were always echoes of other contexts in which these words have been used which can not definitively be excluded from the occasion – making it comic, for example, or reminiscent of a scene in a film or play. Butler's formulation of »performativity« follows Derrida's work closely. For her performativity involves the enactment or production of that which is named in ongoing social practices (Butler 1993, 12-13). And for Butler, as for Derrida,

the necessary structure of language as citation means that there is a constant risk of failure of the identities that are constituted in performativity: that which is named is never fully self-present, never fully itself and so risks subversion in each instance of its repetition. As she puts it with regard to gender identity:

*»The injunction to be a given gender produces necessary failures, a variety of incoherent configurations that in their multiplicity exceed and defy the injunction by which they are generated.«* (Butler 1990, 145)

Butler's concept of performativity covers both senses of fiction with which we are dealing here: identities enacted in performativity are fictional in the first sense because they are never fully themselves, never self-present; and they are fictional in the second sense because they produce effects of truth, they produce reality for the agents who enact them. For Butler these two senses of fiction are closely linked. It is because identities are fictional in the first sense, because they are necessarily split, that new possibilities can be enacted, new realities fictioned. As Butler puts it:

*»It is this constitutive failure of the performative, this slippage between discursive command and its appropriated effect, which provides the linguistic occasion and index for a consequential disobedience.«* (Butler 1993, 122)

For Butler, then, following Derrida, there is a necessary tension in performativity between the repetition of social norms as constraining – performativity as *»the forced repetition of norms«* (p. 94) – and as subversive – performativity as *»a reciting of the signifier that must commit a disloyalty against identity.«* (p. 220) It is *necessarily* a tension since it is integral to the concept of performativity that naming simultaneously produces and offers the possibility of subverting social practices. But the problem with Butler's account, I want to suggest, is that it does not give sufficient weight to the possibility of the *failure of subversion*, a failure which is also integral to the concept of performativity: if every norm is at risk of subversion, every subversion is also at risk of failing to subvert the norm on which it depends. In fact it is not at all clear on Butler's account how we are to identify *a successful* subversion. It has been suggested that for Butler the permanent problematisation of identity is her *»regulative ideal«* (Smith 1994). But while this may be true of her earlier work in *Gender Trouble*, it is less true of *Bodies that Matter* where she explicitly states that the aim of political resignification is the production of *»the new«* (Butler 1993, 220), though without elaborating on how we are to distinguish *»the old«*, from *»the new«* on a theory of performativity as citation. The production of the new is, then, an important criterion by which the success of subversion can be judged and using this criterion we must assume that subversion succeeds when it becomes a norm since, by definition, it is norms, and not the subversive

»risk« which they necessarily harbour which enact the »normal« everyday practices of social life. If, however, it is the case that for Butler successful subversion requires the institution of new norms, it is also the case that she does not address the question of the conditions under which it might be possible to transform the necessary risk of subversion in every repetition into the enactment of these new social conventions. It is for this reason that I think it is useful to supplement Butler's theory of performativity with the theory of hegemony developed by Laclau and Mouffe in order to understand how, under certain determinate conditions subversions can become normality, and fiction can fiction reality.

There are two important aspects of the theory of hegemony proposed by Laclau and Mouffe which enable us to think through the subversive potential of performativity. Firstly, successful subversion requires decision. If every performative instance is, as we have seen, undecidable between subversion and repetition of a norm, on the theory of hegemony a decision must be made on this undecidable terrain as to which of the possibilities is to be taken up (Laclau 1993, 281-2). To be sure, nothing guarantees that the decision will be correct because according to a theory of hegemony in which no description is possible outside discourse, there is no higher rationality – God, the history of class struggle or the like – according to which a decision could be made that would ensure its truth or its teleological realisation. And it is also the case that such a decision can not definitively close off undecidability; as we have seen, any identity constituted in discourse will necessarily be unstable, undecidable between identity and difference and it is, in fact, this undecidability that permits the articulation and rearticulation of elements in different hegemonic projects (Laclau and Mouffe 1985, 111-113). Nevertheless, a decision needs to be taken because, and this is the second aspect of the theory of hegemony that is needed here, achieving hegemony depends on the articulation of discursive elements around nodal points, privileged signifiers, that will partially fix their meaning *in opposition to* alternative projects which attempt either to institute new forms of the social too, or which continue to reproduce social practices that are already ongoing (Laclau and Mouffe 1985, 135-6). On the theory of hegemony proposed by Laclau and Mouffe the subversion of social identities does involve the repetition of identities in continually changing contexts such that something new is created, but this does not happen as a matter of course; new identities have to be created by their articulation with others with which they were not previously associated in projects which are actively promoted in order to displace others. Fictional identities do not fiction reality as a result of their undecidability, the subversion that every norm harbours is not a sufficient condition of the displacement of that norm; fictioning a new reality involves decision and an act of will. Fictional identities fiction reality only where a

hegemonic project has been relatively successful in instituting new social practices and new – fictional – identities.

To return, then, to the problem with which we began this paper we can see how women were fictioned as individuals in the nineteenth century in the light of the theory of hegemony. We have seen how in Mill's liberalism women were undecidable between femininity in public opinion and the abstract self-determining individual of liberal rights. In Butler's terms the norm of the Victorian woman was subverted as »woman« was contextualised not only as feminine but also as a free and equal liberal individual. This individual was fictioned into reality – women came to describe themselves and to be described as such – as a result of the hegemonic project of first-wave feminism. Feminism decided on women as individuals and, with varying degrees of success, challenged the description of women as irrational, inferior and naturally subordinate to men with the description of women as rational, self-determining individuals whose rights – to property, education, divorce, custody of young children, protection from domestic violence and so on – should be guaranteed (Shanley 1989).

And beyond formal rights, women were further articulated as individuals with equal rights to self-determination in personal relationships with men, especially in marriage (p. 63).<sup>5</sup> Feminine women in the private sphere could be, and were, individuals in nineteenth century liberal theory and in the social practices realised by first-wave feminism but clearly the undecidability of Mill's text – the fictional status of its identities – was not sufficient to fiction reality, to perform it in new ways.<sup>6</sup> For reality to be fictioned a decision had to be made in the context of a hegemonic project which succeeded in instituting new

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<sup>5</sup> This is to abstract from and somewhat to simplify first-wave feminism which also, on occasion, decided for the feminine woman of Mill's public opinion (despite Mill's hostility), attempting to extend her influence beyond the private domestic sphere (Holton 1986, ch. 1). At the same time woman as an individual was promoted in private, in the reform of marriage and property law and so on, and also in public, in the suffrage campaign, for example. In fact, we might say that first-wave feminism oscillated between the construction of women as feminine and as abstract individuals without, however, ever giving up the attempt to institute the rights of the latter, in law and in social practices more generally.

<sup>6</sup> In fact, the undecidability of a text could not be sufficient to fiction a new reality in Butler's terms either: subversive performativity takes place in social practices and not simply in language. She explicitly argues, for example, against what she calls »linguistic constructivism« as unable to account for the materiality of the sexed body (Butler 1993, 6-10). But the important distinction here is not between language and practice as such; it is a question rather of the relation between a text and its social context. It is evident that performativity for Butler involves practices that are at the very least linguistic as well as material and in actual fact, and possibly inconsistently (can there be social practices that are entirely or almost entirely linguistic?), she

social practices on the basis of that decision. In short, the fictioning of a progressive reality requires political struggle, it does not just happen.

*Acknowledgements* – I would like to thank Anne-Marie Fortier for helpful comments on this article, for which, of course, she can in no way be held responsible.

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deconstructs literary texts (the novels of Willa Cather, for example) as subversive, as if they were in themselves performative practices (Butler 1993, ch. 5). For Laclau and Mouffe, on the other hand, a text can be subversive only if it is taken up in a (relatively successful) social movement actively struggling to bring about change. It is the dimension of intentionality and struggle in their theory that differentiates it from Butler's, not a distinction between linguistic and non-linguistic practices; for Laclau and Mouffe, as for Butler, material practices are always also linguistic (Laclau and Mouffe 1985, 108-9).

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# Virtual Derrida\*

Sue Golding

We live at a time where words like »cyberspace« and the »internet«, »solid state« and »e-mail«, »virtual reality« and »spell-check«, actually make sense. Funnily enough, we live also at a time when words like »revolutionary« and »ethical«, »power« and »history«, »democratic« and »change«, »community« and the »political«, not to mention the very subject of our matter, that of »being« (human, perverse, time-worn or otherwise), seem rather at odds, a bit fuzzy, too hot to handle, or realized as something exactly other than what they are supposed to mean or imply.<sup>1</sup> Indeed, as Derrida suggests, these oddly unfamiliar-familiar words seem to float rather aimlessly, though relentlessly, too, like some splintered wrecks from a ship that never existed but for a vague collective memory of some far away time, either too long ago past or not yet fully realized; that is to say, as Derrida would say, from the ghost worlds of a melancholic future or a mourningful past, writ large and encumbered, but ultimately, persistent and alive.

At the risk of implying too much by saying too little, I want to re-focus attention today on one of those fuzzy little words: namely, »necessity«. And I want to skewer this necessity along the virtual axes that Derrida paints with respect to promises, gifts, inheritances, ghosts, and the so-called »undeconstructibility« of the ethical demand as the just, unstoppable, manically democratic, demand.<sup>2</sup> Along the way, one and a half things (possibly two) may become clear: (1) we are dealing with a very peculiar notion of negation;

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\*I would like to express my thanks especially to Ernesto Laclau, Professor and Chair, for organizing the conference on »Deconstruction and Politics« at the Centre for Theoretical Studies, Essex University, October 27-28, 1994, at which this paper was given.

<sup>1</sup> See for example Francis Fukuyama's *The End of History and the Last Man* (New York, 1992) and its thorough discrediting by Derrida in »Spectres of Marx,« *New Left Review*, no. 205, May-June, especially pp. 41-50.

<sup>2</sup> I will be referring mainly to the abridged version of his longer work, *Spectres of Marx; The State of the Debt, the Work of Mourning, and the New International*, translated by Peggy Kamuf, forthcoming from Routledge in the autumn of 1994, and as earlier references as »Spectres of Marx,« *New Left Review*, pp. 31-58.

indeed (1.5) it is possibly not negation at all. Could it be said that Derrida has finally »taken a decision« by virtue of his courtship with the nether world of the undecidable and its spectral effects? Virtual Derrida: a quasi-negation, if ever there was one.

But here's the more interesting part for the deconstructive politicians amongst us: odd thought it may be, this virtual (Derridean) terrain, does indeed emit an ethical demand, though (point number two) it does so, in a way, quite a bit different than how Derrida himself claims it to be so.

### *The Three Laws of Necessity*

In order to re-state the contours and implications of »necessity«, in order to draw out what I would like to call the »three laws of necessity«, I would like to rumage around for a brief moment in Marx's *Theses on Feuerbach*, and notably, the first thesis. May I quote it, in part, as follows:

*I. The chief defect of all hitherto existing materialism – that of Fukuyama – I mean Feuerbach included – is that the thing (Gegenstand), reality, sensuousness, is conceived only in the form of the object (Objekt) or of contemplation (Anschauung), but not as human, sensuous activity, practice, [that is to say] not subjectively. Hence it happened that the active side, in contradistinction to materialism, was developed by idealism – but only abstractly... Hence in the Essence of Christianity, [Feuerbach] regards the theoretical attitude as the only genuinely human attitude, while practice is conceived and fixed only in its dirty-judaical form of appearance. Hence he does not grasp the significance of 'revolutionary,' i.e. of 'practical-critical,' activity.<sup>3</sup>*

Of the many significant aspects to this Thesis, the one that stands out as absolutely central – at least in this clipped version of it – is this: »real« change, »objective« change does not take place either by way of conspiracy (as in »the dirty« jewish international conspiracy model« of change) or for that matter, by divine retribution or intervention (as in »the God is on our side« model of change). Here change is specifically noted as a human endeavour and strategy, where »human«, »endeavour«, and »strategy« name, encompass, situate and produce an event *as event*, one which can never, *by necessity*, fall outside of history. The liberalist logic which accepts otherwise, that is to say, which accepts a self-contained, pre-configured »private« a-social human, replete with the Cartesian ego-I self-reflexive sense of individual self, one who *can*

<sup>3</sup> Karl Marx, »Theses on Feuerbach«, in *Marx/Engels: Selected Works*, (Moscow: Progress Publishers, 1970), p. 28.

»chose« whether to enter or not the social or the historical, is, for all intents and purposes, ditched.

First law of necessity, then: one does not select what the »is« is going to be. This does not mean that this »is« remains static, mute, or fully formed. Indeed, it implies precisely the reverse: Change is only and utterly the present-tense *expression* of »man-made« *strategies* (of power) that »stick«, that become a »must«, in the sense of meaning »real« or »permanent«, i.e. that become whatever the »is« is going to become, when whole masses of people (for example) shift. A systematic/systemic circumstantial shift, a »movement« that is not in and of itself wholly »intentional« or hundred per cent conscious, but a movement, nonetheless; one that contains and produces, indeed is grounded upon, a »vital materiality« of sorts – a »certain something« (which, Gramsci, names »the will«) – devoid of a pre-given archimedean point or an »outside« or abstract »thing-ness« which »secretly« moves »the us« along. I will return momentarily to this »certain something« and its supposed dimensionalities (around the outside or the in), not to mention what causes a »shift« in »the people«, especially if no outside force (like genius or God or his chosen people) can be called upon to take responsibility for movement as such. But let me just say that in unpacking the orthodoxy of Marx's first thesis, we find that here, in this first reading, »necessity,« indeed, »law«, is precisely the fluid, impossible-to-close fullness of the »to be«, whose very impurity, i.e., whose very unstatic-ness or instability or movement (i.e., change) has not one whit to do with definition. It is in this sense, and in this sense only, that one can never get »outside« of, or can never get to the »end« of, history, or, for that matter, fall off, say, the edge of the Earth.

We have here, then, a necessity that, albeit »imperfect«, »sensuous,« »impure,« »not-stagnant«, etc., forms a limit. A fluxed, heterogeneous, deep and abiding cut, which is itself discontinuous (though, nonetheless, in movement), infinitely »concrete«; a »telos« of sorts: now as co-extensive »ground«, now as circumscribing »edge«, now as middle-limit cut, etc. A limit around which, in between which, in spite of which, because of which – i.e. *out of necessity* – produces meaning »as such«, produces an »is«; a meaning which can only ever be »social«, »human«, »historical«. Without putting too fine a point on it, Marx called this impure [necessary] movement, the movement of »the 'real' dialectic.«

This first law of »necessity« (as imperfect, sensuous, mutated limit, we nonchalantly call »change«), implies and, in fact, secures, the second law of necessity; this being, of course the ethical demand of the »must be«. Or to put it slightly differently, the »must be« (as in the »past-is« and the »present-is«) always (also) calls forth the »must be« of the »that which might be possible«;

of, that is to say, the future »ought to be«, while at the same time not ignoring the fact that any »ought« [*devoir*] bears also an unavoidable imperative, demanding one »ought to act.« Here we find, then, that this second law of necessity is but the expression of a double bind: the double bind of »what is practically-possibly *able* to become (i.e., what is it that is not just mere fanciful daydream but that *can* [and therewith »must«] become, the »present-day real«, the »real future-is«), emeshed, simultaneously, in the unavoidable compulsion to act. Since the content of this [future] ethical demand could never be filled-in (how could it be: it hasn't yet happened), many marxists, neo-marxists, post-marxists and the like, have posed this double-conundrum of the future-must [ought (to be) as a kind of quasi-neo-Kantian-statement/question mark, in part asking how, in part demanding, that: »tasks become 'duty'; will becomes 'free'.«<sup>4</sup>

Now, before I bridge the gap between these remarks, encased as they are in the paradigm of an historical materialist (logocentric) dialectics, and, on the other hand, those of Derrida's, situated as they are in the domain of the promise, the debt, and various spectral effects which may (or may not) produce the desired emancipatory possibilities, two more points need to be clarified.

First, what is of interest here, in reviewing this second law (the double bind) of »necessity«, is to recognize the degree to which the political (as both practical-political and ethical-political) enters into the arena of necessity by way of, as confusing as this might sound, the first law of necessity. To my mind, at any rate, this is precisely what »hegemony« is all about: the *strategic* »art of the possible«, a purposeful making of a »future-is«, a »future-must/ought-to-be« that can »stik«; one which trawls, at the very same time, the »past-is«/»present-is« and, therewith, in this multiple singularity of necessity, sets up the limit, in all its nefarious limitation (edge, centre, ground, horizon and so forth and so on); i.e., a limit, let us not forget, which is ever only an impossible closure (though meaningful/»closed«, nonetheless).

<sup>4</sup> Derrida, in referencing Kojève's »post-historical man« makes a similar point: »Post-historical man *doit* ...,« writes Kojève. »*Doit*« what? Is »*doit*« to be translated her as »must« or »should«? *Whatever may be the case concerning the modality or the content of this »devoir«, whatever may be the necessity of this prescription, even if it calls for eternities of interpretation, there is an »it is necessary« for the future. Whatever may be its indetermination, be it that of »it is necessary [that there be] the future« [»il faut l'avenir«], there is some future and history, there is perhaps even the beginning of historicity for post-historical Man, beyond man and beyond history such as they have been represented up to now. We must insist on this specific point precisely because it points to an essential lack of specificity, an indetermination that remains the ultimate mark of the future: *whatever may be the case concerning the modality or the content of this duty, this necessity, this prescription of this injunction, this pledge, this task, also therefore this promise, this necessary promise, this »it is necessary« is necessary and that is the law.*« (»Spectres of Marx«, p. 51).*

Second point, then: that this hegemonic (practical-political + ethical-political) limit is not, as noted earlier (though in a slightly different context), »hundred per cent conscious«. Indeed, not only is it not hundred per cent conscious or intentional – and thus cannot be confined to the level of a political party (quite obviously) – but the geography that a hegemonic moment produces or works from, in order to produce »the new« as necessary, relies also upon (by incorporating, producing, creating, maintaining, etc.) an excess, whatever the content of that excess may be. For as we know, in order that an identity produce itself as such; in order for an identity to »stick«; it must somehow »go beyond« the tautology of an  $a = a$ ; it must somehow »go beyond« the mimetic mirroring of its reflection. A remainder, a not-of-the-something must exist as remainder, as excess, as, that is to say, a »not-the-same«. In this sense, then, we come to, through a somewhat circuitous route, the third law of necessity: the »must be« of a limit is always a virtual, almost (i.e., not quite the same; »fictioned«) to be. What is of interest here is not only that this notion of excess is precisely political in all its impossible imaginings; but that it no longer presupposes a binaric divide. We have a »virtual« limit as limit, one which is neither inside nor outside; neither beginning nor ending, »history«. One that is precisely steeped, instead, in the politics of the neither/nor, in the politics of the limit, of necessity, as itself, »virtual reality«.

### *Mourning and Melancholia: Promises, Promises*

Virtual reality admits no general History of history to the limitation of its being-there; rather it admits only to the specificities of the (small »p«) politics, in all its nuanced sedimentations, corruptions and hegemonic displays. But when Derrida speaks of a virtual limit, he replaces the politics of the virtual being-there with »the logic of the ghost«, a spectre whose affirmation »is now the realization; now the heralding of the realization«. <sup>5</sup> In this sense, he breaks with logic of binaries, and continues what he began so long ago in *Of Grammatology*, and elsewhere: to radicalize, as he puts it, – while carrying on (indeed, inheriting) – a »certain spirit of Marxism«. <sup>6</sup>

*»If we have been insisting so much since the beginning on the logic of the ghost«, says Derrida, »it is because it points toward a thinking of the event that necessarily exceeds a binary or dialectical logic, the logic that distinguishes or opposes effectivity or actuality (either present, empirical, living – or not) and ideality (regulating or absolute non-presence). (...) This logic of the limit, to be sure, is not new; it has always been leaving its mark on anti-marxist*

<sup>5</sup> *Ibid.*, p. 45.

<sup>6</sup> *Ibid.*, p. 56.

*idealism as well as on »'dialectical materialism'. But ... [i]t is also made more manifest by what inscribes the speed of a virtuality irreducible to the opposition of the act and the potential of the space of the event, in the event-ness of the event.«<sup>7</sup>*

With the logic of the ghost (and its attendant spectral effects in the form of inheritance and debt and promise), we have at once the memory of a past that was never quite »there«, i.e., a haunting memory of an event, a mourningful death of an emancipatory past that was never quite all that it »ought« to be. At the same time, we are the inheritors of this dead body, this dead marxism, in all its varying dimensions (»there are many marxisms,« Derrida solemnly intones, and we've inherited them all); so we encumbered with the carrying on or carrying out of a debt. And what is this debt, but precisely the »spirit«, the ghostly ghost of marxism; to wit, its affirmative thinking and emancipatory promise »as promise and not as ontolo-theoretical or teleo-eschatological programme or design«. It means, accordingly, advancing a political agenda where »one must not renounce the emancipatory desire; [but rather] ... insist on it more than ever, it seems, and insist on it, moreover, as the very indestructibility of the 'it is necessary'.«<sup>8</sup> A plaintive, »messianic call without the messianism,« says Derrida.

But here is where things get a bit worrying. For while it makes perfect sense to get rid of a teleological unfolding and onto-theological ground, and, furthermore, while it is with the best of intentions that Derrida calls out for an irreligious messianic moment that takes as a given »the ideal of democracy« and thus has an eye to »creating a new Enlightenment for the century to come,«<sup>9</sup> it seems that we might be left with a rather strange concept of necessity/limit, one where the must/»ought to be« seems rather closer to the Nike running shoe commercial of »Just Do It«, than to the spirit of Marx's self-critique and the »revolutionary«/»practical-critical activity« this would, of necessity, provide. A headless messianic order, a radical mastery of the law, to be sure, but one, it would seem divorced from the very life blood, the very sensuousness of life itself.

It seems that neither we (not Derrida, with all due respect) need go down that particular part of the Promised Land. For it we link the concept of hegemony (and the ethico-political necessity this implies and secures), with that of the spectral in all its virtual realisms, necessities, imaginings, limits, and decay, there is the possibility not only to interpret change – and to pay homage to it – but to make it »stick«.

<sup>7</sup> *Ibid.*, pp. 45-6.

<sup>8</sup> *Ibid.*, p. 52.

<sup>9</sup> *Ibid.*, p. 55.

# Fictions of Justice

Jelica Šumič-Riha

**M**y ambition is to examine implications of the deconstructive approach in rethinking politics in general and relationship between Law and Justice in particular. One can ask: does deconstruction have any political implications despite the widespread assumption that Derrida has so consistently, skilfully and, perhaps, deliberately avoided the topics of politics? What sort of political thought remains possible once one has deconstructed all the traditional bases of political reflection? Is it possible to rethink the political from a Derridian standpoint? Is it possible to articulate a deconstructive politics? One could say, of course, that there is already a politics implicit in his work. According to Derrida, there is something political in the very project of attempting to fix the content of utterances. Thus one could »extract« the following a guideline »extracted« from *Limited Inc.*

*»This is inevitable; one cannot do anything, least of all speak without determining (in a manner that is not only theoretical but practical and performative) a context. Such experience is always political because it implies, insofar as it involves determination, a certain type of non-«natural» relationship to others ... non-natural relations of power that by essence are mobile and founded upon complex conventional structures«.*<sup>1</sup>

Once this general and a priori structure has been recognised, he adds,

*»the question can be raised, not whether a politics is implied (it always is), but which politics is implied in ... a /given/ practice of contextualization. This you can then go on to analyse, but you cannot suspect it, much less denounce it, expect on the basis of another contextual determination every bit as political. In short, I do not believe that any neutrality is possible here«.*<sup>2</sup>

It is along those lines that I wish to address the following question: why should it be necessary to rethink, to re-thematise the relationship between justice and law, and what have this questioning to do with democracy? My first, provi-

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<sup>1</sup> J. Derrida, *Limited Inc.*, Evanstone: Northwestern University Press, 1989, p. 136.

<sup>2</sup> *Ibid.*, p. 147.

sional answer to this question is to say that the awareness of the gap, or the conflict, antagonism even between law and justice is constitutive of democracy.

I will start my questioning by quoting Lefort's thesis according to which democracy is characterised by the »dissolution of the markers of certainty«. For Lefort, as you may know, a democratic society is »a society in which power, law and knowledge are exposed to a radical indetermination, a society that has become a theatre of an uncontrollable adventure, so that what is instituted never becomes established, the known remains undetermined by the unknown, the present proves to be undefinable.«<sup>3</sup> Following this line of argument, we need to examine various implications that the thesis of the impossibility of any ultimate foundation or final legitimation may have for one of the key constituents of democratic society, »the rule of law«.

Because this issue concerning the groundlessness of »the rule of law« is all the more acute today. With the collapse of real socialism, it seems that the model of liberal democracy has been imposed as the only possible articulation of the contemporary political and social. As the »new world order«, it is claimed to be the final victory of the democratic invention. Yet this globalisation of liberal democracy is accompanied by something that could be called the negation of democracy, its dark side. In this Europe of human rights, a war rages; nationalism, racism and antidemocratic populism are spreading. How are we to conceptualise these negative and pathological phenomena with respect to the victory of »democratic culture«? Is this a historic regression, caused by circumstances, and thus something marginal in relation to the universal model of democracy, an exception to the rule? Or is it a return of the foreclosed which subverts the universal democratic culture as such? In the light of this questioning, democracy appears to be a precarious, »weak« order demanding to address the following question: what is, in fact, so problematic about democracy that its very foundations can continuously be questioned? According to Lefort, as pointed out earlier, democracy is characterised by a radical lack which Lefort conceptualise as the empty place of power. The structural necessity of the empty place of power is grounded in the paradoxical nature of the legitimating instance of the power. In democracy, the role of the sovereign is played by the People.

The People in the role of the sovereign is a problematic, divided entity. On the one hand the People is a symbolic entity which legitimises the power. On the other hand, the people is also conceived as a collection of those who are subjected to the power. As a non-totalisable collection of atomised individuals

<sup>3</sup> Cf. Cl. Lefort, *The Political Forms of Modern Society*, Oxford, 1986, p. 305.

it, no doubt, exists. As a symbolic authority, it clearly does not exist, or, rather, it exists only as a »fiction«. The place of power remains by necessity – that is, as a consequence of this division – empty. It is a place that no-one, no representative of the people can claim as his own, nor can legitimately occupy. Any attempt to incarnate this absent, impossible entity, the symbolic people, leads therefore into totalitarianism. This irreducible gap between the People as a Symbolic entity and the people as a non-totalizable, non-substantial entity is constitutive of democracy. It is because of this insurmountable division that democracy must be conceived as an ethico-political dilemma. It is because of its radical openness that democracy is always facing a threat of a fall into its opposite: a non-democracy, and totalitarianism. Once it is admitted that democracy is an »eternally« open question – due to the this paradox of the self-legislator who is at the same time his own subject – we need to rethematisé the precarious status of the Law and its relationship to its own specific, constitutive, I would add, outside.

What is at stake here is precisely the question of what is this Other of Law, this non-Law, if Law in democracy is posited as all encompassing universal, as an instance which nothing escapes. And vice versa: what is this Nothing which, as we shall see shortly, constitutively escapes the Law? What is this Nothing which, by evading the Law, renders the Law incomplete? In an attempt to examine the precarious nature of democracy in its relation to Law, I will address the proper object of my inquiry, namely the dilemma of the incompleteness of the Law. My objective is to show how the modernist project on the one hand and the postmodernist on the other – two major endeavours of our time – situate themselves with respect to the dilemma of Law and to suggest a possible solution to the problem. In the first part of my presentation I will focus on the modernist conception of justice as elaborated in Rawls's *A Theory of Justice* and indicate those points at which this conception turns into its opposite. In the second part, I will present the postmodernist critique of modernist approach. I will then elaborate on some problematic implication of the postmodernist conception of justice as exemplified by Lyotard's *The Differend*. In the third part I will focus on the antagonistic relationship between modernist and postmodernist approach as actualisation, or realisation of the antagonism between law and justice, and suggest a possible rethematisation of this relationship.

### 1.

The modernist and postmodernist conception of the opposition between law and justice can be thematised, as I pointed out earlier, in terms of a radical rupture or a differend, to use Lyotard's own term. This differend between the

two theoretical approaches, I argue, needs to be reappraised in the light of an internal blockage, impossibility, or aporia of the Law itself. The thesis that I wish to defend here is precisely that this theoretical differend »stages« the differend that always already exists between law and justice. The theoretical differend, I argue, enunciates the truth of the relationship between law and justice, that is, the impossibility of bringing together two heterogeneous logics: on the one hand the symbolic, universalistic logic which characterises the Law, and on the other hand the logic of the real, as always singular (particular), contingent logic which is, in my view, constitutive of Justice.

My basic point is that despite the fact that this impasse characterises the rapport or rather non-rapport between law and justice, there is nevertheless a way out of it. And this possible way out of the impasse concerns, in my view, not only democracy »to come« (*à venir*), as Derrida puts it, but also the possibility of (radical) changes in present-day more or less democratic societies.

In order to suggest a possible solution to this problem, I will draw on Derrida's recasting of the relationship between the law and justice. In »Force of Law: The 'Mystical Foundation of Authority'«, the lecture that Derrida delivered as the keynote speaker in the conference consacrated to *Deconstruction and the possibility of justice* at the Cardoza School of Law in 1989, the issue that I wish to address here, namely the antagonistic relationship between law and justice is articulated as »the absence of rules, of norms, and definitive criteria that would allow one to distinguish unequivocally between *droit* (law) and justice.«<sup>4</sup>

I believe that both, Rawls and Lyotard, would accept this formulation of the problem. It could constitute their provisional meeting point. They would agree also that the central question of the contemporary theorising about ethics, politics and law is the question of how to produce a discourse on justice, law and politics when one no longer relies on pre-existing rules, in other words, when the norms for deciding the norms, rules and laws become themselves a problem. What characterises contemporary democratic societies and theorising about them is precisely a rupture with the idea of totalizing unity and the idea of subject as self-legislator on the one hand and awareness of the immanence of norms, rules and criteria on the other. Rawls and Lyotard would agree, I believe, that, in an age that can no longer rely on any »given« criteria, the problematic of the law and justice cannot be inscribed in the horizon of the

<sup>4</sup> Cf. J. Derrida, »Force of Law: 'Mystical Foundation of Authority'«, in *Deconstruction and the Possibility of Justice*, (eds., J. Cornell, M. Rosenfeld, D.G. Carlson, Routledge, London, New York 1992, p. 4.

Good. So we could say that for Rawls and for Lyotard the Good in the sense of the Law of Law, the Other of Law, the instance in which the Law is grounded, does not exist. In short, both would agree that there can be no foundationalist grounding of any given system of legal rules and norms in the Law of Law. Yet, from this provisional agreement they proceed in completely opposite directions. As pointed out earlier, Rawls's starting point is the assumption that the Good in the role of the foundation is lost. According to his view, the Good we know of exists only as a multitude of particular, conflicting conceptions of the Good that render any consensus impossible. For Rawls, any form of political justification appropriate to present-day societies must acknowledge that there can be no general agreement on one vision of the Good, and that a plurality of opposing and incommensurable conceptions must be taken as given. Thus, for Rawls, the Good in the role of the foundation and guarantee is at best irrelevant and at worst a regression to the premodern.

What is problematic about Rawlsian position is that, while admitting the lack of the Good as the Law of Law (in the traditional sense of transcendence: God, Nature, Reason, etc.), Rawls represses it at the same time. Rawls rightly rejects the Law of Law, grounded in the Good. Yet he establishes as its replacement, as its substitute the self-grounded Law.

Lyotard on the other hand, while agreeing with modernists that the Good does not exist, nevertheless rejects the proposed solution, that is, the ideal of self-grounding Law. For Lyotard, the very idea of a self-grounding and, as a consequence, of a self-legislation is an illusion. Contrary to this idea of the self-grounding Law, the Law of Law is »present« only in its absolute absence. The Law of Law, in other words, is an instance whose role is precisely to repress and dissimulate an initial fragmentation due to the loss of the Good. The central difference between Rawlsian and Lyotardian approach, I will suggest, lies however in their divergent opinions on the way the loss of the Good relate to justice. Rawls's conception of justice can be considered as an attempt to fix, to localise, and to neutralise the dissensus, fragmentation and contingency which characterise the contemporary political and social. The guideline of his theorising can be formulated as follows: how is social unity to be understood in the face of seemingly limitless diversity? His answer is to separate the formal question of justice from the substantive, material question of the Good. The unity of social and) political order is not to be found in the Good, that is, in a finite set of shared values, ideals, aims, etc. The Good cannot produce an »overlapping consensus«, to use Rawls' expression. On the contrary, given its conflicting interpretations, it can only lead to violent conflicts and antagonisms. Which is why justice is conceived as a normative ideal presented as a universable set of rules and procedures, recognisable and acceptable by all.

This conception of justice is underpinned, as is well known, by the conviction that all conceptions of truth or justice are commensurable. That is, »able to be brought under a set of rules which will tell us how rational agreement can be reached on what would settle the issue on every point where statements seem to conflict.«<sup>5</sup> In short, the conception of justice, desired by Rawls, is purely regulative: that is to say, a conception of justice which can be acknowledged by all as »a common point of view from which their claims may be adjudicated,« as Rawls puts it.<sup>6</sup>

## 2.

However, it is precisely this association of justice with (rational) consensus that Lyotard denies. The modernist conception of justice is, according to Lyotard, questionable to the extent that it is grounded in an assumption of the subject who is also legislator. Yet this division of the subject is dissimulated by the interchangeability of the addressee and author of the Law.

The very idea that the roles of the addressee and author of the Law are interchangeable is inspired by a certain ideal of communication which identifies, assimilates the speaker and the hearer. For Lyotard, on the contrary, »to place oneself in the position of enunciator of the universal prescription«<sup>7</sup> is clearly an illusion. Yet it is a dangerous illusion because it wrongs the Other. And to the extent that the idea of a consensus is an »absolute injustice«, as Lyotard puts it,<sup>8</sup> he defends an »idea of justice that is not linked to that of consensus«.<sup>9</sup>

Lyotard's ambition is to analyse those situations where social interaction cannot be experienced as an exchange between two equal partners, where the position of the other remains irreducibly other. This irreducible gap between the two positions testifies, according to Lyotard, to the fact that the Social itself is fragmented, dispersed into a multiplicity of incommensurable »language games«. Postmodern society is a society characterised by »an absence of unity, and absence of totality«.<sup>10</sup> It is therefore a society without a set of stable criteria which would guide politics or its appraisal.

<sup>5</sup> Cf. R. Rorty, *Philosophy and the Mirror of Nature*, Oxford, Blackwell, 1980, p. 316.

<sup>6</sup> Cf. J. Rawls, *A Theory of Justice*, Cambridge, Mass. Harvard University Press 1971, p. 6.

<sup>7</sup> Cf. J.F. Lyotard, *The Postmodern Condition*, Minneapolis: University of Minnesota Press, 1984, p. 60.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*, p. 66.

<sup>10</sup> J.F. Lyotard, J.L. Thébaud, *Just Gaming*, Minneapolis: University of Minnesota Press, 1985, p. 94.

Postmodern conception of justice could be therefore a conception which remains faithful to the heterogeneity and incommensurability of language games. It is a conception that preserves the »agonistic aspect of society«.<sup>11</sup>

Once it is admitted that there is no privileged, unifying discourse, we are faced with a situation in which a general theory of justice does not apply. In other words, the Social characterised by the absence of unity and impossibility of totalisation demands, according to Lyotard, a new conception of Justice. This conception of justice cannot be founded on the category of the autonomous subject, an entity which can place itself in a position outside an endlessly changing discourses, and there assume a perspective from which the whole chaotic field of discourses might be assessed and dominated.

One of the premises of Lyotard's conception of justice is precisely to reject this idea of the self, freed from the risk of exposure and destabilization. On the contrary, according to Lyotard, the starting point of any theorising about justice is to insist on the impossibility of autonomy and equivalence, in short, to insist on the dissolution of the self within a complex texture of social relations. Social relations and discourses which constitute them cannot be mastered, dominated by the subject because they not only precede him but make its constitution, positioning possible. The heterogeneity and incommensurability of language games on the one hand and the dissolution of the self on the other demands a re-thematisation of justice. Justice, according to this view, can only be local, multiple, and provisional. It is subject to contestation and change, allowing no generalisation of (universal) rules or principles. Once the heterogeneity and incommensurability of language games is admitted, we are faced with a situation where conflicting claims cannot be settled by referring to a common rule or criteria, for they do not and cannot exist. In short, we are faced with a situation in which one must judge without criteria, as Lyotard puts it.<sup>12</sup>

In *Just Gaming* Lyotard illustrates this point by using as an exempla Aristotle's judge who has no criteria to guide his judgement. According to Lyotard, the problem of judgement is precisely the problem of having to make a good judgement without resorting to already existing rules. It should be noted, however, that Lyotard's point is the invention of rules rather than the absence of rules.

Lyotardian idea of a plurality of justices and a »justice of multiplicities« lays the basis for a different, postmodernist, politics. This political strategy is claimed to do justice to plurality, heterogeneity and incommensurability of

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<sup>11</sup> *Ibid.*, p. 16.

<sup>12</sup> *Ibid.*

language games. There is only one principle that operates in politics adjusted to »justice of multiplicities«: one must accept the assumption that the Social is grounded in a radical, insurmountable dissension. In other words, challenging, contestation and putting into question must always be allowed or else we are faced with totalitarian terror rather than not justice. Also no one language game can mediate between competing language games, nor can specific principles or rules settle disputes.

Liotard's main point, however, is that the modernist idea of justice is not only inadequate. It is absolute injustice. It is injustice to the extent that the unanimity, rationality, and sameness, that is, the constituents of the modernist idea of justice, are produced by the process of exclusion, marginalisation and suppression of the heterogeneous and differences. Denouncing this active subordination of plurality to a set of universal principles, Lyotard advocates for a »vengeance« against the conception, according to which, justice is subsumed under the universalistic form of Law.

On its way to the »right answer«, to use Dworkin's expression, justice identified with the universal law inevitably excludes and marginalises cases which cannot be accommodated within its own framework. It is precisely this aspiration to the universalisation, a crucial characteristics of the modernist conception of justice and the rule of law, which, according to Lyotard, generates cases of unresolvable differends, that is, cases of a radical injustice or a wrong (*le tort*). The issue of differend is introduced by way of postulating that there is a necessary redundancy of genres of phrases which is suppressed by the limited number of idioms that can survive. This superfluity causes an agonistic »selection«, if I may say so, which allows only a fewer stronger variants to survive and suppress a great number of weaker ones. These become victims unable to express the violence they have suffered.

Liotard's ambition is to put forward the notion of the differend, that is, the notion of activating and bearing witness to conflict, as a political strategy. At issue here is not the question of how differences are to be resolved, but rather the question of whether they can be articulated, »phrased«. The difficulty lies in the fact that one can only perceive the harmless kind of conflict which Lyotard calls »litige« (*litigation*). In this case, it is possible to find an idiom which can solve the conflict because it covers both parties and provides a »rule of adjudication« (*a regle du jugement*). A »differend«, by contrast, is a conflict which for structural reasons cannot be resolved equitably. In this case, there is no idiom applicable to both parties. A case of differend between two parties »takes place,« says Lyotard, »when the 'regulation' of the conflict which

opposes them is done in the idiom of one of the parties, while the injustice suffered by the other is not signified in that idiom.«<sup>13</sup>

The crucial question is what implications can one draw from Lyotard's attempt to »rephrase« the political in terms of the justice of multiplicities which, in turn, is grounded in the notion of a differend?

In order to assess Lyotard's contribution to contemporary political theorising it should be noted that his emphasis on dissensus is no doubt a valuable contribution. He attempts to account for the antagonistic, conflicting nature of the political. His concept of the differend points to the need to articulate differences between competing political positions. In addition, the concept denounces some of the ways and strategies used by the mainstream political though in practices in their attempt to disregard and, ultimately, to suppress the heterogeneous.

Yet the initial openness to the otherness of the other, to differences, and the insistence on the incommensurability of multiples discourses, although in itself indisputable, may lead to problematic consequences. The fundamental undecidability with respect to the question of which side engaged in a conflict is right, when no criteria available are acceptable for both sides, may lead to a conclusion not only that all political and social demands are legitimate, but also that the outcome depends on the capability of the stronger to impose his/her vision of the just on the weaker or defeated side.

Many commentators objected to Lyotard's conception of justice because it is grounded in a position of a self-conscious equivocation with respect to conflicting demands and discourses. Such a position is considered disastrous since it does not allow for the distinction between true and illusory consensus, a just and unjust society, a good and a bad action. This inability to draw a line of demarcation between what can and what cannot be tolerated, which characterises the position of cynicism as well as the position of indifference, undermines, according to their view, the very foundations of democracy.

This critique, although pointing to some of the problematic features of Lyotard's conception of justice, is questionable to the extent that its starting point is the normative view. And it is for that reason that they seeks the original sin in Lyotard's conception of the incommensurability of language games and, as a consequence, in a radically antagonistic nature of discourses which constitute the Social and the political, that is to say, precisely in those theorisation which constitute Lyotard's main contribution to the theorising of political.

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<sup>13</sup> J. F. Lyotard, *The Differend*, Manchester University Press, Manchester, 1988, p. 12.

However, the very possibility of the subversion of an initial openness and tolerance in its opposite requires a radical reappraisal of Lyotard's conception of justice as well as his critique of the relationship between law and justice. While modernist privileging of the universal law, as Lyotard rightly points out, wrongs justice conceived as always only contingent, singular, and particular; Lyotard's own view, which starts with the rejection of the universalistic law as totalitarian, by privileging the justice of multiplicities, the incommensurability of various visions of the just, may lead, in the last instance, to the destruction of the very idea of justice.

What is at stake here is precisely the relation between the initial incommensurability of all claims and, as a consequence, a radical undecidability with respect to the legitimacy and justifiability of those claims to justice. This question is, in my view, more than justified since the only conclusion one can draw from the radical incommensurability, which denies the very possibility of a rule or criteria for decision and judgement, is that all claims to justice are legitimate.

Yet, if politics and legal adjudication involve a decision-making, the question arises of how to ground and account for a decision-making that does not refer to common, universal criteria and rules. Is not this suspension of decision ethically irresponsible and politically harmful, as critics of postmodernism repeatedly point out?

### 3.

So far I have tried to confront modernist and postmodernist conception of justice. Now I would like to examine some of the consequences of their antagonistic relationship. This relationship generates – as has been pointed out – a differend, an unresolvable conflict. I have started this presentation with the thesis that the differend between the two theoretical approaches is but a repetition, an actualisation of the original differend which constitutes the relationship between law and justice. In an attempt to explain the relationship between the Rawlsian and Lyotardian conception of justice, the Lacanian formula of communication may be of some help. According to this formula, the speaker receives from the addressee his own message, yet in its inverted, that is, true meaning. Thus it could be said that both modernist and postmodernist conceptions return to the other its own lack. The postmodernist critique rightly calls attention to the fact that the universality of law, as such, is contaminated with the particularity of the place of its enunciation. On the other hand, the modernist critique of postmodernist conception could show that the very idea of incommensurability of justices, the insistence on the absolute heterogeneity

of justice in relation to the law, on an absolute undecidability as to which side in a conflict is right, paradoxically turns into its opposite: a universalised injustice, or in other words, radical evil. Thus we could say that the two approaches share something in common: their unwillingness to bear responsibility for the aporia of the relationship between law and justice. While it is true that Lyotard is at least sensitive to this aporia – as opposed to Rawls who does not perceive it at all. However, Lyotard's failing lies in the fact that, for him, the aporia is to be conceived as the solution to the problem of the incommensurability between law and justice. As a consequence, law and justice are substantiated and fixed in their mutual exteriority and exclusivity.

My ambition is, on the contrary, to thematise this irreducible gap between law and justice which, I believe, is constitutive of both. How is their mutual heterogeneity, irreducibility to be conceptualised? Is there a possibility of their reconciliation? Here, I think, Derrida's approach may be of help. Despite the fact that Derrida himself was accused of avoiding the discussion of political and ethical questions, I believe that his deconstructive reading of law and justice suggests a way out of this impasse. One may, of course, doubt if Derrida is capable of providing such a solution given the fact that he privileges responsibility (political, ethical, legal) over mere decision-making, which is understood as choosing between alternatives. Moreover, according to Derrida, what characterises responsibility is precisely its undecidability, to the extent that one could say that a responsible answer to the aporia of decision is its constant deferring to the future, in short, its suspension. Derrida, for example, points out that »there can be no moral or political responsibility without this passage by way of the undecidable«.<sup>14</sup> What, then, one could ask, could count as a responsible attitude toward the universality of law on the one hand and the singularity and heterogeneity of justice on the other? In other words, is it possible to avoid traps of both the modernist and postmodernist conception of justice? Against both modernists, who subsume justice under the universal law, and against postmodernists who, on the contrary, insist on the multiplicity of justices while denying the universal law, Derrida seems to insist on a paradoxical subjection to both: law and justice. According to Derrida, one needs to obey universal rules, while at the same time, one must respect the contingency and particularity of justice.

So how are we to conceptualise this »impossible« reconciliation of both law and justice? One could say that Derrida attempts to achieve an impossible »synthesis« of both positions, modernist and postmodernist. In other words, it seems as if Derrida accepts to a certain degree a modernist conception of law

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<sup>14</sup> J. Derrida, *Limited Inc.*, p. 116.

since he admits that the law, in contrast to justice, can be accounted for in terms of a good rule applied to a particular case. As to justice, it seems as if Derrida follows a postmodernist line of argument: justice, for Derrida, involves singularity and contingency. It concerns the »otherness of the Other« in a unique situation, irreducible to principles of duty, rights, or universal law. In short, justice is incalculable by definition. It is incalculable because it entails moments in which the decision between just and unjust cannot be insured by a rule. Thus one could say that justice is the experience of incommensurability, of the impossible, of the undecidable, of the aporia, as Derrida puts it.

Yet the difficulty about this position is that in order to be faithful to incalculable justice one needs, paradoxically, to calculate, to obey the calculable law. And vice versa: even in those instances where the singular case of the »other« is to be applied to the universalisable law of the »same«, there remains a trace of undecidable which Derrida identifies with justice. He writes:

*»The undecidable is not merely the oscillation or tension between two decisions, it is the experience of that which, though heterogeneous, foreign to the order of the calculable and the rule, is still obliged ... to give itself up to the impossible decision while taking account of law and rules. A decision that didn't go through ordeal of the undecidable would not be a free decision, it would only be the programmable application or unfolding of a calculable process. It might be legal, it would not be just.«<sup>15</sup>*

The undecidability of justice is therefore that which subverts the legal and political decisions' claims to certainty and legitimacy. No decision is unconditionally decidable. No decision is ever totally pure, wholly present to itself. No decision is wholly subsumed under rules, since an element of incalculable singularity always contaminates it. On the other hand, there is never a completely, absolutely just decision, since some element of rule determination is always present. In short, all decisions are to some degree impure.

Yet there is another aspect of the opposition between law and justice. According to Derrida, the law is always deconstructible. Justice, on the other hand, is immune to deconstruction. In fact, justice is identified with deconstruction. Now, how can we account for this divide between law and justice with respect to deconstruction? In terms of Lacanian theory, the gap between law and justice could be rephrased as the gap between the Symbolic and the Real. Thus it could be said that justice – being always singular, but repetitive, inert, returning to the same place – in a relation to the universal law presents an insurmountable limit, a transcendence which renders the law incomplete. On

<sup>15</sup> J. Derrida, »Force of Law: The 'Mystical Foundation of Authority'«, p. 24.

the other hand, the paradox of justice could be described as follows: justice – while referring to the singularity and heterogeneity of the other, appeals to a rule. In so far Derrida is right in saying that it is just that law exists, but this does not mean that the law can be identified with justice. If justice could be reduced to a mere application of the law, than justice, in the true sense of the word, would simply disappear.

How are we to conceptualise the relationship between justice and law? In order to link them together we may try to do so by bringing into play the concept of *repetition*. While it is easy to grasp the repetitive character of the law. After all, the essence of law consists in a repetitive application of the same universal form to various singular cases of violation of law. But it seems difficult if not impossible to conceptualise justice, as always singular, contingent, etc. in terms of repetition. Yet I will try to do so.

What constitutes the law as universal is precisely a repetition of a signifier, a trait in relation to which different cases of violation are reduced as violation of a particular norm or rule. Justice, I argue, as only ever singular, contingent, etc. is precisely that which does not allow for a repetition. Thus the rendering of justice cannot be reduced to a mere application of rules to the extent that it is conceived as radically unique. And this impossibility of »taming« justice and subsuming it to the law, and vice versa, this impossibility of the law to integrate justice, this repetitive failure of law to encompass justice is what I call a traumatic encounter of the Real. Thus Derrida's »call for justice«, »a desire for justice« which is not law, but deconstruction *in actu* of law and politics presents itself as the Real which emerges in the field of universal Law and disrupts it.

Is there a solution to the aporia of Law and justice? We shall look for it in the direction already indicated by Derrida. Yet what is crucial in this suggested solution is the fact that it is grounded on three instances of »blindness« or suppression.

Firstly, the suspension or the *epokhé* of the rule. A judge must found his/her decision on a rule, yet the act of just decision is never a result of a simple application of a rule. His/her decision is conceived as a just decision only if it is perceived as an act which posits its own rule. A just decision therefore must presuppose a rule and, at the same time, its suspension.

Secondly, in order to be a decision (just or unjust) we must blind ourselves to the radical undecidability in which all decisions are grounded. Although there is no moment in which a decision is fully present and just, as Derrida puts it, since a decision either has not been made according to a rule – thus we cannot call it neither just nor unjust – or it follows an established rule which means

that a decision is reduced to calculation and cannot therefore be called just. However, in order to be a decision we must blind ourselves to this irreducible gap between calculation and a decision which follows no rules. In other words, we must pretend as if the moment of a decision is a coincidence of an invention of a rule and its following.

Thirdly, a decision is accomplished in haste, in urgency. A just decision, as Derrida puts it, is called immediately, it cannot wait. This haste, this urgency which leads to a suspension of knowledge about facts and situation, a suspension of a rule suggests that a decision is acting »in the night of non-knowledge and non-rule«,<sup>16</sup> as Derrida puts it justifying in this way his quotation from Kierkegaard who identifies a moment of decision with madness. To put it differently, even if we believe that we behave and decide according to a rule, the decision is, in the final instance, a jump into the unknown, into an abyss.

Thus the paradox of the relationship between justice and law could be formulated as follows: we know that law as such is not and cannot be just. However, if we accept that and behave according to this knowledge, we will have lost not only justice, but also law. Law is namely conceived as an instance that appeals to justice which means that a law that does not refer to justice is simply not a law. It is therefore in some way necessary to blind ourselves to this knowledge. In other words, we must blindly believe that justice can be rendered only by respecting laws. In Derrida's terms: even if justice cannot be reduced to rule-governed activity we must respect rules. We must respect them because in the very undecidability of justice on the one hand and groundlessness of law on the other lies the danger that the right to do justice can be usurped by bad legislators.

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<sup>16</sup> *Op. cit.*, p. 24.

# La logique de l'apparence

Alenka Zupančič

## »L'océan orageux« de l'apparence

Dans le texte présent, nous allons aborder les entités que E. Kant désigne par le nom général d' »idées transcendantales«, mais qu'il appelle aussi »ens rationis«, les »fictions heuristiques«, les »concepts de la raison«, les »idées régulatrices«, pour ne nommer que quelques uns des termes les plus fréquents. Il s'agit donc du champ de la pensée qui s'ouvre avec la deuxième partie de la *Critique de la raison pure*, avec la dialectique transcendantale. Si, dans l'analytique transcendantale, nous avons affaire à la *logique de la vérité*, la dialectique nous confronte à la *logique de l'apparence* (les deux expressions sont kantienne). Cependant, on pourrait aussi bien dire qu'il s'agit de deux logiques différentes de la vérité. Dans la première, la vérité est conçue comme conformité de la connaissance à l'objet et, dans la deuxième, comme conformité de la connaissance à elle-même. Dans la première il s'agit du rapport entre les mots (les concepts) et les choses, tandis que dans la deuxième il est question du rapport entre les mots (les concepts) en tant que tels. Autrement dit, dans la première nous avons affaire à la théorie classique de la vérité, *aedaequatio intellectus rei*, et dans la deuxième à une théorie de la vérité qui est plus proche de celle développée par J. Lacan: La vérité se situe au niveau de l'articulation des signifiants, des rapports qui s'établissent entre eux, et non pas au niveau du rapport entre les signifiants et les choses qui leur seraient simplement »extérieures«. C'est cette »extériorité absente« qui donne à la vérité la »structure de la fiction« et la rend »pas-toute«. Pourtant, la thèse lacanienne selon laquelle »la vérité a la structure de la fiction« n'implique pas son statut »arbitraire« ou »fictif« au sens habituel du terme. (Avec la formule citée, Lacan ne vise pas à »deshonorer« la vérité, il vise plutôt à faire ressortir l'aspect »véridique« de la fiction.)

On pourrait dire la même chose pour les idées transcendantales de Kant. D'une part, la raison se trouve ici »délivrée« de tout lien immédiat aux choses, aux objets de l'expérience possible, elle ne manie que des concepts qu'elle implique dans des combinaisons et des relations différentes, mais, d'autre part, il s'avère

qu'il n'y a rien qui serait moins »libre« que précisément ce »libre jeu« avec les concepts. C'est ce qui figure comme le point de départ des développements kantien dans la dialectique transcendantale: étant indépendante de l'expérience, la raison pourrait »fabriquer« toutes sortes de »fantasmagories«, cependant, au lieu de cela – si on considère l'histoire de la philosophie – elle crée systématiquement toujours les mêmes »idées«: les idées de l'âme, du monde et de Dieu. De cette »compulsion de répétition« Kant conclut à la nécessité des idées en question. Dans la structure de la pensée humaine, quelque chose incite précisément à la création de ces idées-là.

Pourtant, la théorie kantienne de la vérité est plus complexe. Il est vrai que Kant part de la théorie classique de la vérité qui définit celle-ci en termes de conformité de la connaissance à l'objet. Cependant, il est clair que l' »édifice philosophique« kantien, qui diffère sur des points nombreux de la philosophie »classique«, ne peut pas se satisfaire de cette simple définition qui suppose une conception pre-kantienne du rapport entre le sujet et l'objet. L'objet auquel la connaissance doit être conforme ne peut pas être autre chose que l'objet de l'expérience possible, et celui-ci est toujours »médiatisé« par les conditions *a priori* (subjectives) de la sensibilité, c'est-à-dire qu'il se trouve toujours déjà du côté subjectif de la connaissance. De plus, Kant soutient que la *conditio sine qua non*, la »condition négative« de toute vérité, repose sur le critère logique ou formel de la vérité, critère qu'il définit comme »la conformité de la connaissance aux lois universelles et formelles de l'entendement et de la raison«. En d'autres termes, c'est la conformité de la connaissance à elle-même qui est la condition fondamentale et première de toute vérité, et la question de la conformité de la connaissance à l'objet ne se pose qu'à un niveau ultérieur. On pourrait interpréter le »critère formel de la vérité« comme ce qui rend possible la distinction même entre le vrai et le faux. Le critère formel serait ainsi la condition qui doit être remplie pour qu'on puisse s'interroger sur la vérité ou la fausseté d'une proposition.

Par rapport à ce cas de figure, la dialectique ou la »logique de l'apparence« est déterminée par la prétention de trouver, à partir de la simple logique, une vérité »matérielle«, c'est-à-dire la vérité dans le sens habituel du terme (l'accord entre les mots et les choses). La logique de l'apparence est une tentative pour conclure de la condition négative de la vérité – dont la seule tâche est de constater la possibilité ou l'impossibilité de la vérité (ceci ne peut pas être vrai parce que cela implique une contradiction logique; cela peut être vrai parce qu'il n'y a pas de contradiction) – à son »objectivité«. Autrement dit, il s'agit de considérer comme vraie une chose pour cela même qu'elle n'est pas impossible, ce qui fait tomber la distinction même entre le vrai et le faux. Voilà pourquoi Kant parle des »sophismes« de la raison. Dans cette perspective, la

dialectique est définie par rapport à l'analytique dans le double jeu du »trop« et du »pas assez«, du manque et du surplus. La dialectique = l'analytique moins l'objet de l'expérience; la dialectique = l'analytique plus l'objet qu'on ne trouve nulle part dans la réalité (expérimentale). De là, nous pouvons préciser d'avantage la notion de l'apparence par laquelle Kant définit la dialectique. L'apparence n'est pas le contraire de la vérité, elle se situe à un autre niveau, elle rend plutôt impossible la distinction même entre le vrai et le faux. L'apparence est le nom de quelque chose qui »apparaît« là où il faudrait qu'il n'y ait rien. En d'autres termes: l'apparence est *l'objet à la place du manque de l'objet*. »À la place« doit être compris au sens topologique: nous avons une structure logico-formelle (la conformité de la connaissance aux lois universelles et formelles de l'entendement et de la raison) dans laquelle il y a une place pour un objet qui cependant »manque à sa place«. L'apparence n'est donc pas l'apparence de quelque chose, elle n'est pas l'image inadéquate d'un objet réel, elle n'implique aucune »profondeur de champ«. Derrière l'apparence il n'y a pas d'objet réel, il n'y a rien, il n'y a que le manque de l'objet. L'apparence est »quelque chose« à la place du »rien«, elle ne trompe pas en représentant (faussetment) quelque chose, elle trompe par le fait même qu'elle *est*. Ce qui est problématique n'est pas ce que nous voyons dans l'apparence, mais le fait même que nous voyons quelque chose. L'apparence transcendante ne se réfère pas au contenu de l' »image«, elle se réfère à son existence. On pourrait dire que l'apparence trompe au niveau de l'être – elle est l'être en tant que semblant, le semblant en tant qu'être. Elle *est*, afin de »voiler« sa propre inexistence.

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Nous devons commencer l'analyse des idées transcendantales un pas avant le commencement, c'est-à-dire non pas au début de la dialectique mais à la fin de l'analytique, où Kant étale devant nous le plan célèbre du pays de l'entendement et décrit le spectacle sublime qui se montre à l'habitant de ce pays quand il promène son regard autour de soi.

*»Nous avons maintenant parcouru le pays de l'entendement pur, en examinant soigneusement chaque partie; nous l'avons aussi mesuré et nous y avons fixé à chaque chose sa place. Mais ce pays est une île que la nature enferme dans des limites immuables. C'est le pays de la vérité (mot séduisant) entouré d'un océan vaste et orageux, véritable empire de l'apparence, où maints brouillards épais, des bancs de glace sans résistance et sur le point de fondre offrent l'aspect trompeur de terres nouvelles, attirent sans cesse par de vaines espérances le navigateur qui rêve de découvertes et l'engagent dans des*

*aventures auxquelles il ne sait jamais se refuser et que, cependant, il ne peut jamais mener à fin.*»<sup>1</sup>

L'île de la vérité dans le vaste océan de l'apparence – telle est la description de l'état des choses à la fin de l'analytique. Le pays qui porte le nom séduisant de vérité une fois traversé et »mesuré«, perd de son charme pour les navigateurs; ils partent alors pour le trouver ailleurs. Pourtant, ils ne savent pas qu'ils courent à leur perte.

L'imaginaire activé par Kant afin d'accentuer l'importance et la portée du lieu et du moment où nous nous trouvons, mérite d'être élaboré pour soi. Indiquons à ce propos une des lectures possibles, celle qui s'appuie sur la différence entre le beau et le sublime. La différence entre la nature qui »sait« (beau) et la nature qui »jouit« (sublime); entre la nature où tout est à sa place et où règne l'harmonie, et la nature chaotique des »éruptions« soudaines et inattendues; entre la nature dans laquelle nous nous sentons à l'aise et en sécurité, et la nature qui nous met au-delà du »principe de plaisir« et qui nous emporte comme un petit grain de sable.

On pourrait dire du dispositif en question qu'il traite de la différence entre le plaisir et la jouissance, pourtant, la parabole de Kant prend un tournant inattendu. On doit s'étonner du fait qu'après ce prologue impétueux de l'aventure de la dialectique, notre expectative reste insatisfaite. Rien de »si troublant« ne se passe dans la dialectique. A la place du chaos nous rencontrons l'»unité systématique«, à la place de l'»intrusion du réel« l'Idée. La raison ne conduit pas l'entendement à sa perte, mais fournit au contraire à ses connaissances une cohérence. – Tout cela en dépit du fait que nous nous trouvons dans le pays de l'apparence. Nous reviendrons à ce paradoxe plus tard.

### *Les figures du rien*

Une des questions décisives à laquelle nous confronte la théorie kantienne des idées transcendantales est celle de savoir si nous avons affaire, tout simplement, aux »noumènes« ou s'il s'agit d'autre chose. On pourrait formuler cette question ainsi: une chose qui n'est pas objet d'expérience, est-elle pour cela nécessairement un »noumène«? La façon dont Kant introduit la discussion des idées transcendantales, surtout à la fin de l'analytique (celle-ci se conclut sur l'examen de la différence entre les phénomènes et les noumènes) et au début de la dialectique, donnent en effet l'impression que nous sommes en train d'entrer dans le domaine flou des noumènes et que toute l'insistance sur le caractère régulateur et »fictif« des idées sert à contrebalancer ce fait. D'autre part,

<sup>1</sup> Emmanuel Kant, *Critique de la raison pure*, Paris, PUF 1944, p. 216.

presque tous les points de l'analyse kantienne des idées transcendantales montrent bien qu'il s'agit d'un concept indépendant et irréductible à celui des noumènes.

Nous allons essayer d'éclairer le cas de figure sur lequel se base l'élaboration kantienne des idées transcendantales en nous appuyant sur la »table de la division du concept de rien« que Kant propose à la fin de l'analytique et à propos de laquelle on pourrait dire qu'elle constitue le pivot de la dialectique. En effet, la dialectique s'avère dans cette perspective être la »dialectique du rien«, ce qui parle en faveur de notre thèse selon laquelle c'est le »rien«, le manque, qui figure comme pivot de la dialectique et l' »habite« de l'intérieur. Voyons la table de Kant.

RIEN  
comme:

1.		
Concept vide sans objet <i>ens rationis</i>		
2.		3.
Objet vide d'un concept <i>nihil privativum</i>		Intuition vide sans objet <i>ens imaginarium</i>
4.		
Objet vide sans concept <i>nihil negativum.</i>		

Après avoir défini chacune des »catégories« du rien, Kant les associe par couples (1,4; 2,3) et nous allons procéder pareillement. Commençons par le couple 1,4. Kant explique 1 comme »l'objet d'un concept auquel ne correspond absolument aucune intuition = rien, c'est-à-dire que c'est un concept sans objet, comme les noumènes«. Le rien que nous rencontrons en 4 est pour sa part »l'objet d'un concept qui se contredit lui-même«. Quand il les associe, il ajoute: »La chose de la pensée [*Gedankending*] (n° 1) se distingue de la non-chose [*Unding*] (n° 4) en ce que la première ne peut pas être comptée parmi les possibilités, parce qu'elle est une simple fiction (bien que non contradictoire), tandis que la seconde est opposée à la possibilité puisque le concept se détruit lui-même.«<sup>2</sup>

Kant situe alors les noumènes dans la même catégorie que les idées transcendantales. Pourtant, on s'aperçoit vite qu'il existe une différence

<sup>2</sup> *Ibid.* p. 249.

considérable entre ses deux types d'entités. Comme nous le verrons plus tard, les idées transcendantales comme »concepts sans objets« répondent à un manque inhérent à l'expérience et à la connaissance mêmes, et non pas simplement à quelque chose au-delà de toute expérience. Elles répondent à un manque que nous pourrions attacher au problème de la détermination complète ou incomplète du concept. *Ens rationis* n'est pas une »présentation« (inadmissible) du noumène, mais au contraire quelque chose qui surgit de la conjoncture de deux manques, de deux »riens«, ceux-là précisément qu'on rencontre dans les catégories 2 et 3 de notre table. Voyons alors de plus près comment Kant conceptualise ces deux »figures du rien«.

2 est la négation ou »un concept du manque de l'objet, comme l'ombre, le froid (*nihil privativum*)«, et 3 est »la simple forme de l'intuition« qui, comme l'espace pur ou le temps pur, n'est pas l'objet de l'intuition. Kant lie ces deux figures du rien par l'explication suivante:

*»Si la lumière n'était pas donnée aux sens, on ne pourrait se représenter aucune obscurité, et si les êtres perçus n'étaient pas étendus, aucun espace. La négation, aussi bien que la simple forme de l'intuition sans rien de réel, ne sont pas des objets.«<sup>3</sup>*

2 se fonde alors sur la complémentarité du concept et de l'intuition (ou de l'objet donné dans l'intuition), tandis que 3 implique la complémentarité de la »forme« et de la »matière« de l'intuition. Afin d'illustrer cette complémentarité, Kant introduit la métaphore de la lumière dont l'émergence seule rend possible la représentation de l'obscurité. Il s'agit d'un saut curieux de zéro à deux: nous avons d'abord un rien, l'obscurité pure dont, pourtant, nous ne pouvons pas être conscients et que nous ne pouvons pas nous représenter. Ensuite intervient la lumière qui fait de l'obscurité, de façon rétroactive, *quelque chose* – précisément son contraire. Les rubriques 2 et 3 présentent alors chacune à sa façon la catégorie du rien qui ne devient quelque chose que dans le rapport à son autre. Ce qu'ont de commun les deux »riens« c'est – comme l'exprime Béatrice Longuenesse – »qu'ils représentent l'un et l'autre l'absence d'une intuition empirique dont on sait qu'elle *pourrait être donnée*, mieux: qui *doit avoir été donnée* pour que l'absence en soit perçue et réfléchi dans un concept.«<sup>4</sup> Des deux on pourrait dire alors qu'ils deviennent »rien«, qu'ils deviennent l'»absence perçue« seulement dans un second temps. C'est dans ce sens qu'ils sont captifs de la logique de l'imaginaire. Nous n'employons pas le terme »imaginaire« au sens de Kant qui parle d'*ens imaginarium*, d'»êtres pour l'imagination« (*Einbildung*) – la désignation qui ne se réfère qu'à la rubrique 3. Nous employons la notion d'imaginaire au sens de Lacan, c'est-à-dire comme le concept qui

<sup>3</sup> *Ibid.* p. 249.

<sup>4</sup> Béatrice Longuenesse, *Kant et le pouvoir de juger*, PUF, Paris 1993, p. 348.

ponctue précisément ce que Kant décrit avec les métaphores lumière/obscurité et corps étendu/espace. Il s'agit d'un rapport duel, le «rapport du miroir», qui implique en même temps le fait que les deux termes s'excluent l'un l'autre et le fait que chacun des deux nécessite l'autre. Si nous abolissons l'un, nous perdons les deux.

A ce propos, il est très intéressant de voir que c'est précisément la reconnaissance de ce type de logique qui fait que Kant ne peut pas accepter l'institution cartésienne du cogito ni d'ailleurs n'importe quelle autre «idée psychologique». Quelle est l'argumentation avec laquelle Kant conteste la démarche de Descartes? Examinons le passage suivant:

*«J'ai conscience de mon existence comme déterminée dans le temps. Toute détermination de temps suppose quelque chose de permanent dans la perception. Or, ce permanent ne peut être quelque chose en moi, puisque ce n'est que par ce permanent que peut précisément être déterminée mon existence dans le temps.»<sup>5</sup>*

Pour le dire de façon un peu simpliste: notre existence ne peut être déterminée qu'à travers quelque chose d'autre, éliminons ce quelque chose d'autre et il ne nous restera dans les mains qu'un «rien». Nous pouvons résumer ainsi l'argumentation de Kant, développée dans la *Critique de la raison pure* à plusieurs reprises: Descartes part de pensées différentes et arrive à la forme même de la pensée qui accompagne toutes nos pensées («je pense»); en ce point, il rejette les pensées particulières, en croyant qu'il lui est resté dans les mains, intacte, la forme de pensée comme ce qui témoigne avec certitude de l'être du moi au-delà de toutes pensées particulières. Or, de la même façon que l'obscurité n'est rien sans la lumière et que l'espace n'est rien sans le corps étendu, la forme de pensée sans pensées n'est rien, ou plus exactement, elle est encore moins que rien. Afin de pouvoir concevoir l'identité de notre moi comme quelque chose de plus que la simple identité formelle (impliquée par l'unité transcendantale de l'aperception), il faudrait un terme *tiers* qui serait capable de «fixer» ce «miroitement» de l'un dans l'autre. C'est précisément l'idée transcendantale qui joue le rôle d'un tel tiers. Autrement dit, avec les idées transcendantales, Kant répond à la question de savoir comment il est possible que le sujet se conçoive lui-même spontanément comme une personnalité identique dans le temps (les idées psychologiques), qu'il parle du Monde (les idées cosmologiques) et de Dieu (les idées théologiques). Dans ce qui suit nous allons examiner le parallogisme de la personnalité et l'idée transcendantale qui en résulte, en essayant de discerner la logique des idées transcendantales en général.

<sup>5</sup> *Critique de la raison pure*, p. 205-206.

»La personne veut dire aussi le masque«

On trouve ces mots dans l'*Opus postumum* de Kant (I, 142), là où il parle justement des idées transcendantes. Cette parenté étymologique entre les mots »personne« et »masque« est évoquée aussi par Jacques Lacan qui en parle dans son écrit »Remarque sur le rapport de Daniel Lagache: »*Psychanalyse et structure de la personnalité*«. Selon Lacan, rappeler que la *persona* est un masque, n'est pas un simple jeu de l'étymologie: »c'est évoquer l'ambiguïté du procès par où la notion en est venue à prendre la valeur d'incarner une unité qui s'affirmerait dans l'être.«<sup>6</sup> Il est difficile de ne pas reconnaître l'écho kantien de ces mots lacaniens qui décrivent à leur façon précisément le concept de l'idée transcendante: la *notion* qui incarne une *unité* qui – »comme si« – existe dans l'être. Nous verrons qu'il y a d'autres aspects de cet écrit qui peuvent être lus »avec Kant«.

Que dit alors le paralogisme de la personnalité? Kant le formule ainsi: *Ce qui a conscience de l'identité numérique de soi-même en différents temps est, à ce titre, une personne*. Nous devons souligner encore une fois que le paralogisme en question est rangé parmi les raisonnements nécessaires de la raison, c'est-à-dire qu'en tant que sujets pensants nous ne pouvons pas ne pas le faire. Autrement dit, le raisonnement qui amène à la conclusion que nous sommes des »personnalités« est l' »idéologie spontanée« du sujet pensant.

Nous pouvons résumer la critique kantienne de ce paralogisme par l'argumentation suivante: »Je« suis, ou plus exactement, le »je« est un objet du sens interne. Je n'apparais à moi-même que dans le temps qui, lui, n'est rien d'autre que la forme de mon sens interne. Le raisonnement qui conclut à l'identité de mon »moi« ne dit alors rien d'autre que: dans tout le temps où j'ai conscience de moi-même, j'ai conscience de ce temps comme appartenant à l'unité de mon moi; si je dis »tout ce temps est en moi comme dans une unité individuelle« ou si je dis »je me trouve dans tout ce temps avec une identité numérique«, cela revient au même. Il reste le fait que je ne peux pas penser l'un sans l'autre.<sup>7</sup> D'autre part, toutes nos pensées sont des pensées dans le temps et »nous ne pouvons jamais décider si ce moi (simple pensée) ne s'écoule pas aussi bien que les autres pensées qu'il sert à lier les unes aux autres«. <sup>8</sup> Même si l'identité de ma personne se rencontre inmanquablement dans ma propre conscience (comme identité logique liée à l'unité transcendante de l'aperception), je ne peux jamais la »voir« en tant que telle, je ne peux pas monter sur mes épaules et »regarder en moi«. Ce serait autre chose si cette identité figurait comme objet du sens externe, si un autre pouvait alors

<sup>6</sup> Jacques Lacan, *Écrits*, Paris, Seuil 1966, p. 671.

<sup>7</sup> Cf. *Critique de la raison pure*, p. 293-294.

<sup>8</sup> *Ibid.* p. 295.

l'apercevoir. Mais à ce niveau aussi, un problème se pose: l'autre ne peut être que mon semblable, soumis aux mêmes difficultés que moi:

*»Mais si, pour me considérer, je me place au point de vue de l'autre (qui me regarderait comme un objet de son intuition extérieure), je vois que cet observateur extérieur est le premier qui m'examine dans le temps, car, dans l'aperception, le temps n'est proprement représenté qu'en moi. Quand même donc il admettrait le moi qui accompagne en tout temps dans ma conscience toutes les représentations, et cela, il est vrai, avec une parfaite identité, il n'en conclurait pas encore cependant la permanence objective de moi-même. En effet, comme, alors, le temps où me place l'observateur n'est pas celui qui se rencontre dans ma propre sensibilité, mais celui qui est dans la sienne, l'identité, qui est nécessairement liée à ma conscience, n'est point par là même liée à la sienne, c'est-à-dire à l'intuition extérieure de mon sujet.«<sup>9</sup>*

On pourrait résumer le passage cité simplement ainsi: Que l'autre me voit comme l'objet de son sens externe ne me permet pas encore de conclure à l'identité de moi-même. Je pourrais arriver à cette conclusion seulement si je me voyais, *en même temps*, comme l'objet de l'intuition intérieure et extérieure, c'est-à-dire si je me voyais moi-même de la façon dont je suis vu(e) par l'autre.

Ainsi nous sommes arrivés, d'une part, à ce qui s'appelle, dans la théorie lacanienne, l'«idéal du moi» comme la façon dont je vois que je suis vu(e) par l'autre et, d'autre part, à l'idée transcendante qui correspond au paralogisme de la personnalité.

Il faut remarquer pourtant que le cas de figure en question ne se borne pas aux «idées psychologiques» et qu'il est, dans un des ses aspects, paradigmatique pour les idées en général. Chaque fois que Kant parle du statut des idées transcendantes en général, il se sert de métaphores visuelles qui décrivent précisément le cas de figure en jeu. Les idées transcendantes expriment toutes un rapport entre l'entendement et la raison. On sait que chez Kant, l'action de créer les concepts et celle de leur procurer une unité sont deux tâches distinctes qui se distribuent entre l'entendement et la raison. L'entendement se trouve absorbé par le travail de création des concepts (ou des séries de concepts) et comme tel «il n'a jamais *en vue* leur totalité». C'est du point de vue de la raison que la totalité et la cohérence d'une série se rendent visibles. Cependant, pour que le point de vue de la raison puisse avoir une influence sur la connaissance (et il l'a toujours, même si ce n'est que sous une forme «régulatrice»), la conception de ces deux points de vue comme s'excluant l'un l'autre ne suffit pas. Au contraire, l'entendement doit effectuer son travail comme s'il partageait, avec «un des ses yeux», le point de vue de la raison. Si

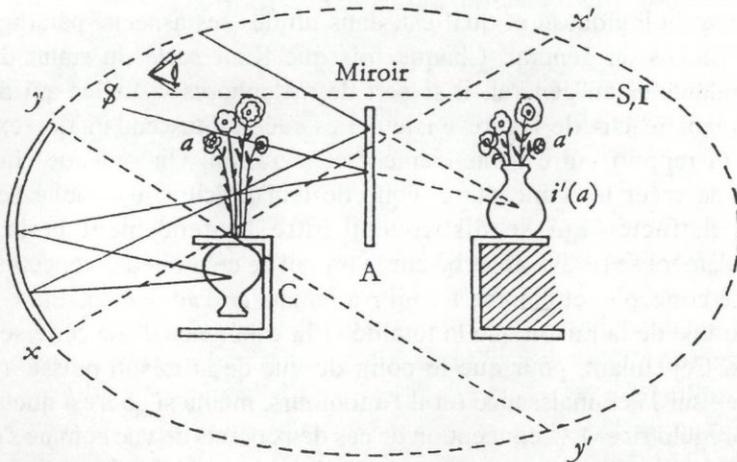
<sup>9</sup> *Ibid.*, p. 294.

la raison est supposée exercer une influence sur le travail de l'entendement à travers des idées régulatrices, celles-ci ne peuvent être autre chose que *la façon dont l'entendement voit qu'il est vu par la raison*.

Considérons maintenant le passage suivant qu'on trouve dans le chapitre »De l'usage régulateur des idées de la raison pure« :

Les idées transcendantales ont l'usage de »diriger l'entendement vers un certain but qui fait converger les lignes de direction que suivent toutes ses règles en un point qui, pour n'être, il est vrai, qu'une idée (focus imaginarius), c'est-à-dire un point d'où les concepts de l'entendement ne partent pas réellement, – puisqu'il est entièrement placé hors des bornes de l'expérience possible, – sert cependant à leur procurer la plus grande unité avec la plus grande extension. Or, il en résulte pour nous, à la vérité, une illusion telle que toutes ces lignes nous semblent partir d'un objet même situé en dehors du champ de la connaissance possible (de la même façon que l'on aperçoit les objets derrière la surface du miroir); mais cette illusion (...) n'en est pas moins inévitablement nécessaire, si, outre les objets qui sont devant nos yeux, nous voulons voir en même temps ceux qui sont loin derrière nous.«<sup>10</sup>

Est-ce qu'on ne peut pas reconnaître, dans ce que décrit Kant, l'appareil optique que Lacan emprunte à H. Bouasse et dont il se sert pour illustrer ses propres conceptualisations (celle de la différence entre le moi-idéal et l'idéal du moi, et celle de la jonction de l'imaginaire et du symbolique)?



<sup>10</sup> Ibid. p. 453-454.

Examinons d'abord la partie gauche du schéma, c'est-à-dire l'espace à droite du miroir plan (A). Tout à fait à gauche nous avons le miroir sphérique (x,y). Devant lui il y a un support sur lequel sont fixées les fleurs. Disons que ces fleurs représentent des concepts constitués par l'entendement ou la collection des »je pense« qui accompagnent, en différents temps, toutes mes représentations. A l'intérieur du support se trouve attaché un vase renversé, ce »rien avec quelque chose autour«, qui n'est pas une mauvaise représentation de ce que Kant appelle l'unité transcendante de la conscience, en tant qu'elle est purement formelle ou logique. – L'unité que je ne peux jamais »apercevoir« comme pensée »indépendante«, puisque tout ce que je pense, je le pense »à travers« elle, de telle façon qu'elle ne peut jamais apparaître devant moi comme un objet de considération. Si nous situions maintenant un observateur (nous même dans notre exemple) en haut du côté droit de cette partie du schéma, le vase apparaîtrait, à cause du miroir sphérique, sur le support et lierait les fleurs dans une »unité«; elle procurerait une totalité aux séries de concepts, elle ferait de l'unité logique de notre moi une unité perceptible ou »réelle«. Mais il y a un problème fondamental, à savoir que ni le sujet lacanien, ni le sujet kantien ne sont (et ne peuvent être) à la place de cet observateur idéal de soi-même. En tant que sujet, je me trouve nécessairement quelque part parmi les fleurs, je fais partie de ce que le miroir sphérique constitue en une unité. Si nous nous limitons aux raisons qui forcent Kant à refuser cette possibilité »idéale«: l'intuition intellectuelle n'existe pas, je ne peux pas me trouver en même temps »en dedans« et »en dehors« de moi-même, je ne peux pas me »voir voyant«. De la même façon que si je me place devant le miroir, je n'y verrai jamais mon regard, mais seulement un couple d'yeux.

Maintenant nous introduisons encore un miroir – cette fois un miroir plan – (A sur notre schéma), ce qui ouvre l'espace virtuel (la partie droite du schéma). Que se passe-t-il avec cette intervention du second miroir? En dépit du fait que nous nous trouvons toujours »parmi les fleurs«, nous voyons maintenant devant nous tout ce qui reste toujours dans notre dos. Nous sommes capables d'apercevoir dans le miroir plan la »consistance« et l'»unité« qui est l'effet du miroir sphérique. Ce qui est toujours-déjà derrière moi, apparaît maintenant comme quelque chose qui est toujours-encore devant moi. En d'autres termes, l'intervention du miroir plan produit précisément la situation décrite par Kant: »il en résulte pour nous, à la vérité, une illusion telle que toutes ces lignes nous semblent partir d'un objet même situé en dehors du champ de la connaissance possible (de la même façon que l'on aperçoit les objets derrière la surface du miroir)«. Autrement dit, le »je pense« comme forme pure de l'unité transcendante de la conscience »passe«, à travers la notion de la personnalité, à l'identité qui – »comme si« – s'affirme dans l'être.

Pour que cette «illusion», comme l'appelle Kant, puisse se produire, le sujet doit être situé entre les deux miroirs, de façon qu'il discerne dans le second l'effet qu'il a sur le premier – celui qui se trouve dans son dos. Ce qui est précisément la fonction de l'idée régulatrice. Dans le cas de l'idée de la personnalité, elle incarne le point virtuel à partir duquel le sujet se voit de la façon dont il est vu par l'autre. Plus généralement, elle articule analogiquement le rapport entre l'entendement et la raison. Elle est, comme nous l'avons déjà indiqué, la façon dont l'entendement voit qu'il est vu par la raison. Il faut souligner que Kant conceptualise systématiquement les idées régulatrices à travers la notion du point de vue. Par exemple:

*«On peut considérer chaque concept comme un point qui, semblable au point où se trouve tout spectateur, a son horizon, c'est-à-dire une multitude de choses, qui de ce point, peuvent être représentées comme parcourues des yeux (...). Mais à divers horizons (...) on peut imaginer un horizon commun d'où on les embrasse tous comme d'un point central (...) jusqu'à ce qu'on arrive enfin (...) à l'horizon général et vrai, qui est déterminé du point de vue du concept le plus élevé.»<sup>11</sup>*

Le «concept le plus élevé» n'est alors pas un cadre *contenant* tous les points d'un univers, mais un point de vue d'où on les *voit* tous et d'où ils forment une unité. Selon la conviction de Kant, le sujet de la connaissance ne peut jamais accéder directement à ce point de vue, il ne peut pas – si on file la métaphore visuelle – se voir voyant. La possibilité d'une telle perspective ne s'ouvre qu'avec la notion de l'idée régulatrice comme le point de vue virtuel avec lequel s'identifie le sujet pour pouvoir apercevoir l'unité. Or, le paradoxe réside dans le fait que pour atteindre l'unité en question, le sujet doit justement perdre son unité. L'identification avec ce point de vue virtuel exige et présuppose déjà le clivage du sujet. Le fait que je me considère moi-même comme personnalité (identique à travers le temps), implique que «ma personnalité» est marquée, en son sein, par le point de vue de l'Autre.

De ce qui a été dit jusqu'à présent, on voit clairement que ce quelque chose que nous voyons «comme si» il était derrière le miroir, n'est pas la chose en soi ou l'«apparence» de la chose en soi. Kant lui-même compare l'idée transcendante à la fonction du schématisme et souligne qu'«il n'y a réellement qu'un schème, auquel aucun objet n'est donné directement, ni même hypothétiquement, mais qui ne sert qu'à nous représenter d'autres objets dans leur unité systématique.»<sup>12</sup> L'idée transcendante touche l'acte lui-même de la représentation, elle est la «forme» de la représentation et non pas son «contenu». On pourrait dire que

<sup>11</sup> *Ibid.*, p. 461.

<sup>12</sup> *Ibid.*, p. 467.

les concepts de l'entendement et ceux de la raison (les «idées de la raison») ont le même «contenu». Ce quelque chose en «plus» (ou en «trop») apporté par les concepts de la raison, n'est que le point de vue qui montre ce «contenu» dans une nouvelle perspective. L'âme (ou la personnalité), le Monde et le Dieu sont de ces concepts dont le seul contenu est la façon même de présenter un autre contenu, celui qui est déjà donné par les concepts de l'entendement. Ce qui veut dire que nous devons distinguer entre l'idée régulatrice en tant que point de vue virtuel et la «réalité» que ce point de vue déploie devant nous. Pour revenir à notre exemple, au paralogisme de la personnalité: nous devons distinguer entre la «personnalité» en tant que «notion» qui résulte d'un certain mode de représentation, et ce mode de représentation en tant que tel (que nous avons défini comme la façon dont je vois que je suis vu(e) par l'autre). Il faut distinguer entre le caractère «fictif» du point de vue dont la nature est symbolique, et le caractère «fictif» de la personnalité dont la nature est imaginaire. Si nous prenons en compte cette distinction, il faut dire que l'opposition constitutif/régulateur scinde les idées régulatrices elles-mêmes. Le «mécanisme de la représentation» que nous avons décrit est bien constitutif pour la réalité dans laquelle nous vivons. Kant admet ce rôle «constitutif» du principe régulateur, même si le mot n'y figure pas:

*«Comme tout principe qui assure a priori à l'entendement l'unité totale de son usage s'applique aussi, quoique indirectement, à l'objet de l'expérience, de même les principes de la raison pure ont une réalité objective par rapport à celui-ci, non pas, il est vrai, pour déterminer quelque chose, mais seulement pour indiquer le procédé suivant lequel l'usage expérimental empirique et déterminé de l'entendement peut être entièrement d'accord avec lui-même, par cela seul qu'on le fait s'accorder, autant que possible, avec le principe de l'unité universelle et qu'on l'en dérive.»<sup>13</sup>*

La question fondamentale qui se pose avec la *dialectique* de la raison pure est alors la suivante: dans quelle mesure notre connaissance est toujours-déjà déterminée et «médiatisée» par le point de vue de la raison? La dialectique transcendantale fait ressortir la question d'un rapport qui n'est pas celui qui existe entre les phénomènes et les noumènes, entre les objets de l'expérience et les choses en soi. Le problème principal que la dialectique pose, rétroactivement, devant l'analytique, n'est pas celui de l'impossibilité de conceptualiser les choses en soi et de porter des jugements sur eux, il est bien plus radical. Il s'agit de savoir s'il est possible de parler de «phénomènes en soi». Est-il possible de parler des objets empiriques ou de leurs concepts «en tant que tels», indépendamment du «réseau symbolique» constitué par les points de vue

<sup>13</sup> *Ibid.*, p. 465.

des différentes idées transcendantales, où il y a une place prévue pour chacun des objets de l'expérience possible (et pour son concept), même avant qu'il »apparaisse«? L'idée peut bien n'être que »régulatrice« et nous pouvons être bien conscients de ce fait, elle n'est cependant jamais privée d'effets réels (i.e. constitutifs) par rapport à notre »démarche scientifique«. Prenons, pour illustrer ce cas de figure, l'exemple suivant: La théorie de l'évolution joue sans doute le rôle de l'idée régulatrice de la science biologique. Comme toute idée régulatrice, elle repose sur la structure des »chaînon manquant« – des chaînon qui sont déjà »impliqués« par le point de vue donné et pour lesquels on »garde une place«, mais dont les traces (des fossiles, par exemple) n'ont pas été encore trouvées dans la »réalité«. Les »chaînon manquant« ne posent aucun problème pour cette communauté scientifique, ils fonctionnent très bien précisément en tant que »manquant«, et si on en trouve un, tant mieux. Par contre – comme l'a remarqué le biologiste Stephen J. Gould – ce sont les »chaînon en trop« qui posent le véritable problème, c'est-à-dire les chaînon qu'on trouve dans la »réalité«, mais pour lesquels il n'y a aucune place prévue dans l' »édifice régulateur«, chaînon qui semblent alors appartenir à une autre »idée régulatrice«. On pourrait dire qu'à la différence des »chaînon manquant«, ce sont précisément les »chaînon en trop« qui présentent l'événement au sens propre du terme, puisqu'ils demandent que »bouge« le point de vue de l'infini lui-même, le point de vue de l'idée régulatrice.

La question fondamentale qui se pose avec la théorie kantienne des idées régulatrices est alors la suivante: ne peut-on pas dire qu'on distinguant entre le régulateur et le constitutif Kant a plutôt évité le vrai problème, au lieu de le résoudre? Et cela surtout si on considère le fait que la démarche de quelqu'un qui procède dans ses recherches, par exemple, *comme si* le monde était infini, ne diffère guère, au niveau des »effets«, de la démarche d'un autre qui »croit vraiment« que le monde est infini. Ceci est vrai d'autant plus dans le cas où nous concevons l'idée régulatrice comme *régulatrice*, c'est-à-dire comme quelque chose qui n'apporte aucun contenu nouveau, mais lie le contenu donné d'une manière spécifique. En d'autres termes, c'est précisément dans la mesure où nous ne prenons pas, par exemple, l'idée cosmologique selon laquelle le monde est infini pour une proposition qui affirme quelque chose sur le monde, mais comme une ligne de conduite méthodologique de nos recherches – la ligne de conduite qui nous commande d'aller toujours un pas plus loin dans notre recherche des causes des phénomènes et de nous interroger sur les causes des causes – c'est précisément dans ce cas que la distinction entre le régulateur et le constitutif devient insignifiante. Elle est insignifiante pour la réalité que nous allons »découvrir«, »constituer« en suivant cette ligne de conduite. C'est précisément en tant que privée de tout contenu, en tant que purement régulatrice, que l'idée transcendantale a une fonction tout à fait constitutive.

Il y a encore une autre question liée à la précédente. Plus on avance dans le champ de la dialectique, plus il devient évident qu'on devrait effectivement renverser la métaphore que Kant prend pour point de départ. N'est-ce pas justement la »connaissance pure«, supposée représenter l'île tranquille de la métaphysique comme science, qui devrait être comparée à l'océan orageux? La connaissance est ici »morcelée«, sans véritable liaison ni »unité«, sans »système«, comme des morceaux de glace chaotiquement dispersés. Le domaine de la connaissance qui, selon Kant, porte le nom séduisant de la vérité, n'est-il pas précisément celui où règne le chaos et la dispersion contingente des concepts et des séries de concepts particulières? N'est-il pas plutôt le »pays de l'apparence« qu'on pourrait comparer à l' »île tranquille« où règnent l'ordre, la »hiérarchie« des concepts et l'unité systématique de la connaissance?

Et ne peut-on pas y voir la raison pour laquelle Kant n'a jamais écrit le »système« de la métaphysique comme science? Le système de la »métaphysique comme science« ne peut être que la *dialectique*, et c'est cette »leçon« kantienne qu'Hegel prendra pour point de départ. Le pari de Hegel est, pour cette raison, exactement inverse à celui de Kant: soit la vérité surgit de la dialectique elle-même, de l' »apparence« en tant que telle, soit il n'y a pas de vérité. La connaissance, la connaissance comme vraie, se constitue dans le processus de la réflexion rétroactive sur la »surdétermination« du constitutif par le régulateur, dans le processus de la réflexion rétroactive du lieu d'énonciation de cette connaissance.

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# Kant's Transcendental Ideal as Fiction

Peter Klepec

*Le fictif, en effet, n'est pas par essence ce qui est trompeur, mais, à proprement parler, ce que nous appelons le symbolique.*

Jacques Lacan

What can be said, from the point of view of Kant's *Critique of Pure Reason*, about Kant's relation to fiction? At first glance, the answer is quite ambiguous; if the Transcendental Analytic is taken as our starting point, it seems that Kant is one of the greatest opponents of fiction, but if we, contrariwise, accept the point of view of Transcendental Dialectic it seems that the answer should be precisely the opposite. Do we need to choose between the two apparently irreconcilable answers or is there something wrong with this option as such? In our opinion, the latter is true. One of the differences between Transcendental Analytic and Transcendental Dialectic is, that they are based on a different theory of truth: whereas Analytic is based on classical theory of truth which can be shortly summed up as *adequatio rei et intellectus*, the Dialectic does not concern the truth conceived as adequation of concepts to objects. In Dialectics the relation to objects has no role at all, because main relation is the relation of concepts to concepts. In other words, the basic premise of Analytic is that concepts, which are not related to sensible intuition, are »without sense, that is, without meaning« (B 299)<sup>1</sup>, for, as famous Kant's dictum goes, »thoughts without content are empty, intuitions without concepts are blind.« (B 75) Strawson in his *Bounds of Sense* summarized this thesis with the so-called *principle of significance*. »This is the principle that there can be no legitimate, or even meaningful, employment of ideas or concepts which does not relate them to empirical or experiential conditions of their application. If we wish to use a concept in a certain way, but are unable to specify the kind of experience-situation to which the concept, used in that way, would apply, then we are not really envisaging any legitimate use of that concept at all.«<sup>2</sup> In short, if the concept transcends the bounds of experience the illusion arises. Can we, from this point of view, give a straight and plain answer

<sup>1</sup> Kant's works are cited from: Immanuel Kant, *Werkausgabe in zwölf Bänden*, ed. Wilhelm Weischedel, Frankfurt am Main 1989. In the parentheses, the second edition of the *Critique of Pure Reason* is cited. All translations of Kant are mine.

<sup>2</sup> P. F. Strawson: *The Bounds of Sense*, Routledge, London 1975, p. 16.

concerning Kant's conception of fiction? In other words, is for Kant the term fiction equivalent to illusion? Our answer is negative. It is true that Kant uses numerous expressions for illusion (besides *Illusion* and *Schein*, illusion and semblance, there are also expressions like *Wahn*, *Blendwerk*, *Hirngespinnst*, *Täuschung*, *Geschöpf*, *Betrug*, *Chimäre*, *Erdichtung*, *Einbildung* etc.), but he never identifies, in the very strict sense of a word, illusion with fiction. Even more. He obviously differentiates between both terms since he reserves the term fiction for a very special concept, i.e., the idea. The only Kant's utilization of the term fiction in the *Critique of Pure Reason* links fiction with ideas, ideas, which are for Kant nothing but heuristic fictions, *heuristische Fiktionen*. (B 799)

Consideration of ideas, as is well known, belongs to the Transcendental Dialectic, which, incidentally, comprises almost a half of *Critique of Pure Reason*. But this half could be, from the point of view of Strawsonian principle of significance, easily cut off, since Dialectics contains, as it seems, nothing valuable for Strawson. This is in fact Strawson's authentic conviction, for he claims: »After construction, demolition; after the Transcendental Analytic, the Transcendental Dialectic. (...) The primary aim of the Dialectic is the exposure of metaphysical illusion; the primary instrument of exposure is the principle of significance.«<sup>3</sup>

Although it is accompanied by »natural, but inevitable illusion« (B 354), Transcendental Dialectic is, at least in our opinion, anything but pure exposure of error. One cannot just cut off the ideas and the dialectic of pure reason, as Strawson recommends. The problem is that »it is possible to tell reality from fictions (...) the legitimate use of transcendental categories in the constitution of reality from their illegitimate use which brings about 'transcendental illusion'; however, as soon as we renounce fiction and illusion, we lose reality itself; *the moment we subtract fictions from reality, reality itself loses its discursive-logical consistency*. Kant's name for these fictions, of course, is »transcendental Ideas«, whose status is merely regulative and not constitutive: Ideas do not simply add themselves to reality, they literally supplement it; our knowledge of objective reality can be made consistent and meaningful only by way of reference to Ideas. In short, Ideas are indispensable to the effective functioning of our reason.«<sup>4</sup>

To see more concretely what it means that for Kant ideas are something indispensable and that ideas are heuristic fictions, we will turn in this paper to the third chapter of Transcendental Dialectic, the chapter entitled *Ideal of Pure*

<sup>3</sup> *Ibid.*, p. 33.

<sup>4</sup> Slavoj Žižek, *Tarrying with the Negative*, Duke University Press, Durham 1993, p. 88-89.

*Reason*, which is divided into seven sections. These can be, for the convenience of interpretation, separated further into three main parts: the first part deals with Kant's conception of ideal in general and the transcendental ideal, comprising the first and the second section, the second includes sections from three to six and it contains Kant's critique of traditional proofs for the existence of God, the third part is identical with the seventh section and it concerns some consequences of Kant's dealing with the idea of the supreme being for the rational and natural theology.

The only »part« which interests us here is the first one. It contains Kant's treatment of transcendental ideal<sup>5</sup> and it also represents the clue for the second and the third part. The reason for that being the fact that the first part deals with the idea of *omnitudo realitatis*, whereas the other two parts deal with the link of this idea with the idea of absolutely necessary being. The reason for the link of both ideas lies in the fact that there is, of course, no difficulty in giving a verbal definition of absolutely necessary being, »namely, that it is something the non-existence of which is impossible. But this yields no insight into the conditions which make it necessary to regard the non existence of a thing as utterly unthinkable. It is precisely these conditions that we desire to know, in order that we may determine whether or not, in resorting to this concept, we are thinking anything at all.« (B 621) These conditions are another expression for the idea of *omnitudo realitatis* and Kant has convincingly shown that all proofs for the existence of God necessarily contain the following step: »The necessary being can be determined in one way only, that is, by one out of each possible pair of opposed predicates. It must therefore be thoroughly determined through its own concept. Now there is only one possible concept which thoroughly determines a priori, namely, the concept of *ens realissimum*. The concept of the most real being is therefore the only one through which a necessary being can be thought.« (B 633-634) In other words, all speculative proofs for the existence of the supreme being are based for Kant only on reciprocity of two concepts or ideas: the idea of the most real being and the idea of absolutely necessary being. (See B 816-817) But this reciprocity, we would like to add, is not mutual – although the concept of the most real being is the only concept through which a necessary being could be, but in fact cannot be thought, Kant tries to show that we *can* think the idea of *omnitudo realitatis* without linking it with *ens necessarium*. Namely, Kant's basic task is to develop the concept of transcendental ideal and to separate it from idea of

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<sup>5</sup> This section is closely related to Kant's pre-critical work *The Only Possible Basis for a Demonstration of the Existence of God* (1763). For basic parallels and differences between the two works see: Dieter Henrich: *Der ontologische Gottesbeweis, Sein Problem und seine Geschichte in der Neuzeit*, J. C. B. Mohr (Paul Siebeck), Tübingen 1967<sup>2</sup>, p. 137 ff.

absolutely necessary being to prevent every, even the slightest possible link between these two concepts. Furthermore, not only that there is no necessary link between the above mentioned concepts, there is also no necessary link, at least in our opinion, between transcendental ideal and theological idea of God. Although we cannot think the idea of God without the transcendental ideal, we can perfectly think, as we will at least try to show in our paper, the transcendental ideal without theological consequences. It is true that even the transcendental ideal itself originates some sort of illusion, but Kant emphasizes that this illusion is, although natural, not inevitable. This proposition of Kant is in apparent opposition to the usual description of illusion in *Critique of Pure Reason*, but this is due to the fact that for Kant, transcendental ideal is »based on a natural, not on a merely arbitrary idea«. (B 609)

But what is in fact Kant's conception of the ideal? Kant begins the section entitled *About the Ideal in general* with the distinction between concepts of understanding and concepts of reason, i.e. ideas. Basic difference between the first and the second concepts is that, to the latter, no corresponding object can ever be given in sense-experience, which is the primary reason why there can be no transcendental deduction of the ideas. But in spite of the fact that no object adequate to any transcendental idea can ever be found within experience, ideas are not arbitrarily invented. They are imposed by the very nature of reason itself. Reason needs ideas because they contain a certain completeness to which no possible empirical knowledge can ever attain. »In them reason aims at a systematic unity, to which it seeks to approximate the unity that is empirically possible, without ever completely reaching it.« (B 596) After this brief review of the term idea, Kant introduces<sup>6</sup> the concept of the ideal: »By the ideal I understand the idea, not merely *in concreto*, but in *individuo*, that is, as an individual thing, determinable or even determined by the idea alone.« (B 596) It means that the *ideal* seems to be even further removed from objective reality than ideas and that is one reason more for Kant to prevent possible misconceptions. In order to do that, he emphasizes that: 1. we cannot realize any ideal; 2. ideal as such does not possess objective reality, however, it is not to be identified with the illusion and with products of imagination; 3. ideal does not have creative, but merely a certain practical power. But why reason needs ideals at all? There are two needs of reason, the first is a practical one: as the idea gives the *rule*, the ideal »serves as the *archetype* for the thorough determination of the copy; and we have no other standard for our actions than the conduct of this divine man within us, with which we compare and judge ourselves, and so reform ourselves, although we can never attain to the

<sup>6</sup> The term ideal is, strictly speaking, used by Kant already before (see: B 398, 434-435), but it is here that Kant gives the definition of the term.

perfection thereby prescribed.« (B 597) The second need is a speculative one: »Reason, in its ideal, aims, on the contrary, at thorough determination in accordance with *a priori* rules. Accordingly it thinks for itself an object which it regards as being thoroughly determinable in accordance with principles. The conditions that are required for such determination are not, however, to be found in experience, and the concept itself is therefore transcendent.« (B 599)

The introduction of the ideal in general is followed by the introduction of the »*The transcendental Ideal*« or »*prototypon transcendentale*«, as the second section is formally entitled. The section begins with two principles which both consider possibility. The first one is called the principle of *determinability*, the second one the principle of *thorough* determination. The first principle is more or less self-evident and unproblematic. According to it »every concept is, in respect of what is not contained in it, undetermined, and is subject to the principle of *determinability*.« (B 599) Though the expression *contain*<sup>7</sup> is very indefinite and at least disputable, it is quite clear that according to this principle, which abstracts itself from the entire content of knowledge and is concerned merely with its logical form, of *every two* contradictorily opposed predicates only one can belong to a concept. In other words, either *a* or *non-a* can belong to a concept, *tertium non datur*. This principle is based on the principle of contradiction, and is therefore a purely logical principle.

Although it would not seem so at first sight, the more problematic one is the second principle, the principle of thorough determination which Kant introduces here for the first time. The place alone of this introduction – Kant introduces it in the middle of the transcendental Dialectic, in the middle of the logic of apparition, *Schein* – and the fact that in spite of the place of its introduction the principle is something what is for Kant indubitably true, causes to the interpretation of this section – as far as interpretation finds it worthy enough to involve with it<sup>8</sup> – some troubles. Principle is the following: »Every *thing*, as regards its possibility, is likewise subject to the principle of *thorough* determination, according to which if *all the possible* predicates of *things* be taken together with their contradictory opposites, then one of each pair of contradictory opposites must belong to it.« (B 599-600) This principle is not based, as the principle of determinability, merely on the principle of

<sup>7</sup> Kantian vague expression »contain« is undoubtedly problematical. For the sketch of the problem see: Henry Allison, *Kant's Transcendental Idealism. An Interpretation and Defense*, Yale University Press, New Haven & London 1983, p. 74.

<sup>8</sup> Bennett, for instance, says: »This is an unconvincing tale.« (*Kant's Dialectic*, Cambridge University Press, Cambridge 1974, p. 282), Strawson (op. cit.) devotes a page to it in his book, etc. There are only two useful interpretations: Peter Rohs, »Kants Prinzip der durchgängigen Bestimmung alles Seienden«, *Kant-Studien* 69/1978, p. 170-180; Svend Andersen, *Ideal und Singularität*, *Kantstudien Ergänzungshefte* 116, Walter de Gruyter, Berlin & New York 1983.

contradiction, where we can chose between two contradictory predicates, but involves something more. Every thing is in relation to something third, »to the *sum-total* [Inbegriff] of all possibilities, that is, to the sum-total of all predicates of things«. (B 600) For that reason the principle of thorough determination needs »a synthesis of all predicates which are intended to constitute the complete concept of a thing, and not simply a principle of analytic representation in reference merely to one of two contradictory predicates.« (Ibid.) The principle of thorough determination concerns, therefore, the content, and »not merely the logical form«. (B 600)

Now the difference between the two principles seems to be more or less clear: the first one involves both concepts and things, whereas the second one is reserved for things only. In other words, the first principle involves logical and the second one real possibility<sup>9</sup>. But – what is supposed to be the specificity of the second principle compared to the first one? The central point of the second principle is undoubtedly the claim that every thing presupposes the sum-total of all predicates. The relation of things and *us* to this sum-total is said to be that what assures to the second principle the character of syntheticity. But – what relation precisely has Kant in mind? It is said that this principle is »the principle of synthesis of all predicates which are intended to constitute the complete concept of a thing, and not simply a principle of analytic representation« (B 600) To put it differently, if we would have to deal with a complete concept, concept given as some sort of a Whole from which everything would then be derived, this would be nothing but a mere analytic representation. However, this sum-total, as Kant warns, can never be completed or even given, existent. The reason for that is that »the conditions that are required for such determination are not to be found in experience« (B 599). It means that we must add new predicates to the sum-total always anew and this process never ever ends. Maybe we should stop here for a moment since it seems that we have to deal with the same old Kantian song, which Hegel called bad infinity (*schlechte Unendlichkeit*). It seems that Kant regards the concept of sum-total as something somehow completed and perfect which stays forever somewhere beyond, or to use precise Kantian term – transcendent. The clue to this undoubtedly paradoxical concept of sum-total of all predicates brings up the following question: where are all this predicates which are supposed to determine the concept of sum-total taken from? Obviously from our experience. And it is experience or synthesis which assures the principle of thorough

<sup>9</sup> In order to clarify the matter, Kant introduces another distinction: Whereas the *determinability* of every *concept* is subordinate to the *universality* (*universalitas*) of the principle of excluded middle, the *determination* of a *thing* is subordinate to the *totality* (*universitas*) or the sum of all possible predicates. (See: B 600)

determination the *relation* to the sum-total of all predicates and the character of syntheticity. In other words, »the existence of this synthesis is identical to the existence of multitude of predicates«. <sup>10</sup>

Although synthesis plays decisive role in the second principle, the difference between the two principles is not to be simply understood as the difference between the logical and the transcendental principle. It is true, of course, that the first principle concerns only the form and is therefore analytical, logical principle, and it is also true that the second principle involves something more, things, reality, content. It would be a mistake to think that the only reason for Kant's introduction of these two principles is to emphasize how separated are form and content, concept and reality. That there is a certain difference between them is as plain and self-evident as the claim that a thing is a thing, and a concept – a mere concept. But, is all that really so self-evident? It is true, of course, that a thing is a thing, a reality, and concept, fiction something different. But it nevertheless does not mean that there should be nothing but a sharp distinction between them. So, purely hypothetically, let us pose some questions. First, is it really so necessary that the two principles are simply separated? Is it really so clear what is the distinction between the two principles based upon, in other words, if the decisive mark of the principle of thorough determination is the character of syntheticity, it is still not clear *what* is this sum-total of all predicates and *how* to think it? Furthermore, is there any possibility that one single concept would fulfill the conditions of the second principle? In other words, is a thoroughly determined concept possible or only things and empirical intuitions can be thoroughly determined?

It seems that Kant has already given the answer for he introduces first principle in the following manner: »every concept is, in respect of what is not contained in it, undetermined.« (B 599) A concept can – as Kant numerous emphasizes – never be thoroughly determined, since, as Kant very exactly posits above, concept as such is always undetermined. There always exists something what is not contained in it. Even more – not only that a concept is not, but for Kant also cannot be thoroughly determined – otherwise it would cease to be a concept and it would become an empirical intuition. It is the empirical intuition, and not the concept, which always relates to a single object, to a certain thing. A concept cannot relate to a singular object, for it is a general representation or a representation of what is common to several objects, in other words, a concept contains common marks of several objects. Their generality enables that they can be repeatedly used. From their generality follows their irrealty, that is, the more one concept is general, the lesser

<sup>10</sup> Peter Rohs, *op. cit.*, p. 171-172.

number of marks or features it contains, for it leaves open – this is the consequence of its general validity – what are further features and attributes of these things. The more a concept is general, the wider is its sphere, the lesser amount of reality it contains. And for all these reasons, no concept can be thoroughly determined. But, we could ask, if this is true for the concepts of reason, concepts which literally demand their relatedness to objects, what is then true for concepts which are not and cannot be related to any object of experience, i.e. with ideas and ideals? Since it is the ideal which interests us here, let us recall Kant's definition of it: ideal is not idea »merely *in concreto*, but in *individuo*, that is, as an individual thing, determinable or even determined by the idea alone.« (B 596) From this definition follows that ideal is determinable, not with objects, but with an idea and it can even be determined by the idea. Again, this Kant's definition raises some questions. Does it mean that ideal as such can be thoroughly determined? And if the answer is negative, if the ideal as such, ideal in general, cannot be thoroughly determined – is there *at least* one ideal which can be? Does at least one mean only one? And, if this single thoroughly determined ideal is possible, which ideal is it and under what conditions this may be true? If such ideal *is* possible, is it in any relation to the concept of thorough determination and consequently with the sum-total of all possible predicates? Last but not least – does it mean that our two principles are not so strictly separated as it seemed at first glance?

If we want an answer to some of these numerous questions, we will first have to specify *what* is Kant's conception of thorough determination. Let us start with Kant's proposition which represents some sort of example for the principle of thorough determination: »*Everything which exists is thoroughly determined.*« (B 601) This Kant's example is, certainly, anything but coincidentally chosen. As Dieter Henrich<sup>11</sup> points out, in Wolf's school existence is a supplement of essence or inner possibility of things. And maybe this possibility was alluded to in Kant's claim that »every *thing*, as regards its possibility, is likewise subject to the principle of *thorough* determination ...« (B 599) However, there is a crucial difference between Kant and Wolf. For Kant, thorough determination is not supplement of essence but »the criterion of existence.«<sup>12</sup> A certain number of predicates belongs to everything what exists, to every existent thing. But it does not mean merely that only one of *every two* contradictorily opposed predicates *can* belong to a certain concept, it means that one of each pair of all contradictory opposites *must* belong to it. For example, our task is to determine a certain object. The object – and it does not need to be always an object or a sensual object at all – can either be red or not

<sup>11</sup> Henrich, *op. cit.*, p. 155-156.

<sup>12</sup> *Ibid.*

red, either blue or not blue, either black or not black etc. It can also be either round or not round, either square or not square, etc. etc. In other words, we are not comparing the predicates only logically, but also transcendently, with regard to the sum-total of all possible predicates. Kant's proposition that everything what exists is thoroughly determined in fact meant the following: in order to know one thing completely, *volständig*, we need to know all and everything that is possible and determine it either positively or negatively. »The thorough determination is thus a concept, which, in its totality, can never be exhibited *in concreto*. It is based upon an idea, which has its seat solely in the faculty of reason – the faculty which prescribes to the understanding the rule of its complete employment.« (B 601) It seems to be the proper reason, as Rohs emphasizes<sup>13</sup>, for Kant's placement of the principle of thorough determination in the Transcendental Analytic. This principle requires, as it seems, *complete* knowledge and not knowledge *as such*. But complete knowledge is for Kant something impossible since only things in themselves are thoroughly determined, whereas we, we as human beings, have nothing but appearances at our disposal. For that reason alone we can never attain to all predicates, yet we must always try. The insistence of reason on that task, although the conditions that are required for such determination are not to be found in experience, could be described as some sort of demand, perhaps – why not? – in its strongest, Lacanian sense of the term, demand which we can never fulfill. Thus, we are in an untenable position – although we *cannot* know all what is possible, reason demands that we *must* always try to attain it. This position could be described as some kind of ethical position, as far as we can talk about position at all, since each position is already always a non-position. And its fundamental claim: you cannot, but you must, is even more demanding and frantic than notorious claim of Kant's categorical imperative.

If a certain impossibility is inherent in Kant's conception of thorough determination, is therefore a thoroughly determined concept possible at all? But – the thorough determination itself is already a concept, an ideal, which as every ideal presupposes a certain idea, in our case the idea of the sum-total of all possibilities. This idea has been, strictly speaking, undetermined until now. It was thought merely as the sum of all possible predicates and if we would succeed to determine it, we could, perhaps, have a thoroughly determined concept. Now – how do we proceed from this undetermined idea of the sum of all possible predicates to the thoroughly determined concept *a priori*? Under closer scrutiny, claims Kant, »we yet find, that this idea, as a primordial concept, excludes [*ausstoße*] a multitude [*Menge*] of predicates which as derivative are already given through other predicates or which are incompat-

<sup>13</sup> Rohs, *op. cit.*, p. 172.

ible with others; and that it does, indeed, define itself as a concept that is thoroughly determinate *a priori*. It thus becomes the concept of an individual object which is thoroughly determined through the mere idea, and must therefore be entitled an *ideal* of pure reason«. (B 601-602)

This is the decisive point. »The idea of an *omnitudo realitatis*« (B 604) is not just an idea, but a very special idea. It is this idea that serves as some kind of basis for the transcendental ideal. This ideal is also not just *an* ideal, but a *very special* ideal. It »serves as basis for the thorough determination that necessarily belong to all that exists. This ideal is the supreme and complete material condition of the possibility of all that exists – the condition to which all thought of objects, so far as their content is concerned, has to be traced back. It is also the only true [*eigentliche*] ideal of which the human reason is capable. For only in this one case is a concept of a thing – a concept which is in itself universal – thoroughly determined in and through itself, and known as the representation of an individual.« (B 604)

At this point, everything seems to be clear for Kant. However, some of the problems still remain unsolved. But before we would draw any jumpy conclusions, a few misunderstandings should be cleared up. First of all, Kant's language and conceptual apparatus which he uses repeatedly should not deceive us. Kant describes transcendental ideal as »transcendental presupposition, namely, that of the material *for all possibility*, which in turn is regarded as containing *a priori* the data *for the particular possibility* of each and everything.« (B 600-601) Moreover, though this ideal should not be conceived as given, for Kant to represent means »to represent everything as deriving its own possibility from the share which it possesses in this sum of all possibilities.« (B 600) Consequently, ideal is described as *Urbild*, *prototypon*, original of everything, on the other hand, things are described as mere *ectypa*, copies, which are derived from it.<sup>14</sup> But all these repeatedly used terms are not, as Kant himself warns, »to be taken as signifying the objective relation of an actual object to other things, but of an *idea to the concepts*. We are left entirely without knowledge as to the existence of a being of such outstanding pre-eminence.« (B 607)<sup>15</sup> Although Kant repeatedly uses terms such as matter,

<sup>14</sup> Although Kant constantly uses the term derivation, there is, strictly speaking, no derivation at all. This applies, on the one hand, to two kinds of predicates – the first expresses a content, a reality without restraints, the second a certain degree of this content, a limited reality; although the second kind of predicates can be thought under the presupposition of the first, there is no derivation in the literal sense of a word, because both kinds of predicates are the result of the same synthesis and are produced simultaneously – and on the other hand, to the two kinds of negation, i.e. to the logical and the transcendental negation and their relation to the purified concept of transcendental ideal.

<sup>15</sup> There is another Kant's notice: »although in our first rough statements we have used such

substratum, material etc., the transcendental ideal remains what it is, the idea of totality, the idea of reality, i.e. merely an idea: »It is obvious that reason, in achieving its purpose, that, namely, of representing the necessary thorough determination of things, does not presuppose the existence of a being that corresponds to this ideal, but only the idea of such a being.« (B 605-606)<sup>16</sup>

However, if the transcendental ideal is to be understood strictly as an idea which is in the ultimate analysis nothing but a concept – how then to think it, since Kant obviously left us more or less in the dark? Perhaps the parallel between the transcendental ideal and the Kantian concept of space, the parallel, which is proposed by Kant himself,<sup>17</sup> would be of some help at this point. The transcendental ideal is, i.e. as space, not the concept which contains all predicates under itself, *unter sich*, but the concept which contains them within itself, *in sich*.<sup>18</sup> What is the difference? The concept, for Kant, contains infinite number of possible objects, infinite multitude of representations as their common mark. It contains them therefore under itself, *unter sich*. »But no concept, as such, can be thought as containing an infinite number of representations *within* itself. However, space is thought in this latter way...« (B 40) Space is single, infinite and divisible – we can divide only one single space, because there exists only one such space. But the trouble with the parallel between the transcendental ideal and space lies in the fact that, for Kant, space is an intuition, while the transcendental ideal is just a concept. As is well known, concept and intuition are strictly separated for Kant, which brings up the following question: is there any common ground for the parallel between

language« (B 607) In German: *ob wir es gleich anfänglich im ersten rohen Schattenrise so vorstellten.*

<sup>16</sup> We have to admit that we are on very slippery grounds, at least as far as the level of language is concerned. It would suffice to understand the derivation as »a limitation of its supreme reality« (B 607), i.e. to conceive the *Einschränkung* as *Teilung*, and the manifold of things in the world would be understood as the effect of the supreme being. We could then easily proceed with the determination of such being in its unconditioned completeness and also succeed in determining it through all predicates. But such use of transcendental ideal would trespass the bounds of its legal employment »for reason, in employing it as a basis for the thorough determination of things, has used it as the *concept* of all reality without requiring that all this reality be objectively given and be itself a thing.« (B 608) But, »we have no right to do this, nor even to assume the possibility of such an hypothesis« (B 608). However, Kant knows very well that it »does not suffice merely to describe the procedure of our reason and its dialectic; we must also endeavor to discover the sources of this dialectic, that we may be able to explain, as a phenomenon of the understanding, the illusion to which it has given rise. For the ideal, of which we are speaking, is based on a natural, not on a merely arbitrary idea.« (B 609)

<sup>17</sup> Kant's example is: all figures presuppose different kinds and ways of limiting infinite space. (See: B 606).

<sup>18</sup> For Kant's distinction between *unter sich/in sich* see also, *Logik* (Jäsche) Werkausgabe, Bd. VI., p. 526 (§ 7), 529 (§ 13).

concept and intuition? Has not Kant himself already given an answer to this question claiming just few lines above that no concept as such can be thought as containing an infinite number of representations *within* itself? However, there may be a way out of this impasse if we do not search for their common ground, but only their common features. As Philonenko emphasizes<sup>19</sup>, space and the transcendental ideal are both *forms*, nothing but empty forms, and they are both something, not real, but ideal.<sup>20</sup> This may be the reason why Kant characterizes the transcendental ideal as »simple [*einfach*]« (B 607) And the simplicity of form could be – why not? – understood, as Hogebe proposes, as »universal register, shrunk on a single one concept«<sup>21</sup>. This register, however, would be a paradoxical one: in fact empty, but always *already* fulfilled with content; nothing but empty form, and at the same time apparent substratum; and finally, transcendental condition, yet not as real, as given. This paradoxical status of the transcendental ideal can also be formulated in the following way: although it seems that the transcendental ideal *already* contains all possible predicates, although it appears to be some sort of an All or a Whole, it is actually not so – it can never be such a whole, it can never be Whole, for it can never be completed or accomplished. The reason for that is that the transcendental ideal does not have analytical, but synthetical character and it is the synthesis, the experience which confers upon the ideal its character of syntheticity. Not surprisingly, this synthesis is also paradoxical – we are actually never ever in the position to add a missing, lacking, new or uncontained predicate to the sum-total of all predicates. It is due to the fact that it is impossible to find out whether a certain predicate is or is not contained in the transcendental ideal. Why? We would need to compare this predicate with *all* possible predicates and since there is an infinite number of possible predicates, there is no guaranty or Guarantor, which could ensure that the comparison would not last – infinitely long. In other words, such comparison would very probably last endlessly.

If this is true, the transcendental ideal would represent a very inconvenient and thereby unneeded support. However, the time in question, i.e. the time needed for finding out the desirable predicate, is not such time to be characterized as *logical* and not as real time, since it is only with logical time that we can explain the immeasurable moment which passes between empty form as not-yet fulfilled with content and always already fulfilled transcendental ideal as thoroughly determined? But as soon as we accept that the time which passes

<sup>19</sup> Alexandre Philonenko, *L'Oeuvre de Kant*, 1. part, Paris 1989, Vrin, p. 316.

<sup>20</sup> That the form is a common feature of both space and transcendental ideal was already pointed out by Kant himself. See, for instance, R 6290, *Kant's gesammelte Schriften*, Bd. 18., p. 559.

<sup>21</sup> Wolfram Hogebe, *Prädikation und Genesis. Metaphysik als Fundamentalheuristik im Ausgang von Schellings »Die Weltalter«*, Frankfurt/M 1989, Suhrkamp, p. 62.

between not-yet and always already is the logical time, such time can also be, as immeasurable, characterized as infinite, for who can tell how long it takes to come to the conclusion from, for instance, the first and the second premise? How much time does it elapse during the logical operation, for example: if  $p$  then  $q$ ? Therefore, the time which is needed for the thorough determination of transcendental ideal can be nothing but logical. Another reason for that lies in the fact that *we*, as human beings, are simultaneously on both sides. It is our experience which is identical with the transcendental ideal and it is merely an illusion that ideal itself »excludes [*ausstoße*]<sup>22</sup> a multitude of predicates » (B 601). It only appears that the transcendental ideal produces this multitude at the same time as it excludes the predicates. It is the same illusion which produces a semblance of the transcendental ideal as thoroughly determined.

In spite of its paradoxical and illusionary status, the transcendental ideal is nevertheless thoroughly determined. How? We have to determine repeatedly, whether a certain predicate belongs to it or not. However, it does not happen in real, but in logical time. Logic, i.e. the operation of disjunction, is crucial here. If a certain predicate is added to a particular thing, its opposite must be excluded. For example, if a thing is white, it is not red, blue, black etc., in short, non-white. In accordance with »either-or« of the upper premise of disjunctive syllogism, one predicate of each pair of contradictory opposites must belong to everything what exists. The upper premise in disjunctive syllogism contains logical division of concept or the division of sphere of a universal concept, the lower premise limits this sphere to the part, with which conclusion determines the universal concept. But the universal concept of reality cannot be divided *a priori*, for without experience we cannot know any kind of reality. The first or the upper premise is therefore nothing but representation of the sum-total of all predicates, i.e. the transcendental ideal.

Where does the illusion that the transcendental ideal is identical to all reality have its origin? The answer is self-evident for Kant, and it lies in Transcendental Analytic. The possibility of objects of our senses is based in their relation to our thinking. We can think space and time *a priori*, but what makes out the content, the matter, the reality in the appearances (what corresponds to feeling), *must* be given as real. If that condition is not fulfilled, if there's no content, no reality, we cannot think at all, and we cannot represent anything, because there is nothing to be thought or represented. Without the real there is also no thorough determination. »The material for the possibility of all objects of the senses must be presupposed as given in a sum-total [Inbegriff]; and it is

<sup>22</sup> German verb *ausstoßen*, which Kemp-Smith translates with the verb »to exclude«, can also mean: to extrude, to force out, to launch, to emit, to produce, to articulate, to express, to outlaw, to discriminate, to ostracize, to segregate, to separate, to except.

upon the limitation of this sum-total that all possibility of empirical objects, their distinction from each other and their thorough determination, can alone be based« (B 610), although we know that »as a matter of fact, no other objects, besides those of the senses, can be given to us, and nowhere save in the context of a possible experience; and consequently nothing is an object *for us*, unless it presupposes the sum [Inbegriff] of all empirical reality as the condition of its possibility« (Ibid.) But this possibility should be understood as a purely empirical principle, which is valid for appearances only, not for things in themselves. If we would demand of this principle to be valid for things in themselves too, we would sooner or later return to the old theological path, but that does not concern us here.

Let us resume the result of our examination of Kant's concept of the transcendental ideal. Its most notable feature seems to be its paradoxical status: in fact empty form, but never presented as such, i.e. pure and empty, for it is always *already* filled with content; the apparent substratum and transcendental condition, but not in the sense of something real. Though it is thoroughly determined, it is never a Whole, it is never completed or accomplished. This thorough determination of the transcendental ideal is paradoxical and illusionary, which is due to the fact that it does not have analytical, but synthetical character, that it is the synthesis, the experience which confers upon it its character of syntheticity. This syntheticity is paradoxical as well – we are in fact never in the position to add a missing, lacking, new or uncontained predicate to the sum-total of all predicates since this predicate is always already contained in the transcendental ideal. It could be said, therefore, that the transcendental ideal is some kind of non-existing surplus, fiction, and yet as such the basis for every determination of things. As thoroughly determined concept, as a register of all possible predicates and as fiction which is the basis for our thinking and knowing, it resembles, with certain reservation, the conception of big Other of Jacques Lacan: that, too, is a universal register which is always already here, but not as existent. This Other is the Other of universal discourse, the Other which contains all what was said and what can be represented, it is the Other of Borges' total library, the treasure of signifiers. This Other has fictional status, too, it is pure symbolic order, but without it, in a very certain sense of the word, we could not even disagree... Of course, Lacan's concept of the Other has a broader meaning than the one presented here, but as a mere hint, it suffices at least to illustrate the fact that, although not fully developed by Kant himself, the concept of the transcendental ideal as presented here allows us to claim at least that, for Kant, fiction is certainly not just illusion.

# Five Fables About Human Rights

Steven Lukes

In this essay I propose to discuss the topic of human rights as seen from the standpoint of five doctrines or outlooks that are dominant in our time. I don't propose to be *fair* to these outlooks. Rather, I shall treat them in the form of Weberian »ideal types« or caricatures – a caricature being an exaggerated and simplified representation which, when it succeeds, captures the essentials of what is represented.

The principle that human rights must be defended has become one of the commonplaces of our age. Sometimes the universality of human rights has been challenged: those historically proclaimed are said to be Eurocentric and to be inappropriate, or only partly appropriate, to other cultures and circumstances.<sup>1</sup> So alternative, or partly alternative, lists are proposed. Sometimes the historic lists are said to be too short, and so further human rights are proposed, from the second unto the third and fourth generation.<sup>2</sup> Sometimes the appeal to human rights, or the language in which it is couched, are said to be unhelpful or even counterproductive in particular campaigns or struggles – in advancing the condition and position of women,<sup>3</sup> say, or in promoting Third World development.<sup>4</sup> But virtually no-one actually *rejects* the principle of defending human rights.

So, in some sense, it is accepted virtually everywhere. It is also violated virtually everywhere, though much more in some places than in others. Hence the pressing need for organisations such as Amnesty International and Helsinki

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<sup>1</sup> See »La Conception occidentale des droits de l'homme renforce le malentendu avec l'Islam«: un entretien avec Mohamed Arkoun, *Le Monde*, 15 March 1989, p. 2; and the essays in Adamantine Pollis and Peter Schwab (eds.), *Human Rights. Cultural and Ideological Perspectives*. Praeger, New York, 1979, esp. Ch. 1, pp. 14 sqq.

<sup>2</sup> See D. D. Raphael (ed.), *Political Theory and the Rights of Man*, London, Macmillan, 1967.

<sup>3</sup> See Elizabeth Kingdom, *What's Wrong with Rights? Problems for Feminist Politics of Law*, Edinburgh University Press, 1991.

<sup>4</sup> Reginald Herbold Green, *Human Conditions and Law – Some Explorations towards Interaction*, Brighton, IDS, 1989, Discussion Paper no. 267.

Watch. But its virtually universal acceptance, even when hypocritical, is very important, for this is what gives such organisations such political leverage as they have in otherwise unpromising situations. In this lecture I want to focus on the significance of that acceptance by asking: what ways of thinking does accepting the principle of defending human rights deny and what way of thinking does it entail? I want to proceed in two stages: first by asking: what would it be like *not* to accept the principle? And Second: what would it be like to take it seriously? First, then let us ask: what would a world without the principle of human rights look like? I would like to invite you to join me in a series of thought experiments. Let us imagine a series of places in which the principle in question is unknown – places that are neither utopian nor dystopian but rather places that are in other respects as attractive as you like, yet which simply lack this particular feature, whose distinctiveness we may thereby hope to understand better.

### I

First, let us imagine a society called *Utilitaria*. Utilitarians are public-spirited people who display a strong sense of collective purpose: their single and exclusive goal, overriding all others, is to maximise the overall utility of all of them. Traditionally this has meant »the Greatest Happiness of the Greatest Number« (which is the national motto) but in more recent times there have been disputes about what »utility« is. Some say that it is the same as »welfare«, as measured by objective indicators such as income, access to medical facilities, housing and so on. Others, of a more mystical cast of mind, see it as a kind of inner glow, an indefinable subjective state that everyone aims at. Others say that it is just the satisfaction of whatever desires anyone happens to have. Others say that it is the satisfaction of the desires people ought to have or of those they would have if they were fully informed and sensible. Yet others, gloomier in disposition, say that it is just the avoidance of suffering: for them the »greatest happiness« just means the »least unhappiness«. Utilitarians are distinctly philistine people, who are disinclined to see utility in High Culture and never tire of citing the proverb that »pushpin is as good as poetry«, though there is a minority tradition of trying to enrich the idea of »utility« to include the more imaginative sides of life. But despite all these differences, all Utilitarians seem to be agreed on one principle: that what counts is what can be counted. The prized possession of every Utilitarian is a Pocket Calculator. When faced with the question »What is to be done?«, he or she invariably translates it into the question »Which option will produce the greatest sum of utility?« Calculating is the national obsession.

Technocrats, Bureaucrats and Judges are the most powerful people in Utilitaria and are much admired. They are particularly adept at Calculating, using state-of-the-art computers of ever-increasing power. There are two political parties that vie for power – the Act Party and the Rule Party. What divides them is that the Act Party (the »Actors«) encourages everyone to use their Calculators on all possible occasions, while the Rule Party (the »Rulers«) discourages ordinary people from using them in everyday life. According to the Rule Utilitarians, people should live by conventions or rules of thumb that are devised and interpreted by the Technocrats, Bureaucrats and Judges according to their superior methods of Calculation.

Life in Utilitaria has its hazards. Another national proverb is »*Utilitas populi suprema lex est*«. The problem is that no-one can ever know for sure what sacrifices he or she may be called on to make for the greater benefit of all. The Rule Party's rules of thumb are some protection, since they tend to restrain people from doing one another in, but they can, of course, always be overridden if a Technocrat or a Bureaucrat or a Judge makes a Calculation that overrides them. Everyone remembers that famous case at the turn of the last century of an army captain from a despised minority group who was tried on a charge of treason and found guilty of passing documents to an Enemy Power. The captain was innocent of the charge but the Judges and the Generals all agreed that the doctrine of »*Utilitas populi*« must prevail. Some intellectuals tried to make a fuss, but they got nowhere. And recently, six people were found guilty of exploding a bomb at a time of troubles for Utilitaria caused by fanatical terrorists from a neighbouring island. It turned out that the six were innocent, but »*Utilitas populi*« prevailed and the Six stayed in gaol.

These hazards might seem troubling to an outsider, but Utilitarians put up with them. For their public spiritedness is so highly developed that they are ready to sacrifice themselves, and indeed one another, whenever Calculations show this to be necessary.

Let us now visit very different kind of country called *Communitaria*. Communitarians are much more friendly people, at least to one another, than are the Utilitarians, but they are like them in their very high degree of public spiritedness and collective purpose. Actually »friendliness« is too superficial a word to describe the way they relate to one another. Their mutual bonds constitute their very being. They cannot imagine themselves »unencumbered« and apart from them; they call such a nightmarish vision »atomism« and recoil with horror from it. Their selves are, as they say, »embedded« or »situated«. They identify with one another and identify themselves as so identifying. Indeed, you could say that the Communitarians' national obsession is Identity.

Communitaria used to be a very *gemütlich* place, much given to agricultural metaphors. Communitarians were attached to the *soil*, they cultivated their *roots* and they felt a truly *organic* connection with one another. They particularly despised the Utilitarians' calculative way of life, relying instead on »shared understandings« and living according to slowly evolving traditions and customs with which they would identify and by which they would be identified.

Since then Communitaria has undergone great changes. Waves of immigration and movements of people and modern communications have unsettled the old *gemütlich* ways and created a far more heterogeneous and »pluralistic« society. New Communitaria is a true »Community of Communities« – a patchwork quilt of sub-communities, each claiming recognition for the peculiar value of its own specific way of life. New Communitarians believe in »multiculturalism« and practise what they call the »politics of recognition«, recognising each sub-community's Identity with scrupulous fairness in the country's institutions. Positive discrimination is used to encourage those that are disadvantaged or in danger of extinction; quotas ensure that all are fairly represented in representative institutions and in the professions. The schools and colleges teach curricula that exactly reflect the exactly equal value of those communities' cultures and none (and certainly not the old *gemütlich* one) is allowed to predominate.

The new Communitarians feel »at home« in their sub-communities but further take pride in being Communitarians who recognise one another's sub-communitarian identities. But there are problems. One is the »inclusion-exclusion problem«: how to decide which sub-communities are included in the overall framework and which are not. Some groups get very angry at being included in sub-communities which recognise them but which they don't recognise; others get angry because they recognise themselves as a sub-community but are not recognised by others. Recently, for example, a province of Communitaria in which one sub-community forms a majority passed a law prohibiting *both* members of their sub-community *and* all immigrants from attending schools that teach in the language that prevails in the rest of Communitaria and in which most of its business and trade are conducted. The immigrants in particular are none too pleased. A related problem is the »vested interests problem«; once on the official list, sub-communities want to stay there for ever and keep others out. Moreover, to get on the list, you have to be, or claim to be, an indigenous people or the victims of colonialism, and preferably both.

Then there is the »relativism problem«. It is obligatory in Communitaria to treat the beliefs and practices of all recognised sub-communities as equally

valid, or rather, none is to be treated as more or less valid than any other. But different sub-communities have incompatible beliefs and some engage in very nasty practices, mistreating, degrading and persecuting groups and individuals, including their own members. Typically, the definers of sub-communitarian identity are men; and their women are sometimes oppressed, marginalised and badly abused. Some require that womenfolk to conceal *their* identities in hooded black shrouds. Some practise female circumcision. Unfortunately, Communitaria's official relativism must allow such practices to continue unmolested. Recently, a famous writer from one sub-community wrote a satirical novel that was partly about the life of another sub-community's holy religious Prophet and Founder. Hotheads from the latter sub-community became wildly incensed at what they took to be an insult to their faith and publicly burned the book in question, while their fanatical and fiery leader, in the home community from which they came, ordered the famous writer to be killed. Other writers from other sub-communities all over the world signed petitions and manifestos in the famous writer's defence. Communitaria's government dealt with this tricky situation in a suitably relativistic way, declaring that the practice of writing satirical novels was no more but also no less valid than the practice of protecting one's fait against insults.

And finally there is the »deviant problem«. Not all Communitarians fit well into the sub-communitarian categories. Recalcitrant individuals have been known to reject the category by which they are identified or to pretend that they don't belong to it. Some cross or refuse to acknowledge the identifying boundaries, and some even reject the very idea of such boundaries. Non-, ex-, trans-, and anti- Identifiers are not the happiest people in Communitaria. They feel uneasy because they tend to be seen as »not true Communitarians«, as disloyal, even as »rootless cosmopolitans«. Fortunately, however, they are few and unorganised. Least of all are they likely to form another sub-community.

Now I propose to take you to another place which is called *Proletaria*, so called nostalgically, after the social class that brought it into being but has long since withered away, along with all other social classes. Proletaria has no state. That too has withered away. Indeed, it is not a particular country but embraces the entire world. Human and other rights existed in pre-historic times but these too have withered away. The Proletariat in its struggle sometimes used to appeal to them for tactical reasons, but they are no longer needed in Proletaria's »truly human« communist society.

Proletarians lead extremely varied and fulfilling lives. They hunt in the morning, fish in the afternoon and criticise after dinner, they develop an enormous range of skills, and no-one has to endure a one-sided, crippled development, to

fit into a given job-description or role, or an exclusive sphere of activity from which one cannot escape. The division of labour has also withered away: people are no longer identified with the work they do or the functions they fulfil. No-one is a »such-and-such«: as the prophet Gramsci put it, no-one is even »an intellectual«, because everyone is (among all the other things he or she is). They organise their factories like orchestras and watch over automated machinery, they organise production as associated producers, rationally regulating their interchange with Na-Nature, bringing it under their common control, under conditions most favourable to, and worthy of, human nature, and they elect representatives to Communes on an annual basis. As the prophet Engels foretold, the government of persons has been replaced by the administration of things, and by the conduct of processes of production. The distinction between work and leisure has withered away; so also has that between the private and the public spheres of life. Money, according to the prophet Marx, »abases all the gods of mankind and changes them into commodities« and has »deprived the whole world, both the human world and nature, of their own proper value«<sup>5</sup>; but now the whole »cash nexus« too has withered away. Now at last, as foretold, »love can only be exchanged for love, trust for trust, etc.«, influence can only be through simulation and encouragement and all relations to man and to nature express one's »real individual life«.<sup>6</sup> An arcadian abundance exists in which all produce what they are able to and get what they need. People identify with one another but not, as among the Communitarians, because they belong to this or that community or sub-community, but rather because they are equally and fully human. Relations between the sexes are fully reciprocal and prostitution is unknown. In Proletaria there is no single dominating obsession or way of living: everyone develops their rich individuality which is as all-sided in its production as in its consumption, free of external impediments. There is no longer any contradiction between the interest of the separate individual or the individual family and the interest of all individuals who have intercourse with one another.

The only problem with Proletarian life is that there are no problems. For with communism, as Marx prophesied, we see

*»the definitive resolution of the antagonism between man and nature and between man and man. It is the true solution of the conflict between existence and essence, between objectification and self-affirmation, between freedom and necessity, between individual and species. It is the solution of the riddle of history and knows itself to be this solution.«*<sup>7</sup>

<sup>5</sup> K. Marx, »Bruno Bauer, »Die Fähigkeit der Heutigen Juden und Christen, frei zu werden«, translated in T.B. Bottomore (ed.), *Karl Marx, Early Writings*, London, Watts, 1963, p. 37.

<sup>6</sup> K. Marx, »Money«, translated in Bottomore (ed.), *op. cit.*, pp. 193-94.

<sup>7</sup> K. Marx, »Private Property and Communism«, translated in Bottomore (ed.), *op. cit.*, p. 155.

Yet visitors to Proletaria (from other planets) are sometimes disbelieving of what they behold, for they find hard to credit that such perfection could be attained and, moreover, maintained without friction. How, they wonder, can be planning of production run so smoothly without markets to provide information through prices about demand? Why are there no conflicts over allocating resources? Don't differing styles of living get in each other's way? Aren't there personal conflicts, between fathers and sons, say, or lovers? Do Proletarians suffer inner turmoil? No sign of any such problems is visible: Proletarians seem able to combine their rich individuality, developing their gifts in all directions, with fully communal social relations. Only sometimes does it occur to such extra-terrestrial visitors that they may have lost their way and landed somewhere else than Earth and that these are not human beings after all.

Human rights are unknown in all the three places we have visited, but for different reasons. Utilitarians have no use for them because those who believe in them are, by definition, disposed to question that Utilitarian Calculations should be used in all circumstances. As the Utilitarian State's founder Jeremy Bentham famously remarked, the very idea of such rights is not only nonsense but »nonsense on stilts«, for »there is no right which, when the abolition of it is advantageous to society, should not be abolished«. <sup>8</sup> The Communitarians, by contrast, have always rejected such rights because of their *abstractness* from real, living, concrete, local ways of life. As that eloquent Old Communitarian speechifier Edmund Burke put it, their »abstract perfection« is their »practical defect«, for »the liberties and the restrictions vary with times and circumstances, and admit of infinite modifications, that cannot be settled upon any abstract rule«. <sup>9</sup> A no less eloquent New Communitarian, Alasdair MacIntyre broadens the attack: »natural or human rights«, he says, »are fictions – just as is utility«. They are like »witches and unicorns« for »every attempt to give good reasons for believing that there *are* such rights has failed«. According to MacIntyre, forms of behaviour that presuppose such rights »always have a highly specific and socially local character, and ... the existence of particular types of social institution or practice is a necessary condition for the notion of a claim to the possession of a right being an intelligible type of human performance«. <sup>10</sup> As for Proletarians, their rejection of human rights goes back to the Prophet of their Revolution Karl Marx who described talk of them as

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<sup>8</sup> J. Bentham, *Anarchical Fallacies*, reproduced in Jeremy Waldron (ed.), *Nonsense on Stilts: Bentham, Burke and Marx on the Rights of Man*, London and New York, Methuen, 1987, p. 53.

<sup>9</sup> Edmund Burke, *Reflections on the Revolution in France*, reproduced in Waldron, *op. cit.*, pp. 105, 106.

<sup>10</sup> Alasdair MacIntyre, *After Virtue: A Study in Moral Theory*, London, Duckworth, 1981, pp. 65-67.

»ideological nonsense« and »obsolete verbal rubbish«,<sup>11</sup> for two reasons. First, they tended to soften hearts in the heat of the class struggle; the point was to win, not feel sympathy for class enemies. It was, as Trotsky used to say, a matter of »our morals« versus »theirs«;<sup>12</sup> and Lenin observed that »our morality is entirely subordinated to the interests of the proletariat's class struggle ... To a communist all morality lies in this untitled discipline and conscious mass struggle against the exploiters. We do not believe in an eternal morality, and we expose the falseness of all the fables about morality«.<sup>13</sup> And second, Marx regarded human rights as anachronistic because they had been necessary only in that pre-historical era when individuals needed protection from injuries and dangers generated out of an imperfect, conflictual, class-ridden world. Once that world was transformed and a new world born, emancipated human beings would flourish free from the need for rights, in abundance, communal relations and real freedom to develop their manifold human powers.

What, then, does our thought-experimental so far suggest we are accepting when we accept the principle of defending human rights? First, that they are *restraints* upon the pursuit of what is held to be »advantageous to society«, however enlightened or benevolent that pursuit may be. Second, that they invoke a certain kind of *abstraction* from »specific and socially local« practices: they involve seeing persons behind their identifying (even their self-identifying) labels and securing them a protected space within which to live their lives from the inside, whether this be in conformity with or in deviation from the life their community requires of or seeks to impose on them. And third, that they *presuppose* a set of permanent existential facts about the human condition: that human beings will always face the malevolence and cruelty of others, that there will always be scarcity of resources, that human beings will always give priority to the interests of themselves and those close to them, that there will always be imperfect rationality in the pursuit of individual and collective aims, and that there will never be an unforced convergence in ways of life and conceptions of what makes it valuable. In the face of these facts, if all individuals are to be equally respected, they will need public protection from injury and degradation, and from unfairness and arbitrariness in the allocation of basic resources and in the operation of the laws and rules of social life. You will not be able to rely on others' altruism or benevolence or

<sup>11</sup> Karl Marx, *Critique of the Gotha Programme* in Karl Marx and Friedrich Engels, *Selected Works*, 2 Vols., Moscow, Foreign Languages Publishing House, 1962, vol. 2., p. 25.

<sup>12</sup> Leon Trotsky, »Their Morals and Ours«, *The New Internationalist*, June 1938, reproduced in: *Their Morals and Ours: Marxist versus Liberal Views on Morality*. Four essays by Leon Trotsky, John Dewey and George Novack. Fourth edition, New York, Pathfinder Press, 1969.

<sup>13</sup> V.I. Lenin, »Speech at Third Komsomol Congress, 2 October 1920« in V.I. Lenin, *Collected Works*, 45 vols., Moscow, Foreign Languages Publishing House, vol. 31, pp. 291, 294.

paternalism. Even if the values of those others are your own, they can do you in countless ways, by sheer miscalculation or mistake or misjudgement. Limited rationality puts you in danger from the will, meaning no less than from the malevolent and the selfish. But often the values of others will not be your own: you will need protection to live your own life from the inside, pursuing your own conception of what is valuable, rather than a life imposed upon you. To do so, social and cultural preconditions must exist: thus Kurds in Turkey must not be treated as »Mountain Turks« but have their own institutions, education and language. Now we can see the sense in which human rights are *individualistic* and the sense in which they are not. To defend them is to protect individuals from utilitarian sacrifices, communitarian impositions, and from injury, degradation and arbitrariness, but doing so cannot be viewed independently of economic, legal, political and cultural conditions and many well involve the protection and even fostering of collective goods, such as the Kurdish language and culture. For to defend human rights is not merely to protect individuals. It is also to protect the activities and relations that make their lives more valuable, activities and relations that cannot be conceived reductively as merely individual goods. Thus the right to free expression and communication protects artistic expression and the communication of information; the right to a fair trial protects a well-functioning legal system; the right to free association protects democratic trade unions, social movements and political demonstrations, and so on.

## 2

I turn now to the second stage of my inquiry. What would it be like to take human rights, thus understood, seriously? To approach this question, let me propose a further thought experiment. Let us now imagine worlds *with* human rights, where they are widely recognised and systematically put into practice.

One place where some people think rights flourish is *Libertaria*. Libertarian life runs exclusively and entirely on market principles. It is located somewhere in Eastern Europe or maybe in China in the near future. Everything there can be bought and sold; everything of value has a price and is subject to Libertarians' national obsession: cost-benefit analysis. The most basic and prized of all their rights is the right to property, beginning with each Libertarian's ownership of himself or herself and extending (as Libertarians like to say) to whatever they »mix their labour with«. They own their talents and abilities and, in developing and deploying these, Libertarians claim the right to whatever rewards the market will bring. They love to tell the story of Wilt Chamberlain, the famous basketball player whom thousands are willing to pay to watch. Would it be just, they ask, to deprive him of these freely-given rewards in order to benefit others?

They also attach great importance to the right of engaging in voluntary transfers of what they rightly own – transactions of giving, receiving and exchanging, which they use to the advantage of their families, through private education and the inheritance of wealth. There is a very low level of regressive taxation which is used only to maintain Libertaria's system of free exchange – the infrastructure of the economy, the army and the police, and the justice system to enforce free contracts. Compulsory redistribution is prohibited since it would violate people's unlimited rights to whatever they can earn. Inequalities are great and growing, based on social class, as well as on differential talents and efforts. There is no public education, no public health system, no public support for the arts or recreation, no public libraries, no public transport, roads, parks or beaches. Water, gas, electricity, nuclear power, garbage disposal, postal and telecommunications are all in private hands, as are the prisons. The poor, the ill, the handicapped, the unlucky, and the untalented are given some sympathy and a measure of charity, but Libertarians do not regard their worsening plight as any kind of injustice, since they do not result from anyone's rights being infringed.

No-one is tortured in Libertaria. All have the right to vote, the rule of law prevails, there is freedom of expression (in media controlled by the rich) and of association (though trade unions cannot have closed shops or call strikes, since that would violate others' rights). There is equal opportunity in the sense that active discrimination against individuals and groups is prohibited, but there is an unequal start to the race for jobs and rewards; the socially privileged have a considerable advantage stemming from the social backgrounds. All can enter the race but losers fall by the wayside: the successful are fond of quoting the national motto : »The Devil take the hindmost!«. The homeless sleeping under bridges and the unemployed are, however, consoled by the thought that they have the same rights as every other Libertarian.

Are human rights taken seriously enough in Libertaria? I believe the answer is no, for two reasons. First, as I said, the basic civil rights are respected there – there is no torture, there is universal franchise, the rule of law, freedom of expression and association and formal equality of opportunity. Yet the possessors of these rights are not equally respected; not all Libertarians are treated as equally human. To adapt a phrase of Anatole France, those who sleep under the bridges have the same rights as those who don't. Though all Libertarians have the right to vote, the worst off, the marginalised and the excluded do not have equal power to organise and influence political decisions, or equal access to legal processes, or an equal chance to articulate and communicate their points of view, or an equal representation in Libertarian public and institutional life, or an equal chance in the race for qualifications, positions and rewards.

The second reason for thinking that Libertaria fails to take human rights seriously enough relates to the distinctively Libertarian rights. Libertarians believe that they have an unlimited right to whatever reward the abilities and efforts can bring in the market-place and the unlimited right to make voluntary choices that benefit themselves and their families. No Libertarian ever takes a step outside the narrowly self-interested point of view of advancing his own, or at most his family's, interests. He is impervious to the thought that others might have more urgent claims on resources, or that some of his own and his family's advantages are gained at the expense of others' disadvantage, or that the structure of Libertarian life is a structure of injustice.

Are human rights in better shape elsewhere? Where is the principle of defending them more securely defended? Where, in other words, are all human beings more securely treated as equally human? Where are they protected against Utilitarian sacrifices for the advantage of society and against Communitarian imposition of a particular way of life, against the Communist illusion that a world beyond rights can be attained and against the Libertarian illusion that a world run entirely on market principles is a world that recognises them fully?

Is *Egalitaria* such a place? Egalitaria is a one-status society in the sense that all Egalitarians are treated as being of equal *worth*: one person's well-being and freedom are regarded as just as valuable as any other's. The basic liberties, the rule of law, toleration, equality of opportunity are all constitutionally guaranteed. But they are also made real by Egalitarians' commitment to rendering everyone's conditions of life such that these equal rights are of equal worth to their possessors. They differ about how to do this but one currently influential view is that a basic economic and political structure can be created that can make everyone better off while giving priority to bettering the condition of the worst off: on this view no inequality is justified unless it results in making the worst off better off than they would otherwise be. All agree that progressive taxation and extensive welfare provision should ensure a decent minimum standard of life for all. But there is also within Egalitarian culture a momentum towards raising that minimum through policies that gradually eliminate involuntary disadvantage. That momentum is fuelled by a sense of injustice that perpetually tracks further instances of illegitimate inequality, or involuntary disadvantage – whether these result from religion or class or ethnicity or gender, and so on, and seeks policies that will render Egalitarians more equal in their conditions of life.

Could there be such a place as *Egalitaria*? More precisely, is *Egalitaria* *feasible*: could it be *attained* from anywhere in the present world? And is it *viable*: could it be *maintained* stably over time? Some doubt that it is feasible.

Some say that, even if feasible, it is not viable. Some say that it might be viable, if it were feasible, but it is not. Others say that it is neither feasible nor viable. I fear that there are good reasons for all these doubts. I shall suggest two major reasons for doubting the attainability and the maintainability of Egalitaria and conclude this lecture by suggesting what they imply about how we should view the principle of defending human rights.

The first reason for thinking that Egalitaria may, after all, be a mirage is what we may call the *libertarian constraint*. This is found, above all, in the economic sphere. Egalitarians are (or should be) extremely concerned to achieve maximal economic growth. For them »equality« is not to be traded off against »efficiency«. Rather, they seek most efficiently to achieve an economy that will attain the highest level of equality of condition at the highest feasible economic level. The worst off (and everyone else) under a more equal system should, they hope, be at least as well off as the worst off (and everyone else) under a less equal system. If the cost of more equality is lesser prospects of prosperity for everyone or most people, their hopes of attaining, let alone maintaining, Egalitaria, at least under conditions of freedom, are correspondingly dimmed.

Egalitarians these days are (or should be) keen students of Libertarian economics. For one thing, they know what markets can and cannot do<sup>14</sup>. On the one hand, they know when and how markets can fail. Markets reproduce existing inequalities of endowments, resources and power, they can generate external diseconomies, such as pollution, which they cannot deal with, they can, when unchecked, lead to oligopolies and monopolies, they can ravage the environment, through deforestation and in other ways, they can produce destabilising crises of confidence with ramifying effects, they can encourage greed, consumerism, commercialism, opportunism, political passivity, indifference and anonymity, a world of alienated strangers. They cannot fairly allocate public goods, or foster social accountability in the use of resources or democracy at the workplace, or meet social and individual needs that cannot be expressed in the form of purchasing power, or balance the needs of present and future generations. On the other hand, they are indispensable and cannot be simulated. There is no alternative to them, as a signalling device for transmitting in a decentralised process information about tastes, productive techniques, resources and so on, as a discovery procedure through which restless individuals, in pursuit of entrepreneurial profit, seek new ways of satisfying needs and even, as the Prophet Marx himself acknowledged, as an arena of freedom and choice. Egalitarians know that command economies can

<sup>14</sup> See Samuel Bowles, »What markets can – and cannot – do«, *Challenge. The Magazine of Economic Affairs*, July-August 1991, pp. 11 – 16.

only fail in comparison with market economies, and they know that, even if the market can in various ways be socialised, »market socialism« is, at best, an as yet ill-defined hope.

They also know that no economy can function on altruism and moral incentives alone, and that material incentives, and notably the profit motive, are indispensable to a well-functioning economy. Most work that needs to be done, and in particular entrepreneurial functions, must draw on motives that derive from individuals' pursuit of material advantage for themselves and for their families. They know, in short, that *any* feasible and viable economy must be based on market processes and material incentives, however controlled and supplemented in order to render them socially accountable<sup>15</sup> thereby creating and reinforcing the very inequalities they earnestly seek to reduce.

The second major reason for scepticism that Egalitaria can be attained and, if so, maintained we may call the *communitarian constraint*. This is to be found, primarily, in the cultural sphere. Egalitarians hope that everyone can, at least when considering public and political issues, achieve a certain kind of abstraction from their own point of view and circumstances. Egalitarians hope that they can view anyone, including themselves, impartially, seeing everyone's life as of equal worth and everyone's well-being and freedom as equally valuable. Professor Rawls has modelled such a standpoint in his image of an »Original Position« where individuals reason behind a »veil of ignorance«; others have tried to capture it in other ways.

Yet Egalitarians must admit that this is not a natural attitude in the world in which we live and that it seems in increasingly many places to be becoming less and less so. Yugoslavs turn almost overnight into Serbs and Croats. It matters urgently to some Czechoslovaks that they are Slovaks and to some Canadians that they are Quebecois. Even Black or Hispanic or Asian Americans are insisting on seeing themselves in politically correct ways. It seems that belonging to certain kinds of »encompassing groups« with cultures of self-recognition, and identifying and being identified as so belonging, is increasingly essential to many people's well-being.<sup>16</sup> But, to the extent that this is so, the »politics of equal dignity« that would treat individuals equally, irrespective of their group affiliations, is put in jeopardy.<sup>17</sup>

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<sup>15</sup> See Diane Elson, »The Economics of a Socialised Market« in Robin Blackburn (ed.), *After the Fall. The Failure of Communism and the Future of Socialism*, London, Verso, 1991.

<sup>16</sup> See Avishai Margalit and Joseph Raz, »National Self-determination«, *Journal of Philosophy*, 87, 9, Sept. 1990, pp. 441 – 461.

<sup>17</sup> See *Multiculturalism and »The Politics of Recognition«*. An essay by Charles Taylor, with commentary by Amy Gutmann (editor), Steven C. Rockefeller, Michael Walzer and Susan Wolf, Princeton, Princeton University Press, 1992.

Consider the idea of »fraternity«. Unlike »liberty« and »equality«, which are conditions to be *achieved*, who your brothers are is determined by the past. You and they form a collectivity in contradistinction to the rest of mankind, and in particular to that portion of it you and they see as sources of danger or objects of envy or resentment. The history of »fraternity« during the course of the French Revolution is instructive.<sup>18</sup> It began with a promise of universal brotherhood; soon it came to mean patriotism; and eventually the idea was used to justify militancy against external enemies and purges of enemies within. The revolutionary slogan »la fraternite ou la mort« thus acquired a new and ominous meaning, promising violence first against non-brothers and then against false brothers. For collective or communal identity always requires, as they say, an »other«; every affirmation of belonging includes an explicit or implicit exclusion clause. The Egalitarians' problem is to render such exclusions harmless.

The problem is to attain a general acceptance of multiple identities that do not conflict. But how many situations in the present world are favourable to such an outcome? The least promising, and most explosive, seems to be that of formerly communist federal states containing peoples with historical enmities at different levels of economic development. The least unpromising, perhaps, are polyethnic societies composed mainly of various immigrant groups who demand the right freely to express their particularity within the economic and political institutions of the dominant culture. But there too, wherever that right is interpreted as a *collective* right to equal recognition, a threat to egalitarian outcomes is raised: that of treating individuals only or mainly as the bearers of their collective identities<sup>19</sup> and thus of building not Egalitaria but Communitaria.

Here, then, are two major reasons for doubting that Egalitaria can be realised anywhere in this world (let alone across it as a whole). They very naturally lead those impressed by them to take up anti-egalitarian political positions. Indeed they constitute the two main sources of right-wing thinking today — libertarian and communitarian. Both point to severe limitations on the capacity of human beings to achieve that abstraction or impartial regard that could lead them to view all lives as equally valuable.<sup>20</sup> Both are sufficiently powerful and persuasive to convince reasonable people to reject egalitarian politics.

<sup>18</sup> See the entry on »Fraternité« (by Mona Ozouf) in Francois Furet and Mona Ozouf (eds.), *Dictionnaire critique de la Revolution francaise*, Paris, Flammarion, 1988, pp. 731 – 740.

<sup>19</sup> See Stephen L. Carter, *Reflections of an Affirmative Action Baby*, New York, Basic Books, 1991 and Will Kymlicka, »Liberalism and the Politicization of Ethnicity«, *Canadian Journal of Law and Jurisprudence*, 4, 2, July 1991, pp. 239 – 256. Kymlicka makes an interesting distinction between two kinds of cultural pluralism: one associated with multinational states, the other with polyethnic immigrant societies.

<sup>20</sup> See Thomas Nagel, *Equality and Partiality*, London, Oxford University Press, 1991.

How, in the light of this last fact, should we view human rights? I think it follows that the *list* of human rights should be kept both reasonably short and reasonably abstract. It should include the basic civil and political rights, the rule of law, freedom of expression and association, equality of opportunity and the right to some basic level of material well-being, but probably no more. For only these have a prospect of securing agreement across the broad spectrum of contemporary political life, even though disagreement breaks out again once you ask how these abstract rights are to be made concrete: how the formal is to become real. Who are the possessors of civil and political rights? Nationals? Citizens? Guest-workers? Refugees? All who are residents within a given territory? Exactly what does the rule of law require? Does it involve equalising access to legal advice and representation? Public defenders? The jury system? Equal representation of minorities on juries? The right to challenge jurors without cause? When are freedom of expression and association truly free? Does the former have implications for the distribution and forms of ownership of mass media and the modes and principles of their public regulation? Does the latter entail some form of industrial democracy that goes beyond what currently obtains? What must be equal for opportunities to be equal? Is the issue one of non-discrimination against an existing background of economic, social and cultural inequalities or is that background itself the field within which opportunities can be made more equal? What is the basic minimum? Should it be set low to avoid negative incentive effects? If so, how low? Or should there be a basic income for all, and, if so, should that include those who could but don't work, or don't accept work that is on offer? And how is a basic minimum level of material well-being to be conceived and measured — in terms of welfare, or income, or resources, or »level of living« or »basic capabilities« or in some other way?

To defend these human rights is to defend a kind of »egalitarian plateau« upon which such political conflicts and arguments can take place.<sup>21</sup> On the plateau, human rights are taken seriously on all sides, though there are wide and deep disagreements about what defending and protecting them involves. I hope I have convinced you that there are powerful reasons against abandoning it for any of the first four countries we have visited.

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<sup>21</sup> The idea of the egalitarian plateau is Ronald Dworkin's. See his »What is Equality? Part 1: Equality of Welfare; Part 2: Equality of Resources«, *Philosophy and Public Affairs*, 10, 3 - 4, 1981, pp. 185 - 246, 283 - 345, »What is Equality? Part 3: the Place of Liberty«, *Iowa Law Review*, 73, 1, 1987, pp. 1 - 54, »What is Equality? Part 4: Political Equality«, *University of San Francisco Law Review*, 22, 1, 1988, pp. 1 - 30 and *A Matter of Principle*, Cambridge, Mass. and London, Harvard University Press, 1985. See also the discussion in Will Kymlicka, *Contemporary Political Philosophy: An Introduction*, Oxford, Clarendon, 1990.

Yet the plateau is under siege from their armies. One of those armies flies a communitarian flag and practises »ethnic cleansing.« It has already destroyed Mostar and many other places and is currently threatening Kosovo and Macedonia. Right now it is laying siege to Sarajevo, slaughtering and starving men, women and children and raping women, only because they have the wrong collective identity. We are complicitly allowing this to go on, within the very walls of modern, civilised Europe. The barbarians are within the gates.

I believe that the principle of defending human rights requires an end to our complicity and appeasement: that we raise the siege of Sarajevo and defeat them by force. Only then can we resume the journey to Egalitaria, which, if it can indeed be reached at all, can only be reached from the plateau of human rights.

# Fictions in Political Thought

## *Las Casas, Sepúlveda, the Indians, and the Turks*

Tomaž Mastnak

Fictions seem to make political thought work. In this paper,\* I will try to substantiate this claim by offering a new interpretation of a (relatively) well known episode in the history of European political thought: the dispute between Bartolomé de las Casas and Juan Ginés de Sepúlveda over the rights of indigenous peoples in the newly discovered America. I will argue that lying behind their different stances was a shared conception of what was the »Turk«, which structured their response to the Indians. Where Las Casas tried to prove that the Indians were not »Turks« and should be treated differently, that is peacefully, Sepúlveda extended the European attitude towards the Turks to the treatment of the Indians.

That the *imago Turci* underpinned the European debate over the Indians may seem surprising. However, in the creation of European identity, the image of the »Turk« lay at the core. The mental framework within which Europeans related to a new outer world, was – to a large degree – shaped by the interaction of Medieval Western Christianity with the World of Islam.<sup>1</sup> But the creation of European identity is not at issue here.<sup>2</sup> My point here is rather that an intimate link existed, in European imagination, between the two outer worlds<sup>3</sup> – the muslim world and what came to be called the *Mundo Nuevo* – and, moreover, that European attitudes towards the »Turks« were at the heart

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\*The research for this paper was assisted by an award from the Social Science Research Council of an SSRC-MacArthur Foundation Fellowship on Peace and Security in a Changing World.

<sup>1</sup> What I have in mind is what we would today call political attitude, not geographical and »anthropological« ideas feeding on (often vulgarized) Hellenistic and Roman sources. Cf. Hay, *Europe*; Hodgen, *Early Anthropology*; Elliott, *Spain and Its World*.

<sup>2</sup> I discuss this in *Islam and Creation of European Identity*.

<sup>3</sup> There was also a third world, Africa, from which Las Casas proposed exporting Negro slaves to America to spare Indians the heavy labour destroying them. However, the occupation of African lands and islands was originally seen as instrumental for crusading warfare against muslims. Cf. Muldoon, *Popes, Lawyers, and Infidels*, pp. 89 sq., 137 sq.; Rein, »über Bedeutung«, p. 32; Staedler, »Die westindischen Investituredikte«, p. 326.

of their response to the Indians. Twentieth-century discussions of the debate over the rights of Indians have tended to overlook this link.

Once we see how much the image of the »Turk« determined the sixteenth-century debate over the Indians, it becomes clearer how much our own story of the discovery of the New World, overlooking as it does that central, fictitious, figure of the Turk, continues to be wrapped in fictions. In historians' accounts of European debates over the New World, Las Casas and Sepúlveda themselves often turn into fictions. We have the fiction that their debate was about the rights of Indians; the fiction of the discovery of America as the turning point in European history and, once again, the fiction that there was no imagined Turk in the story. This absent/present fiction is shared by today's historians with the sixteenth-century disputants they study – and is shared by our late modern with the early modern world.

In order to approach the question of how fictitious are our past and present worlds, and thus to approach the subject of this paper, it may be helpful to see how Europeans' view of the world outside was represented in fiction. Let us take as a starting point Daniel Defoe, a great master in giving literary expression to obsessions of his age. One of those obsessions was travel to the known and unknown lands. A century and a half after Las Casas and Sepúlveda met, Defoe published his *New Voyage Round the World*. Perhaps not surprisingly, the novel is an eposée to commerce. At the disposal of Defoe's trading flotilla, whose crew is composed of the leading European nations, is nothing less than the whole globe. Only gale could prevent these merchants from acquiring wealth, not the peoples on shores, »wild, naked, black, barbarous, perfectly untractable, and insensible of any state of life being better than their own«.<sup>4</sup>

Most telling is Defoe's description of the sailing merchants' encounter with the Ceylonese. »The people here we found willing to supply us with provisions; but withal so sharp, imposing upon us their own rates for everything, [...] that we were often provoked to treat them very rudely. However, I gave strict orders that they should not be hurt upon any occasion, at least till we had filled all our water-casks and taken in what fresh provisions we could get.« However, the natives were provocative beyond all patience, and the peace was finally broken. When a Ceylonese ran away with some fowls that had been already sold, two of Defoe's seamen »were so enraged to be so served, that they took up their pieces, for they had both fire-arms with them, and fired immediately after him, and aimed their shot so well, that though the fellow flew like the wind, he shot him through the head, and he dropped down dead upon the spot.« And because his fellow countrymen failed to show under-

<sup>4</sup> *De Foe's Works*, Vol. VI, p. 256.

standing for what had happened, more were killed.<sup>5</sup> Political theory could hardly present the problem better than this novel from the pen of a great ideologist of the new world order. Those writing theoretical fictions expounded ideas similar to those found in Defoe's *New Voyage*.

Halfway between Defoe, on the one hand, and Las Casas and Sepúlveda, on the other, émeric Crucé published his *Le nouveau Cynée*, a work that occupies a prominent place in the *canon* of European pacifism, and which won its author praise as a precursor of liberalism. In this treatise, men travelled, communicated, and traded freely across borders. The earth, in Crucé's vision of free trade, became one big commonwealth. Yet his commercial cosmopolitanism stumbled over »savages« – peoples whom he saw as making »no use of their reason«. Their mere existence, the author feared, could hinder commerce and welfare. If they continued to live in their brutish way, they would provoke civilized peoples who would, by a general consent, »attack them and kill them like wretched beasts in their dens. War against them,« Crucé declared, »will always be a good thing if it will not be possible to bring them to reason«. They represented a just object of war.<sup>6</sup>

The sixteenth-century Spanish controversialists did not speak commercial language,<sup>7</sup> but many of them would also call natives in lands beyond the sea wild beasts. These were not abusive words, but concepts. And what they had in common with Crucé, the early ideologist of the freedom to trade who did not yet feel obliged to hide the warlike face of the »pacific commerce«, was their concern with just war. The issue of just war played a key role in searching for an answer to the question of how to deal with the peoples Europeans encountered in the »Age of Discovery«, and it was prominent in both Las Casas' and Sepúlveda's reasoning.

In what follows, I will first briefly present the controversy between Las Casas and Sepúlveda, focusing on what I see as the thrust of their arguments. In the next section, I will then try to show that the views of these controversialists on

<sup>5</sup> *Ibid.*, pp. 257-8.

<sup>6</sup> *Le Nouveau Cynée*, pp. 51, 65-7; cf. pp. 33, 35.

<sup>7</sup> Vitoria and his pupils addressed the question of the »right to trade« in the framework of the *jus gentium*, under the title of the »right of society and natural communication«. See Pagden, »Dispossessing the barbarians«, p. 86 sq. A different language was spoken by the Genoese Capelloni who, soon after the dispute between Las Casas and Sepúlveda, in a reflection of direct relevance for my subject here, complained that the discovery of America had been very detrimental to the Christians and beneficial to the Turks: »Mais ce qui importe le plus, c'est que la plus grande quantité de cet or [brought to Spain from America] court ordinairement es endroits ou il y en a le plus. Et cestui là est celui qui iadis estoit continuellement porté & puisse encore aller en Leuant: Et en fin reduit de tout point au thresor du Turc, sans auoir esperance qu'vn seul ducat retourne iamais de cñ.« *Les divers discovrs*, pp. 276[b]-277.

the Indians were shaped by the tradition of thought in which Latin Christendom articulated its attitude towards the Muslims.

### *I. The dispute between Las Casas and Sepúlveda*

The dispute between Las Casas and Sepúlveda can be seen as the culmination of the debate in Spain triggered by the discovery of America. The two disputants presented their views to a *junta* of learned men, summoned by the Emperor Charles V at Valladolid, in 1550-51. The controversy is said to be a unique episode in the intellectual history of Europe because »then for the first, and doubtless for the last, time a colonizing nation organized a formal enquiry into the justice of the methods used to extend its empire«. <sup>8</sup> Such an approach has been contrasted to the methods employed by other European nations that, in their colonial policy, were not troubled by the voice of conscience (»a Las Casas did not appear in the French or English colonies in America«), and the debate at Valladolid has been interpreted in a broader framework of the »Spanish struggle for justice in the conquest of America«. <sup>9</sup>

The *junta* of Valladolid, and the two controversialists in particular, were to »inquire into and establish the manner and the laws by which our Holy Catholic faith can be preached and promulgated in the New World [and to examine] in what form those peoples may remain subject to His Majesty the Emperor without injury to his royal conscience, according to the bull of Pope Alexander.« <sup>10</sup> The dispute before the *junta* of Valladolid has been characterized as a debate over the rights of Indians, yet it was at least as much a debate over the emperor's right to a quiet sleep. In this sense, it was a debate over what Christians could do with, and to, infidels and pagans and still feel just and virtuous: an internal dialogue of Europeans with themselves »in the last century of faith and logical reasoning«. <sup>11</sup> Yet the debate did not only touch upon matters of conscience but also upon questions of faith. Christian Europe was divided into bitterly opposed religious camps, and the »over-arching concern« of the Spanish debate over the rights of Indians was to refute the Lutheran theory of *dominium* and sovereignty. <sup>12</sup> In this, other, sense, the Indians were pawns in arguing out the European confessional conflict.

<sup>8</sup> Hanke, *Aristotle and the American Indians*, pp. ix-x.

<sup>9</sup> Carro, »The Spanish Theological-Juridical Renaissance«, pp. 241 *sq.*, 245-6; Hanke, *The Spanish Struggle for Justice*.

<sup>10</sup> Giménez Fernández, »Fray Bartolomé de Las Casas«, p. 109.

<sup>11</sup> »[...] as opposed to 'la Raison'«. Bell, *Juan Ginés de Sepúlveda*, p. xi.

<sup>12</sup> Pagden, »Dispossessing the barbarians«, pp. 83, 97.

The question posed to Las Casas and Sepúlveda was phrased clearly and precisely; neither of them questioned the framework in which they were to argue. Their suggested solutions to the problem, however – if we stay within the dominant interpretation of the debate – were diametrically opposed. Las Casas, who had a conversion experience in the Indies and entered the Dominican order, has acquired the reputation of a great defender of the Indians because he was resolutely opposed to the use of violence against the indigenous peoples in the newly discovered world. He passionately denounced the *conquistadores'* atrocities and cruelty of the *encomienda* system; held the Indians to be civilized and rational beings; and contended that only the peaceful, nonviolent, spread of Christianity was just and permissible. Sepúlveda, a notable scholar of his time and a translator of Aristotle, is understood to have applied the philosopher's theory of natural slavery to the Indians. Because of their depravity of reason and civilization, he is said to have argued, it was right that the Indians be governed by those who were by nature their superiors, *i.e.*, the Spaniards. He is furthermore said to have argued that should the Indians refuse to submit to Spanish rule and continue to live in their brutish ways, sinning against nature, it would be just to wage war against them and to subdue them by force.<sup>13</sup>

Such an interpretation has constructed the figure of Sepúlveda as the one who »stepped forward to give comfort to Spanish officials and *conquistadores* by proclaiming the conquest just«; while Las Casas becomes »an apostle who burned with a fierce zeal on behalf of those newly discovered Indians and who defended them with all the weapons at his disposal«.<sup>14</sup> But such a simplifying interpretation has also created problems: its predominantly moralistic character has often diverted discussion away from analysis of the main characters' theoretical positions.

On the one hand, Las Casas' deserved reputation of a Human Rights Watch activist *avant la lettre* has obscured the theoretical dimension of his work; it has had to be stressed that he should also be considered »a political thinker«.<sup>15</sup> Sepúlveda, on the other hand, was a renowned scholar, but one involved in political controversy. And while engagement in *vivere politico* is to be expected of a good humanist, perhaps it was his involvement with what has become the wrong side that cast a shadow not only over him but also over what

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<sup>13</sup> See, for example, Hanke, *Aristotle*; and Skinner, *The Foundations*, Vol. 2, pp.142, 168 *sq.* A good summary of the dispute, not neglecting theoretical arguments involved: Losada, »The Controversy«, and »Introducción« to Sepúlveda/Las Casas, *Apologia*; the official summary of the dispute: Soto, »Controversia«.

<sup>14</sup> Hanke, *The Spanish Struggle*, pp. 114, 155.

<sup>15</sup> *Ibid.*, p. 153.

he actually said.<sup>16</sup> Thus, in short, we need to look closer at the arguments of both Las Casas and Sepúlveda.

If we first define Sepúlveda's theoretical position *per negationem*, he was not an Erasmian. His polemics with Erasmus – which gave occasion to portray Sepúlveda as a defender of »scholasticism, dialectics, of all that which the Erasmian wit had scorned as sheer logomachy«<sup>17</sup> – is of no immediate interest here. What is relevant is the popular understanding of Erasmianism as uncompromisingly rejecting war.<sup>18</sup> It is in this context that Las Casas can be seen as a »genuine Spanish Erasmian«,<sup>19</sup> and Sepúlveda's argument in *De convenientia militaris disciplinae cum christiana religione dialogus qui inscribitur Democrates* – that military profession and Christianity are not exclusive of each other and that Christians are allowed to wage war – as running contrary to Erasmian irenism.<sup>20</sup> Erasmians did not respond to Sepúlveda's challenge, and the argument itself put forward in *Democrates* had by then had a long life in the Christian doctrine, yet Sepúlveda nevertheless felt he had to defend his position. That defence, *Democrates alter* (followed by *Apologia*), already belonged to the Valladolid controversy.

Sepúlveda's views on war were of obvious relevance for the »Indian question«. Describing these views simply as an attempt to legitimize either the ethics of martial society, or the military spirit then already in retreat before commerce; or as an apology of one of the »aspectos del vivir hispánico« (with arms in the noble hands),<sup>21</sup> loses sight of this relevance. A much more promising approach is to see Sepúlveda in the framework of classical humanism.<sup>22</sup>

Sepúlveda's central concern was *vita activa*. He brought »the moral virtues fully within the social and political order inseparable from the *civitas*' scope«, and »possibly the single most constant feature of Sepúlveda's thought« was the relevance he ascribed to the laws, »the truest backbone of any common-

<sup>16</sup> Losada, »Introducción« to Sepúlveda, *Demócrates segundo*, p. xvi, has argued that Las Casas' (and his partisans') »machinations« silenced Sepúlveda's voice; and Bell, *op. cit.*, wrote »an apology [...] long overdue to a great man too often misunderstood and misinterpreted«. (But Las Casas, too, has been defended against his »detractors«: Comas, »Historical Reality«.)

<sup>17</sup> Bataillon, *Érasme et l'Espagne*, Vol. 1, p. 442.

<sup>18</sup> For a critique of such view, see my *Islam*.

<sup>19</sup> Losada, »Introducción« to *Apologia*, p. 26.

<sup>20</sup> Bataillon, *op. cit.*, Vol. 2, p. 254-5, has pointed out that the words Sepúlveda, in *Democrates alter*, put into the mouth of Leopoldus, the literary adversary, were reminiscent of *Querela pacis*.

<sup>21</sup> *Ibid.*, Vol. 1, p. 673, Vol. 2, p. 254; Hanke, *Aristotle*, pp. 13 sq., 128-9, n. 6.

<sup>22</sup> Fernández-Santamaría, *The State, War and Peace*, Ch. 7.

wealth«. As the law common to all men he understood natural law, constituted by *recta ratio*, acceptance of duty, and the obligations of virtue.<sup>23</sup> The light of right reason enabled the good man to discern what was good and just, from what is evil and unjust. This Sepúlveda held true not only of the Christian but of everyone who had not corrupted *rectam naturam* with depraved, perverse behaviour.<sup>24</sup> Thus Sepúlveda contained that »if the governance of a republic is to remain healthy it must take care not to exclude from its midst any form of natural law. To do otherwise would be barbaric and contrary to that human nature which is held in high esteem precisely because of its reasoning powers.«<sup>25</sup>

These principles were the basis on which Sepúlveda passed his judgement on the *vita activa* of the Indians. He found the life of the American natives »savage«, »comparable to that of the beasts«; he castigated, as »crimes damned by natural law«, human sacrifice (»their execrable and prodigious immolations of human victims to demons«), cannibalism, and »the custom of burying alive the wives of prominent men with their dead husbands«.<sup>26</sup> And because the Indians violated the law of nature, the Spanish humanist doubted their rationality. However, what Sepúlveda judged were institutions; what he passed his judgement on was what we could call Indian polities. »Seeking to dispel possible doubts that he may have been influenced by religious considerations Sepúlveda is at pains to stress that he is evaluating the *vita activa* of the Indians and not judging their spiritual shortcomings. Thus he points out that the natives' paganism is not the reason why they must be ruled by the Spaniards.«<sup>27</sup> The ground for the Spanish claim for *imperium* over America was the civic deprivation of the Indians, their lack of civility. The proto-civility of the Indians implied that they were »in a state of improvable backwardness«,<sup>28</sup> that they were perfectable, and humanism inspired – or sought to inspire – the Spaniards with the care for the welfare of those barbarians.

Because Sepúlveda saw reason as the *sine qua non* of civility – while the possession of Christian truth was not »a prerequisite to the emergence of sound political institutions«<sup>29</sup> – the American natives should, under the Spanish parental guidance, be led out of their sinful condition into civic existence based on reason and obedience to natural law. The humanist imperial program

<sup>23</sup> *Ibid.*, pp. 196-8.

<sup>24</sup> *Demócrates segundo*, pp. 11-12.

<sup>25</sup> Sepúlveda, *De regno*, quoted in Fernández-Santamaria, *op. cit.*, p. 197.

<sup>26</sup> *De regno*, quoted *ibid.*, p. 202.

<sup>27</sup> Fernández-Santamaria, *op. cit.*, p. 202-3.

<sup>28</sup> Losada, »Controversy«, p. 287.

<sup>29</sup> Fernández-Santamaria, *op. cit.*, p. 209.

was civic education. *Barbaras et inhumanas gentes* should be for their own good subjected to the rule of more humane and virtuous nations or princes, so that by the latter's example of virtue, laws, and prudence; they could be taught to embrace a more humane life, milder manners, and to cultivate virtue.<sup>30</sup>

Should the barbarians, whose natural condition demanded that they obey those embodying civic perfection, reject the magnanimity of the Spanish kings who did not want to punish their sins but desired their correction (*emendatio*), salvation and public well-being;<sup>31</sup> war could be justly waged against them. »By means of a just war we also seek to establish *imperium* over those after whose welfare we care, so that the barbarians – once deprived of their license for sinning, their customs contrary to natural law uprooted, exhorted toward a more humane way of life through a civil form of government – be kept reasonably within the boundaries of their duties.«<sup>32</sup>

Las Casas – if we do not overlook that »under the fire and brimstone of his sulphurous invective lay a closely reasoned structure of thought based upon the most fundamental political concepts of medieval Europe«<sup>33</sup> – differed from Sepúlveda in that he predominantly based his arguments in defence of the Indians from the violence of the *conquista* on the ecclesiastical legal tradition. He »marshalled a corps of medieval jurists to march for his cause«.<sup>34</sup> But he did not defend the Indians from the Spanish *imperium* over them. Like Sepúlveda, he did not question the right of the Spaniards' imperial presence in America. When Las Casas came to consider the justice of Spanish title over American lands, the central authority he referred to was *donatio Alexandri*, Pope Alexander VI's bull that invested Spain with *imperium* over America. For him, it was in papal bulls where the supreme and fundamental reason for Spain's imperial enterprise in America was to be found.<sup>35</sup> In his view, »[t]he kings of Castille and León have the most just title to imperial and universal sovereignty over the whole world of what is called the Indian Ocean and are justly sovereign and supreme princes, and universal lords and emperors over

<sup>30</sup> *Demócrates segundo*, p. 22. Fernández-Santamaría refutes the thesis that Sepúlveda advocated natural servitude for the American natives, and argues instead that the form of government he recommended for the natives of the New World »does not significantly depart from that recommended for the mass of the population in the Old«; and Sepúlveda's ideal imperial agents were men »modeling their lives after the Ciceronian ideal of public service«. *Op. cit.*, pp. 234, 233.

<sup>31</sup> *Demócrates segundo*, p. 43.

<sup>32</sup> *De regno*, quoted in Fernández-Santamaría, *op. cit.*, p. 218.

<sup>33</sup> Hanke, *The Spanish Struggle*, p. 153.

<sup>34</sup> Pennington, *The Prince and the Law*, p. 272. But Pagden has called Las Casas' defence of the Amerindian peoples »quasi-legal tracts«. *European Encounters*, p. 56.

<sup>35</sup> Carro, *op. cit.*, p. 271.

the natural kings and lords thereof, by virtue of authority, grant and donation [...] of the apostolic Holy See [...]. And this, and nothing else, is the juridical and substantial foundation upon which rests and is placed this title in its entirety.«<sup>36</sup>

In Las Casas' opinion, the Spanish crown had no legal ground to claim *dominium rerum* in America, but it had the right to *dominium jurisdictionis*.<sup>37</sup> Accepting and justifying Spain's sovereignty over the Indians, Las Casas strove to make the Spanish *imperium* as good and humane as possible.<sup>38</sup> He argued for imperialism with a human face. Taking seriously the noble idea of the Spanish kingdom (as expressed, for example, in the testament of Queen Isabella and in royal *cédulas*), he wished to purge the *conquista* of the evils that were done, he believed, against the will of the monarchs and their legislation. He was convinced that the principal aim of Spanish presence in America – the spread of the true faith, »la predicación y plantación de la sancta fe« – could be, and could only be, achieved with peaceful methods. His conviction was also that Spanish imperial sovereignty over the newly discovered lands was not detrimental to the rights and freedom of the Indians and their princes, »who could govern themselves as long as they complied with their duties and did not hinder the missionaries and the Indians' conversion or practice of the Christian religion«.<sup>39</sup> The acceptance of the Spanish King as their *universal señor* would make it possible for the Indians »to cleanse away the defects from which their commonwealths suffer, that they might enjoy a better liberty«.<sup>40</sup>

Thus cleansing away evil did not apply to the conquerors only, but to the conquered as well. And Las Casas' view of the conquered – framed in the admired declaration that »mankind is one, and all men are alike in that which concerns their creation and all natural things«<sup>41</sup> – was that »the savage peoples of the earth may be compared to uncultivated soil that readily brings forth

<sup>36</sup> Las Casas, »Tratado comprobatorio«, p. 352. On key categories – *auctoridad, concesión* and *donación* – see Staedler, *op. cit.*, p. 322.

<sup>37</sup> See Pagden, *Spanish Imperialism*, pp. 13-36; Pennington, *op. cit.*, p. 273.

<sup>38</sup> »Far from seeking to remove Spain and her kings' sovereignty from the New World, [...] Las Casas wished to improve the work of Spain to make it a greater work of unique grandeur.« Carro, *op. cit.*, p. 273.

<sup>39</sup> *Ibid.*, pp. 274-5.

<sup>40</sup> *Ibid.*, p. 274; Las Casas, »El octavo remedio«, p. 93.

<sup>41</sup> Hanke, citing Las Casas' *Apologética historia*, sees here his author »at his best«. Aristotle, p. 112. »Las Casas, in his bid to make the Indians familiar to his European reader, tries to erase difference and create a suitable natural and human environment for Cicero's 'republic of all the world'.« Pagden, *European Encounters*, p. 59.

weeds and useless thorns, but has within itself such natural virtue that by labour and cultivation it may be made to yield sound and beneficial fruits«. <sup>42</sup>

Las Casas' imperialism is usually seen as benign because he rejected the empire of conquest for empire of conversion. <sup>43</sup> But his metaphor comparing the »savage peoples« to uncultivated soil represents the Indians as even more passive than in Sepúlveda's argument. In contrast to the latter's civic education design, what we have here is a cultivation project: instead of education, *cultura*; instead of parental guidance, tilling the uncultivated mind.

Las Casas was as arrogant as Sepúlveda in his belief that the Spaniards and, generally, Christians, were »on the path of truth«. <sup>44</sup> At an early stage in his career he proclaimed as »the basic concept which was to guide all his action on behalf of the Indians«, <sup>45</sup> that »[o]ur Christian relation is suitable for and may be adapted to all the nations of the world, and all like may receive it«. <sup>46</sup> On declaratory level, *plantación* of the true faith, as Las Casas made it clear time and again, excludes violence. If the argument behind Sepúlveda's civic education was the sword, what pertained to Las Casas' cultivation was the symbol of peace, ploughshares. But ploughshares can easily be beaten into swords, <sup>47</sup> and even Las Casas himself envisaged the Spaniards in America building fortresses and argued that a limited number of soldiers should remain there to protect the missionaries. <sup>48</sup>

The Spanish debate over the »rights of the Indians«, it has been argued, was not provoked »solely by intellectual or moral disquiet but by peremptory need to organize – politically, socially, and economically – the new colonial empire«. <sup>49</sup> How much the two disputants served those pragmatic needs is difficult to ascertain. Las Casas is said to have influenced the spirit of the basic law of 1573, <sup>50</sup> that proscribed the word »conquest« and replaced it with the politically

<sup>42</sup> *Apologética historia*, quoted by Hanke, *ibid.*

<sup>43</sup> Hirst, »The evolution of consciousness«, p. 62.

<sup>44</sup> The phrasing is pope Innocent IV's, denying to the Muslims the right, which he claimed for the Christians, to preach the faith among non-believers: »cum ipsi sint in errore et nos in via veritatis«. Apparatus to X 3.34.8, in Appendix to Kedar, *Crusade and Mission*, p. 217.

<sup>45</sup> Hanke, *Aristotle*, p. 17.

<sup>46</sup> Quoted *ibid.*

<sup>47</sup> Cf. The oration of cardinal Bessarion, the humanist pope Pius II's aide, a century before the Valladolid dispute: »Now those who blaspheme against the Holy Ghost and commit the unforgivable sin of denying by word and sign that Christ is the Son of God must be punished by God's right hand, Now ploughshares must be beaten into swords, now the tunic must be sold and the sword bought [...]«. Piccolomini, *The Commentaries*, book VIII, p. 539.

<sup>48</sup> Carro, *op. cit.*, p. 275; Pagden, »Dispossessing the barbarians«, p. 96.

<sup>49</sup> Friede, »Las Casas and Indigenism«, p. 129.

<sup>50</sup> Hanke, *Aristotle*, p. 86.

correct »pacification«. How much such laws determined the behaviour of the Spaniards in America is another question. Yet as ideas, Las Casas' humanitarianism and Sepúlveda's humanism would have had equally devastating effects on the indigenous population if put into practice.<sup>51</sup> They expressed the fundamental attitude of what was by then Europe, towards the world outside populated by infidels and pagans. I will now turn to the question of how Las Casas and Sepúlveda related to the intellectual tradition in which this attitude had been elaborated.

## II. *The Indians and the Turks*

Intellectual life in the sixteenth-century Spain was dominated by the Spanish theological and juridical renaissance. Las Casas and Sepúlveda are usually discussed in the context of this renaissance, with some commentators questioning how representative they were of that intellectual milieu. Thus, for example, it has been argued that »Las Casas was not the central figure of the tradition in question, and indeed lacked the standing to be such«; and that Sepúlveda represented »the old European ideology, superseded in Spain by men like Francisco de Vitoria and Domingo de Soto«.<sup>52</sup>

Such qualifications may help us to better understand Las Casas and Sepúlveda. But it is misleading to see Sepúlveda as »ill advisedly« entering an »alien field« and arguing »alien ideas that he simply borrowed from the old Europe«.<sup>53</sup> On the one hand, the theologico-juridical renaissance in Spain (to which Sepúlveda was indeed alien) was itself rooted in medieval intellectual traditions: it is only the stress historians have laid on what was – or seemed – new in that renaissance that have disappeared its medieval lineage from our sight. On the other hand, Las Casas and Sepúlveda themselves extensively referred to, and embedded their arguments within, doctrines and ideas of medieval Europe.<sup>54</sup> They both quoted, in support of their disparate positions, Pope Alexander VI's bull *Inter caetera*,<sup>55</sup> thus invoking a tradition running back to the eleventh century.<sup>56</sup> They backed their arguments with the *auctoritas*

<sup>51</sup> Menéndez Pidal characterized the Valladolid controversy as the struggle between the humanitarianism of Las Casas and the humanism of Sepúlveda. Hanke, *Aristotle*, p. 95. (More than four centuries later, Serbian humanists designed a war of conquest against Bosnia; and Serbia's Western allies are waging humanitarian aid against the unfortunate country.)

<sup>52</sup> Carro, *op. cit.*, p. 247.

<sup>53</sup> *Ibid.*

<sup>54</sup> »Las Casas exploited a tradition supporting his contention in the writings of medieval jurists that stretched back to the thirteenth century.« Pennington, *op. cit.*, p. 272.

<sup>55</sup> See Staedler, *op. cit.*; Muldoon, *op. cit.*, p. 137 sq.

<sup>56</sup> »Las Bulas Alejandrinas de Partición, de 1493, constituyen una de las últimas aplicaciones

of pope Innocent IV and Hostiensis, not to speak of lesser figures central to the development of Christian doctrine regarding the non-Christians. In short, the Valladolid disputants did not borrow »alien ideas« from »the old Europe«. Rather, the three centuries from Innocent IV and the Spanish debates over the Indians »formed a coherent period in the development of European attitudes toward non-Europeans«. <sup>57</sup> Those ideas were not »alien« to the world in which Las Casas and Sepúlveda lived; and the discovery of a new world did not simply turn the medieval Europe into »the old Europe«. The opposite was, rather, true: there was a prominent presence of the middle ages in the conquest of America. <sup>58</sup>

The basic structure of the argument regarding the extra-European worlds and peoples, canonically formulated in the mid-thirteenth century, was not shaken by the discovery of America. The discovery was not a break with the past. The immediate impact of the *descubrimiento* on Europe was all but revolutionizing. Elliott has convincingly argued that, »at least so far as fundamental political transformations are concerned« – »[t]he refusal of states to accept the continuance of any form of subordination to a supra-national ecclesiastical authority; the absolutist tendencies of sixteenth-century princes; the development of new theories and practices to regulate relations between independent sovereign states – all these developments are entirely conceivable in a Europe which remained in total ignorance of the existence of America.« <sup>59</sup>

It appears to me that the idea of the centrality of discovery of America for European history is less a result of the discovery itself than a product of the rise of the »Atlantic World« and its dominance over the globe, sealed by the American and French revolutions. The centrality of the discovery of America was a work of interpreters – among whom historians played a key role – not discoverers and conquerors. Francisco López de Gómara's statement, offered up to the Emperor Charles in the dedication to his *Hispania victrix* (1552), that the discovery of America had been the greatest event since the creation of the world (save the incarnation of God), <sup>60</sup> was merely the opening peal of the history workshop accompanying the formation of the Atlantic-centred world.

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prácticas de una vieja y extraña teoría jurídica, elaborada explícitamente en la corte pontificia a fines del siglo XI [...] conforme a la cual *todas las islas* pertenecen a la especial jurisdicción de San Pedro y de sus sucesores, los pontífices romanos, quiénes pueden libremente disponer de ellas.« Weckmann, *Las Bulas*, pp. 32-3.

<sup>57</sup> Muldoon, *op. cit.*, p. 153.

<sup>58</sup> Weckmann, »The Middle Ages in the Conquest of America«.

<sup>59</sup> *The Old World and the New*, p. 79; cf. *Spain and Its World*, Part I.

<sup>60</sup> »Muy soberano Señor: La mayor cosa después de la creación del mundo, sacando la encarnación y muerte del que lo crió, es el descubrimiento de Indias.« Quoted in Hanke, *Aristotle*, p. 124 n.7; cf. Pagden, *European Encounters*, Ch. 3.

A history workshop that dumped European history upon Others who had no reason to be concerned with it, but were used by Europeans to construct an encounter with themselves.<sup>61</sup> (To what avail is not at issue here.)

When Las Casas and Sepúlveda exchanged arguments in Valladolid, America was still of little interest to Europe. European history, as *European* history (that is, the self-awareness of that new collective entity that had succeeded the *respublica christiana*), was at its core a history of imaginary and real warfare against Islam. What Europe, then, was far more interested in than America, was the Orient, the Muslim world, the representation of which had become the »Turk«. Far from being a break with that history, the discovery of America was caught into its symbolic nets. In more than one sense, the discovery was »an indirect byproduct of the crusading movement«,<sup>62</sup> and the argument that the fall of Constantinople is to be seen as a more decisive »turning point« in European history than the discovery of America, is not to be too easily dismissed.<sup>63</sup> The results of Atkinson's study of the sixteenth-century French literature may be seen as indicative not only for France. The study showed that there were far more books published on the Turks, and also on the East Indies and Asia, than on America; that there were twice as many publications on the Turks as on the New World; and four times as many books devoted to the Turks and Asia, than to America.<sup>64</sup> However, for my argument here, this is circumstantial evidence.

Closer to my subject is the evidence of how much the *conquista* was seen, also from within, as a continuation of the *reconquista*.<sup>65</sup> That Spain had been »the land of perennial crusading« was not inconsequential.<sup>66</sup> And because the

<sup>61</sup> »[T]here is a real sense in which the most important encounter made by Europeans in the age of Enlightenment was the encounter with themselves, with their pasts and with their own historicity, so that it was into these highly sophisticated and even self-critical schemes of historiography that they sought to integrate, or gave up trying to integrate, the cultures with whom they came in contact. The Others found all the problems of European history dumped upon them [...]« Pocock, »Nature and History«, p. 8.

<sup>62</sup> Atiya, *Crusade*, p. 128. Cf. Villey, *La croisade*, p. 265: »Qui sait dans quelle mesure la notion de croisade n'éclairerait pas l'histoire d'Espagne, jusqu'à une époque tardive, y compris celle des Grandes Découvertes?«

<sup>63</sup> For example, Toffanin, »Introduzione«, p. ix. But already the occupation of Jerusalem by the crusaders was glorified in words very similar to Gómar's (see n. 60): »But apart from the mystery of the healing cross, what more marvelous deed has there been since the creation of the world than that which was done in modern times in this journey of our men of Jerusalem?« I quote Riley-Smith's translation of Robert the Monk, *Historia Iherosolimitana*, in *The First Crusade*, p. 140.

<sup>64</sup> Atkinson, *Les nouveaux horizons*, pp. 10-11. Cf., especially, Göllner, *Turcica*, Vol. III; Rouillard, *The Turk*; also Elliott, *The Old World*, p. 12; Hanke, *Aristotle*, p. 2.

<sup>65</sup> Muldoon, *op. cit.*, pp. 137, 152; Hirst, *op. cit.* p. 53.

<sup>66</sup> Weckmann, »The Middle Ages«, p. 130.

*reconquista* had often been perceived as an integral part of the great enterprise of the »recovery of the Holy Land«,<sup>67</sup> it is not surprising that Columbus, when he discovered the earthly Paradise, estimated the grandeur of the wealth there with eyes turned back East: as big enough to finance a huge army which could retake possession of the Holy Sepulchre.<sup>68</sup> The *conquistadores* self-consciously and explicitly acted out heroisms of El Cid; they were helped by crusading saints; and in their celebrations in New Spain they knew to stage the siege of Rhodes by the Turks.<sup>69</sup> Yet the point I want to make is that the »Turks« functioned as an organizing principle in the internal economy of Las Casas' and Sepúlveda's reasoning.

In 1529, Sepúlveda wrote a small treatise addressed to Charles V, exhorting the Emperor to wage war against the Turks. He deplored Turkish tyranny<sup>70</sup> and argued that war against the Turks was an indisputable example of just war. Compared to this war, all other wars in which Christians were engaged, paled: »It is neither glory nor wealth that is at stake here but fatherland, home, liberty, salvation, and religion.«<sup>71</sup> And as already the title shows, *Ad Carolum V ... ut fac'a cum omnibus Christianis pace bellum suscipiat in turcas*, Sepúlveda firmly anchored his *Cohortatio* in the ideological matrix that had by then long been the European spiritual common good: that peace had to be made within Christianity so that Christians could go to war against the Turks.<sup>72</sup> *Democrates primus*, written a few years later, was Sepúlveda's response to a student protest that he had witnessed when visiting the Colegio de San Clemente, an elite Spanish school in Bologna where he himself had studied. At a time when Spain was at war with the Turks, the students claimed that »all war, including defensive war, is contrary to the Catholic religion.«<sup>73</sup> Sepúlveda, in his first *Democrates*, refuted this, to his mind, scandalous opinion. The views he formulated in this context he would later, in *Democrates alter*, apply to the Indian question, extending the treatment that Europeans and their Christian republican predecessors had conceived for the Muslims, to the Amerindians. There is no doubt, as an expert has concluded, that Sepúlveda »used the

<sup>67</sup> See Villey, *op. cit.*, p. 193 *sq.*, especially p. 199, on the *reconquista* seen as »une seconde marche vers Jérusalem«.

<sup>68</sup> Weckmann, »The Middle Ages«, p. 132. »Columbus himself was deeply rooted [...] in the medieval crusading tradition.« Muldoon, *op. cit.*, p. 136.

<sup>69</sup> Pagden, *European Encounters*, pp. 78-9, *cf.* 62; Weckmann, »The Middle Ages«, pp. 133-4.

<sup>70</sup> »Sepúlveda, unacquainted with the ways of modern income taxation, considered this an intolerable tyranny: 'O novum genus tyrannidis et prioribus saeculis apud humaniores gentes inauditum! O avaritiam intolerabilem!« Bell, *op. cit.*, pp. 8-9.

<sup>71</sup> Fernández-Santamaria, *op. cit.*, pp. 219-20.

<sup>72</sup> See Mastnak, *op. cit.*

<sup>73</sup> Losada, »Controversy«, p. 281.

arguments for the war against the Turks to justify the war against the Indians.«<sup>74</sup>

Las Casas' argumentative strategy was less linear. While sharing basic premises with Sepúlveda, he desired to get to the opposite conclusion. He held the same views of the Turks as did his adversary, but unlike him he claimed that the Indians were not »Turks« and should therefore not be treated like Turks. The construction of difference between the Muslims and the natives of America was the axis of his reasoning, and if one speaks of his love for the Indians, one should also speak of his hatred of the Turks. Indeed, his love for the former fed on his hatred of the latter.

It has been argued that Las Casas, in his insistence on the difference between the Indians and the Turks, was more typical of Spanish political discourse of the age than Sepúlveda; that the Spaniards' attitude towards the American Indians looked »remarkably mild« compared to their attitude towards other non-Christians known to them;<sup>75</sup> and that it was »fortunate for the Indians that Las Casas, along with Francisco de Vitoria and Domingo de Soto, emphasized the great distinction between wars against the Indians and those against the Moors and Turks«. <sup>76</sup> Given the prominence of the just war theory in those times, the fundamental distinction between wars was that between just and unjust wars. Because a necessary condition of a just war was that it be conducted by legitimate authority,<sup>77</sup> the nature of Christian wars against non-Christians depended not only on crimes of which non-Christians were deemed guilty and could be considered just causes of war; but also on whether Christian rulers could claim legal authority over particular non-Christians. Las Casas' desire was to prove that just war could not be waged against the American Indians. Thus he had to demonstrate that the Indians were to be exempted from those cases in which the Church and Christian princes thought that they could claim juridical authority over non-Christians.

Las Casas assertion was that the Church gives all hope of salvation, and that, in this sense, »all the infidels hope for the Church's power of exercising jurisdiction, but in a very different way, depending on their genus or species«. He also

<sup>74</sup> *Ibid.*, p. 301.

<sup>75</sup> With regard to the »hate speech«, the Laws of Burgos (1512) forbade that an Indian be called *perro* (dog), but another curse, *perro moro* (Moorish dog) seems not to have been proscribed. (Cf. Hanke, *Aristotle*, p. 15.)

<sup>76</sup> *Ibid.*, p. 107. He should have added the persecution of the Jews. The year of the discovery of America was also the year of the fall of Granada, followed by the expulsion of Moors and Jews, so that a decade later Spain was religiously cleansed. Cf. Shannon, *Visions*, p. 12.

<sup>77</sup> »The most crucial issue in any just war theory is the locus of authority capable of waging war.« Russell, *The Just War*, p. 68.

made it clear, however, that the Church did not exercise jurisdiction over all infidels.<sup>78</sup> Following this leading idea, Las Casas classified infidels into, firstly, those who lived under, and were subjects of, Christian princes, such as the Jews and the Moors; secondly, those who lived in kingdoms subjected to infidel princes, such as the Moors, Turks, Scythians, Persians and Indians; and, thirdly, heretics. The first and the third class, he argued, were under Christian jurisdiction,<sup>79</sup> but not the second. Consequently, neither Church nor Christian princes might castigate pagans living under their infidel princes for their idolatry and crimes, because Christian rulers did not have juridical authority over them.<sup>80</sup>

Las Casas then constructed another tripartite classification to consider exceptions to the rule that where the Church had no jurisdiction over infidels it had no right to punish. In two out of these three classes the Church had jurisdiction over infidels, yet of a different nature. The first class of this scheme were those infidels who lived and worked within Christendom and were therefore »subjects of the Church or of a member of the Church, for example, of a Christian prince«. <sup>81</sup> Over them, the Church had actual legal authority, but not over the third class that fell under the title of »voluntary jurisdiction« – the jurisdiction, that is, which could not be exercised over any person against his will. Such was the jurisdiction of the pope, the vicar of Christ, whose mission was to preach gospel to all the people of the world. This jurisdiction was voluntary because no one could be compelled by the Roman pontif to accept the faith; they could only peacefully and gracefully be exhorted and invited to accept it.<sup>82</sup> This third class could be easily translated – with far reaching consequences – into *jus gentium*, with the right to travel, *jus peregrinandi*, and the right to preach, *jus praedicandi*, as central tenets.<sup>83</sup> Yet this is another subject. Of interest here are exceptions to the second class. To this class belonged the infidels who were not under Christian authority but over whom (as Las Casas claimed) the Church could exceptionally assume jurisdiction, which was almost synonymous with the right to make war.

Las Casas divided these exceptions into six cases: First, when infidels possessed dominions that they had unjustly taken from Christian peoples, espe-

<sup>78</sup> *Apologia*, pp. 229-30. In original, fol. 110v: »Omnes ergo cuius generis aut species existant infideles ad iudicium spectant ecclesiae: sed multum differenter. [...] non omnes infideles esse de ecclesiae iudicia vim potestate.«

<sup>79</sup> *Ibid.*, pp. 145-6.

<sup>80</sup> *Ibid.*, pp. 158, 164, 182.

<sup>81</sup> *Ibid.*, p. 192.

<sup>82</sup> *Ibid.*, p. 306.

<sup>83</sup> Cf. Pagden, *Spanish Imperialism*, p. 21 sq.

cially if Christians still lived in those territories. Second, when pagans practised idolatry in provinces that had been in former times under Christian jurisdiction, and (in Las Casas' words) infested with their nefarious and abominable vices regions which had been consecrated by the sacrifice and blood of Christ; where the true God had been worshiped and sacred sacraments administered.<sup>84</sup> Third, when infidels blasphemed against Christ or saints, or consciously spoke maliciously and contemptuously, with hatred and scorn, against the Christian truth.<sup>85</sup> Fourth, when pagans hindered the propagation of the faith »de per se« and not »per accidens«, and with word or deed attacked those who wished to embrace, or had embraced, the faith; and when they understood what was preached to them and still mistreated the preachers.<sup>86</sup> Fifth, when infidels with their armies invaded Christian provinces or infested Christian littoral, and in great numbers, like the Turks, molested, attacked and troubled Christendom, or, like Saracens, made frequent incursions into Christian territory.<sup>87</sup> Sixth, when infidels unjustly oppressed innocent persons, the Church had the right to exercise coercive jurisdiction to liberate the victims.<sup>88</sup>

The careful formulation of these exceptions made it relatively easy to prove that Christians had no right to make war on the Indians. The first and the second case were an obvious description of the situation in the Holy Land, as seen through European eyes. The infidels Las Casas had in mind in the third case were Jews and Saracens, whom he saw as blaspheming Jesus Christ with the intention of preventing the acceptance, and impeding the spread, of the Christian faith. The fourth case, like the third, was an infringement of the right to preach. But while the Muslims were supposed to know what was preached to them,<sup>89</sup> their assumed ignorance saved the Indians from Christian coercion. While the fifth case left no doubt about Indian innocence, it took some ingenuity for Las Casas to prove his sixth case: that the notorious Indian human sacrifices did not constitute just cause for war against them.

Las Casas' demonstration that war against the Indians was illicit rested on his bellicosity against the Turks, Moors and Saracens. It has been pointed out that he was »in no sense a pacifist«, because he considered some wars just: those,

<sup>84</sup> *Apologia*, pp. 193-5.

<sup>85</sup> *Ibid.*, pp. 230-1.

<sup>86</sup> *Ibid.*, pp. 232, 234.

<sup>87</sup> *Ibid.*, p. 244.

<sup>88</sup> *Ibid.*, p. 247 sq.

<sup>89</sup> That was not a completely groundless supposition, for »Oriental studies«, as maid servants of the *recuperatione Terrae Sanctae* enterprise, had been by then more than two centuries old – if we accept that Ramon Llull was their »father« (Atiya, *The Crusade*, p. 86). But see Smith, *Christians and Moors*, Vol. II, p. 60 sq., on the study of Arabic in the thirteenth century.

for example, against Mohammedans and heretics.<sup>90</sup> But only common sense sees a contradiction between bellicosity and pacifism. Las Casas was a spokesman of a world that uses war and peace as alternate means of subjecting Others. Why he chose peace for the Indians is a question I will not try to answer here; my point is that he could argue for peaceful treatment of the Indians because he accepted the justice of war against the Muslims.

In Las Casas' views of the Muslims, we can discern a mentality hostile to the »Turks« that he shared with his world, and a formal expression of that mentality that was all his own. On the one hand, Las Casas did not spare invectives when talking of Muslims whose impiety was, in his and his contemporaries' opinion, adverse to divine and natural law.<sup>91</sup> He also used the Muslim name as invective, for example, when he charged Sepúlveda with the desire to spread the faith with »Mohammedan method«, that is, »with death and terror.«<sup>92</sup> (But he did not shrink from authorizing the use of methods he called Mohammedan against the Mohammedans themselves.) There is nothing surprising about this. This mentality, not specific to Las Casas, simply provided substance to the formal structure of his argument.

His argument, on the other hand, is surprising. On the road to proving that just war could not be conducted against the Indians, Las Casas ended up with a general rejection of the idea of conquest as such. He postulated that »there should be no talk of conquest, as if the Indians were African Moors or Turks, but only the preaching of the gospel of Christ 'with gentle and divine words'«. <sup>93</sup> He argued that the very term conquest was »tyrannical, Mohammedan, abusive, improper and infernal« and that, consequently, conquest could be conducted only against »Moors from Africa, Turks, and heretics who seize our lands, persecute Christians and work for the destruction of our faith«. <sup>94</sup> For the argument to stand, it had to be backed by a formal authority. What is surprising is that Las Casas chose, in support of his vindication of the rights of the Indians, an *auctoritas* who denied that infidels had any rights at all.

The legal question central to the Church doctrine regarding infidels was whether they possessed the right to lordship and property – that is, whether they were rightful owners of the lands they inhabited and whether they could

<sup>90</sup> Losada, »Controversy«, p. 283, who is happy to note that, with regard to the Muslims, Las Casas agreed with Sepúlveda (p. 293).

<sup>91</sup> *Apologia*, pp. 222, 231, 353

<sup>92</sup> *Ibid.*, pp. 338, 342. Hanke, *Aristotle*, p. 91, called attention to Franciscan Juan de Silva who »argued, like Las Casas before him, that preaching the faith under the protection of the sword was to adopt the methods of Islam«.

<sup>93</sup> Carro, *op. cit.*, p. 275.

<sup>94</sup> Pagden, *European Encounters*, p. 79, citing »Memorial de los remedios« (1542).

legitimately rule themselves. In canonical tradition, there was a sharp division on this issue between Innocent IV, who maintained that by the laws common to all men, private property and self-government were the right of all men (*pro omni rationabili creatura*); and Hostiensis who asserted that »with the coming of the Christ every office and all governmental authority and all lordship and jurisdiction was taken from every infidel lawfully and with just cause and granted to the faithful through Him who has the supreme power and who cannot err«. <sup>95</sup> The implications of the two positions are clear for the question: Was it or was it not licit to invade lands possessed by infidels and establish Christian rule over them? Hostiensis himself concluded that, »according to the law, the infidels have to be subjected to the faithful«. <sup>96</sup>

Las Casas chose to positively refer to Hostiensis. That was not an obvious choice. For it was rather in the tradition of Innocentian doctrine that Vitoria, and later Suárez, restrained the right of the Spaniards to make war against the Indians. <sup>97</sup> While Hostiensis formulated an integralist theory of holy war, »opposing without mercy one religion to other religions«, and declared that war against infidels is always just; <sup>98</sup> for Innocent and his followers, war against the unfaithful was just only under certain conditions. <sup>99</sup> Nor was Las Casas' choice opportunistic: Hostiensis had been discredited more than a century ago. <sup>100</sup> Yet it was nevertheless a good choice or, at least, one Las Casas knew how to make good. His comment that Hostiensis' opinion »does not apply indiscriminately to all infidels but to those only who existed in Hostiensis' own time«, <sup>101</sup> let him have all he wanted: war and peace.

The paradox of Las Casas' legalism is that he had to find an extra-legal

<sup>95</sup> »Mihī ... videtur quod in adventu Christi omnis honor et omnis principatus et omne dominium et jurisdictio de jure, et ex causa justa, et per illum qui supremam manum habet nec errare potest, omni infideli substrata fuerit et ad fideles translata.« Hostiensis, *Lectura*, quoted in Villey, *op. cit.*, p. 31 (English translation in Muldoon, *op. cit.*, p. 16). Generally on the subject: Muldoon, *op. cit.*, Ch. 1; Russell, *op. cit.*, especially p. 199sq.; Brundage, »Holy War«, pp. 121-2.

<sup>96</sup> »Unde constanter asserimus, quod de jure infideles debent subijci fidelibus.« Hostiensis, *l. c.*

<sup>97</sup> Cf. Villey, *op. cit.*, p. 35.

<sup>98</sup> *Ibid.*, p. 32.

<sup>99</sup> In case the Saracens »terras christianorum invasissent vel occupatas tenerent, vel christianos hostiliter impugnarent, tunc tam per ecclesiam quam per principes ... potest eis justum bellum indici.« Innocent IV, *Apparatus*, cited *ibid.*, p. 35. Cf. Russell, *The Just War*, pp. 199-200.

<sup>100</sup> As a result of the dispute between Paulus Vladimiri, speaking for the Polish King, and the Teutonic Knights in the council of Constance, »Hostiensis' views on *dominium* were no longer acceptable«. Muldoon, *op. cit.*, p. 119. Russell, »Paulus Vladimiri's Attack«, p. 253, has noted that the problems Paulus addressed – the legitimacy of infidel dominion and the just war – »would soon resurface with the European conquest of America«.

<sup>101</sup> *Apologia*, p. 194.

existence for the Indians in order to be able to defend their peaceful treatment. His choice, and interpretation, of Hostiensis, »the father of the juridical theory of crusade«,<sup>102</sup> was ingenious. His argument that Hostiensis' law was still in force with regard to the Muslims implied that the crusade was not *passée*, but that it did not apply to the Indians.

A further paradox lies in Las Casas' reference to the crusading tradition – the materialization of an attitude towards the Muslims that was ultimately outside the realm of law. From the very beginning, there was a tension between canon law and the crusade: »So alien was the crusade ideology to the thinking of the canonists that it was not until the thirteenth century that it was incorporated into the canon law tradition of the just war.«<sup>103</sup> The moment of that incorporation, personified in Hostiensis, was Las Casas' reference point. Yet the question remains of how much the canon law had actually tamed »the fanaticism of the crusade« (only »distantly stirred by Augustine's anti-Donatist writings«).<sup>104</sup> The »Turkish question«, the solution for which was the crusade, could not be wholly captured by law. It was the surplus that evaded legal codification, the *imago Turci*, that made it possible for Las Casas to preach war against the Muslims and peace for the Indians.

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<sup>102</sup> Villey, *op. cit.*, p. 257. Cf. Russell, *The Just War*, pp. 201 *sq.*, 206.

<sup>103</sup> Gilchrist, »The Erdmann Thesis«, p. 38.

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# ANALOGÍA

Revista de Filosofía.

ANALOGIA es una revista de investigación y difusión filosóficas del Centro de Estudios de la Provincia de Santiago de México de la Orden de Predicadores (Dominicos). ANALOGIA publica artículos de calidad sobre las distintas áreas de la filosofía.

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Colaboraciones (artículos, notas, reseñas) y pagos enviarse a:  
Apartado postal 23-161  
Xochimilco 16000 México, D.F.  
MEXICO

Periodicidad semestral. Suscripción anual (2 números): 35 US dls.

# The Role of Fictions in Law

*Hume, Adam Smith and Bentham*

Gorazd Korošec

Law is the fundamental institution of every society and the very functioning of social life is dependent on its legitimacy. Therefore it should not be surprising that philosophers of law and moral and political theorists have always involved themselves in discussions about foundations and justification of law, its legitimacy, scope, form, its limits and obligatory force. And the notion of »fictions« plays a crucial role in these discussions: it is either used as an argument against theoretical opponents or its role in the normal functioning of law is considered in an analysis of legal theory and practice.

We will take a look at the arguments of three theorists of law, living and working in an age when the transformation of legal theory from early modern natural law theories to modern utilitarian legal theories was taking place. Hume reformulated the natural law theory and rejected ideas of social contract which were built on natural law, Smith provided new criteria for a science of natural jurisprudence, and finally Bentham has accomplished this transformation with his critique of existing legal institutions and proposals for their general reconstruction on utilitarian grounds.

All of them regard some of the central ideas of the natural law theory as inappropriate, as mere »fictions«, and to some extent we could say that their theories represent an attempt to come to terms with the »fictional« character of the natural law theories. The result of this attack on the »fictivity« of natural law is somewhat paradoxical; all of them have to acknowledge that »fictions« play a necessary role in legal theory and practice, although they articulate this role in a different ways. We will therefore try to outline their respective theories of »fictions« and their role in legal and wider philosophical theory.

In a sense, this critique of natural law and its »fictions« could also be understood as inherent transformation or reformulation of the natural law theories. The fact is that some basic natural law assumptions find their way into, and survive, in the theories of their critics. There is some truth in what Schumpeter remarks somewhere, namely that Bentham's utilitarianism is just another theory

of natural law. And also it is true that many of the legislative efforts of utilitarian liberals consist of proposals to include in the body of law some basic natural law categories. This process has also been termed *Positivierung der Naturrechts*, positivisation of natural law. Our own contemporary ideas about human and an individual's rights are of course heirs of these natural law ideas too. We understand them as being self-evident and we feel no need to prove them, just as the natural law theorists, our ideological ancestors, understood them.

So this inquiry into the criticism of the »fictional« character of natural law could help us to reflect upon our own understanding of political and legal theory and maybe even give some contribution to the open post-modern controversy. Discussion about »fictions« in political and social theory has indeed become fashionable. But still we have to be cautious in using this term. Even if we say that (political) authority »does not exist«, as Foucault did, and that it is a mere »fiction«, the question remains, why do those who understand authority as »fiction« attack or criticise it so strongly.

Accusations of legal »fictions« are not new or a privilege of a time or the authors who we wish to examine. Ideas on which religious and political authorities have found their case for earthly obedience to the law and a particular organisation of power, government, society and religious life and sanctions, have all been considered as »fictions« on the part of their opponents. Scholastic ideas of natural law, which were reformulated classical Roman ideas of natural law, were regarded in a similar way by their adversaries, early modern natural law theorists, such as Grotius. His ideas and those of his followers such as Hobbes, Selden, Pufendorf and Locke, have in turn exercised an important influence on social, political and legal theory during the following centuries, encouraging some of them, including Rousseau and Kant, to develop on this foundation theories of social contract, again to be recognised as »fictitious« by subsequent critics. I have examined some of these developments in my previous articles and this present one is intended as a continuation of this effort.<sup>1</sup>

Apart from natural law theories, the main reference of authors which I wish to examine here is Common Law as existing established legal theory and practice. Although some influence of the natural law theory was in previous times

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<sup>1</sup> These articles were »Hobbes and the theory of social contract as the context for Kant's political philosophy«, *Filozofski Vestnik* 2, Ljubljana 1992; »Kant, razsvetljenstvo in razvoj ter iztek teorije družbene pogodbe«, *Filozofski Vestnik* 1, Ljubljana 1993; »Social Contract and Public Opinion – Two Political Concepts of the Enlightenment«, *Filozofski Vestnik* 2, Ljubljana 1993 and »Hugo Grotius in razvoj teorij naravnega prava«, *Filozofski Vestnik / Acta Philosophica* 1, Ljubljana 1994.

present even in Common Law circles, exercised for example by Selden's friend, Chief Justice John Vaughan, and even young Sir Matthew Hale before the Restoration,<sup>2</sup> Common Law was articulated, mainly in the works of Sir Edward Coke, Sir Matthew Hale and later Sir William Blackstone, as traditionalist, immemorial law, based on the reason of the centuries, expressed in his institution of case decisions and role of legal precedents as legal rules. It was interpreted as customary, unwritten law, expressing common rules and collective rationality, as opposed to statute law. Its nature was conventional and it was closely bound to legal practice.

Some of these features of Common Law have already led Hobbes to involve himself in controversy with Common Law theorists, opposing them from his rationalist and positivist view of rational and written law. Latterly radicals have returned to natural law arguments to attack the Common Law tradition. Hume afterwards defended the basic premises of the Common law framework, Smith has provided new normative criteria for jurisprudential reform, and finally Bentham bitterly attacked Common Law as utterly »fictitious«, demanding statute law to take its place.

We have outlined the basic developments in legal theory of that time and we can now turn to examining Hume's moral and political theory.

### Hume

Hume's well-known scepticism allows him to clearly see the elements of »fiction« in the theories of his opponents and predecessors. He has rejected some of their »fictitious« ideas, but accepts others and in a sense has, as Buckle argues, grounded natural law theory on his new moral psychology.<sup>3</sup> He does not deny the influences of, and links with, the natural theory and he even says that his theory of the origin of property is basically the same as that of Grotius.<sup>4</sup>

He wanted to avoid some of the excesses of natural law rationalism and therefore regards rules of justice as conventions, justice itself being artificial, not natural virtue, therefore the product of development of legal and social institutions. He defends existing social institutions, because he regards them as

<sup>2</sup> These influences are examined in Richard Tuck, *Natural Rights Theories*, Cambridge University Press, Cambridge 1979, p. 111 sq.

<sup>3</sup> Stephen Buckle, *Natural Law and the Theory of Property. Grotius to Hume*, Oxford University Press, Oxford 1991, p. 295 sq.

<sup>4</sup> David Hume, *Enquiry concerning the Principles of Morals*, in *Enquiries concerning Human Understanding and concerning the Principles of Morals*, ed. L. A. Selby-Bigge, rev. P. H. Nidditch, Clarendon Press, Oxford 1975, p. 307 n.

being beneficial to all members of society and as a precondition for the improvement of arts and advancement of human relations.

He also defends Common Law as a legal frame for existing social institutions and interactions of citizens, although, as we will see, he gives it a different philosophical explanation and justification from that of the mainstream Common Law theorists. His idea of rules of justice being the unintended result of human moral actions was extremely influential in the following centuries, being adopted by many important social theorists, including some contemporary ones. Although this very idea could itself be regarded as »philosophical fiction«, it remains a fact that it is a very productive, fruitful and widely accepted »fiction«.

Postema is therefore right to see Hume in the context of Common Law theory,<sup>5</sup> as a theorist who gave this theory a new expression. Hume also rules out ideas of the state of nature as being »fictitious«, because man's first condition is already social, he does the same with ideas of social contract as »fictions« of convening *de novo*, he defends legal precedents as sufficient reasons for new judicial decisions and he demands perfectly inflexible rules of justice in order to thwart sensible knave who regard only his own benefits, even if it could be achieved by transgression of the rules of justice.

His argument against rationalist philosophers is founded on his basic insight that the role of reason in social and everyday life is strictly limited. Reason, according to Hume, cannot bring about the making of an agreement between people. Imagination must do the job and move us to action. And again, imagination is closely connected with »fiction«. These assertions about reason have of course developed against the background of Hume's theory of passions which direct human actions. This theory is developed in Hume's *Treatise*,<sup>6</sup> the third book, where specifically Humean understanding of justice is also developed.

Hume's aim in it is to answer the question, How could morality arise as a social, public and objective category from natural passion which is something private and subjective, and therefore how is the common world created out of private elements. But from the beginning he treats man in a social context and within the framework of social science, his approach is both psychological and social.

<sup>5</sup> Gerald J. Postema, *Bentham and the Common Law Tradition*, Clarendon Law Series, Oxford 1986, p. 81 sq.

<sup>6</sup> David Hume, *A Treatise of Human Nature*, ed. L. A. Selby-Bigge, rev. P. H. Nidditch, Clarendon Press, Oxford 1978.

Therefore we can reject the arguments that his other important work on moral theory, namely the second *Enquiry*, represents a sharp break with his previous theory of passions. It is indeed a fact that his theory of passions is declared unnecessary and abandoned in *Enquiry*, but this work also treats reason and sentiment as passions, and the concept of sympathy, which now has a wider meaning, is connected here with *artificial virtues*, not just with passions. But apart from this, basic elements of Hume's moral theory remain the same, and he confirmed this by republishing a short version of the *Treatise* argument under the title *A Dissertation of the Passions* after *Enquiry*.

For Hume, morality as a social category could only be accounted for in terms of an *observer*. We take someone's behaviour as a clue to his *character*, which is the real object of moral evaluation, based on the observer's sympathy. But we can also judge the character of a person with regard to the *imagined* effects of his actions, that which would become possible if actual external hindrances to his actions were removed. So we must produce *habitual rules* about connections between motives and behaviour. And when we judge we are, in order to communicate our evaluations, under the influence of actual spectators forced to approach the standpoint of an *independent* spectator.

Moral approval or disapproval are the names for *indirect* passions of love or hatred, arisen in the observer of moral actions, and they are *calm passions* (as opposed to violent ones).

Among the qualities subject to moral evaluation, those which are useful to others are termed *artificial virtues* and they are especially important because they include *justice*. And one of the most important questions in moral theory for Hume is the question of what are the motives for justice? The answer should explain the question of origin and the development of justice.

To avoid circular justifications of justice which refer to the sense of duty, which already presupposes the existence of justice, Hume searches for further answers. He respectively rules out the ideas that this motive could be *self-love*, *regard for public interest*, *benevolence towards mankind* or *benevolence towards a particular person*, as inappropriate, as »fictions«. The first is directly contrary to justice, the second, regard for public interest, is rejected, because there is no natural connection between justice and public interest, but only an artificial one, some acts of justice are only concern of two individuals, not public interest, and people in fact do not have public interest in mind while they consider their behaviour. Benevolence towards mankind does not exist, because we cannot sympathise with mankind in general. And the last idea, benevolence towards a particular person, is contrary to the main demand of justice, that it should be shown to friend and foe alike.

Because there is, therefore, *no natural motive* for justice, Hume concludes, »the sense of justice and injustice is not deriv'd from nature.«<sup>7</sup>

Therefore justice is an *artificial* virtue. It »arises artificially, tho' necessarily from education, and human conventions.« While passions emerge from nature, society generates artificial virtues.

Justice is necessary for social life and its origin is connected with the establishment of property and stability of property, but it is not naturally relevant to man. It became such because of his particular circumstances: exchangeability and scarcity of external objects and qualities of the human mind, dominated by selfishness and limited generosity.

Here again we come across »fictitious« ideas – philosophers have developed four »fictional« ideas that should illustrate the origin of justice. These are the idea of complete *abundance* in everything and the idea of the extreme *generosity* and *benevolence* of human nature; the other two are the direct reversals of the former two – a *shipwreck* situation, where seizing the means of one's safety regardless of the property limitations is no longer a crime, and the idea of a *society of ruffians*, where justice is no longer of any use and only violence can guarantee self-preservation. The first two ideas represent »the *poetical* fiction of the *golden age*«, which can only serve the fanatic ideas of enthusiasts, whereas the latter two represent »the *philosophical* fiction of the *state of nature*«. And both are »an idle fiction«.<sup>8</sup>

Hume has therefore affirmed his position on the conditions necessary for the development of justice by rejecting these ideas. He then proceeds with an argument that people's recognition that infringement and violation of someone else's property causes so much trouble, makes them abstain from such practice and *redirect* their *interested* passions, which may have previously led them to such acts of violence. Hume maintains that only passion or affection could control and counter-balance another passion.

This led people to enter a *convention* about stability of property, and justice arises out of such conventions. But these conventions are not explicit, rather they consist of a great number of individual just actions, followed and imitated by similar ones by other people. Justice is therefore a slow growth, it is developed through the ages, it arises gradually, by slow progression.

It is true that Hume oscillates a bit here between two different views on the establishment of conventions, contractual and evolutionary. Nevertheless, he still articulates his distinctive and innovative view about the origin of justice.

<sup>7</sup> *Treatise*, p. 483.

<sup>8</sup> *Treatise*, pp. 493-4.

The establishment of justice contains a certain paradox. Being an *artificial* virtue, justice has a strong, »natural« tendency towards public and private good in general, but need not be beneficial in every case (in contrast with *natural* virtues which are beneficial in any case) and could even be directly contrary to both public and private good in some individual cases. Hume explains this in the following example:

*»Judges take from a poor man to give to a rich; they bestow on the dissolute the labour of the industrious; and put into the hands of the vicious the means of harming both themselves and others. The whole scheme, however, of law and justice is advantageous to the society, and to every individual.«<sup>9</sup>*

If men were led only by their regard for public good, they would not adopt these rules and restrain themselves by them precisely because of this reason, because of their knowledge of particular nonbeneficial effects of justice. Although rules of justice are result of human rational designs and their moral actions, they are *not* their *intended result*, says Hume in a famous passage:

*»Those rules, by which property, right, and obligation are determin'd ... have all of them a direct and evident tendency to public good, and the support of society. This last circumstance is remarkable upon two accounts. First, because tho' the cause of the establishment of these laws had been a regard for the public good, as much as the public good is their natural tendency, they wou'd still have been artificial, as being purposely contriv'd and directed to a certain end. Secondly, because, if men had been endow'd with such a strong regard for public good, they wou'd never have restrain'd themselves by these rules; so that the laws of justice arise from natural principles in a manner still more oblique and artificial. 'Tis self-love which is their real origin; and as the self-love of one person is naturally contrary to that of another, these several interested passions are oblig'd to adjust themselves after such a manner as to concur in some system of conduct and behaviour. This system, therefore, comprehending the interest of each individual, is of course advantageous to the public; tho' it be not intended for that purpose by the inventors.«<sup>10</sup>*

Therefore self-interest of individuals gave rise to the development of the rules of justice, indeed in its »enlightened« form, as redirected self-interest, as redirected interested passions. Individuals have their own interests at heart, says Hume, but approbation of the rules of justice which they establish reaches far beyond their intentions. Out of pursuit of individual self-interest, public interest is achieved and maintained and Hume has thus establish congruence

<sup>9</sup> *Treatise*, p. 579.

<sup>10</sup> *Treatise*, pp. 528-9.

between public and private interest. Now he can say that »public utility is the sole origin of justice.«<sup>11</sup>

Although this idea was first presented by Mandeville, Hume develops it at full length. The whole theory of Smith's »Invisible Hand« was already developed by Hume.

But still more important is his idea of rules of justice being *unintended consequences* of human actions and design. This idea could be regarded as one of the *great moves* in the history of philosophy of law, as Haakonssen remarks.<sup>12</sup> With it Hume avoids the dangers of excessive rationalism replacing traditional natural law with *secular* and *empirical* conception of fundamental law or rules of justice.

But he did even more, as Haakonssen argues on, with his idea of the »*unintended consequence*« phenomenon, he theoretically establishes and recognises a third category between natural and artificial phenomena as elements of the old distinction between nature and artifice, known at least from Hobbes on. He distinguishes between natural phenomena which should be explained in terms of efficient causes, and artificial phenomena, which can be explained in terms of final causes.<sup>13</sup>

But the »*unintended consequence*« phenomena resembles both elements of the old distinction, *natural* and *artificial* phenomena, being unintended and having efficient causes, but still being the result of human rational action. He indeed may not have seen all of the consequences of his theoretical achievement, and this fact could be explained partly with regard to the circumstances in which he has to strongly defend his understanding of the artificiality of justice against his opponents and therefore some passages in his work sound rather rationalistic and this in turn causes problems for the interpreters.

However, he has successfully replaced the old idea of artifice which involved *constructive* reason, and has developed his own coherent evolutionary theory of justice. He presents the full theory of what Schumpeter would term an »automatic mechanism«, and Hayek would later, in his »return to Hume«, take his idea of »spontaneously developing social order« as a foundation of his

<sup>11</sup> *Treatise*, p. 496.

<sup>12</sup> Knud Haakonssen, *The Science of a Legislator. The Natural Jurisprudence of David Hume and Adam Smith*, Cambridge University Press, Cambridge 1981, p. 20 sq. See also his article »The structure of Hume's political theory« in *The Cambridge Companion to Hume*, ed. David Fate Norton, Cambridge University Press, Cambridge 1993, pp. 182-221.

<sup>13</sup> This distinction was later taken from him by Kant, who used it in formulating his famous antinomies in *Critique of Pure Reason*.

counter-attack on *constructivist rationalism*. Hirschman in his most famous book<sup>14</sup> also recognised Hume's great theoretical achievement.

Although this idea of the »unintended consequences« of human actions can be regarded by its critics as »philosophical fiction« and some elements be accused of expressing »cynical reason« (as Sloterdijk would probably do), it remains one of the most convincing ideas about the functioning of society and an individual's moral life.

Now let us examine Adam Smith's contribution to modern jurisprudence and moral theory.

### Adam Smith

Adam Smith is deeply influenced by Hume's ideas and he develops his moral and legal theory on the foundations which Hume laid for them. He also makes wide use of Hume's idea of »unintended consequences« which has now been given the name of »Invisible Hand«. But apart from this, Smith tries to solve some of the difficulties of Hume's theory. Hume's sympathy mechanism could not explain how we could sympathise with those who benefit from the useful tendency of artificial virtues, including justice, because we could only sympathise with concrete individuals. This is the reason why Hume has abandoned the theory of sympathy and replaced it with fellow-feelings in *Enquiry*. The latter does not require a relation with concrete individuals.

Smith's »situational propriety« can be seen as a solution to this Humean problem, and this enables him to connect theories of the origin of justice and its moral value, two theories which Hume developed independently. Hume's theory met problems in its attempt to answer the question regarding how the spread of just practice is possible. A question also remains, how is it possible to account for the moral value of justice, if accounting in terms of sympathy does not allow sympathy with »anonymous« individual, and accounting in terms of fellow-feeling is evidently too optimistic and rationalistic and couldn't be ascribed to ordinary men being rather *philosopher's speculation*. Smith has therefore succeed in finding elements of philosophical »fiction« even in Hume's sceptical moral theory.

Smith like Hume, regards as »fictions« natural rights which are understood as man's property. But he even thinks that Hume's moral theory was a »philosopher's construction« which did not capture human morality as it is.

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<sup>14</sup> Albert O. Hirschman, *The Passions and the Interests. Political Arguments for Capitalism before its Triumph*, Princeton University Press, Princeton, New Jersey 1977, p. 25 sq.

Smith regards man as a social being from the beginning and so his ideas take shape in a social context. Because we draw our ideas, for example our idea of personal beauty, from the appearance of others, our first moral criticisms are also exercised upon the conduct of other people.<sup>15</sup> Others of course judge us in the same manner. Thus we became aware of ourselves as persons with a moral appearance, subjected to moral evaluation. This perception of other people's evaluations makes us conscious of our own mind. Smith concludes that without society the human conscience could not be developed.

The desire of agreement with others drives us to try to judge ourselves as we imagine others would. We have to act *as spectators of ourselves*, when we are at the same time *agents*. At this point Smith explains in a famous passage how a person in his moral evaluation of his own behaviour divides himself into two persons:

»When I endeavour to examine my own conduct, when I endeavour to pass sentence upon it, and either to approve or condemn it, it is evident that, in all such cases, I divide myself, as it were, into two persons; and that I, the examiner and judge, represents a different character from that other I, the person whose conduct is examined into and judged of. The first is the spectator, whose sentiments with regard to my own conduct I endeavour to enter into, by placing myself in his situation, and by considering how it would appear to me, when seen from that particular point of view. The second is the agent, the person whom I properly call myself, and of whose conduct, under the character of a spectator, I was endeavouring to form some opinion. The first is the judge; the second the person judged of.«<sup>16</sup>

We try to judge our own behaviour by the same standard which we judge the behaviour of others by, that is the standard of its propriety. We naturally strive to bring our moral evaluations into agreement with that of others, and although perfect mutuality and agreement of sympathy is impossible and can only be imaginary (containing an element of »fiction«), moral sentiments can at least be brought in concord, which is enough to give us satisfaction. Therefore moral subjectivism is avoided and Smith maintains that in this way operations of mutual moral sympathy rather *unintendedly* produce *common* social and moral standards, sufficient for the functioning of society. So the mutual sympathy mechanism is an efficient cause that brings about common moral standards.

But the question still remains as to how moral *ideals* emerge from this social

<sup>15</sup> Adam Smith, *The Theory of Moral Sentiments (TMS)*, ed. D. D. Raphael and A. L. Macfie, Oxford University Press, Oxford 1976, III, I, §§ 4, 5.

<sup>16</sup> *TMS*, III, I, § 6.

moral propriety and how they gain independence from socially accepted standards.

Smith answers this question with the following argument: *propriety*, with which we judge moral behaviour, is the aptness of action and its  *motive* to its situation. Although the judgement of others of our own actions starts us to judge ourselves, we soon move from the question of whether others would find our behaviour proper, to the question of whether it is *in fact* proper and so we judge ourselves with a *standard different from the opinion of others*. But we could achieve this by not only taking the position of a *spectator of ourselves*. We must take the position of an *impartial spectator*, »a third person«, which is a moral *ideal* for both agent and spectator. Apart from social propriety, position of an impartial spectator enables us to see »absolute« propriety in given situation, and we use it to judge our own behaviour.

In this way morality is internalised and man's *conscience* gains its independence. When we are regulated by it, we can talk of our *self-command*, which for Smith is a meta-virtue, a foundation for all other virtues.

So the relation between man's conscience and society reflects a relation between the *actual* and *ideal*, impartial spectator. It is the very disagreement between our evaluations of our own behaviour and evaluations of others, that make us search for an impartial point of view, equidistant from both former views. Smith maintains that seeking social approval in itself has a strong tendency of becoming a search for an impartial position. This search may indeed never be completely successful, but it is *the search* itself that matters, this search is common to all or at least to a majority and it makes social life possible. And this process also adjusts our behaviour to common standards, still leaving a place for the independence of moral judgement and actions. Smith emphasises the role of education in this process and also the limited usefulness of social customs – a socially and morally unacceptable practice cannot become a custom.

Smith's *science* of morals therefore understand the general rules of morality as the *unintended* outcome of individual moral evaluations, and those rules, when internalised, create a sense of duty. Although this theory of obligation is based on the descriptive theory, it has great *normative* importance as well.

We judge human actions from two different aspects: according to their motive or intention and according to their effect or proposed end. According to motives we judge the *propriety* of actions, according to effects we judge about their *merit*. Smith makes a contrast between the moral judgements of philosophers and that of ordinary people. Philosophers mainly judge the effects, while common people judge both aspects of the moral actions.

But the two judgements are not on a par or a supplement to each other; the judgement in terms of motive of moral action is fundamental, and the other one is dependent upon it.<sup>17</sup>

Of course moral evaluations of men in everyday life differ to some extent from Smith's *ideal* moral judgement which should primarily consider the motive and intentions of the moral agent, that is the propriety of action, but should also take into consideration the situation in which the action was performed, to judge from its *situational propriety*, and also consider its effects.

Smith knows that our evaluation of motives is independent of the realisation of intended effects and that consequences of moral acts are dependent on fortune, but he also know that we can not have full knowledge of man's motives for his moral actions. This knowledge is only accessible to God and man's own conscience. So on the subject of penal law he remarks:

»Sentiments, designs, affections, though it is from these that according to cool reason human actions derive their whole merit or demerit, are placed by the great Judge of hearts beyond the limits of every human jurisdiction ... That necessary rule of justice, therefore, that men in this life are liable to punishment for their actions only, not for their designs and intentions, is founded upon this salutary and useful irregularity in human sentiments concerning merit and demerit, which at first sight appears so absurd and unaccountable.«<sup>18</sup>

From the same standpoint Smith, who claims, as we have seen, that situational propriety is the most important aspect of a moral action, could also point at Hume's »Philosopher's mistake«, his idea of moral judgement about human characters. It neglects the context and situation of every given moral action of the character in question and is therefore only a »speculative philosophical construction«.

Smith therefore succeeds in building, on the theoretical grounds of Hume's moral theory, a fine dialectics of human social and moral life, successfully balancing between the normative, ideal and descriptive and explanative dimension of his theory. He explains connections, relations and contrasts be-

<sup>17</sup> We know that Kant, who admired Smith's *Theory of Moral Sentiments*, has taken this distinction from Smith and used it in his *Critique of Practical Reason*, although he absolutely rejected moral judgements according to the effects of human actions and strictly held judgements according to motive as the only proper moral judgements. This has led him into certain serious difficulties, of which the most important is perhaps the fact that what he would call an »absolutely evil« action could also be performed with a nonpathological motive. This one-sidedness of Kant's moral theory was later criticised by Hegel.

<sup>18</sup> *TMS*, II, iii, 3, § 2.

tween ideal and common morality, as well as their origin and functioning. His whole theoretical building is based on a central idea of the »impartial spectator« which, being an ideal entity, could indeed be regarded as »fiction«, but a »fiction«, necessary for the foundation of every philosophical system, and at the same time one of the most productive »fictions« for the explanation of human moral life and one of the greatest achievements in moral theory.

And on this basis Smith could explain his views on jurisprudence and develop jurisprudential proposals in outline of »the art of a legislator«. But the course of our examination now leads us to Bentham and his role in the development and transformation of modern legal theory and his contribution to the theory of »fictions«.

### Bentham

Although Bentham would deny this, Hume's reflections on justice and law have shaped his own and he silently follows him in posing the problems in legal theory. So in his early years Bentham, like Hume in his time, defends Common Law as a case law and its institution of *judicial precedent*, the principle that former law decisions are established as legal rules. He made the case for observing precedents as legal rules, that is for *stare decisis*, on the grounds that legal practice, organised this way, guarantees stability and security of the rule of law.<sup>19</sup>

But later in his career Bentham strongly and directly attacks the very practice of English Common Law. He accuses the whole legal system of being based on »fictions«, he even says that it is »doubly fictitious« and demands its replacement by written statute law. He proposes normative standards for law and demands it to be guided by the principle of utility. But it remains true that the motivation for this attack on Common Law originates in Bentham's specifically legal concerns and ideas about legal reform and the codification of law, because his general theory of »fictions« which he also developed, would allow him, as Postema rightly remarks, a much more sympathetic account of Common Law.

While Hume's evolutionary view on the development of law was very close to the Common Law tradition, Bentham in a rationalistic manner understands law as a command, taking this view from Hobbes. In open contradiction to Hume he completely rejects the inflexibility of the rules of justice. But his

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<sup>19</sup> Such views are defended in Bentham's early manuscripts, deposited in University College, London Library.

emphasis on a normative character of legal theory, and his understanding of it as a science, to a certain extent connects him with Smith.

One of the principal targets of Bentham's attack on Common Law was its retrospective, retroactive character. Common law is a collection of judge-made laws, says Bentham, and »on each occasion, the rule to which a judge gives the force of law, is one which, on this very occasion, he makes out of his own head.«<sup>20</sup> But judges succeed in making laws only if they can convince other judges and people that they are not doing so. People are therefore bound by laws which they could not have known and to which they could not have conformed their behaviour to before the judicial decision. With this *ex post facto* law making the basic virtue of law, the security the law should guarantee, is undermined. Therefore, according to Bentham, it is impossible to abide by the law. He concludes that this is not a law for a man living in a well organised society, but a law for beasts, a »Dog law«, as he calls it.

*»When your dog does anything you want to break him of, you wait till he does it, and then beat him for it. This is the way you make laws for your dog: and this is the way the judges make law for you and me. They won't tell a man beforehand what it is he should not do ... they lie by till he has done something which they say he should not have done, and then they hang him for it.«<sup>21</sup>*

Men, because of their dignity as human beings, deserve to be ruled by Statute Law, says Bentham. Instead of rational obedience to the law, according to which citizens would freely censure the law by their own lights of rational reason while obeying punctually, English law is based on blind obedience and maintained through terror, and such law introduces tyranny and slavery instead of securing liberty. Bentham's views become more comprehensible if we know that in the eighteenth century English penal law indeed became extremely restrictive and brutal and a wide range of criticism arose.

The institution of legal precedent also didn't escape Bentham's bitter attack. He claims that it establishes a rule that every decision which judges make is justified, therefore that:

*»Whatever is, is right – (whatever is – that is to say, whatever, by men in the situation in question, has been done) – being tacitly assumed as a postulate, – the rectitude of doing the same thing, on any and every subsequent occasion deemed a similar one, is stated and acted upon, as a necessary consequence. This is called following precedents.«<sup>22</sup>*

<sup>20</sup> Jeremy Bentham, *The Works of Jeremy Bentham. Published under the Superintendence of ... John Bowring*, 11 vols., Edinburgh 1838-43, V, p. 546.

<sup>21</sup> *Works*, V, p. 235.

<sup>22</sup> Jeremy Bentham, *A Comment on the Commentaries*, in *A Comment on the Commentaries and A Fragment on Government*, eds. J. H. Burns and H. L. A. Hart, London 1977, p. 322.

Again Bentham was not alone in his opinions. So his contemporary, Jonathan Swift, one of the most important and popular writers of the age wrote:

»It is a maxim among these lawyers that whatever had been done before may legally be done again, and therefore they take special care to record all the decisions (formerly) made against common justice and the general reason of mankind. They produce these, under the name of precedents, as authorities to justify the most iniquitous opinions, and the judges never fail of decreeing accordingly.«<sup>23</sup>

Therefore in his opinions Bentham joined the English Opposition thinkers, among which Swift was one of the leading figures. But he also made serious remarks about the inflexibility of the Common Law legal rules and so he observes with anger:

»One other capital imperfection /of Common Law is/ ... the unaccommodatingness of its rules. Every decision that is given is spun out of some vague maxim, conceived in general terms without exceptions, and without any regard to times and circumstances. ... Even when it aims at utility, which perhaps is now and then, it either falls short of the mark or overshoots it. A sort of testimony in recognition of this truth is contained in the magnificent and well-known adage, fiat justitia ruat coelum.«<sup>24</sup>

Common lawyers would therefore, according to Bentham, make and execute their decision even if, as a consequence, the sky would fall upon us. Common law is therefore incoherent, it represents no body of law and it is not *real* at all, but »doubly fictitious«, it is a *no-law*.

So Bentham, who considered himself to be an Enlightenment critic, searches for a new model and foundations for law and proposes an outline of utilitarian legal positivism. His general theory of law is divided into the *theory of laws*, consisting of the *formal* criteria of general propositions of law and the utilitarian theory of legislation, concerned with the *content* of law; and a *theory of adjudication*, consisting of constitutional theory and theory of judicial procedure and an account of practical judgement.

Bentham rejects the liberal theory of constitution with its ideas of division of powers and independence of judiciary, developed by Montesquieu. He thinks that such a system would paralyse officials and take all effective power from them, as well as lead to the irresponsibility of judges. He demands a strong central government subjected to the possibility of public criticism and judiciary responsible to the body of the people, working under the conditions of

<sup>23</sup> Jonathan Swift, *Gulliver's Travels*, Bk. 4, ch. 5.

<sup>24</sup> Jeremy Bentham, *Of Laws in General*, ed H. L. A. Hart, London 1970, XV. 12 n. 1.

publicity. His view of democracy emphasises the role of the »public opinion tribunal« and elections, but he sees no need for the extended participation of people in the performance of the government, his concept of representation is rather Burkean. Public opinion should have a *judicial* function and judge the work of public officials and, if needed, demand their recall, and its main medium of expression must be the press.

Bentham's project of legal reform is part of the European legal codification movement, although Bentham, in contrast with its other representatives, rejects the natural law theory. Defending his idea of an »art of legislation«, he says that:

»With a good method, we go before events, *instead of following them; we govern them instead of being their sport. A narrow-minded and timid legislature waits till particular evils have arisen, before it prepares a remedy; an enlightened legislature foresees and prevents them by general precautions.*«<sup>25</sup>

Events of course can not be individually foreseen, but they may be foreseen in their species, says Bentham. A good plan for the organisation of law will leave no *terrae incognitae* in the field of the law. To achieve this, the principle of utility must become our guidance and utility, not the regard of rules, a *decision* principle of judges in legal practice.

But such utilitarian demands are not compatible with Bentham's views on legal positivism. In order to reconcile them, Bentham made a distinction between theories of law and adjudication, but in so doing he cannot avoid their *conflict*. His theory of adjudication undermines his general theory of law.

The code of laws namely enjoys public confidence only so far as its laws are fixed. But if judges, who are allowed their flexible interpretation according to the utilitarian principle, change them at leisure, and the public become aware of discrepancies, Bentham's strategy fails. He wants to avoid the »paradox of inflexibility« of legal rules, but now he meets the »paradox of (their) flexibility«. In his view, officials are *not bound* to adhere strictly to the legal code, but this contradicts the demands of his general theory of law and undermines the legitimacy of the legal system. So the coherence of his legal theory is lost.

Bentham's project cannot achieve the aims it set and is therefore fundamentally mistaken. He also *privatised* justice and adjudication with his proposals that judges should only mediate between two private parties in individual cases, therefore losing sight of public interest as a basic concern of the law.

All this is not surprising given his general views on human individual and his

<sup>25</sup> Jeremy Bentham, *General view of a Complete Code of Laws*, in *Works*, iii, p. 205.

relation to society. He wants to preserve the sovereignty of individual's rational judgement and its role in social life, but at the same time deny, or overlook, the possibility of conflicts between the judgements of different individuals and individual interests.

And so his contemporary, Adam Ferguson, rightly criticised such a view which loses sight of the »public spirit« of the people.<sup>26</sup> Even Bentham's »public opinion tribunal« has no efficient means of expressing the demands which the government should follow. And in the same manner, Bentham unquestionably presupposes that the legal system should be based on consent, but this could, as we have seen, easily fail to be realised in practice.

He fails to see that the role of the law is to provide a *matrix* and *forum* for constant debate and forging of consensus. Because legal justice is never likely to match *ideal* justice, it must be open to challenge and reformulation.

But still Sir Henry Maine was right when he attributes to Bentham and Hobbes a fundamental achievement of a divorce of law from traditionally history, a divorce which is distinctive for the emergence of modern societies in which traditional history is replaced by notions of sovereignty and (statutory) Law.<sup>27</sup>

In contrast, analytical legal theorists and advocates of legal positivism which Bentham initiated, are not justified in pointing at the incompatibility of normative grounds of Bentham's legal theory and his legal positivism. As Postema argues, there is no internal incoherence in using normative grounds for an analysis of law, and this is what Bentham is doing. Analytical jurisprudence in its understanding of language mistakenly assumes that legal concepts could be purified of their everyday meaning and overlooks the dependence of their meaning on our »legal sensibility«.

Bentham also developed his general theory of »fictions«<sup>28</sup> in which he first wanted to completely rule out »fictions« and »fictitious« terms, only leaving room for real terms with existing referents, that is the thing to which a term refers, but later he recognises that »fictions« play a necessary role in every theory as well as in everyday thinking.

Bentham, as we have seen, attacked the whole existing legal theory and practice as »fictitious« and delineates proposals for their complete reform. But his main »fictions« remain the idea of one and unquestionable social utility and the idea that private utility could be treated separately from its social context.

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<sup>26</sup> Adam Ferguson, *An Essay on the History of Civil Society*, ed. D. Forbes, Edinburgh 1966, pp. 165-6, 263-4.

<sup>27</sup> Sir Henry Maine, *Lectures on the Early History of Institutions*, London 1875, pp. 396-7.

<sup>28</sup> See C. K. Ogden, *Bentham's Theory of Fictions*, Kegan Paul, London 1932.

Bentham's legal theory was extremely influential and gave rise to the development of legal positivism, but perhaps it was even too successful in so far as Hayek must later return to Hume's position in his political and moral theory.

### Conclusion

We have come to the end of our examination of the development of theories of »fiction« from Hume to Bentham and conceptualizations of the role of »fictions« in legal theory. Given that legal theory is the cornerstone of common interpretation of social reality and that reality itself is discursively structured, that its perception is dependent upon our everyday legal, political and social concepts, we can recall Lacan's famous saying that *the truth (itself) has the structure of fiction*. We have seen how Hume and Smith have attempted to reveal the »true« functioning of society with their theories of »unintended consequences« of human actions, and how Bentham tried to give legal concepts their »true« form, that is the form they should have. However, the truth is, as we all well know, never complete.

Their respective theories of »fiction« were also successful. Some »fictions« which they criticised have successfully been replaced, others were misinterpreted as such by them and have remained firmly in place. All three of these authors have criticised modern (abstract) ideas of natural law and we have much to learn from their ideas if, as Hayek suggests, we removed some of their rationalistic edge.

Basic elements of their doctrines are still present today and their examination can help us to understand current political, social and moral theories and contribute to open post-modern debate. Our examination can teach us that our fundamental ideas and concepts which we use to orientate ourselves in social, moral and political life, are but »fictions«, but at the same time necessary fictions, without which we would lose every possible compass. But they are not fixed in time or unchangeable, they are not even solid or absolutely reliable, but open to critical examination and necessary adjustment. Whether cynicism of this post-modern era has unjustly and shamelessly made a virtue out of opportunistic adaptation to such altered and changeable circumstances, or whether these new circumstances bring about the possibilities of human emancipation and improvement and are benevolent and beneficent, remains an open question.

# Historical Facts and Historical Fictions

Peter Burke

Is it possible to know the past? Is it possible to tell the truth about »what actually happened«, or are historians, like novelists, the creators of fictions? These are topical questions in the 1990s, though they are questions to which different people offer extremely diverse answers. Some people would describe the present situation as one of epistemological »crisis«. Personally, I am not altogether convinced. If we use the term »crisis« precisely, to refer not to any period of confusion but to a short period of turmoil leading to a major or structural change, then it is still a little too early to see or to say whether we are passing through a crisis or not. We would have to be out of the crisis before we knew that we had been in one. However, the term is so convenient that I shall use it, *faute de mieux*, all the same.

The first point to make is that these topical questions are not new questions. They were being discussed with at least equal excitement and irritation in the age of Pierre Bayle. In order to put late twentieth-century problems »in perspective«, as we historians like to say, and in this way to achieve a certain detachment, I shall begin this lecture by describing the seventeenth-century version of this debate on historical knowledge. The second part of the lecture will return to the present, to the current discussions of history as fact or fiction.

The possibility, the limits and the foundations of historical knowledge have been questioned and debated from at least the time of the ancient Greeks onwards, though more intensely in some periods or at some moments than in others. One such moment was the second century A. D., the age of Lucian, whose *True Story* parodies historians such as Herodotus and Thucydides as well as traveller's tales (Ligota 1982).

Another was the sixteenth century, when the famous Spanish preacher and moralist Antonio de Guevara wrote a fictional biography of the emperor Marcus Aurelius. When he was criticized for inventing historical details, Guevara defended himself by claiming that so far as secular and pagan histories are concerned »we have no certainty that some tell the truth more than

others« (Nelson 1973, 35-6) In similar fashion, the Renaissance magus Heinrich Cornelius Agrippa, in his *Vanity of the Sciences*, dismissed history as untrustworthy because it is always biased. Later in the century, Sir Philip Sidney defended poetry against its critics by launching an attack on history, mocking the historian »laden with old mouse-eaten records«, but »for the most part authorising himself on the notable foundations of hearsay« (Sidney 1973, 83).

The age of Pierre Bayle was another moment when the possibility, the limits and the foundations of historical knowledge became a matter of debate, especially though not exclusively in France. The late seventeenth-century »crisis of consciousness« so vividly described sixty years ago by Paul Hazard included a »crisis of historical consciousness« (Hazard 1935; Reill 1975).

Descartes, in a brief but devastating remark in his *Discourse on Method* (1637), had already dismissed historical writings as misleading on account of their grand style (Descartes 1963, 574; cf Pomian 1966). However, the debate over historical knowledge, or as it was known at the time, over historical »pyrrhonism«, was particularly vigorous in the age of Bayle, although it rumbled on well into the eighteenth century into the time of Voltaire or even beyond (Scheele 1930; Borghero 1983. On the term, Kelley 1971, 783). I shall begin by discussing the attack on historical knowledge, the case for the prosecution, and then turn to the defence.

The pyrrhonists had two main arguments. The first was the argument from bias, the second the argument from forgery. »Bias« is a sporting metaphor, derived from the game of bowls, and applied, in seventeenth-century England, to distorted views of politics and religion. The point is to suggest that both our passions and our interests prevent us from seeing beyond our own side – whether this is a church, a nation or a political party. For example, the scholar Gabriel Naudé noted that historians, »with the exception of those who are quite heroic«, never represent things as they are [*ne nous representent jamais les choses pures*], but »bias and mask them according to the image they wish to project [*les inclinent et masquent selon le visage qu'ils leur veulent prendre*] (Naudé 1625, 18).

Again, a little book called »the uncertainty of history« – *Du peu de certitude qu'il y a dans l'histoire* – written by a French philosopher, François La Mothe Le Vayer, had much to say about the problem of bias. What would our image of the Punic wars be today, La Mothe asked rhetorically, if we only had access to an account from the point of view of the Carthaginians as well as that of the Romans? How would Caesar's Gallic wars now appear if Vercingetorix had been the one to write his *Commentaries* (La Mothe 1668; cf Comparato 1981)?

Pierre Bayle expressed similar views in a discussion of the problem of bias

occasioned by the publication of a history of Calvinism by an ex-Jesuit, Louis Maimbourg. The same material, he suggested, can be used to write a eulogy or a satire, a panegyric or a pasquinade. For example, a historian like Tacitus would be able to write a life of Louis XIV – in bad faith, of course – in which that monarch would appear in a far from glorious light. Hence Bayle confesses that he hardly ever reads historians to learn what happened in the past, but only to discover »what is said in each nation and in each party«. In other words, what interests him in a particular historian is precisely the prejudice (Bayle 1683, 13-18, 28-9; cf Cantelli 1969).

Again, in a study with an unforgettable title, »On the Charlatanry of the Learned«, *De charlataneria eruditorum*, the German scholar J. B. Mencken emphasised the diversity of judgements on the leading figures of antiquity by the classical historians themselves. »Herodianus finds fault with Alexander, the son of Mammaea; Lampridius praises him. Ammianus Marcellinus and Montanus commend Julian as a paragon of virtue; others censure him as a monster of vice. Dio condemns the deeds of Brutus and Cassius; Plutarch extols them. To Paterculus, Sejanus is a loveable man; to many others, he is odious (Mencken 1717, 128).

Thus Voltaire was not saying anything new but summing up more than a century of debate when he wrote his essay *Historical Pyrrhonism* (1769), which like La Mothe discussed the bias of Roman historians against Carthage. »In order to judge fairly it would be necessary to have access to the archives of Hannibal's family«. Since he was Voltaire, he could not resist expressing the wish that he could also see the memoirs of Caiphas and Pontius Pilate (Voltaire 1769, ch. 17, 54).

The second major argument for the prosecution was even more serious. Historians were charged not only with bias but also with credulity. They were accused of basing their accounts of the past on forged documents and of accepting the existence of characters and events which were pure inventions.

Exposures of forged documents were not uncommon in the Renaissance. The critique of the so-called »Donation of Constantine« by the Roman humanist Lorenzo Valla is only the most famous of a series (Grafton 1990). Indeed, the term »critic« came into use in the late sixteenth century partly to refer to these exposures. However, the seventeenth-century critiques went deeper in the sense of challenging the credibility of more and more texts, including some of the most fundamental in both the classical and christian traditions.

For example, two famous accounts of the Trojan war, from rival points of view, believed to be older than Homer and attributed to Dares the Phrygian and Dictys the Cretan, were dismissed as later forgeries. The so-called »her-

metic« writings attributed to the Egyptian sage Hermes Trismegistus met the same fate. So did the letters of the Greek tyrant Phalaris, the history of Carthage attributed to Sanchoniathon, and even the records of the magistrates and pontiffs of ancient Rome. Among the most powerful arguments employed was the argument from »anachronism« (a new word in the seventeenth century), ranging from the language of the forged documents to references to events about which the supposed authors could not have known.

On the same criteria, parts of the Bible were challenged, notably the Pentateuch, attributed to Moses, yet in which the death of Moses is recounted. So were some texts attributed to the fathers of the Church. Some medieval documents too were called into doubt, including papal decretals, charters issued by the Merovingian kings to Benedictine monasteries, and Icelandic sagas. A French Jesuit named Jean Hardouin, went so far as to claim that the majority of classical texts were forgeries (not to mention fathers of the Church, papal decretals, medieval charters, lives of saints, and so on). Hardouin, who would now be diagnosed as paranoid (after all, he believed in a conspiracy to forge texts), may have been a suitable case for treatment, but he was an extreme example of a general trend, combining the doubts already expressed about many of these documents as well as adding a few of his own (Hardouin 1729; cf La Croze 1708; Lenglet 1735; Scheele 1930, 54-9; Momigliano 1950, Sgard 1987).

The example of Hardouin shows how these specific challenges might have a cumulative effect. No wonder that the word »critical« became a fashionable one for book titles in the later 17th century, or that in 1700 one scholar described his own time as the »age of criticism«. An increasing amount of what had been accepted as true history – the foundation of ancient Rome by Romulus, for example, the lives of certain saints, or the foundation of the French monarchy by Pharamond, was now dismissed as invention, as myth. Did Pharamond exist? Did Romulus exist? Did Aeneas ever go to Italy? Was pagan history reliable? Was anything at all certain in the first four centuries of Roman history (Sartori 1982)?

Following in the footsteps of Descartes and his systematic doubt, some scholars went still further, at least in their thought-experiments. Did Charles V exist? Did Augustus exist? Did the siege of La Rochelle really happen? Was history anything more than a novel?

Given all these doubts, it is scarcely surprising to find that the relation between history and fiction was scrutinized with particular interest at this time. For some historians the distinction was clear, and to describe a colleague as a writer of »romances« [*romans*] was for them a way of rejecting his work. Thus the Scottish clergyman Gilbert Burnet condemned the French historian Varillas

because »his books had too much the air of a romance«, only to be denounced in his turn for exactly the same failing (Burnet 1689, 6). A reviewer in a learned journal dismissed the memoirs of cardinal de Retz as »un ouvrage plus romanesque qu'historique« (Quoted Watts 1980, 55).

Examples of this kind of criticism could be multiplied, but it is more interesting to note the existence of the less conventional view that historians had something to learn from novelists. Thus Louis Maimbourg, whose history of Calvinism provoked Bayle's critique, tried to ensure that his way of writing history would give his readers »le plaisir d'un roman«, while Leibniz wished for »un peu du roman« in historical writings, especially when discussing motives (Leibniz 1903, 225-6). The authors of the so-called »secret histories«, a new genre which proliferated in the late seventeenth century, certainly gave Leibniz what he wanted, from Varillas on the secret history of the house of Medici to Gregorio Leti on papal conclaves or Daniel Defoe on »state intrigues«.

For their part, writers of fiction were moving closer to history. The late seventeenth century saw the rise of the historical novel, in the sense of a novel which is not only set in the past but offers interpretations of historical events. The most famous examples come from the abbé de Saint-Réal, whose *Dom Carlos*, published in 1672, bore the sub-title »nouvelle historique«, a term which soon became fashionable in France (Saint-Réal 1672; Dulong 1921, 337; Hipp 1976, 52-3).

Pierre Bayle, incidentally, enjoyed *Dom Carlos* and other historical novels of the time, like the story of the Danish statesman *Le comte d'Ulfeld*. On the other hand, he disliked the »impudence« of writers who ignored the distinction between history and fiction and published what claimed to be »memoirs« but were actually inventions – *Mémoires de la vie de Henriette-Sylvie de Molière*, *Mémoires de M. d'Artagnan* and so on (Woodbridge 1925, Mylne 1965 and Hipp 1976). It was, incidentally, the *Mémoires de M. d'Artagnan* which inspired Alexandre Dumas. The historical fabrications of the late seventeenth century included the memoirs of the Mancini sisters, one of whom was courted by Louis XIV, memoirs sometimes attributed to Saint-Réal, as well as the »political testaments« of both Colbert and Louvois. The fashion was especially strong in France, but it spread to other countries, the obvious English examples being Daniel Defoe's *Memoirs of a Cavalier* and his *Journal of the Plague Year*, complete with official documents and statistics to give it what modern critics would call a stronger »reality effect« (Defoe 1720, 1722).

Why should this kind of fabrication have become fashionable at this time? I should like to suggest that it was the reverse of the medal of historical criticism. The fabricators revealed the same awareness of anachronism as the

critics. The new genre depended for verisimilitude on the very skills which the scholars used to expose forgeries (Cf Grafton 1990).

But why did historical scepticism develop at this particular time? There are a number of possible explanations. The pyrrhonist movement owes something to the systematic doubt of Descartes and his followers (Popkin 1964). The detection of forgeries depended on the progress of philological techniques. As for awareness of bias, it was doubtless stimulated by the religious conflicts of the time, in which each side unmasked the prejudices in the histories of their opponents (Cf Popkin 1964). Bayle, for example, formulated his ideas about bias in reaction to Maimbourg's history of Calvinism, which was published shortly before the Revocation of the Edict of Nantes, precisely in order to justify the campaign against the French Protestants. Even the »pathological« scepticism of Jean Hardouin may be related to religious conflicts, Catholic versus Protestant and especially Jesuit versus Jansenist, since Jansen and his followers had appealed for support to the writings of St Augustine. For Hardouin »began to scent fraud«, as he put it, in »Augustine and his contemporaries«, before extending his scepticism backwards to classical texts (Hardouin 1729, 10, 156, 159; Sgard 1987, 211-2).

By this time you may well be wondering how it was that historians ever survived the crisis of the late seventeenth century. They had to find an answer to the sceptics or go out of business. They did find an answer, or to be more exact, they found a number of different answers which together permitted what has been called the »rehabilitation« of history (Shklar 1981).

One of responses turned out to be a blind alley. This was the geometrical method, so prestigious in the late seventeenth century. It may be illustrated by two examples. The first is that of Pierre-Daniel Huet, who tried to establish the truth of Christianity on the basis of »axioms« such as the following: »Every historical work is truthful, if it tells what happened in the way in which they are told in many books which are contemporary or more or less contemporary to the events narrated« (Huet 1679, 12). A second example comes from the work of a Scottish theologian, John Craig, an acquaintance and a follower of Isaac Newton, who formulated the rules of historical evidence in the form of axioms and theorems. Unfortunately these axioms and theorems turn out to be rather banal, using the language of mathematics and physics to restate commonplaces, for example the principle that the reliability of sources varies with the distance of the source from the event recorded (Craig 1699).

More productive and more useful was the critique of documents, which had a positive side as well as a negative one. Responding to the Jesuit Papebroch, who had questioned the authenticity of royal charters in early medieval France, the great Benedictine scholar Jean Mabillon produced a treatise, *De re*

*diplomatica*, discussing the methods of dating such documents by the study of their handwriting, their formulae, their seals and so on, showing in this way how forgeries might be detected and the authenticity of other charters vindicated. This was not the first work to discuss medieval charters in this way, but it was by far the most systematic. Mabillon convinced his opponent, as the latter was generous enough to admit, though another Jesuit replied instead, and the controversy continued well into the eighteenth century (Mabillon 1681). There was no single definitive reply to Hardouin as there was to Papebroch, and perhaps there was no need for one, but Jean Le Clerc did produce a useful handbook, the *Ars critica*, which laid out the rules of textual criticism, classical and biblical (Le Clerc 1697).

Another response to the sceptics was to emphasize the relative reliability of the evidence from material culture, notably inscriptions, coins and medals. In this field Hardouin was not a sceptic but an enthusiast, who believed that the only way of establishing a satisfactory chronology of ancient history was to rely on coins rather than ancient writers (Hardouin 1693). Inscriptions, coins and medals could of course be forged, but rules for the detection of such forgeries could be worked out, as they were for example by the Italian scholar Scipione Maffei in his »art of lapidary criticism« (Maffei 1765). The debate with the sceptics had the unintended consequence of encouraging historians to make increasing use of non-literary sources not only for ancient history but for that of the Middle Ages as well (Haskell 1993).

So far as the argument from bias was concerned, there was what might be called a »common-sense« defence against the sceptics. For example, Pierre Bayle, giving back with one hand what he had taken away with the other, suggested that by examining circumstances with care, it was possible to discover calumnies (Bayle 1682). Again, Gilbert Burnet distinguished the »natural« bias of historians who favour their own side from the illegitimate techniques of slanderers like Varillas (Burnet 1689).

However, there was no systematic discussion of this problem (so far as I know), until the middle of the eighteenth century, when a German scholar, J. M. Chladenius, published his reflections on the problem of the »standpoint« (*Standort*) or »viewpoint« (*Sehepunkt*). Chladenius concluded that »We cannot avoid looking at history each from his own point of view, and therefore retelling the story according to that point of view ... to be biassed in the telling cannot be equated with narrating a subject or story from one's point of view, for if that were the case all narrations would be biassed« (Chladenius 1752, 150 ff; cf Reill 1975, Koselleck 1979, 137-40).

Yet another response to the challenge of pyrrhonism was what has been called the »rehabilitation of myth«, associated in particular with Giambattista Vico.

The early eighteenth century was a time when the meaning of Greek and other myths was discussed with renewed interest. Vico was a sceptic in the sense that he considered all accounts of the origins of nations to be uncertain, apart from that of the Jews. In the case of Rome, for example, it was impossible to know what happened before the second Punic War. On the other hand, Vico was an anti-sceptic or a »critic of criticism« in the sense that he believed it possible to read myths between the lines and to use them to write the history of customs and ideas. He read myth as evidence of mentalities, as Bayle had read historians as evidence of prejudice. This was the »new art of criticism« which, according to Vico, was one of the seven aspects of his *New Science* (Vico 1744, 28, 102, 125; cf Burke 1985, 43-8, and Mali 1992, 136-211).

Drawing on these special studies, a number of general refutations of historical pyrrhonism appeared in the late seventeenth and early eighteenth centuries, especially in Germany, but also in France, England and the Netherlands (in Spain, despite Renaissance precedents, father Feijóo was the only contributor) (Scheele 1930; Borghero 1983). At Leiden, for example, Jacob Perizonius delivered a lecture on bias in history, distinguishing unreliable writers like Maimbourg and Varillas from trustworthy historians such as Thucydides and Commynes (Perizonius 1702). The key argument against the sceptics, however, was the one about »degrees of assent« put forward by John Locke in *An Essay Concerning Human Understanding*. »When any particular matter of fact is vouched by concurrent testimony of unsuspected witnesses, there our consent is ... unavoidable. Thus: that there is such a city in Italy as Rome; that about 1700 years ago there lived in it a man, called Julius Caesar; that he was a general, and that he won a battle against another, called Pompey« (Locke 1690, book 4).

Perhaps the most interesting of the many refutations of Pyrrhonism is that produced by a friend of Leibniz called Friedrich Wilhelm Bierling, professor at the university of Rinteln. Like Locke, Bierling distinguishes levels of certainty or probability in history, three in all, from the maximum (that Julius Caesar existed), via the middle level (the reasons for the abdication of Charles V) to the minimum (the problem of the complicity of Mary Queen of Scots in the murder of her husband, or of Wallenstein's plans in the months before his assassination). The modern examples make his discussion all the more interesting. Bierling's discussion of the obstacles to reaching historical truth makes the point, unusual for his time, that documents are not only to be doubted because they may be forged, but also because they may be biased, like the judicial records of seventeenth-century witch-trials. However, historians can use documents without believing everything they contain (Bierling 1724. On him, Scheele 1930).

By the middle of the eighteenth century, at the latest, one may say that the crisis of historical consciousness was resolved. Voltaire's contribution to the debate came rather too late to be useful. For the sceptics had been useful in forcing historians to look at their sources more critically and to distinguish different degrees of probability. There followed a long period in which many of the best historians combined what might be called an acute sense of »local scepticism« about particular sources, with a general confidence in their ability to reach what the English scholar John Selden once called »the sanctuary of truth«. Even the sceptic David Hume laid his scepticism aside when he moved from philosophy to history. The boundary between history and fiction, once open, gradually closed. Leopold von Ranke engaged in one kind of writing about the past, Sir Walter Scott about the other.

Today, however, as you well know, the crisis of historical consciousness has returned (despite previous reservations, I use the term out of convenience). Curiously enough, it takes many of the same forms as it did in the late seventeenth century, although the leading participants in the debate appear to be unaware of these parallels. The new philosophers, notably Jean-François Lyotard, undermine the foundations of contemporary historical narrative, just as Descartes had once undermined the narratives of humanist historians (Lyotard 1979). Historians debate whether key documents like the Hitler diaries are genuine or forged. Some of them go so far as to deny the existence of major historical events such as the Holocaust. To the discomfort of librarians, but not only of librarians, the boundary between history and fiction has opened up once more.

Let me remind you of a few well-known recent examples of the transgression of that boundary, as it used to be defined. Thomas Keneally's *Schindler's Ark* claims »to use the texture and devices of a novel to tell a true story« (Keneally 1982). Mario Vargas Llosa has imagined a historian, or would-be historian, carrying out research on the life of a Trotskyist guerrilla, Alejandro Mayta, only to reach the conclusion that »real history« is itself »effectively« a novel (Vargas Llosa 1984, 77). Peter Ackroyd's *Hawksmoor* imitates Daniel Defoe in inventing what appear to be historical documents. Simon Schama's *Dead Certainties* in turn imitates Peter Ackroyd by inventing an eighteenth-century account of the death of General Wolfe, and describes his book, as »a work of the imagination that chronicles historical events« (comparing his claim with Keneally's, we find that of the two, it is the novelist who sees himself as closer to the traditional historian) (Ackroyd 1985; Schama 1991). Umberto Eco conceals authentic medieval texts in his novel *The Name of the Rose*, which claims to be the transcription of a medieval chronicle, while the ancient historian Luciano Canfora's *Vanishing Library* is obviously inspired by Eco

and by Jorge Luis Borges in its account of the library of Alexandria and its destruction (Eco 1980; Canfora 1987). History and fiction appear to be »blurred genres«. In both forms of writing we find »the repudiation of realism, the collapse of the subject or character as an integrated or integrating entity«, and so on (Gossman 1990, 244).

The problem of bias has also returned in a more radical form as the question of the role of the investigator in the creation of the subject of investigation. And who is the La Mothe Le Vayer or the Pierre Bayle of our own time? One obvious candidate for the title would be Hayden White, who has been discussing since the 1970s what he calls »the fictions of factual representation« (White 1976).

Come back M. Varillas, M. de Saint-Réal and M. Leti, one is tempted to say, today all is forgiven, and everything is permitted. That is indeed the diagnosis of the present situation offered by some historians, Gertrude Himmelfarb for example, in an article published in the *Times Literary Supplement*. In this article, entitled »Telling it as You Like it: Post-modernist history and the Flight from Fact«, Himmelfarb presented a critique of Hayden White and of the historians who supposedly follow in his wake and that of Jacques Derrida, accusing them of abandoning the reality principle for the pleasure principle, of »a denial of the fixity of the past, of the reality of the past apart from what the historian chooses to make of it« (Himmelfarb 1992). In similar fashion, a decade or so earlier, the late Arnaldo Momigliano claimed that Hayden White had »eliminated the search for truth as the main task of the historian« (Momigliano 1981). There have been a number of recent debates of this kind in which the representatives of traditional history have dismissed new trends en bloc (Zagorin 1990, and Stone 1991, 1992).

I must admit to being more than a little unhappy with this extremely general criticism of recent intellectual developments. It reminds me of some seventeenth-century denunciations of the poison of pyrrhonism which lumped together René Descartes, Pierre Bayle, Jean Hardouin, and so on rather than distinguishing their different positions. Today, we are equally in need of fine distinctions. Attacks have been made from several directions on the citadel of traditional history, especially on what has been called »the myth of realism«, that is, on the idea that historians can discover »the facts« (usually in archives) and on the basis of these facts tell an objective story of »what actually happened« in the past (Tonkin 1990). (The quotation from Ranke has its own context, but it is repeated here as a useful brief summary of positivist claims); (Bann 1984, 8-31). The citadel's besiegers agree about what they oppose, but as so often happens in alliances, they do not always agree about what they support.

It may be useful to distinguish at least three disagreements between traditional historians and their critics.

1. In the first place, the critics charge traditional historians with paying insufficient attention to literary form. At the beginning of the century, G. M. Trevelyan made a similar charge against his colleagues. The difference today is the further claim that form is no mere outward ornament but has its own content. All the same, Hayden White caused something of a sensation in the 1970s by his argument that works of history are »literary artefacts« and more specifically that Ranke, Michelet, Burckhardt and Tocqueville followed literary models, consciously or unconsciously in »emplotting« their histories in the form of comedy, romance, satire and tragedy respectively (White 1973, 1974). In other words, written history is closer to fiction than historians have generally admitted. As a distinguished literary critic, Frank Kermode, was already saying in the 1960s, »Historiography has become a discipline more devious and dubious because of our recognition that its methods depend to an unsuspected degree on myths and fictions« (Kermode 1967, 36).

No wonder that the history of historiography, once on the margin of historical studies, has become increasingly central in the last few years. In similar fashion, in anthropology and sociology, which are going through their own crises, the question of form and »transparency of representation« has become a matter of debate (Clifford and Marcus 1986, 2; Geertz 1988). For their part, literary critics are increasingly interested in the forms taken by »literary nonfiction« (Fletcher 1976; Weber 1980; Siebenschuh 1983).

2. In the second place, the concepts and categories employed by historians – »feudalism«, »mannerism«, »absolutism« and so on, no longer look as firm as they once did. They are dissolving, or more precisely, they are revealing more and more clearly the signs of the times in which they were invented rather than the times to which they are supposed to refer. Like beauty, baroque seems to be as much in the eye of the beholder as in the work of art under examination. The great legal historian F. W. Maitland once remarked, jokingly or half-jokingly, that the feudal system was introduced into England not by William the Conqueror but by the legal historian Sir Henry Spelman. Today, his remark is taken more and more seriously. Terms like »feudalism« are now discussed as »constructions« or »representations« (Brown 1974). Taking the argument a little further, it is sometimes suggested that historians invent rather discover their objects of study (Goldstein 1976, 1977; Nowell-Smith 1977).

3. In the third place, there is the claim that – even when they are not at their desks emplotting their histories or inventing their categories – historians cannot observe the past as it really was with an eye innocent of prejudice because they, like everyone else, are the prisoners of their »point of view«, in

other words the stereotypes, assumptions or mentalities of their own time, place and social group (including, of course, their gender). The rise of history from below and of women's history has made awareness of the problem of point of view even more acute. The debate resembles the seventeenth-century debate over bias, but takes it considerably further. Sociologists and anthropologists have been moving in the same direction, towards a sharper awareness of what it is convenient to call »ethnocentrism«. Hence the interest of a recent study by a historical anthropologist, Richard Price, who takes the multiplicity of viewpoints as given and organizes his work around this multiplicity. His study *Alabi's World* reconstructs eighteenth-century Suriname by means of an analysis of the records left by Dutch colonial administrators and German Moravian missionaries, supplementing them with oral history among the Saramakas in order to discover their point of view. His book is printed in four type-faces to make clear to the reader the viewpoint underlying a given paragraph – official, missionary, Saramaka or Price's own (Price 1990).

Finally (though not really finally, for this catalogue could easily be extended), there is the argument that the three points I have just summarized apply not only to historians but to historical actors as well.

i. What contemporaries wrote about their own time was shaped by literary forms. Claims of this kind have been made for generations by literary critics in their analyses of autobiographies (Tindall 1934; Pascal 1960; Hipp 1976). As autobiographies follow the model of earlier autobiographies, so the descriptions of foreign parts made by travellers owe as much to earlier travel writings as they do to observation (Pratt 1992). Even in the archives we find »fiction«, as Natalie Davis has recently argued, not (or not necessarily) in the form of lies but of »the crafting of a narrative«, as in her examples of the stories of violence in sixteenth-century France recounted by the perpetrators in the hope of obtaining a royal pardon (Davis 1987, 3). »Myth« is not just a name for bad history or for stories which primitive peoples tell themselves. Myths structure everyone's experience (Samuel and Thompson 1990).

ii. Contemporary categories as well as the categories of historians look increasingly fragile and fluid. Look what has happened to the idea of »tradition«, since Eric Hobsbawm described it as »invention« a few years ago (Hobsbawm and Ranger 1983). A number of nations, from Argentina to Scotland, have been described as »inventions« (Shumway 1991; Pittock 1991). Social classes, like castes, are increasingly treated as »discursive constructs«, in other words they are considered to be linguistic rather than social facts which create social reality rather than shaping it (Joyce 1991a; Inden 1992).

iii. More radically still, experience itself is coming to appear more and more like a construction. There was a time when Stendhal and Tolstoy shocked

people by describing events like the battles of Waterloo and Borodino in a fragmented and chaotic form, but today we are coming to take it for granted that this is exactly how we experience events, which are given their coherence and permanence only afterwards, by the media. Even individuals such as George Washington or Louis XIV are described as having been »invented« or »fabricated« in their own time, in the sense that a powerful public image of these leaders was projected by these individuals and their assistants (Longmore 1988; Burke 1992). In a way reminiscent of the philosophy of Edmund Husserl, historians are increasingly inclined to place reality between brackets and to concentrate on representations (Husserl 1913, 107 ff). Or in a way reminiscent of Michel Foucault, they extend their idea of the real to include what is imagined. At any rate, they are more and more fascinated by the history of perception, more especially by images of the »other« – how Europeans have perceived Americans, the Occident perceived the Orient, the rich perceived the poor, men perceived women, and so on (De Certeau 1975; Said 1978).

Parallel to this historical debate there is of course a philosophical debate, about the nature of knowledge and the nature of reality, a debate which may be summed up in the phrase that the »mirror of nature« is broken and that what we used to call »reality« now appears to be a representation (Rorty 1980). In that case, the work of historians must be the representation of a representation.

Many of these points have been made before. As in the seventeenth century, however, specific local doubts, even mild ones, can add up and they can have a cumulative effect. If we speak of a crisis of historical consciousness today rather than a generation ago, it is because the doubts are affecting more intellectual areas (and of course more people). The pot has long been simmering, but it is now boiling over.

Is there a way out of the crisis today as there was in the seventeenth century? Personally, I believe that there is such an exit. One might begin by remarking that most of these challenges come in mild versions and extreme versions (»historians are closer to novelists than used to be thought« versus »history is fiction« and so on), and that the mild versions are a good deal more persuasive. It is one thing to argue that historians cannot tell the whole truth, another to dismiss their ideal of telling nothing but the truth, one thing to bracket reality and another to deny it. One thing to say that historians created the feudal system, another that they created William the Conqueror. The critics have sometimes used the device which Ernest Gellner once described as the »greasy pole«, sliding between radical claims and arguments which only support a more moderate position. They sometimes contradict themselves, as in the case of Edward Said, who tried to demonstrate that »Islam has been fundamentally

misrepresented in the West«, and at the same time to question »whether indeed there can be a true representation of anything« (Said 1978, 272).

Any attempt to resolve this current debate by declaring that »the truth is between the two extremes« would be both too vague and too dogmatic. Indeed, I rather doubt whether the way out of the crisis can be summed up in any simple formula. Like the application of the geometrical method to history, it is no exit but a cul-de-sac. Indeed, the whole point of offering you that long list of distinctions was precisely to suggest that different challenges require different responses.

If I may quote my own work for a moment, a recent book on the »fabrication« of Louis XIV was intended to demonstrate the reality of representations, in other words to show that the poems and festivals and engravings and statues and tapestries together had important effects on the perception of the king. In offering this demonstration, however, I had no intention of denying the existence or even the accessibility of a reality beyond these representations. On the contrary, what impressed me most when carrying out the research for this study was the extent to which contemporaries were aware of the discrepancies between the image of a hero-king and the everyday behaviour of Louis Bourbon. They knew, for example, that the king wore high heels, while gossip claimed that the king preferred love to war.

As in the seventeenth century, historians will have to modify not only their conception of reality but also their methods to respond to the challenges of the philosophers and the critics. In this domain the need to represent multiple viewpoints seems to me to be particularly important. *Alabi's World*, and also some twentieth-century novels, such as Aldous Huxley's *Eyeless in Gaza* or William Faulkner's *The Sound and the Fury*, with their various voices, offer historians possible models for this kind of representation. The paired speeches or »antilogies« in classical and Renaissance historians such as Thucydides, Poggio and Guicciardini performed similar functions (Romilly 1956; cf Struever 1970).

Even in the age of »blurred genres«, most historians still recoil from such a procedure, for the same reason that antilogies and other speeches were rejected in the seventeenth century, that they gave the false impression that past generals or statesmen actually spoke words which were written for them by later historians. All the same, it might well be worth trying to find substitutes for this technique. I attempted something like this in my book on the image of Louis XIV, following the description of his official image with a chapter called »the reverse of the medal« which was a kind of mosaic of hostile views of the sun king.

I have been trying to define and defend what might be called a moderate or Erasmian position, arguing that the way out of the present crisis of historical consciousness is to plead »guilty« to some of the charges against historical certainty, but to plead »innocent« to others, to adopt some techniques from writers of novels but to maintain historical writing as a separate genre from fiction (A good example of such discrimination is Spiegel, 1990, 1992). Such a position is doomed to attack from both sides, but I hope and believe that it is defensible.

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# »White Men Can't Jump...«

## *Objectivity and Fiction*

Oto Luthar

»A different reality is possible«,  
he defended himself,  
»if only you succeed in looking  
left and right from your own nose«

Juan Octavio Paz, *Everyday pedagogics*

»A us Absicht und Stoff entsteht die Form«, claimed Ranke.<sup>1</sup> Ranke still believed in a mission. He also believed in a higher law. »Telling it like it was« was his ideal and this was an event in itself in human comprehensibility, yet also a relic. Objectivity, even though »farblos«, »abgebrechend« or »ermüdent erscheinen« had to be »ein Stück historischer Arbeiten«. He would sooner admit to a defeat »am Ende hat man's nicht erreicht« than the possibility of something creative, (with narrative) interfering with the world that was »ein andere«.

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»White men can't jump«, says Sidney Deane (Wesley Snipes) to his partner Billy Hoyle (Woody Harrelson) in the film<sup>2</sup> of the same title. Sidney does not believe anything (or very little) except that the truth is what is most advantageous at the moment, absurd as it may be, just like the statement that white men can't dunk. Sidney Deane does not only believe that nowadays one

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<sup>1</sup> Leopold von Ranke, »Über die Verwandtschaft und Unterschied der Historie und Politik«, Wolfgang Hardtwig, *Über das Studium der Geschichte*, dtv, Munich, 1990.

<sup>2</sup> The film 'White Men Can't Jump' by Ron Shelton is a well meant criticism of the rationality of the white race and its major characteristics: exaggerated obstinacy, determination and vanity. The story is about two team mates, sometime friends, who play basketball for money. An African American, played by Wesley Snipes, who looks at life very pragmatically, is still quite natural in his outlook and always has to explain to his white team colleague, played by Woody Harrelson, that one sometimes has to let loose...

manipulae the world but he also knows that it is necessary if one wishes to survive. To him and to Billy's girlfriend, who tries to reason with Billy in the best possible way that sometimes you win even if you lose or lose even if it looks as though you won, interpretation is everything...

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Of a similar nature is the premise that »blacks have the lowest IQs« as was statistically (read »objectively«) claimed by Richard J. Herrnstein and Charles Murray in their book called *The Bell Curve*<sup>3</sup>. Leaving aside the absurd of such »scientific« procedure and opting for methodology, soon leads again to the imaginary principle of objectivity. The »result« was – as is stressed repeatedly – acquired on the basis of measurements and was therefore supposed to be objective, legitimating the authors their claims and procedures...

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The statements expressed above are by way of an introduction to the following contemplation upon relations between objectivity and fiction, and are either chosen at random or are the result of work on different topics (the history of modern racism, discourses on nationalism) carried out by the author recently.

The final metaphorical starting-point – and a current example of the principle of objectivity – was chosen to stress the fact that this principle is taken to an absurd conclusion in certain quasi-scientific debates on the various cognitive capacities of different races. Above all, this is a clear example that often factual data are not in dispute<sup>4</sup>, but the interpretation of the data is.

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<sup>3</sup> In the book with the significant subtitle: »Intelligence and Class Structure in American Life«, the authors try to support three important claims: that Asians have a higher average IQ than white people; that most immigrants come from groups with lower IQs; and that the IQ score of black people in Africa is »substantially below« the black American average. Each of these seemingly formally objective claims has a key role in the formulation of *The Bell Curve*'s broader suggestions about the relationship between race, heredity, IQ and social structure. (See also the article by Charles Lane: »The Tainted Sources of 'The Bell Curve'« in the *New York Review of Books*, Volume XLI, No 20., p. 14 – 19.)

<sup>4</sup> One of the greatest absurdities of such an approach was the assertion about inferior black African intelligence which has particularly far-reaching implications. Namely, »if it can be shown that low IQ can be taken as being predictive of social ills such as crime, poverty and unstable families, current views of Africa and of the sources of its tragic problems would have to be significantly revised ... And a lower African IQs could also be taken as refuting the claim that black Americans' lower IQ is a legacy of racism, assuming, as Murray and Herrnstein put it, that 'the African black population has not been subjected to the historical legacy of American black slavery and discrimination, and might therefore have higher scores' (p. 288)«. Referrals to the racist explanations of authors such as Richard Lynn are especially problematic. He claims »that genetic mental superiority of the Jews may be a happy Darwinian by-product of 'intermittent persecutions which the more intelligent may have been able to foresee and

This also shows the variable costs incurred by the principle of objective interpretation in general. The price can be high – consider that between Ranke's times and the present it has several times been proven that the criterion of objectivity is an illusion – nonetheless this issue is one of the main issues of the philosophy of history and the modern theory of historiography. This becomes obvious by careful reading of some of Ranke's theoretical papers. Similar facts can be proven by the analysis of letters to his closest contemporary Droysen, who established as early as in the middle of the 19th century that it is our imagination that determines particular phenomena in space and time and not some criterion of objectivity. (Droysen, 1856/57, 1882).

What (other) purpose can the establishment of some (selective) criterion, for which it was clear from the outset that it will not be easily accessible or not accessible at all, serve?

With such emphasis on the principle of objectivity, a certain (moral, political, or aesthetic...) concept can still be established and preserved. In Ranke's philosophy, it was political interest (politics/science, everyday political practice and politics as a long term process of strictly controlled change and leadership...) and a wish for a working definition of the relationship between politics and historiography or history. For the authors of the later period, especially the historians, the following statement, which Freud once said was true of biographers, is also true for historians: sooner or later they fall in love with the subject of their study. Some of them may truly feel some kind of inner mission and in their images of themselves and the world become part of the events, creators of politics, cultures, etc., while over everything, in their professional opinion, hovers the law of objectivity...

For historiography of the 19th century and for the final codification of history as a national science this entails the end of the belief that historiography is a literary art or a part of rhetoric, and historiography is no longer just a profession, a job or a mission, but becomes an (objective) science (with stress on both, the »objective« and »science«) and of course an act of patriotism...

This of course creates some crucial changes, in the manner of interpretation, with the entire set of categories replaced. Rather than fact and fantasy, the terms truth and error are introduced, and this is important for the present discussion on relations between the objective and subjective or fictional form of representation (interpretation), where the truth and the fact have become equal. Fiction in this case is represented as a sheer opposition to the first, as an

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escape«». (See Richard Lynn, »Civilization and the Quality of Population«, *Journal of Social, Political and Economic Studies*, Vol. 16. No. 1 (Spring 1991), p. 123. Here quoted from Charles Lane, »The Tainted Sources...«, p. 16).

obstacle to the comprehension of reality. History was opposed to fiction (a term mostly associated with novels), a literary form, which, contrary to imagining what was real, dealt with imagining what was possible, in short something that can only be imagined but does not really exist. According to Hayden White (White, 1982) this brought about a fantasy of an historical discourse consisting only of statements that can be verified by facts... but mostly the goal of historians of the 19th century was to erase every trace of the fictional or merely imaginable from their discourse. It was a case of the thorough prevention and denial of poetic or rhetorical procedures and the avoidance of what might be characterised as an intuitive procedure by the author. All this of course did not happen suddenly, but the process of formalization of historiography, with several detours, lasted more than a century.

To make these issues clearer let us examine some of the basic characteristics of this transition:

#### *From story to morality*

At the end of the 17th century, the western European world was still enchanted by Roman and Greek history, rediscovered during the Renaissance. Historiography was similar in tone to novel writing, full of awe and respectfulness toward the idealized-virtuous citizens of Rome and Athens. Contemporaries were constantly compared to paragons of virtue from the ancient past, and the crude language of the chroniclers of mediaeval Europe was simultaneously criticised. If someone wished to learn something more about the contemporary history of his own environment, he/she had to, according to the French example, read genealogical narratives of noble families which were almost without exception derived from other sources. These were, like du Haillan, for example full of »such dirty and low words that can only reflect the thoughts of crooks and rude men... (and) ...by no means reflect the thoughts of kings and virtuous men« (Aries 1988). The writers of these »stories« were in his opinion so distant in tone from statesmanlike language that they were incapable of sane judgement.

Authors of a later period were mostly satisfied by using »sources« that were clarified versions of »vulgar« stories modified to the tastes of their time. Like Anquetil, who freely claimed that *Histoire de la France* is a compilation, they principally tried to establish which version of the subject was best presented in the works of their predecessors. The chosen »narrative« was then supplemented by whatever they believed to be missing and their actions were justified by the claim that the public was supposedly in need of activation by a suitable traditional version and that the possible literalization of such narra-

tives was recommendable only on the condition that it did not change the established order of things. According to Aries, for generations up to the end of the 16th century, people were comfortable with the monotony of a message that was always the same and the contents of which were, according to their beliefs, determined forever. Only changes in style, rhetoric or extension were allowed.

On the other hand, the same authors avoided quoting original sources and the original texts. Moreover, the accurate presentation of »manuscripts«, as originals were called, was considered to be a barbaric act, a tedious unravelling of fragmentary texts, the details of which were »impossible to include into general history anyway«. They saw their mission as modifying this original »substance« according to the tastes of their own period. A high style, free of blasphemies, tasteless jokes and proverbs was used.

At the end of the 17th century, however, the need to constitute modern national history arose, yet until the end of the 18th century it was still in its ancient (dis)guise. Its purpose was to rehabilitate previous national rulers and to fabricate new national heroes (a good example of this is provided by a comparison of important figures of the French revolution with ancient heroes or gods). All this led to a new comprehension of historiography. For instance, from this moment on, an historical figure such as Klodovik was no longer depicted as bloodthirsty and Dagobert as being fearful. Klodovik II and his successors, although still reprehensible rulers, were no longer deemed lazy thugs, rude men, but people worthy of respect as part of national history.

History became an act of patriotism and gradually changed into a collection of moral and political lessons. For Furetier, a French historian of the early 18th century, history is nothing more than »morality, reduced to acts and examples« (Aries, pp 135-136) that is offered to people as a reflection of their mistakes. This is a serious announcement of a constitutive phase of classic, nationally oriented historiography, which, in addition to introducing (educational) dialogue with its public, also explicitly recognises it for the first time. The climax of this process was the scientification of historiography. But before this actually took place, France (at the time still determining the orientation of western historiography) was still under the influence of the romantically colourful generation of Thierry, and above all Michelet, who, in his »authentic« report, dealt with the events of the past with the same »alien character«, or otherness that was characteristic of fiction. The strictly scientific approach to history was a reaction to the previous forms of extremely literally-oriented and mythologised historiography. The paths later taken by historical practice do not only include defictionalisation but also demythification of any domain of inquiry and representation.

*History and science*

History, the realistic science par excellence, was set up as superior to fiction as the study of the real in contrast to the study of the merely imaginable. One might also consider the words of White: »Although Ranke had in mind that form of the novel which we have since come to call Romantic, when he castigated it as mere fancy, he manifested a prejudice shared by many of his contemporaries, when he defined history as the study of the real and the novel as the representation of the imaginary. Only a few theoreticians, among whom J.G.Droysen was the most prominent, saw that it was impossible to write history without having recourse to the techniques of the orator and the poet. Most of the 'scientific' historians of the age did not see that for every identifiable kind of novel, historians produced an equivalent kind of historical discourse. Romantic historiography produced its genius in Michelet, Realistic historiography its paradigm in Ranke himself, Symbolist historiography produced Burchardt (who had more in common with Flaubert and Baudelaire than Ranke), and Modernist historiography its prototype in Spengler. It was no accident that the Realistic novel and Rankean historicism entered their respective crisis at roughly the same time«. (White 1982:124)

Nevertheless, we can say that there were several styles of historic presentation in the past, but only until the beginning of 19th century, but that a generation of »scientific« historiographers did not acknowledge these, being »captive of the illusion that one could write history without employing any fictional techniques whatsoever«, or as White says »they continued to honour the conception of the opposition of history to fiction throughout the entire period, even while producing forms of historical discourse different from one another, and that their grounding in aesthetic preconceptions of the nature of historical process alone could explain those differences. Historians continued to believe that different interpretations of the same set of events were functions of ideological distortions or of inadequate factual data«. They also believed that »if one only eschewed ideology and remained true to the facts, history would produce a knowledge as certain as anything offered by the physical sciences and as objective as a mathematical exercise«. (White 1982:125).

They did not realise, however, that facts do not speak for themselves but that historians speak for them, that they speak on their behalf and combine the fragments of the past into a whole »whose integrity is – in its representation – a purely discursive one. Novelists might be dealing only with imaginary events whereas historians are dealing with real ones, but the process of fusing events, whether imaginary or real, into a comprehensive totality, capable of serving as the object of representation, is a poetic process«. Here the historian must utilise precisely the same strategies, the same modalities of representing

relationships in terms that the poet or novelist uses. These fragments have to be put together to make a whole of a particular, not general, nature. (White 1982:125)

We might almost agree with White yet at the same time ask ourselves on what basis it is possible to claim that historical discourse has more factors in common with, than, distinct from, not with the process of novel writing. The first basis – for White – is to be found in recent developments in literary theory – especially in the fact that modern structuralists and literary reviewers insist on the necessity of dissolving the distinction between prose and poetry in order to identify their shared attributes as a form of linguistic behaviour that on one side, are as much constitutive of their objects of representation as they are reflective of external reality, and projective of internal emotional states on the other. White even refers to Stalin and his claim that language belonged neither to the superstructure nor the base of cultural praxis, and especially stresses that language is the instrument of mediation between consciousness and the world it inhabits. If this is nothing new for literary theoreticians, it is new for historians who are »buried in the archives, hoping by what they call a 'sifting of the facts' or 'the manipulation of data' to find the form of the reality that will serve as the object of representation in the account that they will write when 'all the facts are known' and they have finally 'got the story straight'«. (White 1982:126)

Similar views were shared by White in the early seventies in his work »Metahistory«, where he claimed, referring to literary theory, that 'poetising' is not an activity that hovers over reality (White 1973:IX). Some fifteen years later he claims that we are therefore no longer compelled »to believe – as historians in the post-Romantic period had to believe – that fiction is the antithesis of fact ... or that we can relate facts to one another without the aid of some enabling and generally fictional matrix«. (White 1982:126). In his opinion, this would also prove to be a useful cognition for historians if they weren't »so fetishistically enamoured of the notion of 'facts'« and because of that »so congenitally hostile to 'theory' in any form that the presence in a historical work of a formal theory used to explicate the relationship between facts and concepts is enough to earn them the charge of having defected to the despised sociology or of having lapsed into the nefarious labelled philosophy of history«.

The height of White's insight was his reference to Nietzsche who claimed that every discipline is constituted of what it forbids its practitioners to do. In his opinion (which is put into one of the constitutive theses of contemporary theory of historiography), no other science has as many taboos as professional historiography. Those taboos are present »so much so that the so-called 'historical method' consists of little more than the injunction to 'get the story

straight' (without any notion of what the relation of 'story' to 'fact' might be) and to avoid both conceptual overdetermination and imaginative excess ...at any price.«

The price to pay for this is a considerable one. »It has resulted in the repression of the conceptual apparatus« (without which single facts cannot be aggregated into complex macrostructures and constituted as objects of discursive representation in a historical narrative) and the relegation of the poetic moment in historical writing to the interior of the discursive (where it functions as the unacknowledged – and therefore uncriticisable – content of historical narrative).

It is nowadays impossible to draw a firm line between history and philosophy of history because the difference is only that »the latter brings the conceptual apparatus by which the facts are ordered in the discourse to the surface of the text, while history proper (as it is called) buries it in the interior of the narrative, where it serves as a hidden or implicit shaping device...«. Such distinctions lead to the fact that »historians usually work with much less linguistic (and therefore less poetic) self-consciousness than writers of fiction do«, or even worse, it leads to the situation where »the persona of the author appears nowhere identifiable in the text« and where historians aim to be »clear what technical terms mean, when they dare to use any«.

### *Beyond sanctions?*

The problem is that contemporary historians in refer to such authors as Thucydides, Tacitus, Michelet, Ranke, Droysen, Tocqueville and Burchardt support of their views, and forget that these historians at least had a rhetorical self-consciousness that permitted them to recognise that any set of factors was variously and equally legitimately, describable. »There is no such thing as a single correct original description of anything, on the basis of which an interpretation of that can consequently be brought to bear.« (White 1982:127).

»They recognised, in short, that all original descriptions of any field of phenomena are already interpretations of its structure and that linguistic mode in which the original description ... of the field is cast, will implicitly rule out certain modes of representation and modes of explanation regarding the field's structure, and tacitly sanction others.« In other words, it is true that every form of description is already limited by the range of »modes of emplotment« and »modes of argument« which serve to disclose the meaning of the field in a discursive prose representation. According to White, »the plot structure of a historical narrative (how things turned out as they did) and the formal argu-

ment or explanation of why things happened or turned out as they did are prefigured by the original description (of the 'fact' to be explained) in a given dominant modality of language use: metaphor, metonymy, synecdoche or irony«. The mode of metaphor will favour the archetype of Romance as a privileged mode of emplotment (»a mode of explanation that identifies knowledge with the appreciation and delineation of the particularity and individuality of things«). The mode of metonymy will favour a tragic plot structure (»as a privileged mode of emplotment and mechanistic casual connections as the favoured mode of explanation, to account for changes topographically outlined in the emplotment«). An ironic original description of the field will generate a tendency to favour emplotment in a satirical mode (and pragmatic or contextual explanation of the structures thus illuminated). And finally, themes originally described in the synecdochic mode will tend to generate comic emplotments (and organicist explanations of why these fields change as they do. (White 1982:128).

One might add that each of the linguistic modes of emplotment and modes of explanation has affinities with a specific ideological position. White divides them into four types: anarchist, radical, liberal and conservative. The suitability of these terms could be discussed but there is no argument with his claim that »the issue of ideology points to the fact that there is no value-neutral mode of emplotment, explanation or even description of any field of events, whether imaginary or real, and suggests that the very use of language itself implies ... a specific posture before the world which is ethical, ideological or more generally political: not only all interpretation, but also all language is politically contaminated.« (White, 1982:129).

Deriving from this statement is the fact that the issue here is not »What are the facts? but rather, how are the facts to be described in order to sanction one mode of explaining them rather than another? Some people profess the view that history, for example, cannot become a science until it finds a technical terminology adequate to the correct characterisation of its object of study, in the way that physics did in calculus and chemistry did in the periodic table. Such is the recommendation of Praxists, Positivists, Cilometrians and so on. Others will continue to insist that the integrity of historiography depends on its use of ordinary language, its avoidance of jargon. The latter suppose that ordinary language is a safeguard against ideological deformation of the 'facts'. What they fail to recognise is that ordinary language itself has its own forms of terminological determinism, represented by the figures of speech without which discourse itself is impossible.« (White 1982:134).

Similar views to these are not infrequent, the strict scientific principle of objectivity was contemplated by some of Ranke's contemporaries (more openly

after his death – for example, his colleague Lorenz<sup>5</sup> in 1891) and later this was repeatedly the subject of philosophical and historical discussion, especially in the times of the newly-discovered emancipation of philosophy of history (Hemple, 1942), and the period marked by Colingwood in the 60's. In the past quarter of the century – when the theory of historiography gained importance and authors such as H.M. Baumgartner<sup>6</sup>, Karl-Georg Faber<sup>7</sup>, Jörn Rüsen<sup>8</sup>, and White<sup>9</sup> stressed just the opposite – here we have come across the belief that form makes history visible.<sup>10</sup>

»Geschichte existiert nicht solange sie nicht geschaffen wird« (Rosenstone 1991), Ranke was told over one century and a half later by historians that dared to look left and right from their nose and proved that »the 'real' past is devoid of meaning and order«, and that in historical narrative, the systems of meaning peculiar to a culture or society are tested against the capacity of any set of 'real' events to yield to such a system...

Finally, let us note that even some twenty years ago (around 1975) it was very hard to contemplate within the German historiographic debate (which is still the most authoritative in central Europe).<sup>11</sup> German historiographers were still striving for some mutual (general) reference point for each concrete historical interpretation, which should precisely define what can be discussed and acknowledged »as history«. They were (together with the historians in their

<sup>5</sup> Ottokar Lorenz, *Leopold von Ranke*, Berlin 1891, p. 127, quoted here from Helmut Berding, »Leopold von Ranke«, in Hans-Ulrich Wehler, *Deutsche Historiker I*, Vandenhoeck & Ruprecht, Göttingen, 1971, p. 13.

<sup>6</sup> H.M. Baumgartner in his article »Narrative struktur und Objektivität. Wahrheitskriterium im historischen Wissen« (in Jörn Rüsen, *Historische Objektivität. Aufsätze zur Geschichtstheorie*, Vandenhoeck & Ruprecht, Göttingen, 1975), attempts to explain the true sense of objectivity, as well as the relation between objectivity and truth on the basis of five argumentative steps or lines (»Argumentationsschritt«, »Argumentationsreihe«):

the first step stresses the use of the term »historical judgement«;

the second covers the relation between objectivity and the truth;

the third attempts to find an answer to the question of whether objectivity can be ascribed to history at all and if so, how;

the fourth explains expressions of narrative structure, a relation between the narrative and the event and the time-related dependency of narrative organisation of past events; and

the fifth analyses the connection between narrative structure and truth.

<sup>7</sup> Karl-Georg Faber, *Theorie der Geschichtswissenschaft*, C.H. Beck, Munich, 1982.

<sup>8</sup> Jörg Rüsen, *Zeit und Sinn. Die Strategien historischen Denkens*, Fischer, Frankfurt, 1990.

<sup>9</sup> Together with White, the discussion on these issues was brought to Europe by Dominick la Capra, Steven Kaplan and Martin Jay, just to mention a few.

<sup>10</sup> Reinhardt Koselleck, »Wozu noch Historie?« in Wolfgang Hardtwig, *Über das Studium der Geschichte*, dtv, Munich, 1990, pp. 347-365.

<sup>11</sup> A fine example of such views is the introduction by Jörn Rüsen in his book *Historische Objektivität*, pp 5-8.

region of influence) aiming for clearly defined methods and a mutual sense of historic realisation »allgemeine Erkenntniszwecke«). They repeatedly asserted that all they wanted was to make historiography as historical as possible (»es geht darum, die Geschichtswissenschaft so historisch wie möglich zu machen«<sup>12</sup>).

The issue of the objectivity of historical realisation was thus at the centre of their discussions, proving the familiar and previously discussed tendency to make historiography scientific (»Wissenschaftlichkeit der Geschichtswissenschaft«) and demonstrating a need for those »moments of historic realisation« that provide history with a »specially high degree of validity« (»einen besonders hohen Grad an Geltung verschaffen«<sup>13</sup>). Such views are extremely problematic, because they put a historian in an unenviable position, particularly if he/she wishes to remain faithful to the tradition of German philosophy of history. As a scientist, a historian is suddenly overburdened (»überfordert«). He/she is also faced with a demand for the argumentation of past practices of living as well as with expectations of favourable instructions for (different) procedures (»Handlungsmaximen«<sup>14</sup>).

In spite of such relativisations of the »principles of objectivity«, these final short conclusions clearly prove (hopefully) to what extent European discussion – in spite of Veyne's<sup>15</sup> thematisation of intrigue – really digressed from Ranke's »werwissenschaftlichung« of history or drew near to the new conceptualisation of metahistory.

One thing is already »clear«; a recent shift in historical thinking has brought – as Ginzburg would put it – »the peripheral, blurred area between history and fiction close to the center of contemporary historiographical debate«.<sup>16</sup>

Or as Strout<sup>17</sup> would say:«the widespread recognition that historical evidence is not 'a transparent medium', or 'an open window that gives us direct access to reality', is a crucial contribution to historical understanding«. It is also true on the other side, that drastic minimization of differences between fiction and history could contribute to the reduction of historiography to »arbitrary aes-

<sup>12</sup> *Ibid.* p 7.

<sup>13</sup> *Ibid.*

<sup>14</sup> Karl-Georg Faber, »Objektivität in der Geschichtswissenschaft« and J. Rüsen, *Historische Objektivität*, p 10.

<sup>15</sup> See Paul Veyne, *Foucault revolution de l'histoire*, Edition du Seuil, Paris, 1978, German translation published in 1992. See also Paul Veyne, *Der Eisberg der Geschichte*, Merve, Berlin, 1981 and Paul Veyne, *Aus der Geschichte*, Merve, Berlin, 1986.

<sup>16</sup> Carlo Ginzburg, »Checking the Evidence: The Judge and the Historian«, *Critical Inquiry* 18, 1991, p. 87.

<sup>17</sup> Cushing Strout, »Border crossings: History, fiction and Dead Certainties«, *History & Theory* XXXI, No 1, 1992

thetic or political preferences« but we can really agree with those who claim that by turning the idea of evidence into »a wall, which by definition precludes any access to reality«, we get »a sort of inverted positivism«<sup>18</sup>. And we certainly can not agree with the statement that »narrativists« boast of their liberation from positivistic realism and in this way might minimise the chance of the historian enlarging historical understanding.

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# The Logic Structure of Pictorial Representation

Paul Crowther

We use the term »representation« in many different contexts. Danto tells us, for example, that the word Icarus »represents« Icarus; Goodman mentions, in passing, that an ambassador represents his country; pictures represent, maps represent, it is also said that photographs represent. Now what tempts us to group all these together initially, is the fact that they all involve a semantic function. Even in the case of the Ambassador, we are entitled to invoke this function marginally insofar as his activity is a presentation of his country's as opposed to his own interests. His authority ultimately »refers back« to the powers that granted it. It is the semantic function which has thence led Goodman to assert that denotation is the »core« of representation.

This core has a twofold character. On the one hand a representation as in the case of portraiture, can embody a genuine two term relation – there is a picture, and there is a person who the picture is »of«. On the other hand, there are pictures which involve only one term – the picture itself, insofar as their subject-matter – Mr. Pickwick or Pegasus or whatever, are fictional entities. A clarification of the relation between one and two term picturing, has I think to be the foundation of any coherent theory of representation.

However, we immediately face a crucial problem. We have found that representation is used synonymously with »stands for«, »refers to« or in Goodman's case »denotes« i.e. variants of semantic function. But we characteristically associate representation, not with just any old semantic function, but one where the representation perceptibly resembles the subject it is denoting. I mean of course, such things as pictures, maps and photographs. These, we might claim, are the classes of artifacts which give the term »representation« its ontological potency. It is clear then, that an investigation of representation must take as its central task, the clarification of »resemblance« and its role in the context of one and two term representations.

Now by far the most impressive treatment of this whole area is found in Flint

Schier's *Deeper into Pictures*.<sup>1</sup> His basic approach deals with it in terms of a theory of »natural generativity«. The basic outlines are as follows:

*»Pictorial competence in a symbol system is the ability to generate naturally interpretations of arbitrarily many novel members of the system. When an initial interpretation of some symbol does in fact effect an ability in someone to interpret novel symbols without further ceremony, then that initial interpretation was iconic or pictorial, the symbol so interpreted was a picture.«<sup>2</sup>*

Schier's point here is that picturing is a mode of communication, which, *once learnt*, is decisive. To recognise *X* as a picture of *y* in the most basic sense does not require anything in the way of further *ad hoc* conventions. Any new picture we encounter draws on natural abilities to recognise similarities between it and that which it pictures. Interestingly, however, whilst this clearly involves some question of resemblance, it is the »recognition« aspect which Schier gives massive emphasis to. We are told in this respect that

*»... the theory of natural generativity is soaked in causation. Essential to that theory are two causal claims' that an interpretation of S as being of 0 is iconic or pictorial in so far as it has been prompted by the interpreter's 0 – recognising abilities and that a picture of 0 is precisely something which can trigger the interpreter's 0-recognising abilities. Iconic interpretation and iconicity are thus functionally defined.«<sup>3</sup>*

For the present writer, there is a problem here. Schier's analyses are substantially sound but they are embedded in a framework, which emphasises a causal theory of perception. This functionalist approach tends to somewhat obscure the logical core of picturing, and, indeed, to point in a direction which also obscures the more important philosophical ramifications of picturing's relation to self-consciousness. Now in this discussion I shall not address the latter issue. I shall be content rather, to foreground the logical features of pictorial representation through an interpretation of defence of resemblance which (unlike Schier's) is orientated toward the pictorial object and the conditions of its creation. As a means to this, I will critically engage with ideas from Goodman and (to a lesser extent) Joseph Margolis and others.

First, Goodman's approach to picturing has, as its central feature, a rejection of the centrality of resemblance. We differentiate pictorial representation from other modes of denotation, by virtue of the fact that it, in common with other forms of representation, is »syntactically dense«.

<sup>1</sup> Flint Schier, *Deeper Into Pictures*, Cambridge University Press, Cambridge 1986.

<sup>2</sup> *Ibid*, p. 46.

<sup>3</sup> *Ibid*, p. 195.

»A scheme is syntactically dense if it provides for infinitely many characters so ordered that between each two there is a third... [Hence]... no mark can be determined to belong to one rather than to many other characters.«<sup>4</sup>

We need not detain ourselves over the many general puzzles that this definition might raise; a more pressing difficulty is presented by the relationship between picturing's »dense« character as a system, and its denotative function. Specifically, how do the two correlate? One can conceive of *ad hoc* situations where one might say things like »if you should find a picture of Sartre on the front door, it means I'm out« – but this would be simply using the picture to denote, and not an instance of a picturing relation. The correlation would be a case of an arbitrary convention. If, however, the term pictorial representation is to have any descriptive potency, we must have non-arbitrary criteria for correlating picture and denotation. Goodman, however, does not specify any criteria whatsoever. Indeed he has inaugurated something of a tradition for rejecting the most plausible criterion of correlation, namely visual resemblance. Let us review his objections to this notion.

First Goodman posits the »naive« theory:

»'A represents B if and only if A appreciably resembles B', or 'A represents B to the extent that A resembles B'.«<sup>5</sup>

As I shall show a little later Goodman's »naive« theory is actually two theories, the first of which is valid, and the second not. But first, let me consider his objections. Goodman claims that an object »resembles itself« to a maximum degree, but rarely »represents« itself i.e. resemblance, unlike representation, is reflexive. Additionally; resemblance is symmetric whereas representation is not.

»B is much like A as A is like B, but whilst a painting may represent the Duke of Wellington, the Duke doesn't represent the painting.«<sup>6</sup>

Now I (unlike many<sup>7</sup>) am not happy at the idea of reflexivity being ascribed to terms such as resemblance, which find their descriptive potency in the context of two term relations. And indeed, if one chooses to follow this very dubious path, I can think of no reason why an object should not represent itself as much as resemble itself. It is also worth noting that Goodman, in the above objections, has not (as he set out to do) countered the »naive theory« i.e. – that resemblance is a necessary condition of pictorial representation, but rather an

<sup>4</sup> Nelson Goodman, *Languages of Art*, Hackett Publishing Co., Indianapolis 1976, pp. 136 and 137.

<sup>5</sup> *Ibid.*, p. 3.

<sup>6</sup> *Ibid.*, p. 4.

absurd theory of his own devising which holds that resemblance is a sufficient condition of representation.

Goodman does, however, eventually come up with two plausible objections to resemblance as a necessary condition. First, Constable's painting of Marlborough castle resembles any other painting more than it resembles Marlborough Castle, yet we say the picture of »of« the castle, and not simply of an-other painting. Hence resemblance cannot be the criterion for correlating picture and denotation. Margolis has objected to this account that

*»Goodman utterly fails to meet the objection that some respect or other may be specified in which the Constable perceptually resembles the Castle more than it resemble any other picture.«<sup>8</sup>*

This objection seems to be made redundant, however, by the fact that Goodman holds that any painting (no matter what criteria of perceptual resemblance we invoke) will always resemble a good copy of itself, more than it will its subject-matter. Even so, this would only count against an extreme resemblance theorist such as Beardsley, who holds that

*»If P is a design, P depicts an F if and only if P contains some area that resembles more closely the visual appearance of F's than it resembles any other object.«<sup>9</sup>*

Insofar as a picture always visually resembles a good copy more than it does its subject-matter, this account cannot hold. However, we must remember that the »naive« theory which Goodman takes himself to be criticising only contends that for A to be a representation of B there must, to use Goodman's own words, be some »appreciable resemblance«. Clearly Goodman is vacillating as to what sort of resemblance theory he is wishing to reject.

This becomes even more apparent when we consider his second objection to resemblance as a necessary condition of pictorial representation. Goodman entitles the relevant sub-section of *Languages of Art* as »Imitation« but occupies most of his discussion with a rejection of the »copy theory« i.e. the argument that a picture is to be construed as a picture »of« something insofar as it depicts that subject with absolute verisimilitude. Against this view he holds that phenomenological appearances have a multitude of aspects of which the copy theorist is after the »natural« one; hence, for example, he is not out to depict the Duke of Wellington

<sup>7</sup> Such as Max Black, Joseph Margolis, and Roger Scruton.

<sup>8</sup> Joseph Margolis, *Art and Philosophy*, Harvester, Brighton 1980, p. 101.

<sup>9</sup> Monroe Beardsley, *Aesthetics: Problems in Criticism*, Harcourt Brace, New York 1958, p. 270.

»... as he looks to a drunk through a raindrop.«<sup>10</sup>

He is after, in fact, a sure »seeing«; an »innocent eye« that perceives in »aseptic« conditions. Goodman, however, shown that perception is by its very nature interpretative and creative; and cites Gombrich's *Art and Illusion* as showing how pictorial representation reflects this interpretative quality. Hence, given the fact that there are no pure visual »givens« or »facts«.

»The copy theory is ... stopped at the start by inability to specify what is to be copied.«<sup>11</sup>

Indeed, the copy theory takes a further beating in that

»Where a representation does not represent anything there can be no question of resemblance to what it represents.«<sup>12</sup>

Now I am substantially in agreement with Goodman's notion of perception, through (for reasons I shall make clear further on) I do not think he has drawn much benefit from reference to Gombrich. However, the question again arises as to exactly which resemblance theory Goodman is rejecting. We will remember that his initial formulation of the naive theory had two aspects. A represents B only if it appreciably resembles B; and A represents B to the extent that it resembles B. I think that the »copy theory« which Goodman has been rejecting is really a variant of the second aspect (though one can not be absolutely sure of this, since Goodman is so grudging in the depth to which he outlines alternatives to his own position). Hence, whilst I am in substantial agreement with Goodman's contention that the »copy theory« is incoherent this still leaves the first aspect of the »naive« theory untouched. All sorts of confusion as to Goodman's intention lurk here. Margolis observes that

»Goodman does not deny that what represents and what is represented may resemble one another, only that representation as such does not as such depend on resemblance.«<sup>13</sup>

But of course Goodman has not established this conclusively, and in the absence of criteria for the correlation of pictured being forthcoming from him, it is to the notion of »appreciable resemblance« we must return.

An objection might be launched at the outset. Max Black declares for example:

»My chief objection to the resemblance view ... is that when pursued, it turns out to be uninformative ... The objection to saying that some paintings re-

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<sup>10</sup> Goodman, *op. cit.*, p. 7.

<sup>11</sup> Goodman, *op. cit.*, p. 9.

<sup>12</sup> Goodman, *op. cit.*, p. 25.

<sup>13</sup> Margolis, *op. cit.*, p. 102.

*semble their subject-matter is not that they don't, but that so little is said when only this is said.*<sup>14</sup>

The fact, however, that »little is said« in saying that picturing presupposes visual resemblance, does not of itself disprove such a contention. Unfortunately, all the other arguments which Black proposes are substantially the same as Goodman's objection to resemblance as a sufficient condition of representation. This, however, still leaves open the possibility of visual resemblance as a necessary condition. I shall argue that from it, knowledge of a quite informative nature arises.

However, we must first dispose of one admittedly tautological sense of saying that one visual object resembles another. A fried egg for example resembles a mountain insofar as they are both »extended« (in Locke's sense of the term). However, it is rather empty to say that one thereby resembles or »looks like« the other, in that extension is a property possessed by any visual object whatsoever by definition. For the term »visual resemblance« to be less than empty, then, to ascribe such a relation between objects, involves us specifying some more precise way in which their visual aspects correlate. Andrew Harrison puts us, in general terms, on the right road as follows:

*»... one thing represents another either if the two can be relevantly held to be similarly structured so that in accordance with this structure it is possible to pair the unity of one with the units of the other, or else they are themselves such units.*<sup>15</sup>

This definition is a start, but will require some modification as we progress. For example, in the case of pictorial representation the »units« must be certain visual aspects of pictured. Specifically they will be a function of common shape, colour, and texture (though texture resolves ultimately into aspects of the other two). Harrison, however, rejects this invocation of »visual aspects«. For example:

*»... a standard Renaissance drawing of an egg or face will present the viewer with a mass of lines and hatching [sic] that certainly represent, but do not at all resemble the surface of an egg or the appearance of skin.*<sup>16</sup>

However, Harrison is wrong here, in that, viewed from the right distance and angle, masses of line and hatching do resemble visual aspects of eggs or skin, and enable us in fact to specify eggs or skin as elements in what is pictured.

<sup>14</sup> Max Black, »How Do Pictures Represent?« in *Art Perception, and Reality*, ed. M. Mandelbaum, Johns Hopkins University Press, Baltimore 1972, p. 122.

<sup>15</sup> Andrew Harrison, »Representation and Conceptual Change« in *Philosophy and the Arts*, Royal Institute of Philosophy Lectures, Vol. 6, p. 126.

<sup>16</sup> Harrison, *Ibid.*

I shall return to both distance and the role of specification later. For the moment, I want to show how visual resemblance gets a purchase in pictorial representation, by describing some aspects of the creation of pictures.

A first point is that the artist has a choice of two or three dimensional media – drawing, painting, and sculpture. Strictly speaking, picturing is a function of the first two. In painting, the artist has colour, shape, and texture, available to him or her; in drawing, shape and texture alone. Let us consider the example of painting. The possibility most closely related to the nature of the medium itself, is the creation of exemplification of two-dimensional entities – such things as individual shapes or textures, or even distinct areas of monochrome colour. Such atomistic elements can be combined to make more complex entities, and this leads in turn to all sorts of interesting ontological possibilities. For example, we can paint a red square upon a white background, and describe it as instantiating just that relation, or as a white square enclosing a red square. Now whichever, of these two descriptions we opt for, it would surely not count as »seeing as« in the way that we see a series of marks on a canvas »as« a warhorse or nude or whatever. This is because the painting of the red and white squares is ambiguous. On the one hand it serves to instantiate certain classes of two-dimensional objects – namely red squares and white squares; on the other hand it might be taken as serving the additional function of referring to these classes. There is however, nothing in the formal configuration itself which would warrant the assumption of this latter function. Indeed we might modify Occam's Razor here, and claim that denoted entities should not be unnecessarily multiplied.

With these points in mind, let us now consider pictorial representation. In this case, the artist creates two dimensional entities i.e. marks upon a canvas, but configures them in such a way that can be seen as something other than marks upon a canvas. What does this involve and imply? Well, we characteristically individuate visual objects in the perceptual fields by reference to their visual aspects. We are able to say that »This is St. Andrews Bay« or »there is a man« not just because we have a language, but because the objects of our judgement have unified re-encounterable aspects of shape, texture, and colour, which enable us to recognise them at a certain distance and angle as particular objects or members of a class of objects. Now I am making no claims here that individuation by visual aspects is necessarily the most important part of our conceptual scheme (though I think a good case should be made for it); nor am I saying that the capacity for visual individuation does not presuppose the unified operation of all the senses. My only claim is that we can and do make individuations by reference to visual aspects alone.

This is the starting point for pictorial representation. The artist is concerned

not with any arbitrary correlation of units between picture and subject-matter but rather those relevant to visual individuation. By organising paintmarks so as to correlate with the subject's visual individuating aspects, the artist's work when viewed from frontal position and appropriate distance (i.e. not too near or far) will be seen as a picture »of« such and such a thing or things. A schematic drawing or painting with no emphasis on texture will generally tend to copy the individuating aspects of *kinds or types* of object, rather than particular instances of them (for example, the schematic male/female pictures often found on Changing Rook doors). Similarly, whilst a complex and heavily textured painting is well suited to picturing the individuating aspect of quite particular objects, it need not do so, and indeed will sometimes move on a very high level of generality. (The images used in commercial art and advertising, for example, are frequently very much of this kind.)

It is clear, from the foregoing, that whilst a picture is »of« a subject-matter and represents its individuating visual aspects at a concrete or more general level, it will not be identical with, or part of, that subject-matter. Indeed, that it is directly and perceptibly distinct from its subject, is surely a necessary condition for calling it a »picture of« that subject, as opposed to saying it »is« the subject matter. There are of course marginal cases. Suppose for example, that I paint a monochromically uniform frontal view, of a child's red plastic building brick. All I would have at the end of this is a red square (or square of red). Even through copying the brick, I would be working from an aspect which was not sufficient to visually individuate it. Hence there would be no criteria generated from the painting itself, for saying that it was a picture »of« a brick. It would simply be the presentation of a two dimensional entity. However, might we not make it a picture by convention? For example we could say: »Whenever you see a painting of a red square it is a picture of a red brick viewed frontally«. The problem here of course, is that when we want the red square to be a picture of a red ceiling, or of a narrow area of a plain red box cover, (or a red square pure and simple), we have to re-make the convention each time, because whilst the presented aspects resemble views of, or parts of, such objects, they do not visually individuate them. Hence each attempt to denote such objects would have to carry an accompanying *ad hoc* stipulation to the effect »red-square = [whatever]«. This would give us a kind of hybrid meaning, midway between picturing, and linguistic description, but logically distinct from both. Let us suppose, however, that I go on to paint the brick from an oblique and titled angle. In this case there would be grounds for calling my work a picture – but only of a red cube. I have considered visual aspects of the brick which individuate it at least as a member of a specific class of three dimensional objects. If I now want to go further, and create a picture of a (member of the class) plastic brick, I must have recourse to complex

details of texture. If I want to picture just this particular brick and no other, I must look for visual aspects that individuate it from other bricks; or else by depicting it in the context of its visual surroundings.

These points lead to the general principle that no two dimensional artifact can be called a picture unless its formal elements correlate with enough visual aspects of some other object or objects given in three dimensional space, for us to specify (from looking at the picture alone) what that object is – either as a concrete particular, or instance of a certain kind of thing.

This account provides us with materials for refuting Goodman's objections to the resemblance theory. First we can stipulate which features of his or her subject, the artist needs in order to make a picture resemble. He or she is not concerned with a blanket reproduction of all his subject's visual aspects, but rather those which individuate it as a concrete particular, or as an instance of a specific type or kind. It is these aspects which he or she makes the formal and material aspects of the picture resemble. The relevant aspects will be chosen with necessary reference to the above criteria, but the artist's particular style of rendering them will be influenced by his or her own expressive ends, and the nature of the medium worked in. Indeed the artist will make use of various cultural conventions that surround the medium. I mean here, the kind of thing which Gombrich calls a »stereotype«. For example, in *Art and Illusion*, he shows how Wolgemut's woodcuts, purporting to depict different medieval cities, turn out in fact to be variants of one stereotype city. Goodman takes such things as testimony to the »relativity of vision and representation«. <sup>17</sup> However, this is to misconstrue them. Gombrich says that:

*»Without some starting points, some initial schema, we could never get hold of the flux of experience.«<sup>18</sup>*

Now it is clear that whilst Gombrich's »schema« are conventional in the sense of being models or formulas for picturing, they are not arbitrary constructions i.e. *purely* conventional. Rather they serve to embody minimal visual aspects necessary for individuating members of specific classes of things given in three-dimensional space. The use of such stereotypes enables picturing to get to grips with its subject-matter. They are not an alternative to making artifacts with aspects that visually resemble other objects; but rather a generalised starting point. Whilst different cultures or individual artists will make use of different stereotypes, this gives no ground for postulating the »relativity« of picturing except in a very qualified sense. Indeed if such stereotypes were not founded on visual resemblance of some basic sort, we would not think of

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<sup>17</sup> Goodman, *op. cit.*, p. 10.

<sup>18</sup> Ernst Gombrich, *Art and Illusion*, Phaidon, London 1977, p. 76.

calling them »pictures« so much as another form of representation. Goodman actually criticises Gombrich for not being relativist enough, on the grounds that the latter holds »perspective« to be more than a mere convention. Again, this point needs to be qualified. Perspective is construct founded upon the problem of depicting the visually individuating aspects of objects and relations on three dimensional space, on a two dimensional surface. To this extent it is a convention. Other conventions can be used to solve such a problem, but what is significant is that perspective is the solution that enables the closest general visual resemblance between a two dimensional surface an objects and their *interrelations* in three dimensions. Hence, whilst being a convention, it is by no means the arbitrary one construed by Goodman. (I shall return to this topic at length elsewhere).

This brings us to Goodman's point that a picture will always resemble other pictures, particularly copies of itself, more than it will resemble non-pictorial objects, and that picturing therefore cannot be founded on visual resemblance to subject-matter. Picturing is, however, a practice which arose and has been nurtured on making two-dimensional configurations that resemble aspects of other objects in three dimensional space. That is why in looking at pictures we never think of seeing them in relation to things they might more closely resemble; and indeed why we regard them in only secondary terms as two dimensional. But in saying that it is convention which leads us to see the picture »as« something, are we not conceding Goodman's case? No. Because whilst convention may lead us to pick out pictorial qualities on a two dimensional surface, the fact that we *can* do so, is because the surface resembles the individuating aspects of some other visual thing or things. In other words, picturing is founded on a natural phenomenon, namely visual resemblance. The convention arises by focusing on and making a practice out an aspect of this phenomenon; namely that certain two dimensional configurations can resemble the individuating aspects of other objects given in three-dimensional space. Once we have learnt the convention, we can read in a general sense at least what the picture is »of«, without reference to any further *ad hoc* external convention or context (such as was found in the »pseudo-picture« of the red brick viewed frontally). It is this reference by resemblance to individuating visual aspects that constitutes pictorial representation's distinctive logical core.

Let us now consider Goodman's final objection to this view, namely that when a picture is of a non-existent, it cannot be said to resemble that non-existent. On this issue I am substantially in agreement with David Novitz's approach.

*»... it is simply untrue that a picture cannot resemble a fictional entity. It can provided the entity in question has certain imaginary visual attributes. Of*

*course anything which is entirely non-visual, no matter whether it is real or imaginary cannot be picture*«. <sup>19</sup>

Margolis sees fit to qualify this view on the grounds that imaginary entities

»... resemble actual entities because, and only in the sense that, their descriptions entail that we take them to resemble natural entities.« <sup>20</sup>

However, this is rather to miss the point of Novitz's position. If I interpret him rightly, Novitz is working from something like Hume's theory of imagination (detached from the atomistic theory of perception). On these terms, a picture (like a mental image) of a fictitious object is constructed (with its description as a guide) from visual aspects of existent objects. For example, whilst the monsters who tempt St. Anthony in the *Isenheim Altarpiece* are in themselves like no creatures who ever existed, their parts at least do resemble the parts of such creatures. Hence, to depict a fictitious entity, the picture must resemble visually individuating aspects of members (or parts thereof) of some class or classes of existing visual objects. By overlooking this, Margolis is led to posit visual resemblance as a necessary condition of some types of two term picturing (such as portraiture), but not of picturing as such. As he puts it,

»What picturing (the one term characterisation) does require is that the ordered visual features of a picture be capable of being interpreted, fairly, as conforming to a description of 'what is pictured' – where 'what is pictured' is specified intentionally.« <sup>21</sup>

Hence:

»Resemblance between pictures that putatively picture (allowing the equivocation) and actual X's inclines us to interpret a picture as picturing X's ... in virtue of postulating an intention to picture X's; otherwise, we have only resemblance without picturing.« <sup>22</sup>

On these terms, to see P as picture of X, entails an inference to the artist's intending to picture X. But surely, if a picture resembles an X closely enough for us to say »that is a picture of an X«, then its logical status as a picture of that kind of item is established without any positing of »intention«.

Indeed, suppose that an artist paints a picture which is meant to be of an effeminate man, but that the female characteristics are so emphatic that it simply looks like a woman. In such a case, the artist has failed to communi-

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<sup>19</sup> Novitz quoted in Margolis, *op. cit.*, p. 100.

<sup>20</sup> Margolis, *op. cit.*, p. 100.

<sup>21</sup> Margolis, *op. cit.*, p. 101.

<sup>22</sup> Margolis, *op. cit.*, p. 101.

cate. Unless we know the causal origins of the work, we take it to be a picture of a woman. And in this we are entirely justified. For, as we have already seen, the logical distinctiveness of pictorial representation consists in the fact that, once learned, it can be applied without recourse to *ad hoc* external conventions which determine exact denotation. In the present case we would say logically that we are dealing with a picture of a woman and, empirically, that it is one unsuccessfully created in order to secure reference to a man.

The problem then, that has really dogged all discussion of pictorial representation comes down to this. Picturing is intentional in a twofold sense. An artist can have some specific intention which is the reason for creating his or her picture – say to depict Trafalgar Square or whatever. But irrespective of this denotative intention, the taking of a means to an end in accordance with the convention called picturing is also intentional. Irrespective of who or what he or she intends to picture, an artist must at least take up materials and configure them so as to resemble the individuating visual aspects of some specific three-dimensionally given kind of thing. It is *this* layer of function neutral intentional activity which defines picturing. It is the logical structure of which two term and one term representation (i.e. denotation and fiction, respectively) are concrete embodiments.

# Mountain Photography and the Constitution of National Identity

Aleš Erjavec

*Il faut être de son lieu.*

In *The Politics of Vision*, Linda Nochlin speaks about the basic motto of the nineteenth century realism, that is, to »be of one's times« – »Il faut être de son temps.« She adds that »no less crucial to the Realist project ... was another admonition, sometimes related to, sometimes in contradiction with, the concern to be of one's times: 'One must be of one's place'- that is to say, the injunction to deal with one's own native country, region, or even, at its most extreme, one's own property« (Nochlin 19).

Linda Nochlin's two statements concerning nineteenth century painting can be transposed into another realm: that of photography. Like the fine arts, photography too had a special purpose which transgressed the usual documentary role assigned to it by many nineteenth century photographers. What many realist paintings of the previous century depicted and implied was not only a contemporaneity, but as Nochlin in her second observation succinctly put it, that »one must be of one's own place«. This statement has special significance for our topic, for in our case this »place« had two convergent, albeit different natures.

In the first case it concerned a desire which was widespread in Europe of that time: especially after the revolution of 1848 in different countries national aspirations grew. It concerned the wish to unite a nation in a nation-state. For this reason certain specifics of this nation, mostly related to culture but, as in the case under discussion, reaching beyond the usual realms of language, cultural history, etc., were brought to the fore as arguments for the establishment of such a state. The bourgeoisie of small nations was well aware that such states could only exist in federations, for they were much too small to be politically, economically and militarily viable. But as such nations were divided among different countries or, in some cases, dialects merged so much that it was impossible to draw clear borders, geographical and topological landmarks were used to denote national specifics. Sometimes the specific of a countryside added additional weight to the identity of the nation that was trying to attain its self-awareness. This did not always take place by itself.

Thus Massimo d'Azeglio said: »We have made Italy: now we must make Italians« (Confino 49).

If in the first case national identity is yet to be established around different specifics, whether they be real or imaginary, and if here the geographical specifics serve as one of the means to attain such an aim, then the second case concerns the »real« geographical basis for such claims and may transgress national boundaries. Thus the »Swiss« are not really a »nation« though for all practical purposes they nevertheless appear as one. On the other hand, the Russian steppe is often presented as very typically Russian<sup>1</sup> and a whole »national mentality« can be erected on its basis.

Certainly, once the rural countryside is gone such archetypes serve purely ideological functions, even if before they may have had a basis in reality. But when they did, they almost never served any purpose which could be called »national identity«. They emerged as such when they could serve an imaginary and ideological function, especially if it was integrated into the broader context of the »source«, which had been spared the devastations of civilization. Twentieth century thought abounds with claims of a pristine nature and rural life serving as examples of unmediated and unspoiled human life and community.<sup>2</sup> The opposition between the modern urban landscape, with its machines and their velocity and the rural, primeval, »natural« image of the unspoiled past from which the nation supposedly emerged, can be encountered especially from the second half of the nineteenth century on. The bourgeoisie in the predominantly rural countries encountered enormous problems in uniting them so they could serve as vehicles of nascent national economies. To achieve this aim it used the »nation«, although it represented means of a very contradictory nature.

In most cases the »place« where a nation is located is primarily a cultural community which can exist even in Diaspora. In the second case, the »place« is a very real and relatively well defined *territory*. It can, of course, be designated on the basis of »historical« borders, but it can also be based on geographical divisions such as mountains or rivers. In this sense it has to be protected or appropriated. It need not be populated but it must be symbolically appropriated, otherwise it does not really belong to us.

<sup>1</sup> It may not be a coincidence that Chekhov and Gogol, among others, used in the nineteenth century the topography of certain parts of Russia so profusely that the image they represented in their plays and novels even today still persists as the image of the »real« Russia. Not to mention the closing paragraphs of Gogol's *Dead Souls* in which he presents an »Ur-« image of Russia, very similar to »Nordic« ideology. One could find similar examples all over Europe with the exception of countries that managed to establish their nation-states much earlier in history.

<sup>2</sup> Examples range from Heidegger to Walter Benjamin.

In both aforementioned cases the »place« must be symbolically constructed. Realist art of the nineteenth century often played the role of constructor and designator of a »place«: From Scandinavia to the Mediterranean we find in national museums and galleries national »frescoes« depicting fights against the enemy from whom the motherland or fatherland had to be protected. This certainly is not the only aspect of »being of one's place«, for it can just as well refer to a region, town, or »place« – and that is actually what much of French or British realism was concerned with, both in literature and painting as the predominant art forms.

The »place« which must be constructed can obviously represent many different places. What concerns us here is not just any place, but a »national« place and the way in which it is constructed. A term one could use instead of *construction* of a place would be its *constitution*. What we are usually dealing with here is a construction on the symbolic plane which, after some time, gains the appearance of »reality«. What I thus intend to present in this essay is a construction or a symbolic and fictional constitution of a place or space (»Raum« in German and perhaps also »location« in English). This place is simultaneously an imaginary and a real geographical place, with neither of the two being well defined, being with no parergon, so to speak. This imaginary and simultaneously really existing place are the Slovenian mountains.

Why not the Alps? Ultimately, all the mountains in question do lie in the Alps. – But for Slovenians the Alps do not belong only to them, but are just as well Austrian (»German« for short), Swiss or Italian, to mention just the closest countries and nations, while the »mountains« are a signifier which is concrete enough to enable their reading as »Slovenian mountains« (one would otherwise specify these mountains as being Austrian, Italian, French or whatever) and is abstract or general enough to enable the individual or national community to designate them as an imaginary place, usually devoid of concrete geographical specifications.<sup>3</sup>

»Mountains« can thus function simultaneously as a metaphor and metonymy. One can always think of mountains in an abstract and metaphorical way. If one would want to specify them, this abstract meaning would, of course, be converted into a concrete one – that of an actual mountain, mountain peak, etc. Nevertheless, due to the symbolic content invested into »mountains« as such, actually only very few mountains appear to deserve the title of a »real«

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<sup>3</sup> This vagueness is facilitated and strengthened by the fact that a Slovenian minority lives in the area of the Italian and Austrian Alps. Furthermore, a part of the region in Austria beneath the Alps, where Slovenians live (Carinthia or Kärnten with its capital Klagenfurt – Celovec in Slovenian) almost became a part of the newly formed Yugoslavia after the demise of the Austro-Hungarian Empire.

mountain. Preconditions for this designation are certainly the height (usually no less than 6,000 ft, better still 7,000 or 8,000 ft),<sup>4</sup> its historical significance and, finally, its representational value.

The conclusion to be drawn from this introduction is that the mountains serve – at least in Slovenia – as an ideological representation in an almost ideal way, for they are unconsciously and also consciously accepted by the population as the place of its »identity«. In this way the mountains supplement and strengthen the broader »national identity«. They serve this purpose in an almost perfect way, for although they function similarly to signifiers like »Heimat«, »motherland«,<sup>5</sup> or the national spirit (of whatever nation) they have the advantage not only of being able to be visually represented as a singular and homogenous entity but also of being attractive to the whole of the population, for they can be invested with so many different meanings that it is possible to find in them »something for everyone«. In this way they function similarly to, for example, the role of »nature« in the prewar Germany: »The surge out from the cities into nature also represented a search for a source of collective identity not to be found in the urban environment. The movement was informed by the presumption that what all Pfälzers [inhabitants of a region in Germany] had in common was the land. Nature alone could be the appropriate symbol as well as source of Heimat feeling; love of nature, like love of Heimat, was not bound by social class or confession. Workers shared it with industrialists, old with young, uneducated with educated, Catholic with Protestant and Jew« (Applegate 77). The fundamental difference between this case and the Slovenian one is that in the latter this role is predominantly assigned to the mountains.

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<sup>4</sup> In the Slovenian context a peak of 2,000 ft would only be »hill«, and a peak of at least 3,000 ft (which they call a »munro« in Scotland) would be no more than a kind of highlands, designated by the term »planina«, usually referring to a mountain pasture where cattle would graze in the summer and representing an entity between a high hill (or perhaps a »ben«) and a »mountain«.

<sup>5</sup> »The attributes of the national Heimat raise the question whether there was a difference between *Heimat*, on the one hand, and *Vaterland* and *Nation* on the other. These three words described the German people and the territory of Germany, but their meaning was not identical. The words differed in what they represented, how they represented it and their effect on German society. While fatherland and nation represented Germany as one and indivisible, Heimat represented Germany as the one and the many. ... Heimat was a representation of the nation informed by feminine sensibilities. Fatherland and nation, in contrast, conveyed masculine qualities such as courage, combativeness and competitiveness. Fatherland and nation therefore, could go to war, while Heimat could never do that« (Confino 72, 73). The described terms differ to a certain extent in different national contexts, with »nation« often replacing, in the more recent past, the rather outdated »motherland« and especially »fatherland«.

*The Mountains*

Slovenia is situated beneath the Alps and stretches to the Adriatic Sea. The ancestors of the Slovenians settled in the Eastern Alps and Pannonia. Under pressure from the Avars they moved towards the Adriatic Sea and Lake Balaton and established in the seventh century the first independent Slav state. In the tenth century the Franks began to colonize the territory belonging to the Slovenian tribes. Until the formation of Yugoslavia in 1918 it was the German predominance that threatened the Slovenian national existence. The first books in Slovenian language were published five centuries ago and from that time on, and especially from the end of the eighteenth century, a national consciousness existed on a broader basis. After the Treaty of Versailles, Italy acquired a large part of the Slovenian territory which remained in its hands until 1943. For that reason (and also because the Slovenian coast is only 26 mi. long) the sea did not play any significant role in the national consciousness.<sup>6</sup>

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<sup>6</sup> As was the case, perhaps to the greatest extent, in Britain where the sea played a very important role in many different symbolic ways. Similar to the role of mountains in Slovenia was that played by the »puszta« in Hungary, by the Great Karoo in South Africa and, to a lesser extent, by the West in the United States or Sahara in Arab countries. But, as far as I know, a concrete geographical territory (symbolically transformed and restricted) in no other national environment played such an essential and especially unifying function in constituting and retaining the national subjective identity. Thus in some countries such mythical places and spaces did or do exist, but hardly ever attain such an unspecified prominence, because a) there is more than one place or area with such a symbolic value (in the United States, for example), b) it is limited only to a certain part of the country (the Great Karoo), c) it was balanced by the existence or emergence of a national political power (as in Hungary), d) because it was primarily a negative concept (the sea in Britain and some other seafaring countries), e) it played an important role only in a specific period of national history, or, f) it was limited to a single mountain peak (as in Germany, Israel, etc.).

In the case of Slovenia several, otherwise disparate features converged, thus enabling the mountains to attain such a privileged status. The first among them was, until recently, the absence of a nation-state which had to be replaced by a series of symbolic substitutes or surrogates, ranging from the Slovenian language and its extensions (literature) to the aforementioned mountains and their frequent mythical representations.

The possibility to appreciate the mountains is, of course, a relatively recent phenomenon: »For us today it is hard to recapture the sense of repulsion, displeasing irregularity or, at best, disinterested boredom felt by most people prior to the eighteenth century (and still during it) at the sight of mountains (or of the sea). John Evelyn, to give a mid-seventeenth century example, crossed the Simplon Pass in 1646 and was, incidentally, set upon by brigands as an additional suffering. He tells that the way – said to have been 'covered with Snow since the Creation' – was 'through very steepe, craggy, and dangerous passages, ... through strange, horid and firefull Craggs and tracts', and he concludes: 'Nature has swept up the rubbish of the earth in the Alps« (Charlton 42). In the eighteenth century the situation commenced to change. At first, mountains acquired a special significance only for a few individuals. Thus the Swiss botanist »Haller went to collect plant specimens, but the outcome was the first major work of

Mountains played an important role in Slovenian national mythology, especially since romanticism. They gained a special prominence from the middle of the nineteenth century onwards, when throughout Central Europe mountaineering became one of the favorite bourgeois pastimes. Mountains were actually one of the last frontiers to be conquered and contained much of the adventurous potential vested at that time upon faraway lands. The high esteem enjoyed by mountaineering<sup>7</sup> was also strongly linked to the sentiment of national identity, of belonging to a nation, especially when it came to smaller nations of Europe aspiring to gain independence (mostly from Vienna). Such was the case of the Slovenians and also of the Czechs. (Later in the century there existed a Czech branch of the Slovenian Alpine Association.) Mountaineering was not limited to men, for women too played a visible role in hiking endeavors. Obviously all these phenomena were consequences of the new ideas and values of the nascent bourgeoisie erupting after 1848 as well as a consequence and part of the emerging national aspirations for the formation of nation-states within what was then still the Austrian Empire.

In 1874 the German and Austrian Alpine Association was founded. It was reestablished on Slovenian territory in the 1890's and was, at that time, very nationalistic. The time was overflowing with ideas of national autonomy and independence for the nations of the Austro-Hungarian Empire. These have already gained an important level of cultural autonomy and their next aim was political independence, either in separate states or in a federation which would bring together various Slavic nations. In this respect the German and Austrian nationalism can be viewed also as a countermeasure to the Slavic drive for independence.

In 1893 the Slovenian Alpine Association was founded and in 1897 its Photography Section was established. The founding of the German and the Slovenian associations had much to do with the strengthened polarization of the popula-

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mountain literature, his long poem *Die Alpen* (1732). ...Paul Van Tieghem (in his *Le Sentiment de la nature dans le préromantisme européen*, 1960), writing of European literature as a whole, distinguishes three phases: from about 1730 a gradual rise of interest in mountains; from about 1762 a more emphatic liking for the lower, more pastoral slopes of mountains; from about 1773 an extension of that liking to include the high, deserted mountain peaks« (Charlton 46). It is romanticism, with Shelley, Byron and Coleridge, which views storms, mountains and the sea not as products of human sin, as Thomas Burnet did in 1681, but relishes instead in the »mountain glory«.

<sup>7</sup> The fashion, of course, did not have only national or nationalist significance for its participants, but often represented a test of personal endurance, strength and even superiority. In Slovenia the best example was the philosopher Klement Jug (1898-1924) who became so obsessed with mountaineering that he devoted most of his time to it and finally died while climbing. He was also an avid reader of Nietzsche.

tion of the present-day Slovenia at the turn of the century into Germans and Slovenians. Slovenians, like some other Slavs in the Austro-Hungarian Empire such as the Czechs or Croats, developed a strong and prosperous middle class, which wanted to attain national independence and sovereignty. The Germans were, of course, opposed to such ideas, and different means to retain or attain not only physical hold over the territory, but also to appropriate it symbolically, were used by the parties in conflict to achieve their aims.<sup>8</sup>

Mountaineering turned into a competition between the proponents of the pan-Germanic idea and the Slovenians. Each tried symbolically to appropriate the mountains, i.e. use their already existing symbolic value in the struggle for dominance between the two national groups. At that time paths were created in the mountains called the »Slovenian« and the »German« paths, with members of each nation trying to discover and then name paths which would bear names showing that they appertain to the German or the Slovenian nation. As already mentioned, these mountains (and Mt. Triglav as practically the only »concrete« mountain among them) acquired their Slovenian national significance well before the second half of the previous century. The cause of this rather unique feature was that the mountains were viewed not only as a shelter (into which, for example, the predecessors of Slovenians would hide from the attacking (Germanic) »foreigner« who tried forcefully to Christianize them, as a well-known Slovenian romantic sonnet tells us), but sometimes also as the birthplace of the Slovenian nation: a theory, refuted by professional historians but even attracting recently a substantial popular interest, professed that Slovenians were not really a Slavic nation but were of Illyrian descent instead, originating in the Alps.<sup>9</sup>

»From being the last enemy, nature is now a 'friend!« (96), comments D.G. Charlton the change in the romantic perception of the mountains as compared to the previous depiction, encountered less than a hundred years before, of the mountains as repulsive and displeasing irregularities on the surface of the Earth. It is from romanticism on that the Alps (= mountains) acquire a special significance in Slovenian history. With romanticism popular myths and tales are recorded and are fused into the more widespread sentiment of national identity. As it has been mentioned, the mountains are also used as a mythical shelter.

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<sup>8</sup> Perhaps the best example of this appropriation was the purchase of the very peak of the highest mountain in the Slovenian Alps, Mt. Triglav (9,397 ft) in 1895 by the parish priest, Jakob Aljaž, so the peak (and symbolically the mountain as the symbol not only of the »Slovenian mountains« themselves but also of the Slovenians and Slovenia) would remain in Slovenian hands. Aljaž had a shelter built on top of the mountain. See *Fig. 1*.

<sup>9</sup> A consequence (or cause?) of such reasoning is that Slovenians »have nothing in common« with the other nations from the former Yugoslavia, like Croatians, Serbians or Macedonians.

Representing mountains as a shelter was not far removed from representing them as the source of *national identity* (and not of the nation), for they were linked not only to popular tales and myths, but also to literature and painting from the late eighteenth well into the twentieth century which established them as »typical« for the Slovenian nation. The notion of the mountains as the »source« (and not the »place« of national origin as in the aforementioned case of the »Illyrian theory«) gained perhaps the most widespread support, although it has never been explicitly stated except in poetry, and in monographs about the Alps. The idea of the »source« is most probably related to the fact that practically all the rivers in Slovenia have their sources in the mountains. These rivers themselves were often viewed as »Slovenian« at their birth (at their source and while they were still in the mountains) and something foreign when they entered the »foreign« (i.e. Italian or eastern) plains.

Mountains turned into a widely accepted national symbol and remained such for the last century and more. A whole range of representational practices established them in this privileged position vis-à-vis other possible national signifiers, which positioned them into a rather unique place when compared to similar symbols, representations and landmarks or landscapes in other nations.

The mountain landscape became a favorite source of photographic motifs. »Many members of the Slovenian Alpine Association from Ljubljana and its surroundings and even from other countries have called«, reported *The Alpine Review* in 1900 (Kambič 26). Its editors organized lectures and the first exhibition of mountain photography took place in 1898. Every year the *Review* also organized a competition for the best photograph, accompanied by prizes and critical reviews.

In this way, mountain photography received a continuous place and attention in *The Alpine Review*, which is still being published. This continued in the interwar period when mountain photography was joined by the first Slovenian full-length feature film, entitled »In the Kingdom of the Goldhorn« (1931) and the following year by the film »The Steep Slopes of Mt. Triglav«. These films were similar to the »Heimat« and patriotic films, praising one's land and country. Thus we read in the introductory text to the first film (director Janko Ravnik): »This is a silent film. Nevertheless in our hearts resounds a powerful song: sacred you are, Slovenian land.<sup>10</sup> If this film stirs this emotion in everyone, its aim will be more than attained« (Kavčič 28).<sup>11</sup>

<sup>10</sup> The Slovenian word »zemlja« simultaneously means land, soil, and earth.

<sup>11</sup> As often in this essay, the parallel with the Germans is relevant. This is even more so, for a very similar type of films emerged in Germany in the early twenties. The genre of the mountain films was discovered by Dr. Arnold Fanck. »He began with the three films devoted to the joys and

The film was based on the opposition sacred/profane and nature/culture, with mountains representing unspoilt nature, the birthplace of the Slovenian nation, and something to which the man from the city strives to return or escape. The paradox of course was that this nature could be represented and thus symbolically appropriated only through culture, i.e. film.<sup>12</sup> The second film dealt with Mt. Triglav,<sup>13</sup> which is the highest mountain in the Slovenian part of the Alps. It represented this mountain as the symbol of Slovenian national identity.

At the turn of the century, photography was still viewed as a document, but so was, in many respects, realist painting. The basic difference between the two consists in the impossibility of the latter to be reproduced without becoming a

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beauties of mountain sport: 'Wunder des Schneeschuss' ('Marvels of Ski', 1920), 'Im Kampf mit den Bergen' ('Struggle with the Mountains', 1921) and 'Fuchsjagd im Engadin' ('Fox Hunt in the Engadine', 1923), a film depicting a paper chase on skis. These films were extraordinary in that they captured the most grandiose aspects of nature at a time when the German screen in general offered nothing but studio-made scenery. In subsequent films, Fanck grew more and more keen on combining precipices and passions, inaccessible steeps and insoluble human conflicts ... The message of the mountains Fanck endeavored to popularize through ... splendid shots was the credo of many Germans with academic titles, and some without, including part of the university youth. Long before the first World War, groups of Munich students left the dull capital every weekend for the nearby Bavarian Alps, and there indulged their passion. ... Far from being plain sportsmen or impetuous lovers of majestic panoramas, these mountain climbers were devotees performing the rites of a cult« (Kracauer 110, 111). The mentioned case of Klement Jug (see *Note 7*) would fit this description. In the early thirties another kind of films devoted to mountains appeared. The first among them was Luis Trenker's »Berge in Flammen« (»The Doomed Battalion«, 1931). This and another film of his »mark the junction of the mountain films and the national films« (Kracauer 259-60). In such films mountain climbers turn into war heroes – and the link between heroism in combating natural forces and the glorification of war is established. In the two Slovenian cases the »Heimat« as well as a »Nietzschean« ideology was at work, but in a muted form and without any militaristic overtones. The reason was a simple one: throughout the ages »Germans« were opponents of Slovenians and that reason alone sufficed to cancel any overt sympathy for the nascent national socialism. Just as importantly, Slovenians were devoid of military history (except as soldiers in »foreign« armies) and militarism was never cherished.

<sup>12</sup> Grant McCracken is correct in stating that a community may displace certain ideals if reality is impervious to them. »It will remove them from daily life and transport them to another cultural universe, there to be kept within reach but out of danger« (McCracken 106). This observation applies well to the mountains in their imaginary form and thus also as represented in the two mentioned films. The unique opportunity offered by the mountains in question (but much of tourism has basically the same roots) is that they can exist as a real place that one can visit, »submerge« himself or herself into it, and cherish and appropriate it in its representational form, without one contradicting the other, but supplementing it.

<sup>13</sup> In Slovenian Triglav means »the three headed« (the mountain has three peaks. The origins of the name are related to old Slavic mythology: the Slavic god the »Three-Headed« was the god of the three lives; underground, on earth and above it.

»copy« devoid of the »aura« appertaining to a painting as the original work of art, and thus being reduced to the status of the former, i.e. photograph.

There is a continuation in the treatment of mountains from the nineteenth century into the early twentieth, and it is in this respect that Linda Nochlin's statement of the need to be of one's place becomes so important, for, as mentioned, we can easily broaden it from the fine arts into gallery photography. For what, in our case, does mountain photography witness? At the beginning it is just a recording, a »still« of a certain presence as in many photographs from the sixties of the previous century onwards. It documents a waterfall in the Alps, the ascent of Mt. Triglav (*Fig. 2*), Aljaž's Tower on top of the same mountain, etc. But slowly, photography acquires an »artistic« value as well. Now it not only witnesses an event or natural fact (of some special significance), but creates it by choosing and carefully editing the motif and playing upon the pre-existent symbolic context. These gallery photographs are thus already framed. However, they are framed not only by the general knowledge and national features appertaining to the »mountains« as such, but also by previous documentary photographs within the series represented by their continuous appearance in the same publications and aimed at the same public. In our case this feature is much more striking because it is limited to a small and limited environment and thus more easily diagnosed than would be the case with a larger nation and culture. The series of events ranging from interest in mountaineering in Europe in the second half of the previous century, mountaineering becoming a combat zone for the symbolic appropriation of Alpine territory between the Germans and Slovenians, relatively well established photography in Slovenia in the same epoch,<sup>14</sup> and the foundation of the Alpine Association which subsequently stimulated mountain photography in an organized way, all blended in the emergence of a well developed mountain photography which often exhibited patriotic overtones. A relatively large number of photographers and writers was encouraged to produce mountain photography and a whole series of publications ranging from newspapers and journals to monographs devoted exclusively to the Alps and mountains, usually lavishly illustrated with photographs and sometimes consisting exclusively of them. One might expect that this trend would cease with the demise of interest in »Heimat« ideas and ideologies throughout Europe after the demise of national socialism. What happened instead was that in certain parts of Europe it continued immediately after the war. In the case under discussion this course of events had a lot to do with Slovenia retaining within the former Yugoslavia many of its cultural features after becoming socialist. In this way

<sup>14</sup> The Slovenian, Janez Puhar (1814-1864), invented photography on glass (heliotype) and, in 1859, the first photography studio appeared in Slovenia's capital, Ljubljana.

mountain photography and various publications presenting it to the broader public flourished into the present.<sup>15</sup>

Even today the photographic image has a special power: »Photography's vaunted capture of a moment in time is the seizure and freezing of presence. It is the image of simultaneity, of the way that everything within a given space at a given moment is present to everything else; it is a declaration of the seamless integrity of the real« (Krauss 107). Mountains function as a seemingly unideological entity, for they hide this very fact in an almost perfect and veritably sublime way. Of course, I speak here of their representation, which is by far the most common way in which they are presented to us. In his *Investigations on the Feeling of the Beautiful and Sublime*, Kant already described the sublime as deep loneliness, but in a frightful way. The sublime must be big, but the beautiful can also be small. A view of the mountains, the snowy peaks which loom over the clouds, a description of a savage storm, or Milton's depiction of the kingdom of hell induce pleasure, but mingled with horror.<sup>16</sup>

Mountains are sublime. (We are not following Kant's *Critique of Judgment* here very closely, for we are not interested in his ethics.) This feature, to be sublime (or, following Kant, to invoke in us this feeling) is crucial for the mountains being able to function as a place of origin and identity, for in the form of their representation and their imaginary mental form they constitute a void. As Derrida points out in *The Truth in Painting*, the sublime cannot be framed: thus the connection between the sublime and the parergon makes no sense.<sup>17</sup> Frame in this sense, the parergon, has as its necessary precondition, to rephrase Rosalind Krauss, »the seamless integrity« of that represented within it. Within parergon there is no void. The body of photographs showing the mountains produced a realm of »mountains« which are simultaneously »real« and fictitious, real because they really are there, fictitious because with a few exceptions (Mt. Triglav being paramount among them) they are not referred to as actual mountains, but only as a body of mountain peaks represented through paintings, photographs of individual peaks or slopes and, more often, of scenes from these mountains, the latter enabling us to build a fictitious image of the mountains. As they are not geographically defined they can function in many different symbolic and ideological ways, their imaginary parergon being very

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<sup>15</sup> Mountain photography is but one of the vehicles for retaining the paramount role of the mountains in the national consciousness under discussion. Another, perhaps the central role, was played by the aforementioned Slovenian Alpine Association which had in the recent decades almost 400,000 members, i.e. a fifth of the whole population.

<sup>16</sup> See *Investigations on the Feeling of the Beautiful and the Sublime*, Part I.

<sup>17</sup> See Jacques Derrida. *La vérité en peinture*, p. 146.

similar to the picture frame of a painting or photograph. Within this imaginary parergon everything is integrated and complete, but as this is a fictitious place it is impossible to be »within« it. Even if we go hiking and mountaineering, the real value of such an experience emerges only before or afterwards. The »aura« is absent when we are »there« and emerges only when gazing at the mountains from afar: »Motionlessly gazing in the summer in the afternoon at the line of hills on the horizon or at the branch casting its shadow on somebody resting – this means to breath in the aura of these hills and of this branch« (Benjamin 479). Or as Eagleton puts it even better: »Auratic experience can only be recollection« (Eagleton 35).

The mountains to which I am referring never belonged to anybody in an actual or practical way, for they are uninhabitable. Even if they partially and in some ways were claimed (as in the case of Aljaž's purchase of the peak of Mt. Triglav), they still remained empty. Also, they were not annexed from another minority, race or nation. The case of the aforementioned attempts of the Germans and Slovenians in the last decades of the nineteenth century and the turn of this century was, of course, a symbolic appropriation, with the interesting fact being that even today the German names are often preserved. (Or to be more exact, their translations into Slovenian still exist, the consequence being that sometimes the same mountain passes, for example, have two names.) The imaginary presentation of the mountains in question can obviously be invested with an almost infinite number of acceptable meanings.<sup>18</sup>

According to Roland Barthes, »the spectator of a (photographic) image receives *at the same time* perceptual and cultural message« (Barthes 42). In mountain photography under discussion in most cases the titles of the photographs are those that give us the cultural message. Without them the whole

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<sup>18</sup> It is worth noting that mountains in our case function almost like the perfect »Heimat« and a series of other terms associated with national issues. What Confino mentions about German nationhood and the Heimat idea could well be applied to any nationhood and also to the Slovenian one. Even more, it could perfectly be applied to the »Slovenian mountains« as an extension or rather an essential constitutive element of the »motherland« or, to give a literal translation, of the »homeland«: »For the essence of this idea is its indistinctness, its capacity to mean different things to different people: in order to work as an national common denominator the meanings of this idea had to be interchangeable« (Confino 50). What is so curious in the Slovenian case is that »nationhood« or »national identity« were so perfectly positioned into the »mountains« that their representations collapsed all differences. This of course does not mean that other carriers of national identity didn't exist, but in those cases quite often divisions occurred and therefore they did not possess the same homogenizing potential. At the same time it should be pointed out that in Germany »Heimat« referred to the rural countryside, while »motherland« (or »homeland«) in the Slovenian case represented a broader entity which encompassed also the urban environment.

cultural and ideological content would be absent or only implied. Thus the combined message of the photograph and its title serves as the carrier of the meaning that is then invested into the frame of the national identity. In what follows I shall use Althusser's theory of ideology, and the complementary psychoanalytical theory of the constitution of the subject.

National identity and nationalisms fit well Althusser's description of ideology as the lived, experienced relationship of people towards the world, as a »representation of the imaginary relationship of individuals in their real conditions of existence. ... What is represented in ideology is therefore not the system of the real relations which govern the existence of the individuals, but the imaginary relation of those individuals to the relations in which they live« (Althusser 162, 165). If we discard the problematic aspects of Althusser's theory (like the absence of a persuasive link between the unconscious and ideology and of ideology and the Real) what strikes us as very useful when dealing with issues of national identity are two theses.

### *Identities and Imaginary Communities*

First of all, national identity and nationhood appear as »eternal« and are most commonly presented and represented as such; they usually resist all attempts to reveal their »ideological« and »mythical« nature. Even when such attempts succeed they in most cases do not hold persuasive power. In this respect national identity functions like a *belief* and obviously responds to the human desire to belong, to appertain and to be rooted. In spite of having a nonrational character it is nevertheless often (especially when it comes to small nations) supported by an almost extraordinary number of intellectuals. In many cases the intellectuals are those who articulate, defend and most ardently propagate such ideas. It is also unfortunately true, as Celia Applegate writes that, »consciousness of national belonging is one of the most striking and least understood of modern phenomena« (Applegate ix). Still, it can be interpreted as a peculiar strain of ideology, combined with others (especially religious and political) and being carried out with the help of different institutions and apparatuses. As in the case of Slovenian mountaineers who strived to retain (or make) the Alps the »Slovenian mountains«, in Germany too, »one must note from the outset that those who held on to (regional identities in Germany) were, with a few exceptions, not conscious of doing or being anything remarkable. They understood their regionally directed activities, if they thought about them at all, as a private enjoyment, comparable to a hobby, and as a public service – a civic-minded contribution to the health of the community« (Applegate 3). Similarly, the struggle for the symbolic appropriation of the Alps was not an action directed from a center. In most cases these were very spontaneous

actions by both parties to achieve their aims, especially since the local government which had to answer to Vienna did not want to provoke the Germans and at the same time did not want openly to support the Slovenian side. The love of the mountains and the wish to appropriate their symbolic value or potential were thus simultaneously preconditions for and consequences of national and nationalistic actions carried out by the Slovenian and the German mountaineers.

Secondly, national identity or consciousness is a form of mediation. Wherever we encounter nationalism we usually also encounter centuries old problems with »identity«, with bringing (and sometimes holding) the country together, with the feeling of being subordinated to somebody else, all this usually being located in a rural setting. It is therefore not surprising that we encounter at the turn of the century opposed views about the advancing industrialization, urbanization, and cosmopolitanism. Such views were equally forcefully represented in social theory and in art and can be discerned in Russia (decadence arising from western Europe will destroy the Russian way of (rural) life), in Italy, Germany, and elsewhere in Europe. In short, we encounter an oscillation between *Gesellschaft* and *Gemeinschaft*.

If we leave aside other cases of national consciousness and return to the Slovenian case it could be claimed that mountains conflated two topics which carried a great potential for strengthening the national consciousness. First among these was the age-old issue of Slovenians (or their predecessors) versus the »Germans«. This struggle had a much longer history than the relatively recent events from the second half of the last century. As such the former were able to serve as an abstract vehicle for the latter, with the role of the enemy being exchangeable and sometimes even disappearing. (That is, when there wasn't any enemy in sight who would endanger the national sovereignty, identity, etc.). The second topic or rather feature of the mountains was that they acted as a *source* of national identity. Celia Applegate mentioned, in the previously cited passage, that »surge out from the cities into nature also represented a search for a source of collective identity«. The mountains under discussion also served this function.

According to Althusser, »*ideology is eternal*, exactly like the unconscious« (Althusser 161). We know from psychoanalysis that the subject is constituted around a certain void, which by its very emptiness, enables us to invest it with different meanings. (Althusser would say that we are interpellated into subjects.) We as subjects – Cartesian subjects, as Jacques Lacan would put it – are in a continuous process of constitution, reconstitution and changing that point or »line«, as Michel Foucault phrased it in *The Order of Things*, which we experience as our subjective identity.

Perhaps the same can be applied to collective subjectivity – at least in certain cases, that is. In this way, it seems, that for the Slovenians (for those who could be interpellated as such) in the last century and beyond, the mountains have played the role of a void which enabled the constitution of the subjectivity around it. The photographic representation of these mountains essentially contributed to this constitution of national subjectivity – which is what an identity really is. For the essential trait of the perception that a subject has of himself/herself is that it is identical with himself/herself. This search for identity, which is impossible to reach, is the essence of the Cartesian *cogito*: »I am not there where I am a plaything of my thought; I think of what I am there where I don't think thoughts« (Lacan 517).

A community, in our case a nation or rather those who feel to belong to it or can be interpellated into this role, is a more static entity. Although it is an imaginary entity it builds a whole network of symbolic representations which enable its members to feel a common identity. This search for »identity« which is a common denominator of all forms of national consciousness (and of others as well) has in the Slovenian case found a perfect vessel for it: the mountains. The curious issue here is really the identity itself. As Slavoj Žižek puts it, »Hegel 'stages' identity (imagines a subject saying 'Plant is ... a plant') and thus arrives at its truth – that is to say, demonstrates that identity-with-itself consists in the absolute contradiction, in the coincidence of the (logical) subject with the void at the place of the expected, but failed predicate. ... Such a notion of identity implies the presence of the *symbolic order*: for an object to 'coincide' with its empty place, we must in advance 'abstract' it from its place – only in this way are we able to perceive the place without the object. In other words, the object's presence can be perceived *as such* only within a differential order in which absence as such acquires positive value« (*For they know not what they do* 141, 141-42). This is very similar to the empty mountains which in our case play the role of the »repository« of the national identity.

I have referred before to collective subjectivity which is also the level of ideology. On this level the interpellation of individuals and groups coalesces into a social group, community, nation, etc. In our case the perception of the »mountains« and of finding in them one's own identity functions as such an ideological mechanism. It is by belonging to this common denominator that the majority of the Slovenian population regards these »mountains« as their common denominator. This, of course, is not unique. What is unique is that this denominator has no competitors, as is usually the case. At the beginning of this essay I have mentioned few possible options as they exist in various other countries, where a certain part of their territory is perceived not only as the most typical but also of special national significance. Sometimes, due to

various (usually historical) circumstances, it is employed for representing or symbolizing the nation or country as a whole.

I have mentioned that in most of these countries the territory itself does not play such a significant role as is the one played by the mountains in Slovenia. This is so either because its role is divided among different parts of the national territory or because such a territory and its depictions are supplemented by other national attributes such as political power, sovereignty, long history of the nation-state, etc. The other case mentioned is the German Heimat. In this case various authors have shown that the rural countryside, actually consisting of various and disparate parts of Germany, and therefore essentially different in outlook and national specifics, was collapsed into an imaginary whole in which differences were nevertheless retained, even if they were not explicitly shown. Hence depictions of Heimat represented a unity of differences which were based in German regionalism. In the Slovenian case the situation differed because the mountains were constructed simultaneously as *a*) the place of origin (as the source of collective identity), *b*) the location of national identity (the most typical part of the national territory), *c*) the symbolic and historic national battleground (the battleground of the nation with the foreigners and, parallelly, of the individual with the forces of nature, both carrying many common or exchangeable traits), *d*) a place of escape/refuge from everyday urban life, where all class differences vanish and where everybody finds himself in basically the same situation, i. e. the quest for survival and mountain beauty. The notion of Heimat is thus only partially valid when applied to Slovenian motherland (homeland) and its extension and also its constitutive feature, i.e. the mountains.

We could, of course, also say that a Slovenian is also defined by the national territory, for the mountains cover only a minor part of the country. But this would be only partly true, for large segments of the territory now or previously populated by these people are in Austria or Italy; one also could claim that there exists a common culture and this certainly is true, for culture (especially language) is that broader common national denominator. Still, culture as such is not so specific as to offer a clear recognition, although this could certainly be said of language. Nevertheless, the language does not compete with the role the mountains have, for in the case of visual representations of the mountains the national language functions as their auxiliary tool: it offers the »cultural message« and a discourse on them and about them. It verbalizes the mountains.

What the mountains primarily offer is *a visual representation of identity, of its straightforward material location*. They offer a symbolic feature which was hard to confuse with features of other nations in the former Yugoslavia and

also when compared to neighboring countries (Italy, for example). A general consensus existed in the past and in the present (although it is less pronounced after the independence of Slovenia in 1991 for there is less need for it) that mountains can serve as the national common denominator. Thus Mt. Triglav appeared on the provisional banknotes issued before the independence from the former Yugoslavia, on the newly designed insignia, on the new national flag (both designed in 1991), while the mountain contour map of Slovenia was used in designing the newly issued passports. Many old as well as recently issued postcards show motifs from mountains, usually without specifying the locations photographed, and numerous monographs of mountains or of mountain photography continue to be published every year and sell out quickly. Again, this is not specifically Slovenian. What is specific is that beside general publications of Slovenia the only specific ones are those concerning mountains. Also, in general publications, regions are specified and locations duly noted, while in books about mountains, especially those of mountain photography, locations remain vague, only poetically described, or absent. But in these locations another kind of absence can be located: the absence of people, of life in general, and of civilization. Furthermore, these places *are meant to remain empty*, to be sanctuaries for spiritual and symbolic use, to be a place of nature to escape, as it was mentioned, from our culture and urban environment and then return to them. In this respect, again, these mountains do not differ much from national parks, and the like, except that they receive a symbolic treatment rarely encountered in other cultures.<sup>19</sup> This applies not only to poetry, novels, and even music, but also to the aforementioned cinema (from the thirties and again from the fifties) and especially photography. It is this photography which appears to have carried a special role in the development of the contemporary image of these mountains and to represent them as an almost fictitious place, which can function as the location of the national identity and even origin.

As a void this place is never filled and fulfilled and thus remains a place of our permanent desire. Mountain photography helped to constitute the representation of this place or space in an adequate, imaginary, ideological way. At the same time these mountains served as a mythical place of origin – as the source (or *Ursprung* in the Heideggerian sense of the word) which helps us to answer the question »What is my identity?« by another question: »What am I as a subject?« followed by a third question: »Where do I come from?« (Often all three, of course, have little to do with reality.) Furthermore, because these

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<sup>19</sup> Nevertheless, a national park consists of numerous and various elements and the same, of course, applies even to a greater extent to nature in general. What we encounter instead in the mountain photography under discussion are usually the empty mountain spaces.

mountains are the sole location of the *visualized* national identity they can function as the »real object« in the Lacanian sense of the word. Although they exist materially, they are hardly ever located in their »reality«. Mountains, like characters in fiction, cannot be pin-pointed, for this would spoil the poetic effect. Hence the »mountains« exist as a fictitious entity side by side with the actually existing mountains, or better put, they exist on a different plane of reality, on the plane of *effects* which are pure symbolic effects, constituting the real. This »real« of the represented mountains is impossible to attain; whenever we are there, we have already missed it. It is like the »aura« that occurs only in recollection or when gazing at the mountains from a distance, which excludes simultaneous actual contact with them. In mountain photography the effect is only strengthened, for in them the actual locations are superfluous: they even hinder the poetic and ideological effect which they simultaneously convey. In this form they function as the real of the national identity, the real which is, according to Žižek, »a cause which in itself does not exist. It is present only in a series of effects, but always in a distorted and displaced way. If the Real is the impossible, it is precisely this impossibility which is to be grasped through its effects. ... It is something that persists only as failed, missed, in a shadow, and dissolves itself as soon as we try to grasp it in its positive nature« (*The Sublime Object of Ideology* 163, 169). This is exactly the description of the way mountains were represented in our case through mountain photography, whose reading they successfully enforced. To stress again, the described phenomenon is not unique. What is unique is that it exists in our case in such a pure form. One of the reasons is the existence of a general national consensus that the mountains can serve this function of the locus of national identity. This imaginary representation can be invested with all possible acceptable meanings, including political ones, from the liberal to the most conservative and nationalistic. The mountains in their present representational form function as the perfect signifier, because they enable all possible meanings to coexist without giving rise to the awareness of the impossibility of such a coexistence in reality. This consensus is, of course, mostly unconscious; the majority of the population simply feels that »mountains« are acceptable as a national symbol and, simultaneously and additionally, as vehicles of other associated significations, mostly related to issues arising from the division between nature and culture.

In the last hundred years mountain photography in Slovenia has helped to strengthen the image of mountains as the place of national identity and origin. This was made possible due to a series of events, ranging from the early attempts of the Slovenians and Germans to symbolically appropriate the mountains, to their later poetic and artistic photographic representations that strengthened their role of the »Real«. In local and national consciousness

mountains were present for centuries, for they were the geographical and topographical context in which people lived. This was especially true of the people living in the countryside for it was this population which preserved the Slovenian language and traditions. From romanticism on their myths and folk tales served as the basis for the strengthened national awareness.

Due to the possibility of investing mountains with almost infinite and unconflicting meanings and to the aforementioned events or features, mountains could attain an extraordinary symbolic value in the constitution, retention and strengthening of national identity. For the mountains to be able to function in such a way they had to function as a void, capable of being invested with different and contradictory meanings. Unlike those of most nations, the mountains in Slovenia represent a unique symbolic locus of identity and thus of collective subjectivity. It will be interesting to see whether, with the attained national sovereignty, their role will diminish in the future.

In the case of the mountain photography in question, representation functions mainly through *substitution*, *trace*, and *absence*. All three features sometimes appear as parallels between the empty space of the mountains and empty pristine and sacred space. The preconditions for this place or space to play the role of the locus of the constitution of the aforementioned collective subjectivity is that it is empty – and that is what it must also remain.

We see a dilapidated chalet in the mountains (Fig. 5). The poetic effect is achieved by its being a trace of absent people. It is a remnant of life long gone (into the valley and thus into an urban environment), a remnant of past life in these mountains which now, in modern times, has lost its original dwellers. Instead we have today city life, fast and far removed from our origins where we can perhaps escape over the weekend.



Fig. 1 Gustav Pirc, »Aljaž's Tower on Triglav«, 1895.



Fig. 2 Franz Leiner, »On Little Triglav«, 1888.

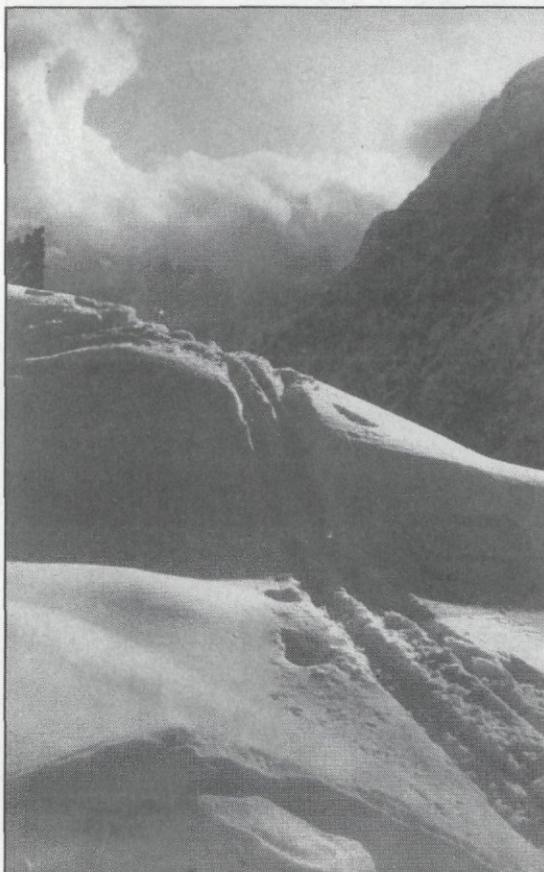


Fig. 3 Ivo Freljih, »Winter«, 1936.

A different, still purely documentary intention is evident from both photos from the previous century depicting scenes from Mt. Triglav (*Fig. 1* and *2*). Nevertheless, today these photographs have attained a different reading: they are framed by later events, enabling us to view the climbers on Little Triglav as hardy men, capable of climbing the dangerous mountain, and at the same time as those who fought against the dominance of the Germans.

*Fig. 3* offers a reading similar to that in *Fig. 5*. The human presence is again felt through its absence. The winter scene reinforces the feeling of solitude and emptiness. But in contrast to the previous picture, in this one our feelings are ambivalent. On the one hand, we see the trace of a former human presence, on the other we see that the skis have intervened in a spoiled nature, leaving a trace, which is quite different from the one in *Fig. 5*. Human intervention in nature has spoiled the pristine winter landscape, while in *Fig. 5* nature has reclaimed its territory.

*Fig. 4*, »My Shadow«, uses substitution to present the creator and the subject of the picture. Photographer's shadow is seen on the steep and snowy mountain slope. At the same time the shadow doesn't present itself neither as a simple oblique shadow nor as a direct double of the author, i.e. as identical with him. It creates instead an »other« person who appears as if he had nothing to do with the author of the photograph, except being its object. It is by the use of this »twist« encountered by our gaze, that the picture achieves its dramatic effect.

*Fig. 6* suggests a different reading. The solitude of nature is very pronounced, but at the same time we can see trees fighting for survival. The wild landscape functions as a sharp contrast to our urban and (relatively) safe environment. Something similar can be experienced in most adventure films. In the foreground there is a dead lonely tree still fighting the wind and other natural forces, sometimes implying that the Slovenians (or whoever) have also stood firm against the invading Germans, Italians, and other enemies.

A very different reading, totally unmodern, is suggested by the still from a video clip by the



*Fig. 4* Slavko Smolej,  
»My Shadow«, 1938.



*Fig. 5* Jaka Čop, »Under a Precipitous Rock«, 1990.



*Fig. 6* Jaka Čop, »It is Dawning in the Mountains«, 1990.

music group *Laibach* (Fig. 7). As can be seen, the members of the group have wrapped a flag around Aljaž's Tower on Mt. Triglav. The group is a part of a Slovenian »retro-garde« movement from the eighties. Among its symbols are also Malevich's suprematist cross from 1915 and the cog-wheel which was a motif much used by socialist realist artists. By wrapping their flag around the tower, they have symbolically appropriated the symbol of the Slovenians. It is a case of postmodern irony, something which is totally absent from previous representations of mountains. In modernist representations mountains are always something serious, a grave matter, representing crucial issues, where laughter and irony are superfluous.



Fig. 7 *Laibach*, 1989.

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# Fiction Re-constructed

Marina Gržinić Mauhler

»E xperience may also be reconstructed, re-remembered, re-articulated. One powerful means of doing so is the reading and re-reading of fiction in such a way as to create the effect of having access to another's life and consciousness, whether that other is an individual or a collective person within the lifetime called history.«<sup>1</sup>

As Fredric Jameson suggests, »the truth of experience no longer coincides with the place in which it takes place, but is spreadeagled across the world's spaces;(...) a situation arises in which we can say that if individual experience is authentic, then it cannot be true; and that if a scientific or cognitive mode of the same content is true, then it escapes individual experience.«<sup>2</sup>

Since January 1993 on the ground floor of Apartment No. 12 in the eastern part of New York's Soho the exhibition Salon de Fleurus has been open for viewing.<sup>3</sup> Salon de Fleurus is a staged and repeated presentation of one of the most significant collections of modern art from the turn of this century which was created by the American authoress and literary critic Gertrude Stein, a Jewess of German descent, with the help of her brother Leo Stein in their Paris apartment at 27 Rue de Fleurus.

We can only relate and describe the actual appearance of the New York Salon because the artist or artists who wish to remain anonymous do not permit photographs to be taken upon the premises<sup>4</sup>. Salon de Fleurus is to be found in a private apartment in New York with two rooms connected by an oval atrium. The apartment is furnished with antique furniture and paintings. Carpets cover

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<sup>1</sup> Donna J. Haraway, *Simians, Cyborgs, and Women. The Reinvention of Nature*, Free Association Books, London 1991, p. 113.

<sup>2</sup> Fredric Jameson, »Cognitive mapping«, in: *Marxism and the Interpretation of Culture* (ed. C. Nelson and L. Grossberg), Urbana III, 1988, p. 349.

<sup>3</sup> Salon de Fleurus is exhibited at 41, Spring street, Apt. 1 AR, 10012 New York.

<sup>4</sup> As (exclusive) information we are publishing reproductions of the pictures which are exhibited in the Salon and some extracts of the conversation with the anonymous artists.

the floors and old, decorative curtains hang on the windows. The paintings are discreetly lit by table-lamps and candles. The music that pervades the dwelling is French popular music from the twenties and thirties played on an old radio, also of the period.

All the paintings exhibited in the Salon are made on a wooden base with ochre hues and emphasized stylistically with extraordinarily controversial frames. Thematically they refer to paintings from the collection of Leo and Gertrude Stein, chiefly from the period 1905-13, and to the collection itself as a complex artefact and integrally pulsating system. That is why the paintings in the Salon, as emphasized by the artists, can be placed in two categories: painting reproductions from the collection (Picasso, Matisse, Cézanne, etc.) and paintings depicting the collection originating from black and white photographs.

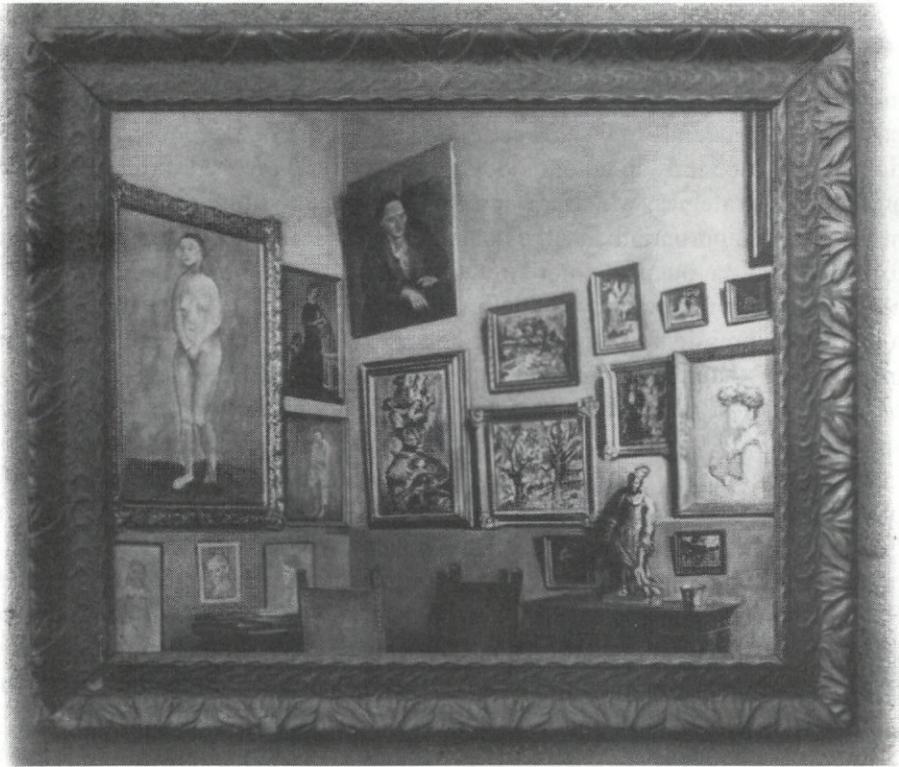
We are witness here to an exact painted facsimile of a particular era which has a lot to do with life, history, fiction and art. We also see the exaggerated iconic duality which borders on »kitsch«, while the cubist paintings are transposed to our present time in the manner of Russian icons. Their painting technique is clearly amateur with the emphasized disharmony of the »Rococo« frames. But rather than label this (as an) attempt to copy original paintings as producing »fakes« using photographic records of the period and reproductions of the originals, we can talk here about the attempt to rearrange and reinterpret the system of art from the turn of this century – a system which influenced the modernist world as such. Certainly, Picassos, Cézannes and Matisses are exhibited before us, but rather than being concerned with an individual item we are concerned here about a system, not in the sense of a specific reconstruction of space or an installation, but a reconstruction of a system of thinking – one which exactly eighty to ninety years ago elaborated the institution of modern art as we know it today. Therefore, in the New York Salon we can not only purchase paintings, but also furniture or even all the items in both rooms. »Every painting sold is substituted with a copy of the same one or with another from the same period. Thus the Salon continuously regenerates and transforms itself at the same time.«

The paintings in the Salon can be compared to pre-Renaissance icons which instead of mythologizing the antique or Christian – Jewish world now do so with a crucial pre-modern period. Kim Levine discussed Salon de Fleurus in an article – »When systems collapse, freak events such as these rise up through the cracks« and as she states, »this is more than purely a simulation – it involves a magical realism«. <sup>5</sup> Spaces of very different worlds seem to collapse

<sup>5</sup> Kim Levin, review of the Salon de Fleurus, *Village Voice*, January 19, 1993.

here upon each other, much as the world's commodities are assembled in the supermarket and all manner of sub-cultures get juxtaposed in the contemporary city.

We can interpret the project in two ways. Firstly, making reference to the concept of David Harvey's time-space compression<sup>6</sup>, a term used to signal processes that so revolutionize the objective qualities of space and time that we are forced to alter, sometimes in quite radical ways, how we represent the world to ourselves. We have been experiencing, these two last decades, an intense phase of time-space compression that has had a disorienting and



»From the *Autobiography of Alice B. Toklas*« 27 Rue de Fleurus, Paris (1907)  
(From the collection of David C. Anderson)

<sup>6</sup> David Harvey, *The Condition of Postmodernity*, Basil Blackwell, Cambridge, Ma 1989, p. 240.

disruptive impact upon political-economic practices, the balance of class power, as well as upon cultural and social life.<sup>7</sup>

The time-space compression is the exact term to compress the time-space condition of the today »virtual« Gertrude Stein, taken to traverse space and time of approximately 90 years.

The greater the ephemerality, the deeper the questions of meaning and interpretation that arise. Photographs, particular objects (a clock, a chair), and events (the playing of a piece of music) become the focus of contemplative memory, and hence a generator of a sense of self that lies outside the sensory overload of consumerist culture and fashion. »The apartment is furnished with antique furniture and paintings. Carpets cover the floors and old, decorative curtains hang on the windows. The paintings are discreetly lit by table-lamps and candles. The music that inundates the dwelling is French pop from the twenties and thirties broadcast from an old radio, also from that period.«

And there is also the question of the exhibition in a private apartment. Whereas modernism looked upon the spaces as 'an epiphenomenon of social functions', postmodernism 'tends to disengage urban space from its dependence on functions, and to see it as an autonomous formal system' incorporating 'rhetorical and artistic strategies, which are independent of any simple historical determinism'.<sup>8</sup> It is appropriate that the postmodernist developer should be indebted to, at least on the outside, »more in the spirit of fiction than of function.«<sup>9</sup> For his part Jameson views the »spatial peculiarities of post-modernism as symptoms and expressions of a new and historically original dilemma, one that involves our insertion as individual subjects into a multidimensional set of radically discontinuous realities, whose frames range from the still surviving spaces of bourgeois private life all the way to the unimaginable decentering of global capitalism itself.«<sup>10</sup> As Harvey has pointed out: »Home becomes a private museum to guard against the ravages of time-space compression. From this standpoint we have to accept the argument that postmodern fiction is mimetic of something, much as that the emphasis upon ephemerality, collage, fragmentation, and dispersal in philosophical and social thought mimics the conditions of flexible accumulation. But it is exactly at this point that we encounter the opposite reaction that can best be summed up as the search for personal or collective identity. Place-identity that implodes in upon us, because everyone occupies a space of individuation (a body, a room, a home).«<sup>11</sup>

<sup>7</sup> Harvey, op. cit., p. 284.

<sup>8</sup> A. Colquhoun, 'On modern and post-modern space', cit. in: Harvey, op. cit., p. 304.

<sup>9</sup> Harvey, op. cit., p. 286.

<sup>10</sup> Jameson, »Cognitive mapping«, p. 351.

<sup>11</sup> Harvey, op. cit., p. 302.

The fact that paintings are made from photographs and not vice versa (at the time when computer processing makes it possible to produce even more perfect photographic simulations) corresponds to Stein's maxim: »Painting is still worth something; photography isn't.« The paintings in the Salon present themselves as a successful mimicry of a certain state of mind; an imitation that is even more controversial here because until recently the birth of modern art had so explicitly referred to scientific analysis whilst here it was completely mythologized. At least we can ask ourselves what was that period like or who was Gertrude Stein? Nevertheless, there is no sense in recapitulating the biography of Gertrude Stein given the fact that in the world till now there have been numerous more or less salacious details of Gertrude's life story already published. One fact of even more significance (as confirmed by the Salon de Fleurus) is that Stein did not only create one of the best collections of modern art and materially and spiritually directly supported the whole pleiad of avant-garde artists, but she established a format for the specific reading and comprehension of the history of modern art. She actually presented this history as a legend with her as heroine and legend at the same time.<sup>12</sup> The book by

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<sup>12</sup> Images of her with her hair cut short, her thunderous laughter, her collection of paintings and Ford's automobiles (precisely in that order) have built up the legend of Gertrude Stein. She had such a strong personality that, for example, in 1937, while the reputation of her picture collecting was only a memory of the golden days (although her popularity as a writer was becoming increasingly strong) she sat on the commission/jury of one of the global exhibitions of modern art. The legend about her collecting lived on even when her collection was split in two, and also when she had to sell it (»eat Cézanne«, as she wrote in one of her many autobiographies and pieces of prose) in order to survive the Second World War, i.e. sell it so she could buy food together with her female friend and life-long companion Alice Toklas. But despite the many myths about her life, certain facts hold true: in 1903 after her arrival in France from the USA, she moved to her brother's apartment in Paris at 27 Rue de Fleurus (where despite travelling around Europe and America she remained until her death). Her move to Paris preceded her intensive friendship with her brother Leo and a lesbian experience with May Bookstaver in the USA. Subsequently, in 1907, she met Alice B. Toklas who became her lifelong companion, first working as a typist, then everything else: cook, gardener, etc. Above all Alice was someone who made Gertrude's life comfortable – as she herself stated to journalists upon her triumphant arrival in the USA in the middle of the thirties on the question of who is Alice B. Toklas.

As distinct from her position as a notable modernist writer who was only in her development phase in the twenties, her reputation as a collector of works of art was established, although it was entirely based on purchases which were made during the period 1905-13. As a designer of the Museum of Modern Art in a private apartment and one of the last adherents of Cubism in the twenties Gertrude Stein was indeed a patron of the arts and a pioneering, visionary woman. In 1905 she acquired the painting *Femme au Chapeau* by Henri Matisse which essentially defined Fauvism. As can be determined from the *Autobiography of Alice B. Toklas*, the decision to purchase this item which was made by Leo, was in fact made by Gertrude. She didn't only acquire, but also posed for the key Cubist portrait, made by Pablo Picasso in 1906.

Gertrude Stein entitled *The Autobiography of Alice B. Toklas* published in 1933 definitively established Gertrude Stein as a literary star, and is paradigmatic for her work and life as well as for the paintings from the Salon de Fleurus. (After all, isn't the initial slogan in the title of each painting »From the Autobiography of Alice B. Toklas«?). In that book which she began to write with the encouragement of a publisher in the autumn of 1932, Stein presents her life together with Alice Toklas with whom she lived for almost 25 years, or vice versa; primarily she reveals the history of modern art through deliberation, conversation and sometimes infantile observings of Alice B. Toklas. The *Autobiography* describes the heroic times of cubism, the life of the lost



»From the Autobiography of Alice B. Toklas« 27 Rue de Fleurus, Paris (1913)

generation (Hemingway and the rest) as Gertrude Stein termed them, and the beginning of modern art through anecdotes and aphorisms with an abundance of details that transposed history to a mythological narrative. By imitating the style of Alice B. Toklas, Stein builds a mythological presentation of her own self and a narrative style worthy of the pulp fiction of the 1890s. Stein discussed the history of modern art in terms as these, as she remarks towards the end of her *Autobiography* in the same way Defoe wrote the autobiography of Robinson Crusoe. This literary game which Stein reveals to the reader in the last paragraph of the book could be the consequence of Stein's love for detective novels and also for superb, subtle mimicry. Incidentally, the responses to *Autobiography* were quite predictable; Hemingway »thanked« her for her recollections with the following verse: »A Bitch is a Bitch is a Bitch is a Bitch«.

At the very moment in which postmodernism proclaims the 'death of the author' and the rise of anti-auratic art in the public realm, the art market becomes ever more conscious of the monopoly power of the artist's signature and of the questions of authenticity and forgery.<sup>13</sup>

What do we obtain by abolishing differences between the past and the future, when everything suddenly becomes the present and time attempts to halt itself within a closed narrative form? The »constant present« which according to Gertrude Stein is the result of the process of copying and at the same time the *raison d'être* of the entire Salon exhibition, is a method of keeping an object or standpoint outside of time in order to discover its reality.

Here we can develop a second approach that goes in two directions, one concerning reality/factuality/virtuality and the second past/present/future. But aren't they interconnected?

In the face of the type of representational dilemma the Salon de Fleurus embodies, the philosophical questions of plausibility and implausibility override those concerning the true and the false. The shift of interest from the thing to its image, and especially from space to time, leads to a shift from the old black-and-white, real-figurative dichotomy to the more relative actual-virtual.<sup>14</sup> »In two hundred years the philosophical and scientific debate itself has

<sup>13</sup> According to Rosalind Krauss, »the copy« poses a challenge to history. Instead of extraordinarity, uniformity, or the entity of one, »the copy« offers a spectrum of multiplicity, threatening to undermine uniformity itself. In post-structuralist terminology repetition replaces that 'always already present' moment of wish production, but only if that wish reproduces somebody else's wish. Cf. Rosalind Krauss, »Originality as Repetition: Introduction«, *October*, No. 37, 1986, pp. 35-41.

<sup>14</sup> Paul Virilio, *The Vision Machine*, British Film Institute and Indiana University Press, London, Bloomington and Indianapolis 1994, p. 70.

thus shifted from the question of the objectivity of mental images to the question of their reality. The problem, therefore, no longer has much to do with the mental images of consciousness alone. It is now essentially concerned with the instrumental virtual images of science and their paradoxical facticity.«<sup>15</sup> Furthermore, this is one of the most crucial aspects of the development of the new technologies of digital imagery and of synthetic vision offered by electron optics: the relative fusion/confusion of the factual (or operational, if you prefer) and the virtual;<sup>16</sup>

The age of the formal logic of the image was the age of painting, engraving, etching and architecture; it ended with the eighteenth century. The age of dialectical logic is the age of photography and film or, if you like, the frame of the nineteenth century and of the actuality of the dialectical logic governing photographic and cinematic representation.<sup>17</sup> The age of paradoxical logic begins with the invention of video recording, holography and computer graphics ... as though, at the close of the twentieth century, the end of modernity were itself marked by the end of a logic of public representation.<sup>18</sup> With paradoxical logic, what gets decisively resolved is the reality of the object's real-time presence. In the previous age of dialectical logic, it was only the delayed-time presence, the presence of the past, that lastingly impressed plate and film. The paradoxical image thus acquires a status something akin to surprise, or more precisely, of an »accidental transfer«.<sup>19</sup>

We are discussing the Salon here and now, thanks to several, projects in the eighties which took place in Ljubljana known to the public only from exhibition titles and supposedly autographed by famous, but already deceased painters:«The International Exhibition of Modern Art – Armory Show«, »The Last Futurist Exhibition«. The lecture purportedly given by Walter Benjamin in 1986 entitled »Mondrian '63 – '96«.<sup>20</sup> These projects elaborated the so-called tactical position of the artist who conceals his own identity and the strategies not only of post-modern art but of the post-socialist condition of art. With Virilio we can say that »paradoxical logic emerges when the real-time image dominates the thing represented, real time subsequently prevailing over

<sup>15</sup> Virilio, op. cit., p. 60.

<sup>16</sup> *Ibidem*.

<sup>17</sup> Cf. Gilles Deleuze, *L'image-mouvement*, Minuit, Paris 1983, and Gilles Deleuze, *L'image-temps*, Minuit, Paris 1985.

<sup>18</sup> Virilio, op. cit., p. 63.

<sup>19</sup> Virilio, op. cit., p. 64.

<sup>20</sup> The lecture was in Cankarjev dom in Ljubljana. It was a lecture by a German philosopher, dead for almost a half of century, whereas Piet Mondrian, a Dutch painter and innovator of abstract art, had died four years after Benjamin in 1944. Cf. Aleš Erjavec, Marina Gržinić, *Ljubljana, Ljubljana*, Mladinska knjiga, Ljubljana 1991, pp. 130 – 131.

real space, virtuality dominating actuality and turning the very concept of reality on its head.«<sup>21</sup>

The »Last Futurist Exhibition«, for example, publicly presented in Ljubljana in March 1986, signed by Kasimir Malevich himself, was a reconstruction of the exhibition of the same name, originally put together by the great Russian Suprematist in St. Petersburg in the winter 1915-16. In a letter published in September 1986 in *Art in America*, the same Malevich (with the postscript Belgrade, Yugoslavia) stated: »...I could not even dream that the photograph of that installation would become so famous. I have the feeling that the photograph of the »Last Futurist Exhibition 0.10 (zero-ten)« in St. Petersburg



»From the Autobiography of Alice B. Toklas« 27 Rue de Fleurus, Paris (1905)

<sup>21</sup> Virilio, op. cit., p. 63.

in 1915-16 has become even more important than my Suprematist paintings. Therefore for years I have cherished the idea of remaking the exhibition!«. The project elaborates the so-called tactical position of the artist who conceals his own identity, putting into question some fundamental arguments concerning modernism. With the virtualities of the paradoxical logic which appertain to the videogram, hologram or digital imagery, these art projects are in fact questioning the comfortableness with the reality of the formal logic of traditional pictorial representation.<sup>22</sup>

The time which we are attempting to clarify at the Salon de Fleurus is circular, not linear, i.e. with a beginning, middle and end. It is similar to cubism which interpreted time as being synchronized and combined the past and future in the present. By abolishing the differences between the past and future everything becomes the present; the myth is therefore not transferred from generation to generation. Gone, more importantly, is any sustained sense of the autonomy, in space and time, of gross and visible individual human actions. And if »actions« are now invisible, then our fates are likewise beyond our grasp. We no longer feel that we penetrate the future; futures penetrate us.<sup>23</sup> By constantly returning to the beginning we halt the possibility of reaching the end. Salon de Fleurus is not a part of the world where we have become what we are. It probably proclaims or represents a part of another world which may not be seen as yet, but which the Salon lets us feel. We are witness to »the decisive end of the present period of art, when an old system (which could be a new one under altered circumstances) is returning to art. (...) The three tenses of decisive action, past, present and future, have been surreptitiously replaced by two tenses, real time and delayed time, the future having meanwhile disappeared via computer programming, and on the other hand, in the corruption of this so-called 'real' time which simultaneously contains both a part of the present and a part of the immediate future«. <sup>24</sup>

Within the metaphors and fictions of postmodern discourse, much is at stake, as electronic technology seems to rise, unbidden, to pose a set of crucial ontological questions regarding the status and power of the human being. It has fallen to science fiction to repeatedly narrate a new subject that can somehow directly interface with – and master the cybernetic technologies of the Information Age, an era in which, as Jean Baudrillard observed, the subject has become a »terminal of multiple networks«. <sup>25</sup> Maybe what we have here is

<sup>22</sup> *Ibidem*.

<sup>23</sup> Cf. John Clute, »Introduction«, *Interzone: The Second Anthology* (ed. John Clute), St. Martin's Press, New York 1987, pp. VII-X.

<sup>24</sup> Virilio, op. cit., p. 66.

<sup>25</sup> Jean Baudrillard, »The Ecstasy of Communication«, in: *The Anti-Aesthetic* (ed. Hal Foster), Bay Press, Port Townsend (Washington) 1983, p. 128.

a kind of new subjectivity which we can name »terminal identity«.<sup>26</sup> As Peter Weibel stated: »When Descartes defines us as *res cogitans*, we can show that parts of thinking activity can be performed by machines; it does not mean that these machines are subjects. We are only saying that we have formulated our ideas of the subject wrongly. Mathematics, calculating as a part of thinking, has nothing to do with the foundation of the subject. The subject is found in something else. This is not the disappearance of the subject as we find it in a post-structural theory, it is a disappearance of the historical definition of the subject. So, our historical ideas of how we construct the subject are clearly vanishing by the advent of these new machines and projects as autonomous agents. We have called them autonomous agents because we have to redefine ourselves. (...) So instead of Descartes, who defined the subject as a *res cogitans* that signifies something limited, *my idea of the subject is anything, anywhere, anytime*. This is a basic universal desire. The subject is trying to become a fatal attractor, this is what the subject really wants to bend, to distract the environment, according to his will.«<sup>27</sup>

Finally we can perhaps suggest that the Salon de Fleurus project may be re-read as or pointed out as a daemon, as something that is disturbing the linearity of history, of art, of science. The most known examples are Maxwell's daemon<sup>28</sup>, Gödel's trickster<sup>29</sup>, or Haraway's coyote<sup>30</sup>.

<sup>26</sup> Cf. Scott Bukatman, *Terminal Identity. The Virtual Subject in Postmodern Science Fiction*, Duke University Press, Durham and London 1993, p. 2.

<sup>27</sup> Marina Gržinić, »Multiple zones of individuality and variable zones of visibility«, interview with Peter Weibel, to be published in: *Mars*, Ljubljana, December 1994/January 1995.

<sup>28</sup> »Maxwell was a famous scientist who discovered electromagnetic waves. But only theoretically, he could not prove it. It was proven by Heinrich Hertz 20 years later. But Maxwell put forward a theory saying that in the world there must be something called electromagnetic waves. There is a famous second law of thermodynamics which states that in each system energy must be constant. But Maxwell said: imagine two spaces. Between the two spaces you have a door with a little slit. One space of gas is very hot, and the other is very cold. According to the law of thermodynamics, when such a door is opened both spaces will be of equal temperature. But Maxwell could mathematically prove that the hot space would become hotter and the cold space would become colder. So this was a riddle, a paradox, Maxwell's daemon. (...) But then along came Zurek, a scientist, who wrote an article in 1984, 'Maxwell's daemon, Szilard's engine and Quantum measurement'. He solved the paradox in such a way that it could even obey the second law of thermodynamics. He said: This daemon is doing work. Somebody is doing work. Even when he just counts molecules, this also uses energy, this also uses information. So when something is becoming hotter and something is becoming colder, we can exactly measure this difference of energy, and we can say this is an amount of information, that is energy which the daemon uses for himself. So we could explain it even within the second law of thermodynamics. He calls this daemon 'Quantum Daemon'.« Peter Weibel, »Ways of Contextualisation«, *Place, Position, Presentation, Public*, (ed. Ine Gevers), De Balie, Amsterdam 1991–1992, pp. 232–3.

<sup>29</sup> »Gödel came up with a famous thesis which showed us the incompleteness of arithmetic. He

As Weibel stated, projects such as »Malevich« (»Last Futurist Exhibition« in 1986) or as the Salon de Fleurus are in this very moment in art, science, and history, functioning like a daemon. »People who work on endophysics are people who are inventing a new kind of a daemon. Also I tried to support somebody like Malevich<sup>31</sup> because he is a such a daemon in the art world today. I also try to find scientists and artists who can act as daemons and promoters of parallel worlds and viruses in science and the art world. I think they really exist, therefore I am the camera trying to synchronize my motions with the motions of the daemon. What is really interesting about this topic – following Jeremy Bentham's panopticum – is the idea that everything is transparent, everything is visible. Postmodernist art at its best, which already started with surrealism, shows us that you have variable zones of visibility. In postmodern societies many things are not transparent, the 'social unconscious' of Fredric Jameson shows this clearly. All those transparent glass buildings that try to provide you with the illusion of total transparency, are a panic reaction in relation to the social unconscious, to the fact that we have zones of visibility and zones of invisibility. That means that the panopticum envisaged by Bentham, where all is visible, and everything is transparent, no longer holds true. At the same time that you now have variable zones of visibility you also have variable zones of identity. We have multiple zones of individuality and we have variable zones of visibility.«<sup>32</sup>

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showed us that each arithmetic sentence produced a sentence which cannot be proved, so the sentence is indecisive, you will never know if it is true or not within the system. This was already an attack, a postmodern attack against modernism, because mathematics was the highest modernist project ever, it tried to show that everything real was verifiable and that for every thing a rule can be constructed.« Weibel, op. cit., p. 230.

<sup>30</sup> »Perhaps the world resists being reduced to mere resource because it is – not mother/matter/mutter – but coyote, a figure for the always problematic, always potent tie of meaning and bodies.« Donna J. Haraway, *Simians, Cyborgs, and Women. The Reinvention of Nature*, p. 201.

<sup>31</sup> Weibel is referring here to the project of reconstruction of the »The Last Futurist Exhibition« which took place in Belgrade and Ljubljana in 1985/1986 and was signed by Kasimir Malevich.

<sup>32</sup> Marina Gržinić, »Multiple zones of individuality and variable zones of visibility«.

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# Interview

## Entretien avec Jacques Rancière

Jacques Rancière est Professeur de Philosophie à l'Université Paris VIII - Vincennes à Saint-Denis. Il a publié *La Nuit des prolétaires: Archives du rêve ouvrir* (1981), *Le Philosophe et ses pauvres* (1983), *Le maître ignorant: Cinq leçons sur l'émancipation intellectuelle* (1987), *Aux bords du politique* (1990) et *Les Mots de l'histoire* (1991). Son travail est centré sur différents problèmes de la philosophie politique, sur l'analyse de la nature et des formes de la démocratie et les rapports de philosophie avec la littérature et les sciences sociales.

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*Commençons par un paradoxe. Vous dites qu'il n'y a pas de philosophie politique. Pourtant une grande partie de votre travail porte sur la politique et aussi sur la philosophie politique.*

**Jacques Rancière:** L'idée centrale sur laquelle j'essaie de travailler c'est l'idée qu'il n'y a pas de philosophie politique ou que la philosophie politique est le nom d'un malentendu. Cette idée, peut s'éclairer à partir de la situation que nous voyons à présent: la fin du système soviétique apparaissait d'une part comme la fin de la seule alternative politique à la démocratie et d'autre part comme la fin aussi de l'alternative posée par le marxisme à la tradition de la philosophie politique. Donc, tout semblait se passer comme si, par la chute du système soviétique, la démocratie se trouvait définitivement légitimée comme véritable fin de l'histoire politique et deuxièmement aussi comme si la philosophie politique se trouvait rétablie, dans cette voie, comme seule réflexion légitime sur les sociétés et sur leurs gouvernements.

Or, j'essaie de prendre cette coïncidence à l'envers et je constate que, si l'effondrement du système soviétique libère un discours d'autosatisfaction des gouvernements qui prétend s'identifier à l'autosatisfaction de la démocratie, cela correspond en fait à un grand vide de la pratique politique, à un vide même de ce qu'on appelait la pratique politique démocratique formelle. De même la philosophie politique qui est censée être libérée par l'effondrement de l'hypothèque marxiste se réduit souvent soit à des commentaires académiques de quelques auteurs canoniques, soit à des grandes déclarations sur la fin de la politique qui correspondent au discours qu'un politicien ordinaire peut tenir sur les fins qu'il se propose.

Je pars de cette conjoncture où une prétendue libération de la politique et de la pensée politique débouche proprement sur un vide pour essayer de réfléchir sur la spécificité de la politique, de la différence entre l'acte politique et les règles de fonctionnement étatique, d'une part, et sur la différence entre la démocratie comme système de pratiques et la démocratie comme forme constitutionnelle, ou comme état du social.

Egalement, j'essaie de penser la différence, peut être interne, inaperçue, du concept de philosophie politique. En effet, cette platitude de la philosophie politique supposée restaurée dans son droit actuel est peut être l'indice du fait que le rapport de la philosophie et la politique est un rapport de type conflictuel. Et c'est à partir de là que j'essaie de revenir aux origines de ce qu'on appelle la philosophie politique et de déceler dans ses textes fondateurs le signe de désaccord ou de malentendu fondamental entre les objectifs poursuivis par la philosophie et le processus politique au sens où je l'entends.

*Etant donné que la notion de la philosophie politique est problématique, la question se pose si la politique et surtout la politique dite démocratique peut se passer de la philosophie. Autrement dit, est-ce qu'on peut dire qu'il y a un lien, un rapport nécessaire entre la politique et la philosophie?*

**Jacques Rancière:** Il y a de fait une rencontre entre la philosophie et la politique sous sa forme démocratique, une rencontre où en quelque sorte le malheur de la philosophie est de venir toujours trop tard. La politique sous la forme de la politique démocratique est là avant la philosophie. Ce qui est tout le problème de l'égalité chez Platon ou chez Aristote. Pour eux, il y a l'égalité qu'ils appellent arithmétique, l'égalité d'échange, et il y a l'égalité qu'ils appellent géométrique, qui est la proportion qui doit donner à chaque groupe la part qui lui revient en fonction de principe qu'il incarne. Or le problème est que l'égalité citoyenne, l'égalité démocratique athénienne, est une égalité qui n'entre dans aucune de ces deux catégories.

Tout le scandale de la politique pour la philosophie tourne autour de cette égalité: c'est une »mauvaise« égalité pour Platon, une égalité »formelle« pour le Marx de la *Question juive*. La politique existe par le fait d'une égalité qui n'est pas une »vraie« égalité, d'une mesure paradoxale des incommensurables.

Donc il y a un noyau de concepts qui a d'emblée institué un rapport de la philosophie à la politique qui est un rapport de désaccord, à la fois d'intrication de leurs concepts mais d'intrication qui est toujours conflictuelle. Ce qui veut dire que pour moi le terme de philosophie politique est un terme de dénégation qui suppose qu'on a trouvé le bon concept ou la bonne mesure qui serait la mesure des incommensurables qui permettrait effectivement de déduire la communauté politique telle qu'elle est en particulier dans les démocraties dites formelles de l'idée philosophique du bien commun. J'essaie de montrer que le noyau d'illusion est dans la manière dont on traite cette notion du bien commun comme si effectivement elle unissait en quelque sorte l'exigence du philosophique et l'exigence du politique.

*D'habitude on distingue entre la politique et le politique. Par contre, la manière dont vous interprétez la notion de police suggère une idée de partage tout à fait différente.*

**Jacques Rancière:** Classiquement, lorsqu'on essaie de penser la politique et la philosophie politique, on pense à partir d'un principe unificateur des pratiques politiques, des formes constitutionnelles et des modes de fonctionnement étatiques. Donc un principe, par exemple la loi, qui serait incarné aussi bien dans l'action d'une force politique, dans l'organisation de l'Etat, dans les textes constitutionnels et dans ce qu'on peut appeler le soubassement philosophique soutenant l'ensemble. Or ce que j'essaie de penser c'est justement que cette homogénéité est illusoire, qu'il n'y a pas de principe de la politique qui s'incarnerait dans tout les lieux où il est question de la communauté, de son organisation, de l'Etat. Il est bien évident que l'Etat de type parlementaire moderne autorise cette espèce de confusion. Et cette manière unitaire de penser le champ politique autorise une sorte de côte à côte, sans pensée, entre, d'une part, un discours de la philosophie politique et d'autre part des pratique étatiques. Mon idée est qu'il faut les séparer pour que la politique ait un sens et qu'il faut en particulier cesser de voir la politique comme incarnation d'un principe qui serait le principe de la communauté.

Donc, j'essaie de penser le politique comme la rencontre de deux processus hétérogènes. D'une part un processus, une loi générale de distribution des corps en places et en fonctions, un système de rapports entre des parts et des parties, qui organise tout ordre social et je réserve le terme de la police à toute

cette activité qui consiste à faire de l'ordre en distribuant des places, des noms, des fonctions etc. Ce qui suppose de séparer l'idée de police de ce qui l'accompagne habituellement, à savoir l'idée des forces de l'ordre, la répression, la police politique etc. etc. et de renvoyer le concept de police à un sens originel: la police, c'est le partage du sensible qui définit la constitution même des parties et de leurs parts, depuis l'antique répartition des trois ordres jusqu'au rapport de nos gouvernements avec l'ensemble des »opinions« que les sondages répartissent entre l'ensemble des catégories et des classes d'âge. La politique, elle, est l'activité, le dispositif singulier de subjectivation qui subverti ce partage par la simple introduction d'une présupposition qui lui est hétérogène: celle de l'égalité de n'importe qui avec n'importe qui: cette présupposition qui se traduit par des sujets comme *peuple* ou *prolétariat*, lesquels ne sont pas des entités sociales mais des opérateurs de la logique du politique: la manifestation d'une »part« singulière qui est la part des sans-part. Plus exactement, le politique, entendu comme le lieu des pratiques politiques, serait le lieu de rencontre de deux logiques hétérogènes: la logique policière, telle que je l'entends, celle de la distribution et des légitimations et la logique de la vérification de l'égalité.

Cette manière de penser est venue chez moi par un détour, parce que j'avais travaillé à une certaine époque sur la théorie de l'émancipation intellectuelle qui avait été élaborée par un Français complètement marginal, Joseph Jacotot, au début du XIXe siècle et j'avais été frappé par la manière dont il opposait une logique de ce qu'il appelait l'émancipation intellectuelle, fondée sur la présupposition de l'égalité de n'importe qui avec n'importe qui, à toute forme de logique sociale. Pour lui l'égalité des intelligences était le présupposé sur lequel repose toujours en dernier ressort tout ordre même inégalitaire. Il était possible de dégager cette présupposition et d'en faire acte. C'est ce que veut dire »émancipation«: rendre l'égalité effective. Mais cette effectivité de l'égalité ne pouvait devenir collective, régir la logique des corps sociaux qui est une logique des poids et des contrepoids. On pouvait imaginer que tous les individus d'une société soient émancipés. Mais on ne pouvait pas imaginer une société égale. Aucune société ne pouvait être égalitaire.

C'est une espèce de défi lancé à tout les problématiques de type progressiste, socialiste ou simplement démocratique, modernes. Et je m'étais intéressé à la manière dont on pouvait essayer de forcer cette opposition. C'est à partir du souci qui était le mien de forcer cette opposition ou cette logique d'opposition que j'ai été amené à penser plus spécifiquement un rôle de la politique comme constitution de dispositifs de subjectivation qui permet à la loi d'égalité de faire effet dans l'ordre social. Mon idée était qu'il y a des points de rencontre. Il est bien vrai que la logique d'égalité, de vérification de l'égalité et la logique de

distribution, d'ordination sociale sont deux logiques hétérogènes mais on peut faire effet de l'égalité dans l'ordre social. Or, faire effet ça veut dire constituer des unités qui justement ne sont pas des unités d'ordre social. C'est-à-dire que cette logique ne peut être dans l'ordre social que par quelque chose qu'on pourrait appeler des tenants-lieux. Cela suppose que se constituent les dispositifs spécifiques qui mettent en scène ce que j'appelle des unités-en-plus qui se superposent sur les unités qui font partie de la société. Les »sujets« politiques unissent au nom d'une partie ou d'une identité vide le nom de la simple égalité de n'importe qui avec n'importe qui. Mon idée, c'est que si la démocratie a un sens c'est en tant qu'un mode de subjectivation de la politique où le peuple ou bien tout autre figure subjective soit autre chose que la population, autre chose que la race, autre chose que toutes ces entités incorporées.

*Parmi des tenants-lieux de la logique de l'égalité il y a une figure privilégiée, une figure subjective singulière qui s'appelle le peuple. Or la longue histoire de cette figure, puisque elle est présente dès le début de la philosophie politique, pose la question de savoir que veut dire le peuple dans ce rôle du sujet politique et, plus généralement, comment construire et penser les points de rencontre entre les deux logiques hétérogènes qui constituent tout ordre social?*

**Jacques Rancière:** Ce que j'essaie de faire c'est le lien entre des questions qu'on peut dire originaires, qui se posaient au début de la politique, et puis celles qu'on se pose aujourd'hui. La question originaire c'est la question que peut avoir un philosophe comme Platon devant cette entité qui s'appelle le peuple, qui s'appelle le *démos*, et qui s'identifie à la communauté sans pour autant être le tout de la communauté et en plus même en étant le nom d'une division, d'un principe de division de la communauté ou du litige au sein de la communauté. Le *démos* s'identifie au tout de la communauté par le fait d'incarner la part des sans-part. J'essaie de penser le rapport entre cette différence à soi originaire du peuple démocratique et les phénomènes modernes de recouvrement de cette différence: les incorporations récentes du peuple à la race ou au travailler glorieux ou bien sa transformation actuelle en collection de communautés de race, sexe, culture, etc. ... L'involution de la démocratie est toujours liée à la perte de cette différence à soi.

Alors c'est à partir de là que j'essaie de penser qu'il y a de la politique lorsqu'il y a des processus de subjectivation qui se différencient de toute action au nom d'un groupe social identifiable comme partie de la société. Il y a des subjectivations lorsqu'il y a des sujets qui sont nommés. Je crois que pour qu'il y ait de la politique il faut d'abord qu'il y ait un sujet d'énonciation, qu'il y ait divers *nous*. La politique commence lorsqu'on peut dire *nous*. Ca peut être

nous citoyens, nous travailleurs, nous prolétaires, nous femmes etc. La politique commence lorsqu'un *nous* peut être énoncé et je dirais qu'un *nous* met en place un dispositif de subjectivation qui nomme les sujets et qui les nomme dans leur différence. Si on dit »nous prolétaires«, ce *nous* fait appel à une communauté qu'il ne réalise pas lui même et qui n'est en plus aucune communauté déjà existante déjà qu'il suffirait de représenter.

Donc un sujet d'énonciation crée un dispositif où un sujet est nommé et où un sujet est nommé justement pour exposer un tort particulier, si on veut, pour créer un monde de communauté autour d'un litige particulier. C'est-à-dire qu'il y a de la politique justement lorsqu'on défait la fausse évidence que la communauté existe déjà et que tout le monde est déjà compté. Donc je crois qu'une subjectivation politique s'accroche toujours à un nom de sujet, à une figure de sujet, dans la mesure où ce nom de sujet, cette figure de sujet est une figure problématique. Je crois qu'il y a de la politique lorsque des »nous« disposent par leurs paroles et leurs actes la sphère de visibilité de sujets qui ne sont pas des corps collectifs ou des groupes sociaux mais des opérateurs qui, sous divers noms (citoyens, patriotes, travailleurs, femmes) rendent visible et argumentent le rapport de l'inclusion et de l'exclusion.

*Les différents modes de subjectivation mettent en cause si on peut dire le rapport entre l'universel et le particulier. Alors nous voudrions vous demander comment déceler, dans le domaine du politique, cette logique spécifique à travers laquelle est ordonné ce rapport entre les deux?*

**Jacques Rancière:** Je dirais qu'en politique tout universel est singularisé. Il y a deux manières de concevoir la politique. Actuellement, on voit les tenants de l'universel qui disent: il y a la loi de l'universel et toute politique s'ordonne à partir de là. Et puis il y a les tenants de la particularité qui pensent la société politique comme le regroupement d'un certain nombre d'identités ou des groupes et l'universel n'est qu'un pacte des parties. Ce que j'essaie de penser c'est qu'il y a de la politique lorsqu'il y a des formes de singularisation de l'universel qui mettent en jeu la question de savoir de quoi l'universel est universel et de quoi il est la puissance. Je crois que la politique fait travailler en quelque sorte les concepts de l'universel. Il y a deux formes de déni de la politique: celle qui dit: l'universel, c'est ce dont s'occupe l'Etat; et celle qui dit: l'universel est le mensonge derrière lequel il y a les intérêts particuliers. La politique, elle, est la pratique qui met l'universel à l'épreuve, en le singularisant, en se demandant ce qui se déduit de l'idée de citoyenneté, de l'idée d'égalité devant la loi, du rapport indécis de l'homme et du citoyen dans tel ou tel cas: le travailleur et son employeur sont-ils deux citoyens liés par l'universel de la citoyenneté? Les droits de l'homme sont-ils les droits de la femme? etc. ... La

politique construit des cas, des dispositifs polémiques de vérification de l'universel. Tout le mouvement démocratique et social moderne a consisté à mettre en jeu l'universel, la citoyenneté, l'égalité devant la loi en construisant le rapport de leur affirmation à leur négation, en montrant les lieux et les cas où il est dénié – l'espace du travail par exemple – c'est-à-dire aussi en l'appliquant dans la construction polémique. L'universel de la politique, ce n'est pas l'égalité devant la loi, c'est la puissance logique qui la met en cas, dans des dispositifs qui la confrontent avec sa négation même, dans des argumentations qui sont en même temps des manifestations, construisant l'espace sensible où l'argumentation fonctionne. La démonstration politique fait voir deux mondes en un seul. De ce fait, c'est toujours un jeu d'enfant pour la philosophie de prouver soit que son universel singularisé n'est pas le véritable universel soit qu'il n'est qu'une mystification idéologique.

*Une des vertus de la politique démocratique est son savoir faire avec le tort. Pourtant, il faut d'abord poser une question tout à fait naïve à savoir qu'est-ce que c'est pour vous un tort, ou plutôt, d'où vient le tort et comment faut-il le traiter?*

**Jacques Rancière:** Le tort est d'abord quelque chose comme une torsion. Ce n'est pas un jeu de mots. Le tort est dans la constitution même de la scène politique. Le tort c'est la rencontre de logiques qui n'ont pas lieu de se rencontrer. J'essaie de montrer que lorsqu'on veut définir la justice politique ou lorsqu'on veut déduire la justice politique de la discussion sur l'utile et le nuisible etc..., il y a quelque chose qui échappe et j'essaie de le cerner dans les textes fondateurs de la science politique, notamment chez Aristote, autour des concepts du dommage, du nuisible etc. C'est le même problème que le problème du rapport entre l'égalité arithmétique et l'égalité géométrique. Il y a une autre égalité, une égalité qui n'est ni l'une ni l'autre, et de même il y a une torsion qui est quelque part entre le nuisible et l'injuste, une absence de passage d'une égalité à une autre, une absence de déduction d'un plan qui est celui des »individus rationnels« à un autre plan qui est celui de la justice politique. Donc, le tort en premier sens ce n'est que la constitution de la politique elle-même, la rencontre de la logique policière et de la logique de vérification de légalité.

Ainsi, chez Aristote, pour passer de l'ordre de l'utile à l'ordre du juste qui définit la communauté *politique*, il faut passer par un compte des parties de la cité et des titres qu'elles ont à faire valoir dans la communauté. Or le seul titre, la seule propriété du *demos*, c'est la liberté. Mais c'est là une propriété vide, qui apparaît comme une donnée factuelle et non comme un principe incarné dans un corps. Pour moi, je dirais que cette liberté, c'est le tenant-lieu de l'égalité, ce

par quoi elle fait effet de pure interruption dans l'ordre supposé naturel de la domination en vérifiant cette vérité paradoxale et pourtant fondatrice que l'inégalité même, en dernière instance, n'est possible et pensable que par l'égalité.

Le *tort*, c'est la rencontre des hétérogènes, la mesure des incommensurables. La «philosophie politique» en un sens n'est que le refus de cette rencontre, la requête faite à la politique d'avoir son »propre« fondement, le refus de cette égalité qui vient bloquer en même temps la logique des échanges arithmétiques et les comptes de la proportion géométrique, de cette exposition du litige qui vient avant la définition du juste, etc. ... La scène politique est biaisée du point de vue de la philosophie.

Ceci peut se repérer aussi à partir de la définition aristotélicienne de l'animal politique: l'homme est »naturellement« politique parce qu'il dispose du *logos* qui argumente et pas seulement de la *phôné* qui exprime plaisir au douleur. Or cette division apparemment principale est en fait l'enjeu d'un litige permanent. Car le *logos* se dédouble en fait: il est la *capacité* linguistique mais aussi le *compte* qui en est fait. L'ordre policier répartit ainsi les hommes et les lieux du *logos* et les hommes et les lieux du bruit. L'intervention politique est celle qui désigne comme manifestation d'un *logos* ce qui, dans l'ordre policier, n'est perçu que comme du bruit. Une grève ouvrière, une manifestation de rue manifestent comme appartenant au *logos* et définissant une communauté ce qui n'était audible que comme le bruit d'un groupe d'une société animale particulière.

Le *tort* c'est cela que la scène politique est toujours dissymétrique et on peut le penser dans les deux sens. S'il y a des philosophes qui veulent fonder en droit la politique et le *tort*, c'est que l'égalité existe déjà et selon eux existe mal, existe d'une manière contingente, factice sans répondre à une *archè* de la communauté. Et puis de l'autre côté c'est la politique qui est la scène d'exposition constante du litige sur la question de savoir si la communauté existe. Il y a une communauté, parce que la communauté est toujours en litige: il y a un litige pour savoir qui en fait partie, qui n'en fait pas partie, quel énoncé est un *logos* qui relève de la communauté et quel énoncé est un bruit qui n'en relève pas, et c'est pour ça qu'un dispositif de subjectivation politique crée de la communauté en mettant en évidence de la non-communauté. La communauté politique, c'est la communauté qui est déployée par un litige sur la communauté.

Il faut distinguer le *tort* fondateur de la politique de deux choses: le règlement juridique d'un côté, le *tort* infini ou la dette irrachetable de l'autre. S'il y a une dette irrachetable, il n'y a pas de politique? Et il en va de même si on remplace le traitement du *tort* par une scène où il y a le droit, l'universel et des gens qui discutent pour essayer d'universaliser leurs intérêts et la validité de leurs normes.

C'est là toute la problématique Habermassienne supposant qu'il y a une rationalité de la politique si on peut juger les arguments à partir de normes qui soient des normes universelles. Or, s'il y a de la politique, c'est parce que il y a une partie qui ne reconnaît pas l'autre comme partie ou une partie qui considère qu'un objet de litige n'existe pas ou considère que les sujets de la discussion ne sont pas constitués. L'argumentation de la politique doit construire polémiquement la scène de sa validité.

*Dans la mesure où le tort est toujours singulier est-ce-qu'on peut parler du traitement du tort? Le traitement du tort n'est y-il pas bloqué d'avance?*

**Jacques Rancière:** Pour moi le tort n'est pas intraitable. Le tort ne se règle pas mais le tort se traite et continue de se traiter. Dans la parole et l'action politiques, on traite constamment de l'hétérogène et l'hétérogène ne veut pas dire l'intraitable, l'irrachetable. Je crois qu'il y a toute une série de formes de la politique qui traitent du tort. Je crois que les moyens de traiter du tort sont toujours quand même des moyens singuliers, des moyens de singularisation de l'universel. Le problème de la politique d'aujourd'hui c'est qu'il n'y a plus de moyens de singularisation de l'universel. Il y a l'universel et puis il y a des identités.

*Comment donc penser aujourd'hui la singularisation de l'universel, étant donné qu'il n'y a plus d'exemples. Et que veut dire le racisme moderne, quel impact pourrait il avoir sur la démocratie? S'agit-il d'un phénomène qui est inhérent à la démocratie elle-même ou plutôt de quelque chose qui lui est tout à fait étranger?*

**Jacques Rancière:** Concernant les phénomènes de catastrophes du politique, soit racisme ou autre, je ne crois pas qu'ils exigent un grand effort de pensée. Toutes les formes de catastrophes du politique comme toutes les formes d'abjection, individuelle et collective, sont tellement ordinaire, tellement simples, brutalement toujours présentes à côté qu'à mon avis l'argument selon lequel c'est tellement compliqué qu'il faut une théorie spécifique est un argument qui ne me convainc pas. Non, je pense que le racisme, la haine, la peur de l'autre etc., c'est tout le temps là, tout proche.

Seulement lorsqu'il y a de la politique démocratique, il y a de ces formes de subjectivations hétérologiques qui traversent tout ce domaine. S'il y a de la démocratie ça veut dire qu'il y a des figures de subjectivation qui sont des figures d'une différence. S'il y a de la démocratie ça veut dire que peuple est quelque chose qui n'est pas la population, qui n'est pas la race, qui n'est pas le

sang etc. S'il y a de la démocratie ça veut dire que prolétaire n'indique pas un groupe social. Les formes politiques de la démocratie sont les formes qui par elles-mêmes ont une vertu contre toutes les formes de xénophobie, racisme, haine de l'autre etc. parce qu'elles constituent la sphère d'apparence des sujets non idéntitaires.

Le racisme n'est donc pas inhérent à la démocratie mais au fait que la démocratie fonctionne toujours au bord de son abîme. Ses subjectivations sont des différences entre des identités, des identités différentes d'elles-mêmes mais toujours homonymes de »vraies« identités: peuple est la part des sans-part, manifestée dans des dispositifs de subjectivation qui en font toute la »réalité«. Mais c'est aussi le nom de la population réelle, le nom de l'ethnie, le support d'un certain nombre de qualités supposées naturelles, etc. ... Le racisme peut donc toujours apparaître et il apparaît là où l'on s'efforce d'enlever au peuple son caractère d'*apparence* soit au nom d'un organicisme de la communauté soit au nom d'un réalisme du compte des parties et des intérêts sociaux. Quand l'*»apparence«* s'effondre, reste effectivement la réalité nue des identités et des altérités.

C'est ce qui se passe dans ce que j'appelle la post-démocratie. La post-démocratie, c'est un système où l'on pense la démocratie comme la simple conjonction d'un état du social (l'*»individualisme«* démocratique, etc...) et de formes constitutionnelles. Or la démocratie n'est ni l'un ni l'autre. Elle est un mode de subjectivation de la politique. Il y a démocratie s'il y a une sphère d'apparence du peuple comme scène de manifestation du tort, s'il y a des sujets qui ne sont pas des corps, des groupes sociaux, etc. On prétend aujourd'hui avoir une politique sans peuple, où *»peuple«* ne désigne plus une instance d'énonciation mais s'identifie au réel d'une population découpée en groupes sociaux. Mais penser ainsi la politique, c'est l'identifier à la police au sens où je l'entends. L'idéal de la soi-disant politique *»réaliste«*, c'est d'avoir des sujets identiques à des groupes réels. Par là la sagesse *»réaliste«* prépare le terrain à la folie idéntitaire, ethnique, raciste, etc. ... On ne veut pas de ces sujets différents d'eux-mêmes qui caractérisent la démocratie. On veut congédier son peuple comme fantôme. En conséquence, on a le retour du *»vrai«* peuple: celui qui se définit par la race, le sang, etc. ... Le *»vieux«* racisme – qui a encore de beaux jours devant lui – dérive de la vision organiciste du dix-neuvième siècle. Le nouveau s'enracine dans le *»réalisme«* libéral lui-même. Notre présence, c'est la conjonction des deux.

*Entretien a été réalisé en coopération avec la revue Angelaki, A Journal in philosophy, literature and the social sciences, Oxford par Jelica Šumič-Riha et Rado Riha.*

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## Notes on Contributors

PETER BURKE teaches cultural history at the University of Cambridge. His books include *Popular Culture in Early Modern Europe* (1978), *The French Historical Revolution: The Annales School 1929-89* (1990), *History and Social Theory* (1992), *The Art of Conversation* (1993).

PAUL CROWTHER is Lecturer in Art History at the University of St. Andrews, Scotland. He is the author of three books published by the Clarendon Press – *The Kantian Sublime: From Morality to Art* (1989), *Critical Aesthetics and Postmodernism* (1993), and *Art and Embodiment: From Aesthetics to Self-Consciousness* (1993).

ALEŠ ERJAVEC is Senior Research Fellow at the Institute of Philosophy in the Centre for Scientific Research of the Slovenian Academy of Sciences & Arts, Ljubljana and Assistant Professor at the department of Philosophy at Ljubljana University. He is the author of *On Aesthetics, Art and Ideology* (Ljubljana 1983), *Aesthetics and Epistemology* (Ljubljana 1984), *Ideology and Art of Modernity* (Ljubljana, 1988, 1991) and (with Marina Gržinić) *Ljubljana, Ljubljana: Slovenian Art and Culture of the Eighties* (Ljubljana 1991).

SUE GOLDING is Senior Lecturer in Political Philosophy at Greenwich University, London and Senior Research Associate at Essex University. Also is a theatre director (of avantgarde theatre) on the London stage. She is the author of *Gramsci's Democratic Theory* (1992), *The Cunning of Democracy* (forthcoming) and of numerous articles on radical democracy and sexual politics.

MARINA GRŽINIĆ MAUHLER is Research Assistant at the Institute of Philosophy in Ljubljana. She wrote with Aleš Erjavec a book *Ljubljana, Ljubljana: Slovenian Art and Culture of the Eighties* (Ljubljana 1991). She is publishing extensively on modern art, culture and social phenomena. Involved in video art from 1982, she made in collaboration with Aina Šmid more than 20 video art projects and received for them several major awards.

PETER KLEPEC is Research Assistant at the Institute of Philosophy in the Centre for Scientific Research of the Slovenian Academy of Sciences & Arts, Ljubljana. He has published several articles on Kant's philosophy.

GORAZD KOROŠEC is Research Assistant at the Institute of Philosophy in the Centre for Scientific Research of the Slovenian Academy of Sciences & Arts, Ljubljana. He has published several articles on social contract theories and political philosophy.

ERNESTO LACLAU is Professor of Politics in the Department of Government, University of Essex. He is the author of *Hegemony and the Socialist Strategy* (Verso, 1985) and *New Reflections on the Revolution of our Time* (Verso, 1990.)

STEVEN LUKES is Professor of Political and Social Theory at European University Institute. He is the author of *Emile Durkheim: His Life and Work, Individualism, Power: A Radical View, Marxism and Morality* and *Moral Conflict and Politics*.

OTO LUTHAR is Senior Research Fellow at the Institute of Philosophy in the Centre for Scientific Research of the Slovenian Academy of Sciences & Arts, Ljubljana and Assistant Professor at the department of History at Maribor University. He edited a collection of essays *All Thucydides' Men: Contemporary Theories of Historiography* (Ljubljana 1990) and is the author of *Between Chronology and Fiction: Strategies of Historical Thought* (Ljubljana 1993). He also published numerous articles dealing with theory of historiography.

TOMAŽ MASTNAK is Senior Research Fellow at the Institute of Philosophy in the Centre for Scientific Research of the Slovenian Academy of Sciences & Arts, Ljubljana. He has published *East of Eden: Civil Society under Communism and After* (Ljubljana 1992), *Islam and Creation of European Identity* (London 1994) and numerous articles on civil society and history of peace movements.

KATE NASH teaches at City University, London. She has published articles on feminism and liberalism in *Feminist Review* and *Essex Working Papers*.

ALETTA J. NORVAL is Lecturer in the Department of Government, University of Essex. Her book on the logic of racism in the South African context will be published by Verso in 1995.

JELICA ŠUMIČ-RIHA is Senior Research Fellow at the Institute of Philosophy in the Centre for Scientific Research of the Slovenian Academy of Sciences & Arts, Ljubljana, also Fellow at the Centre for Theoretical Studies, Essex University; visiting lecturer at Essex University. She is the author of *The Real in the Performative* (Ljubljana 1988) and (with Rado Riha) of *Law and Judgement* (Ljubljana 1994).

ALENKA ZUPANČIČ is Research Assistant at the Institute of Philosophy in the Centre for Scientific Research of the Slovenian Academy of Sciences & Arts, Ljubljana. She is the author of *Die Ethik des Realen* (Wien 1994). She also published several articles on Kant and Lacan.

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# Abstracts

*Aletta J. Norval*

## *THE POLITICS OF HOMECOMING*

This paper examines two of the contending fictions of identity in post-election South Africa: that of the far-right and the ANC. It looks at both in terms of their difference from the logic of apartheid, and examines the relation of the fictions of a *volkstaat* and of non-racialism respectively to the emergence of a democratic space in a post-apartheid South Africa. These questions are developed by drawing on the theoretical discourses of Derrida, Lefort, Žižek and Laclau.

*Kate Nash*

## *WOMEN AND THE FICTIVE INDIVIDUAL OF LIBERALISM*

»Difference« feminists criticise liberalism as essentially masculine: its supposedly universal categories, notably that of the individual, can not be extended to encompass women. This paper argues that if we see the individual and women as fictive it is possible to understand how liberalism may be more flexible than these feminists allow. The individual and women are analysed as fictive in two senses: i) the Derridean sense in which being »is« not because it is never fully present to itself: there are no stable, determinate identities. The individual and women are deconstructed in the liberal political philosophy of J. S. Mill. ii) the sense in which fictive identities in the first sense produce »effects of truth«: fiction fictions reality. J. Butler's conception of performativity is compared to Laclau's and Mouffe's theory of hegemony: the latter, it is argued, better describes how new (fictive) identities are established in practice. The example is the feminist extension of individual rights to women in the nineteenth century.

*Sue Golding*

## *VIRTUAL DERRIDA*

Against the web of a promise writ large or of a duty wantonly (or otherwise) inherited, this article contends, rather, that what compels one to act is the (impure) law of the »must be/to be« – the law of a necessity in all its forms, not the least of which operates at the level of impossibility. But this level of impossibility is »impossible« not because it is »unreal« or »ghost-like« as we find in Derrida's most recent *Spectres of Marx*. Nor

for that matter is it impossible because it is »yet to come« or even »past tense«, Hamlet notwithstanding. This (impossible) law of necessity is impossible precisely because it is both real and unreal – a virtual-real, having little to do with spectres and even less to do with (be-headed) messianistic masters, the corpus of Marx notwithstanding. To disengage from the spectral and recast it with and against the (three) laws of necessity (as outlined below); in fact, to shift to a multiplicitous, corrupted – one might even say violent – albeit, virtual-reality, means not only that we get a very different read, not to mention, a different place, of the political, but, indeed, of the ethical-political, itself.

*Jelica Šumič-Riha*

#### *FICTIONS OF JUSTICE*

This paper examines fictional status of justice as elaborated by modernist (Rawls's) and postmodernist (Lyotard's) approach. Its starting point is the assumption according to which a precarious character of democracy manifests itself in aporias inherent to contemporary theorising of law and justice. It is an attempt to resolve the aporetic relationship between modernist and postmodernist conceptualisation by appealing to Derrida's rethematisation of justice.

*Alenka Zupančič*

#### *THE LOGIC OF ILLUSION*

The paper deals with the Kantian theory of transcendental ideas, developed in the *Critique of Pure Reason*. In the first part, it elaborates the notion of »illusion« (*das Schein*), pointing out that the »illusion« (or the »apparition«) does not refer to (false) representation of a given object. The fundamental point of the transcendental illusion is that there is no object to be (falsely or correctly) represented, we are deceived by the sheer existence of this »illusion« and not by its »content«, e.i. by what it »represents«. The second part of the paper discusses the four »figures of nothing« that Kant elaborates in the last part of the *Analytic* and shows the relevance of this topic for the developments in the *Dialectic*. The third part focuses on the »Paralogism of personality« and tries to discern in it the basic structural function of the transcendental ideas in general. The Paralogism in question is also discussed in relation to Lacanian theory of »ego-ideal«.

*Peter Klepec*

#### *KANT'S TRANSCENDENTAL IDEAL AS FICTION*

The paper examines Kant's concept of the transcendental ideal from the *Critique of Pure Reason*. Though it is not fully developed by Kant himself, and though it is controversial and paradoxical, which seems to be the reason for the indifference towards it in the most of the literature on Kant, it is possible to think it as in fact empty

form, never presented as such, for it is always *already* filled with content. Although the transcendental ideal is in fact nothing but fiction, it is, in a way, substratum and transcendental condition, without which nothing can be thought or represented. As fiction, as concept of reason, it is, for Kant, certainly not just illusion.

*Steven Lukes*

#### *FIVE FABLES ABOUT HUMAN RIGHTS*

This essay discusses human rights from the standpoint of five outlooks dominant in our time by imaging five stylistic ideal-typical countries. First, three countries in which the principle of defending human rights is unknown: *Utilitaria*, *Communitaria* and *Proletaria*. Each rejects human rights for a distinct set of reasons: the first because they conflict with utilitarian calculation, the second because they abstract from correct ways of living, the third because they soften hearts and are superfluous in a classless world. Accepting human rights means departing from each of these standpoints in a given respect. First, we restrain the pursuit of social advantage, however enlightened or benevolent that pursuit. Second, we accept and protect the abstraction or distance of persons from specific, concrete ways of life. Third, we hold that the conditions of human life will never surmount scarcity, conflict of interests, moral divergences and limited rationality to render human rights superfluous. Next, two further countries are imagined in which human rights might be said to be respected: *Libertaria* and *Egalitaria*. The first represents a context of market freedoms, property rights, equal opportunity and civil rights but generates basic inequalities of condition and the sanctification of self-interest. The second is committed to rendering civil rights of equal worth to all and maintaining decent minimum standards for all, while striving for growth and improvement. But is *Egalitaria* feasible and viable? The incentives needed for growth give rise to inequalities, and the ideal of equal individual treatment conflicts with the communitarian goal of treating cultural identities as equal. These difficulties lead some away from *Egalitaria* back to *Libertaria* or *Communitaria*, but the essay concludes by suggesting that there is an »egalitarian plateau« that should not be abandoned for any of the other four possibilities.

*Tomaž Mastnak*

#### *FICTIONS IN POLITICAL THOUGHT*

The paper deals with the dispute between Bartolomé de las Casas and Juan Ginés de Sepúlveda over the rights of indigenous peoples in the newly discovered America. The author argues that lying behind their different stances was a shared conception of what was the »Turk«, and that this fiction structured their response to the Indians. Where Las Casas tried to prove that the Indians were not »Turks« and should be treated differently, that is peacefully, Sepúlveda extended the European attitude towards the Turks to the treatment of the Indians.

*Gorazd Korošec*

*THE ROLE OF FICTIONS IN LAW*

Article examines theories of three important legal and political theorists working in the time of transformation of legal theory from natural law to utilitarianism, namely Hume, Adam Smith and Bentham. All of them stressed the role of »fictions« in law and understand their theories as an answer to »fictitious« ideas of their opponents, so that their theories could be understood as an attempt to come to terms with »fictivity« of natural law theories. While Hume and Adam Smith developed the idea of »unintended consequences« of human actions as an explanation for the functioning of modern society, Bentham's frontal critique of Common Law as existing legal practice laid foundations for utilitarian theory of law and modern legal positivism.

*Peter Burke*

*HISTORICAL FACTS AND HISTORICAL FICTIONS*

This article discusses the similarities and differences between what might be called two »crises of historical consciousness« in the late 17th and the late 20th, the first engendered by a combination of philosophical scepticism with new techniques for questioning the credibility of historical sources and detecting forgeries, the second in our crisis. The result is a widespread cultural relativism to which the debates on colonialism and feminism as well as the practice of anthropology and literary theory have contributed. In both periods, the debate about epistemology is linked to the opening of the frontier between history and fiction and the rise of a hybrid genre of historical novel/novelistic exemplified by St. Réal and Defoe in the first crisis, and by Eco, Keneally and many others today.

*Oto Luthar*

*»WHITE MEN CAN'T JUMP...«*

»Can history be objective« and if, what is then the connection between historiography and fiction, since the former originates in the latter. What status did fiction have in this relationship. By showing some crucial traits of this relationship the author wants to stress the views of those who claim that history is devoid of interpretation, thence of that what makes a story universal, and is only a residuum of the past. It is only a dry protocol or a transcript of time, people and events on which it reports.

*Paul Crowther*

*THE LOGIC STRUCTURE OF PICTORIAL REPRESENTATION*

This paper articulates the logical structure of pictorial representation, through an interpretation and defence of the role of resemblance. As a means to this, the discus-

sion critically engages with existing theories, notably those of Schier, Goodman, and Margolis.

The fundamental argument of the essay is that what makes pictorial representation logically distinctive is the fact that, once learned, it can be applied without recourse to *ad hoc* external conventions. Such conventions are required in order to secure exact denotation, but for something to count as a picture as such, we require only that it is formally organized so as to resemble some kind of three-dimensional object or scene.

*Aleš Erjavec*

#### *MOUNTAIN PHOTOGRAPHY AND THE CONSTITUTION OF NATIONAL IDENTITY*

The author analyzes the way in which from the end of the previous century on mountain photography helped to constitute and strengthen the so-called Slovenian national identity. He sketches the historical background that enabled the mountains and their representations to attain such a prominence within the more recent national history. He then compares the process of the visual representation within the context of the process of constitution of national identity with those found in some other European countries.

Beside the standard carriers of national identity such as language, culture, territory, history, etc., in Slovenia the mountains too serve this function. They carry a special significance for they conflate the quotidian bourgeois need to escape back to nature and the need to constitute one's subjective or collective identity around a void. In the Slovenian case this void is represented also by photographic depictions of the mountains which have the privilege to be simultaneously a »real« and an imaginary place. As such they represent an almost ideal national common denominator which enables members of various segments of the nation to identify with it and thence be interpellated into Slovenians.

*Marina Gržinić Mauhler*

#### *FICTION RE-CONSTRUCTED*

The author explores the cultural consequences of the supposed disappearance of time and space as materialized and tangible dimensions of social life. She agrees with Paul Virilio, that time and space have disappeared as meaningful dimensions of human thought and action. Since January 1993 on the ground floor of Apartment No. 12 in the eastern part of New York's Soho the exhibition Salon de Fleurus has been open. Salon de Fleurus is a staged remake of one of the most significant collections of modern art from the turn of the century, created by the American authoress and literary critic Gertrude Stein, with the help of her brother Leo Stein in their Paris apartment at 27 Rue de Fleurus. By re-reading this specific art project the authoress is trying to develop a »vision machine«, a machine that would be capable »not only of recognizing the contours of shapes, but also of completely interpreting the visual field«.

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Vol. XIV, No. 2 (Autumn 1993) *Questioning Europe*

Contents:

*Hauke Brunkhorst*, Staatsbürgeruniversalismus contra Nationalstaat, *Aleš Erjavec & Marina Gržinič*, Mythical Discoveries, Utopian Spaces and Post-Socialist Culture, *John Keane*, Nations, Nationalism and European Citizen, *Gorazd Korošec*, Social Contract and Public Opinion – Two Political Concepts of the Enlightenment, *Tomaž Mastnak*, The Birth of War out of the Spirit of Peace, *Aletta J. Norval*, Minoritarian Politics and the Pluralisation of Democracy, *J.G.A. Pocock*, Vous autres Européens – or Inventing Europe, *Rado Riha*, Europa und wir Anderen, *Braco Rotar*, Le revers de l'Europe, *Jelica Šumič-Riha*, Liberalismus und Partikularismus im neuen Europa.

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