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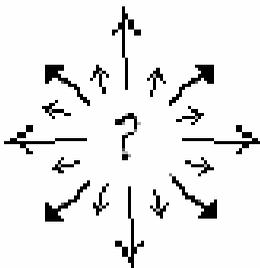
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I. SPECULATIVE HORIZONS

The Metaphysical Sublime and America's Best Idea

Donald Phillip Verene (Candler Professor of Metaphysics
and Moral Philosophy, Emory University)

Traditionally, the sublime is understood as part of the field of aesthetics. As part of the theory of beauty it functions as a contrasting term. What is beautiful differs from what is sublime. But does the sublime have a wider role in philosophical reasoning? Can the sublime be extended to metaphysics? If so, what kind of metaphysics can accommodate the sublime? Is there a way in which the sublime in a metaphysical sense can be initiated through the perception of nature? These are questions I wish to broach in the brief account that follows. So far as I can ascertain, the metaphysical sublime is a new subject. In contemporary thought the sublime has become a topic in postmodern rhetorics and politics, stemming from insights in Jean-François Lyotard's *The Postmodern Condition*. One can encounter, for example, versions of the feminine sublime and the technological sublime. My aim is to return to classical, neoclassical, critical, and romantic views to see whether there is a fundamental connection between the sublime and the speculative. This is a large subject, and, as a first attempt, my remarks are intended as suggestive of the issues rather than definitive of them.

The Sublime and the Beautiful

The English word "sublime" preserves intact the meaning of its Latin root *sublimis*, which signifies high, raised, or lifted up; hence, that which is elevated, lofty. The locus in classical thought for the study of the sublime is the fragmentary treatise *Peri Hypsos*, ascribed to Cassius Longinus. Longi-

nus identifies the sublime with an excellence and distinction of language found in the genius of the greatest poets and prose writers: “for the effect of genius is not to persuade the audience but rather to transport them out of themselves”. Within a well-developed composition, Longinus holds, “a well-timed flash of sublimity shatters everything like a bolt of lightning and reveals the full power of the speaker at a single stroke”.¹ For Longinus the experience of the sublime is to be found in the mastery of rhetorical and literary style, the grandeur of thought it entails, and its effect on the psychology of the audience.

The locus in modern philosophy for the study of the sublime is the “Analytic of the Sublime” of the first part of Immanuel Kant’s *Kritik der Urteilskraft*. Behind Kant’s critique of aesthetic judgment is Edmund Burke’s attack on the eighteenth-century neoclassical identification of both the sublime and the beautiful with aesthetic form in sculpture, painting, and literary works, as well as in architectural design. Burke contrasted the harmony and tranquility of the beautiful object with the fear and terror induced by such all-encompassing events in nature as storms and earthquakes that require a sublime response.² Kant transfers the beautiful and the sublime from the object to the power of judgment of the subject. The beautiful and the sublime rest not in the object itself but in human consciousness, specifically in the power of the reflective judgment (*reflektierende Urteilskraft*).

The reflective judgment does not determine its object under a rule, as does the determinate judgment (*bestimmende Urteilskraft*) of natural science. Instead, the reflective judgment captures the unique internal organization of the aesthetic particular, a feature that it shares with organic natural forms.³ On the Kantian aesthetic a work of art is a particular universal; it is a one-of-a-kind particular that carries a universal significance - the meaning

¹ Longinus, *On the Sublime*, trans. W. H. Fyfe, rev. Donald Russell, pub. with Aristotle’s *Poetics*. See Aristotle, vol. 23 (Cambridge, Mass.: Loeb Classical Library, Harvard University Press, 1995), pp.163-65 (1.3-4).

² Edmund Burke, *A Philosophical Enquiry into the Origin of Our Ideas of the Sublime and Beautiful* (London, 1757).

³ By far the best explanation of the interconnection between the critique of aesthetic judgment and that of teleological judgment in the *Kritik der Urteilskraft* is in Ernst Cassirer, *Kants Leben und Lehre*, ed. Tobias Berben, vol. 8 of *Gesammelte Werke*, ed. Birgit Recki (Hamburg: Meiner, 2001), chap. 6.

that the art work carries. The beautiful object can be encompassed by the subject's concept of it. Its form is finite and fully present to the knower. Judgments of beauty depend upon taste and the communicability of taste requires the condition of common sense (*sensus communis*). As Kant puts this: "everything runs up into the concept of taste as a critical faculty by which an object is estimated in reference to the free conformity to law of the imagination".⁴ The imagination has its own freedom to form the object but it does not produce irrationalities. One is reminded here of Horace's advice to the poet: "either follow tradition or invent what is self-consistent".⁵

On the Kantian view, beauty is the result of the subject's productive imagination acting in relation to the object as external to it. An intuition raised to a pitch of feeling so as to produce the sublime requires the subject to act even more in relation to itself, to its own subjectivity. As Kant states: "for the beautiful in nature we must seek a ground external to ourselves, but for the sublime one merely in ourselves and the attitude of mind that introduces sublimity into the representation of nature".⁶ Like Burke, Kant sees the disorderly processes of nature as the source of our experience of the sublime: "it is rather in its chaos, or in its wildest and most irregular disorder and desolation, provided it gives signs of magnitude and power, that nature chiefly excites the ideas of the sublime".⁷

Kant not only acknowledges the connection of the sublime to the lofty sense of fear and terror we may experience in confronting nature in its extreme, he also connects the sublime to a certain attainment of emotional delight induced by the imagination reaching its limits of formative power. In his analysis of the "mathematically sublime" Kant says: "*Sublime* is the name given to what is *absolutely great*".⁸ This sense of greatness is the sense of something comparable to itself alone. There is a striving by the imagination toward a progress ad infinitum and this striving is "the awakening of a feeling of a supersensible faculty within

⁴ Immanuel Kant, *The Critique of Judgement*, trans. James Creed Meredith (Oxford: Clarendon, 1964), pp.85-86.

⁵ Horace, *Ars poetica*, trans. H. Rushton Fairclough (Cambridge, Mass.: Loeb Classical Library, Harvard University Press, 1978), 461 (119).

⁶ Kant, p.93.

⁷ *Ibid.*, p.92.

⁸ *Ibid.*, p.94.

us”.⁹ Kant’s prime example of this absolutely great is not only our inability to grasp a series of magnitudes as it approaches infinity, it is what he understands that often seizes a visitor on first entering St. Peter’s Square in Rome. Kant says: “For here a feeling comes home to him of the inadequacy of his imagination for presenting the idea of a whole within which that imagination attains its maximum, and, in its fruitless efforts to extend this limit, recoils upon itself, but in so doing succumbs to an emotional delight”. Although Kant allows for this experience to involve delight, he also acknowledges that objects are monstrous when expanded beyond the powers of the imagination to form them as a whole. The colossal is such, or at least “borders on the relatively monstrous”.¹⁰

The Metaphysical Sublime

Kant’s approach to the sublime enacts a transition between the neoclassical view and the romantic that appears in its full form in G. W. F. Hegel’s *Vorlesungen über die Ästhetik* as part of his treatment of the symbolic form of art. Hegel points out that on Kant’s account of the sublime our experience of it cannot be contained in any sensuous form. Instead the sublime concerns Kant’s realm of the Ideas of Reason. Thus Hegel claims: “The sublime in general is the attempt to express the infinite, without finding in the sphere of phenomena an object which proves adequate for this representation”.¹¹ Hegel passes beyond the limitations of Kant’s placement of the sublime in the pure subjectivity of the mind in order to ground the sublime in the Absolute.

Along with philosophy, art and religion are forms of the absolute spirit (*Geist*). The Absolute is present symbolically in art that takes the form of the sublime. The meaning manifest in this form of art is religion. Hegel says: “If therefore symbolic art in general may already be called sacred art because it adopts the Divine as the content of its productions, the art of sublimity is *the* sacred art as such which can be called exclusively sacred because it gives honour to God alone”.¹² When the sublime enters art, art car-

⁹ Ibid., p.97.

¹⁰ Ibid., p.100.

¹¹ G. W. F. Hegel, *Aesthetics: Lectures on Fine Art*, trans. T. M. Knox, 2 vols. (Oxford: Clarendon, 1998), 1:363.

¹² Ibid., 1:372-73.

ries the meaning of Being as the proper object of religion. The experience of the sublime shows man his finitude and at the same time it asserts the infinitude of God. Hegel says: “so far as man is concerned, there are bound up with sublimity at the same time the sense of man’s finitude and the insurmountable aloofness of God”.¹³ The Absolute is the objective ground of the experience of the sublime. The experience of the sublime is essentially noetic, for Hegel agrees with Kant that there can be no essential representation of the sublime. The sublime takes the mind into itself, but as an act of religious imagination it has not freed itself from the thought of *Vorstellen*, which is possible only in the philosophical apprehension of the Absolute.

Hegel’s conception of the Absolute is foreshadowed in Nicholas of Cusa’s connection of the Absolute Maximum and the infinite in the first book of his fifteenth-century work, *De Docta Ignorantia*. Although Cusanus does not develop directly a doctrine of the sublime, he provides a version of the Kantian mathematical sublime that shows its metaphysical implications. Cusanus claims that we can investigate the Absolute Maximum only symbolically, for we cannot think the Maximum directly and must remain in principle and in fact ignorant of it. To investigate this symbolically we must pass beyond simple likeness, and this may be accomplished by the use of mathematical signs.

Cusanus holds that: “since all mathematical are finite and otherwise could not even be imagined: if we want to use finite things as a way for ascending to the unqualifiedly Maximum, we must first consider finite mathematical figures together with their characteristics and relations”. In other words, finite mathematical figures necessarily imply the idea of an infinite. Thus, “Next, [we must] apply these relations, in a transformed way, to corresponding infinite mathematical figures”; this leads Cusanus to the figure of a straight line which is infinitely extendable (although we can represent it only finitely). Realizing this, “thirdly, [we must] thereafter in a still more transformed way, apply the relations of these infinite figures to the simple Infinite, which is altogether independent

¹³ Ibid., 1:376. Hegel repeats this connection of the sublime and religion in his discussion of “*Die Religion der Erhabenheit*” in his *Vorlesungen über die Philosophie der Religion*, vol. 17 of *Werke* (Frankfurt am Main: Suhrkamp, 1969), pp.50-96, and, as in his treatment of the sublime in art, he associates this form of religion especially with ancient Judaism.

even of all figure”.¹⁴ Cusanus’s claim is that if there is a straight line it would be infinite and that all other linear figures could be produced from it. Thus he says: “if there were an infinite line, it would be a straight line, a triangle, a circle, and a sphere. And likewise if there were an infinite sphere, it would be a circle, a triangle, and a line. And the same thing must be said about an infinite triangle and an infinite circle.”¹⁵

Cusanus further claims that the Absolute Maximum and the Absolute Minimum coincide (*coincidentia oppositorum*). An infinite line is infinitely reducible as well as infinitely extendable. Cusanus’s discussion is undertaken to establish his theology of the infinity and oneness of the being of God. Cusanus not only offers in metaphysical terms a version of the mathematical sublime, he comes very close to Hegel’s conception of the “true infinity” (*wahre Unendlichkeit*).¹⁶ Cusanus understands the inherent problem of what Hegel opposes to the true infinity. Hegel terms this the “bad infinity” (*schlechte Unendlichkeit*), in which the finite and infinite remain opposites, the infinite being not more than that which is qualified by its difference from the finite. As Cusanus points out: “It is self-evident that there is no comparative relation of the infinite to the finite”.¹⁷ We could never arrive at an unqualified Maximum by asserting comparative degrees of greatness.

The true infinity is the master key to Hegel’s dialectical comprehension of the *Begriff* and to his conception of speculative philosophy. A convenient way to grasp the true infinite in formal terms is offered in Ernst Cassirer’s theory of the function, which he identifies with the essence of the Hegelian *Begriff*.¹⁸ The *Begriff* is a “concrete universal” that has its ana-

¹⁴ Jasper Hopkins, *Nicholas of Cusa on Learned Ignorance: A Translation and an Appraisal of De Docta Ignorantia*, 2nd ed. (Minneapolis, Minn.: Arthur T. Banning Press, 1985), pp.62-63 (chap. 12).

¹⁵ *Ibid.*, p.63.

¹⁶ G. W. F. Hegel, *Science of Logic*, trans. A. V. Miller (London: Allen & Unwin, 1969), pp.137-156.

¹⁷ Hopkins, *De Docta Ignorantia*, p.52.

¹⁸ Ernst Cassirer, *Substance and Function*, trans. William Curtis Swabey and Marie Collins Swabey (Chicago: Open Court, 1923), chap. 1; on Hegel’s *Begriff*, see 20. See also *The Philosophy of Symbolic Forms*, vol. 3 and *The Phenomenology of Knowledge*, trans. Ralph Manheim (New Haven: Yale University Press, 1955), pt. 3, chap. 1, esp. pp.301-303.

logue in the *Funktionsbegriff* of symbolic or mathematical logic expressed as $\Phi(x)$ when Φ is understood as a rule for ordering a series represented by (x) , e.g., $x_1, x_2, x_3, x_4 \dots$ etc. The series can be extended indefinitely by the successive application of the rule but the rule of the series and the members of the series are different in logical kind. Neither can be dissolved into the other, yet each is meaningless apart from the bond between them. Apart from the series the rule of it has no meaning and the members of the series are members of nothing without their order determined by the rule. But the $\Phi(x)$ bond can be infinitely extended in all directions in the manner of the theory of types or of sets and subsets, since the Φ can itself be a member of another series of a different type and any or all members represented by (x) can stand to sub-series in principle as Φ or rules of these series. Like the Minimum and Maximum of Cusanus, the expansion and contraction of the functional concept coincide.

The true infinity is an actual infinite, not a *Jenseits* of the finite. In the true infinite, the infinite and the finite are held together in terms of themselves. The Hegelian Absolute stands to all that is non-absolute as $\Phi(x)$. This internal bond articulated in the true infinity is what I wish to call the *metaphysical sublime*. The metaphysical sublime is noetic, that is, apprehended only by the intellect. Although the true infinite is always at any moment of its realization determinate, because it is continually and dialectically constructed out of itself, its completeness is never apprehended as such. We are ultimately ignorant of its absoluteness. In this sense it is the absolutely great and is thus sublime. We always stand to it as in medias res. Although such sublimity is beyond representation in the sensuous, do we not require a connection to the sensuous in order to philosophize? For we philosophize in the world, not out of it. We are always at the point of the true infinity and at the same time not at it, because it is not an object in the sense that anything less than it is an object that can completely come before the knower.

America's Best Idea: The Natural Sublime

In 2009, the American Public Broadcasting System (PBS) presented a multi-part documentary film on "The National Parks: America's Best Idea", by the award-winning director and producer Ken Burns, in collaboration

with Dayton Duncan, the writer and producer.¹⁹ The subtitle has its source in a remark by Wallace Stegner, the writer and historian, who said that the national parks are “the best idea we’ve ever had”²⁰ The idea of the system of national parks was born in the United States nearly a century after its founding, and in the view of Dayton and Burns it is “as uniquely American as the Declaration of Independence and just as radical”²¹.

The continent of North America and the United States are not unique in the fact of having such examples of nature or in their preservation. There are natural wonders on all seven continents, and systems of national parks preserve them in many countries throughout the world. The national parks of the United States are America’s best idea in the sense that they embody the democratic ideal of setting aside great tracts of land, especially in the far Western states, often against prevailing economic interests, solely for preserving them as such for the enjoyment and well-being of all citizens and visitors. As one reads the history of the founding of the national parks, one is struck by the fact that they each come into being and develop by the sustained efforts at a few unique individuals who have the vision to realize the importance of the national parks as part of the American way of life. In each case, government had to be forced to take action on behalf of the intrinsic worth of these wonders. The national parks are a testament to the viability of the ideal of American individualism. They concretely represent a nation dedicated to be of the people, by the people, and for the people; they are a monument to the idea of the “new world”. This, I think, is the claim that Dayton and Burns wish to make.

I wish simply to take these natural wonders as my example of objects from which the mind may engage the sublime. I have some personal experience with similar natural wonders in other parts of the world, from the Jungfrau and Matterhorn in the Swiss Alps to Etna in Sicily to Ayers Rock in the

¹⁹ The printed volume that accompanied this series is Dayton Duncan, *The National Parks: America’s Best Idea; An Illustrated History* (New York: Knopf, 2009). Contemporary descriptions of the national parks are to be found in: *Guide to the National Parks of the United States*, 6th ed. (Washington, D. C.: National Geographic Society, 2009).

²⁰ Duncan, p.xxii.

²¹ Ibid.

Red Centre of Australia, but the natural wonders upon which I most immediately base these reflections are Carlsbad Caverns, Badlands, Death Valley, Grand Canyon, Grand Teton, Mesa Verde, Petrified Forest, Rocky Mountain, Wind Cave, and Yellowstone National Parks of the American West. My thoughts most immediately derive from my visits to these sights. They make the sublime not an abstract philosophical idea but an actuality that stands before the mind to incite its propensity to engage in metaphysics.

The national parks produce particular experiences of great beauty, but “sublime” is the one term used to describe them by the early naturalists who explored them and lobbied the government to reserve them. One of the most famous of these naturalists, John Muir, wrote: “One learns that the world, though made, is yet being made. That this is still the morning of creation. That mountains, long conceived, are now being born, brought to light by the glaciers, channels traced for rivers, basins hollowed for lakes... Everybody needs beauty as well as bread, places to play in and pray in, where Nature may heal and cheer and give strength to body and soul alike.” He concludes: “This natural beauty-hunger is made manifest... in our magnificent National Parks - Nature’s sublime wonderlands.”²²

Muir’s claim is typical of writers and observers of the natural wonders contained in these parks: that these are not simply natural curiosities but places that, when perceived, immediately affect the soul and activate the human spirit. They provide occasions for grasping the absolutely great. The national parks are a garden of the sublime. J. B. Priestley, the English novelist and critic, writing for *Harper’s Magazine* about the wonders of the Grand Canyon and the Colorado River that made it, said that it was beyond any possible description: “but you feel when you are there that God gave the Colorado River its instructions. The thing is Beethoven’s Ninth Symphony in stone and magic light. I hear rumors of visitors who were disappointed. The same people will be disappointed at the Day of Judgment.”²³

In 1896, Thomas M. McKee (1854–1939) photographed the cliff dwelling known as Cliff Palace in Mesa Verde, Colorado. McKee, a photographer, lived in the cliff dwellings for a significant period of time. He wrote:

²² Ibid., p.i.

²³ Ibid., p.180.

“I shall describe the sensation that ran through me on beholding Cliff Palace... for a moment I was transfixed off this world of ours to another planet and stargazing with wide open eyes and listening, expecting to see fairies or people of another world appear, before I realized that what I saw was real... The wonderful new world that I saw and felt as if I had gone to a new abode for the living as well as the dead; such was my feeling when I first sighted the Cliff Palace.”²⁴ The cliff dwellings of Mesa Verde are a man-made sublimity, but they are so integrated into the natural landscape that it is difficult to apprehend where the civil and the natural divide.

Of the National Monument known as Devils Tower, in Wyoming near the South Dakota Badlands, Romanus Bear Stops, of the Cheyenne River Sioux tribe, claims: “The Tower is vital to the health of our nation and to our self-determination as a Tribe. Those who use the butte to pray become stronger. They gain sacred knowledge from the spirits that helps us preserve our Lakota culture and way of life. They become leaders. Without their knowledge and leadership, we cannot continue to determine our own destiny.”²⁵ The true name for the tower is *Mateo Tepee*, or Grizzly Bear Lodge, not Devils Tower. What inspired the imagination of the nations of the Great Plains concerning the tower was not its value as an aesthetic object but its sublime and sacred status as something beyond ordinary experience.

In 1871, the American Transcendentalist philosopher Ralph Waldo Emerson, on visiting Muir in Yosemite, described it as Muir’s “mountain tabernacle”.²⁶ The use of religious metaphors is common in reactions to the wonders of nature. Emerson told Americans: “Here we find Nature to be the circumstance which dwarfs every other circumstance, and judges like a god all men that come to her”.²⁷

Such remarks fit with Hegel’s “art of the sublime”, discussed previously, in which the aesthetic image takes on religious meaning that transcends it. The sub-

²⁴ This quotation appears under McKee’s photograph of Cliff Palace, “A White Marble City”, on display at the Museum at Spruce Tree House in Mesa Verde National Park, Colorado.

²⁵ This statement by Romanus Bear Stops is posted at the Visitors Center, Devils Tower National Monument, South Dakota.

²⁶ Duncan, p.19.

²⁷ *Ibid.*, p.11.

lime reactions to the wonders of the national parks correspond more closely to Kant's example of St. Peter's Square than to the fear and terror of Burke's sublime induced by storms and earthquakes. This contrast suggests that there are two routes to the feeling of the sublime that converge; they do not result in two different sublimities. The visitor to the wonders of nature passes from the perception of the aesthetic harmony of nature to the lofty grasp of a whole that is more than can be fully felt or thought. Prompted by the chaotic and powerful actions of natural forces, the sublime takes the mind within itself to the sense of the infinite. But Kant is correct in his insistence that the ocean is not sublime as such.²⁸ The sublimity of anything in nature or in what is made originates in the subject, not the object, but it does not truly remain in the subject if the subject is capable of speculative philosophy.

Claude Lévi-Strauss claims that myth and music "are instruments for the obliteration of time".²⁹ Implicit in his claim is that myth and ritual fit with the sense of the sublime described by Longinus, for the myth transports the hearer out of time and into the sacred: the time beyond, the time of the origin. Music shares this characteristic; recall Priestley's comparison of the Grand Canyon with Beethoven's Ninth. The example of St. Peter's Square adds the possibility of architecture as sublime, which gives justification to Goethe's assertion that "architecture is frozen music".³⁰ The grandeur of the architectural can pass beyond the beautiful to the sense of the absolutely great. The Grand Canyon is a kind of architecture in reverse, receding ever farther into the earth rather than towering above it, in contrast to Mesa Verde. Wind Cave is like the labyrinth of Daedalus at Knossos. The Badlands of South Dakota are like the ruins of a great natural city.

If we consider the connection between the sublime and the Absolute, as

²⁸ Kant, p.92.

²⁹ Claude Lévi-Strauss, *The Raw and the Cooked: Introduction to a Science of Mythology*, trans. John Weightman and Doren Weightman (New York: Harper, 1969), p.341.

³⁰ Johann Peter Eckermann, *Gespräche mit Goethe in den letzten Jahren seines Lebens* (Wiesbaden: Brockhaus, 1975). Eckermann's entry for March 23, 1829 begins: "Ich habe unter meinen Papieren ein Blatt gefunden, sagte Goethe heute, wo ich die Baukunst eine erstarrte Musik nenne. Und wirklich, es hat etwas; die Stimmung, die von der Baukunst ausgeht, kommt dem Effekt der Musik nahe." (p.251)

discussed previously, we can also assert that metaphysics is a denial of time.³¹ If the sublime is our experience of the infinite then it takes us out of the temporal sequence of the finite. It offers us relief from what Mircea Eliade has called the “terror of history”, in which we find ourselves in a sequence of events that has no origin to which we can return nor *telos* toward which we can advance to grasp its ultimate meaning.³² The doctrine of historicism cuts itself off from the metaphysical sublime for, like intellectual history in general, it can offer us an understanding only of epochs in which certain truths are claimed which are replaced by subsequent truths. The feeling of the sublime is fundamental to human sanity, which requires relief from the ongoingness of finitude.

Speculative Philosophy

There is a fundamental connection between the sublime and wonder (*thauma*) as Aristotle speaks of it at the beginning of his *Metaphysics*: “For it is owing to their wonder that men both now begin and at first began to philosophize... And a man who is puzzled and wonders thinks himself ignorant, whence even the lover of myth is in a sense a lover of wisdom, for myth is composed of wonders.”³³ Philosophy and myth share *thauma* as a common point of departure which grows from an initial difficulty (*aporia*). This *aporia* is caused by our reasoning. As Aristotle writes in *Topics*: “An equality between contrary reasonings would seem to be a cause of perplexity”.³⁴ When we encounter such *aporai* we are like someone who is tied up or chained, and “it is not possible to untie a knot which one does not know”.³⁵ The *aporia* can be surmounted, the reasoning untied from itself, only through an exploration of the various routes involved (*diaporia*). This way out of the perplexity assumes the features of a dialectical process of

³¹ I have discussed this in an essay on “Myth and Metaphysics”, in Donald Phillip Verene, *Speculative Philosophy* (Lanham, Md.: Lexington Books, Rowman and Littlefield, 2009), pp.109-125.

³² Mircea Eliade, *The Myth of the Eternal Return: Cosmos and History*, trans. Willard R. Trask (Princeton, N. J.: Princeton University Press, 2005).

³³ Aristotle, *The Complete Works of Aristotle*, ed. Jonathan Barnes, 2 vols. (Princeton, N. J.: Princeton University Press, 1984), 2:1554 (*Meta.* 982b).

³⁴ *Ibid.*, 1:245 (*Top.* 145b).

³⁵ *Ibid.*, 2:1572 (*Meta.* 995a).

thought (*dialektikê*) in which the various routes are compared.

This sense of wonder from which the love (*philia*) of wisdom begins is not identical with the sublime but it connects wonder with dialectic, and I wish to suggest that dialectic is the philosophical response to the apprehension of the sublime and that the experience of the sublime is the basis of speculation as the cast of mind necessary for a proper grasp of the Absolute or what is the really real (*to ontos on*). Dialectic for Aristotle is the logic of opinion and, as he says in the first sentence of *Rhetoric*, dialectic is the counterpart of rhetoric.³⁶ Wonder can be connected to Longinus's rhetorical sense of the sublime, for the audience's capacity of wonder is presupposed for the poet's or orator's words unexpectedly to produce the lofty moment that transcends the text.

Hegel abandons the Aristotelian conception of science as reasoning from first principles and turns the dialectic of opinion into a dialectic of reason. His beginning point for this transformation is the *Phänomenologie des Geistes*, in which each opinion of the status of the object is systematically opposed to its other in a progression of the forms of *Geist* to the ultimate moment of absolute *Geist*.³⁷ Because of the principle of *Aufhebung* Hegel's dialectic is progressive and is thus able to elicit the overall process of reason (*Vernunft*) that is submerged within opinion. This principle allows Hegel to pass beyond the ancient sense of dialectic as a form of thinking in which one view is simply contrasted with another in a back-and-forth movement. For Hegel the True is always the whole.

In his discussion of the relation of philosophy to religion in the introduction to his *Vorlesungen über die Geschichte der Philosophie*, Hegel comments on the relation of wonder to nature in a manner compatible with his conception of the sublime, as discussed earlier. Hegel writes: "only spirit [*Geist*] is aware of spirit, wonder is only the presentiment of spirit, wonder is the interruption of nature; spirit is above all the true wonder over and against the course of nature. Spirit itself is only this awareness itself."³⁸

³⁶ Ibid., 2:2152 (*Rhet.* 1354a).

³⁷ On the rhetorical basis of Hegel's dialectic, see Donald Phillip Verene, *Hegel's Absolute: An Introduction to Reading the Phenomenology of Spirit* (Albany, N. Y.: State University of New York Press, 2007).

³⁸ G. W. F. Hegel, *Vorlesungen über die Geschichte der Philosophie*, vol. 18 of *Werke* (Frankfurt am Main: Suhrkamp, 1971), p.93. My trans.

Wonder is the antecedent or expectation of *Geist* that occurs when there is a break (*Unterbrechung*) in the course of nature. *Geist* is reached by the reaction of wonder to a break in nature, but *Geist* is its own reality and is apprehended only when wonder is surmounted. The experience of the sublime is parallel to this characterization of wonder. If we connect the two we can see how the experience of the sublime brought on by the unexpected in nature becomes the basis of speculative philosophy.

The sublime as a feeling that contrasts with the feeling of beauty remains within the realm of aesthetics. But if the sublime is a form of or proper companion to wonder, the sublime connects us to *Geist*, that which is beyond nature and which is the self-relating of thought. *Geist* in all of its moments is implicitly the Absolute. The Absolute is the self-relation of *Geist*, which is the object of philosophy, the goal of the love of wisdom initiated by the feeling of wonder necessary to the act of reasoning. There is nothing in the mind that is not first in some sense in perception.

The experience of the sublime in relation to nature is what allows us to extend the Aristotelian sense of wonder as *aporia* to the Hegelian sense of the sublime as the experience of the absolutely great of the true infinite. The philosopher who has not the experience of the sublime, who has never confronted nature in such a manner, cannot become speculative. We can now make sense of Hegel's puzzling remark in the early fragment called "The Earliest System-Program of German Idealism", written ten years before the *Phänomenologie des Geistes*. Hegel states: "I am now convinced that the highest act of reason, that in which it embraces all ideas, is an aesthetic act and that truth and goodness are siblings only in beauty. The philosopher must possess just as much aesthetic power as the poet. Men without aesthetic sense are our literal-minded philosophers [*unsere Buchstabenphilosophen*]. The philosophy of spirit is an aesthetic philosophy."³⁹ Our literal-minded philosophers can produce critical and analytical philosophy but they

³⁹ See Donald Phillip Verene, *Hegel's Recollection: A Study of Images in the Phenomenology of Spirit* (Albany, N. Y.: State University of New York Press, 1985), p.25. My trans. There has been a question of the authorship of this fragment. I take the view as decisive that it is *Hegel's*, as presented by Otto Pöggeler, "*Hegel der Verfasser des ältesten Systemprogramms des deutschen Idealismus*", *Hegel-Studien, Beiheft 4* (1969): pp.17-32.

are unable to produce speculative philosophy, at the essence of which is the sublime. The feeling of wonder as joined to the sublime is the common bond of the poet and the speculative philosopher, for each has a path to ascertain the Absolute. In this same fragment Hegel calls poetry the “instructress of humanity” (*Leherin der Menschheit*) and calls for a “mythology of reason” (*Mythologie der Vernunft*).

On the Kantian theory of the aesthetic judgment the sublime can be ascribed to any object dependent on the subject’s apprehension of it. No object or phenomenon is in itself sublime. In Hegelian dialectic the subject and the object are constructed together, into which the Kantian thing-in-itself is dissolved. To the extent that the Absolute is in any moment of the dialectic, what I have called the sublime is to some extent present, and it is fully present in the grasp of the Absolute as such. But in the emergence of *Geist* from the experience of a break in Nature is the origination of the speculative spirit.

I have attempted to suggest in the foregoing that the aesthetic act has implicit in it its own transcendence in the sublime. Thus the metaphysical sublime begins in what Hegel calls the “art of the sublime” that transposes the aesthetic form into the religious, which is further transposed into the philosophic. It is only at the moment of the philosophic that *Geist* is attained as beyond nature, but this requires the experience of the interruption of nature. The sublimity of this experience allows us to overcome literal-mindedness and pursue what may be called the poetry of reason - the distinctive province of the speculative philosopher.⁴⁰

⁴⁰ Portions of this essay were written on site in Mesa Verde and Yellowstone National Parks. I wish to thank the Charles Howard Candler Professorship endowment for stipend support of research travel to complete this essay by allowing me opportunity to confirm my conception of the natural sublime. I also wish to acknowledge the usefulness of the materials and records of Western travelers available in Seymour Library at Knox College, Galesburg, Illinois.

Hegel After and Beyond Kant

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Hegel restores the logos-contentuality of philosophy. The intellectual contents in Kant completely disappear as a consequence of the negative reaction against the dogmatism of the identity of thinking and being, which in classical rationalism reaches the ontological definiteness in a light-minded manner. Kant restricts the theoretical philosophizing within the range of the formalism although the transcendental cognition not only imposes intentionality but also blocks the approach to truthfulness for any cognitive act not directly related to the justification of experience. The result is cognitive illusiveness and a complex of paralogical components completing from end to end the framework of transcendental dialectics. It has a unique and paradoxical nature. And this is not due to any incoherence with ancient and medieval formulations but due to its transcendental sourcing from the primordial division between the metaphysical and empirical with the explicit intention to achieve *mundus intelligibilis*, which it not only fails to achieve but in doing so presents the intelligible world as theoretically impossible and unachievable. This is indirect - and to a certain extent direct - evidence for the inconsistency of the source formulations of the critical program. It looks perfect as an ambition and method; i.e., within the context of Descartes' subjectively formulated principle of doubt, but not from the position of a contentually reflective objectivity setting forth a methodology that is co-relative and effective with regards to the theoretical process of ontologizing.¹

Hegel restores the authentic dialectical sense of the logos as primarily and synthetically united formality and contentuality: "There is nothing, nothing in heaven, or in nature or in mind or anywhere else which does not

¹ Perhaps having in mind the illusive nature of Kant's dialectical ideas of reason, Goethe sagaciously noted: "Who fears the idea, finally loses the concept" - my translation.

equally contain both immediacy and mediation, so that these two determinations reveal themselves to be unseparated and inseparable and the opposition between them to be a nullity.² The primordial dialectical logos predefines a different cognitive way of development of philosophy when compared to the transcendental. It is traced by pure thinking as well but this is the thinking which is not restricted within its own metaphysical form, topologically laid as apriority but which “has free being-for-itself” within the element of science.³ The sense of the critical paradigm as an a priori metaphizing of cognition is preserved not as a pure form, thoroughly and completely separated from the contentuality of experience, but as a metaphysical positing of the immediate and mediated by its own contents thinking. It is realized as a type of contentual logic. But whereas transcendental logic (as contentual logic) only envisages experience in the quality of the necessary, objective end of the thought synthesis, Hegel’s logic makes it immanent by following a strict methodological and formal procedure. Thus logic is a metaphized and fundamentalized turning into a universal scientology.⁴ In it, ontology is a necessary architectonical element within which the phenomenal objectness is presented in the sight of its essential contentuality in a necessary and systematical appearance. Within a dialectical context it crystallizes in its own matter⁵, thus obtaining its genesis and sense becoming.

Thus in the field of the pure logos-ness Hegel is compelled to revive, in a new dialectical way, the fundamental identity of thinking and being. He does not comprehend it as a relatively facilitating means for building ontology but only and solely as an introductory principle, as a general and sufficient justification of thinking to think objects within its immanently progressing contentuality. This is different compared to the critical, expression

² Hegel, Blackmask Online, §92.

³ In the preface to the second edition of *The Science of Logic*, Hegel figuratively noted: In the silent regions of thought which has come to itself and communes only with itself, the interests which move the lives of races and individuals are hushed. §18, Blackmask Online.

⁴ Hegel, “Logic is pure science, that is, pure knowledge in the entire range of its development” §94. It could hardly be given a more concise, more accurate and more comprehensive definition of logic. Further below its heuristics shall also become apparent in the context of Hegel’s objective logic.

⁵ This obtaining its

of intentionality. Here, it is not an a priori direction of the pure activity of the transcendental synthesis towards the experience but is solely of the contentual logical thinking. It is not only discursive relating or a natural product of the primordial human ability of judgment but is a type of ontologizing. Whereas in the critical project there is a staging in the realm of metaphysics - the fundamental metaphysics of knowledge (critique as propedeutics) and regionalized and oriented to the particular types of critical ontologies - the Hegelian Logos program simultaneously lays the cognitive, logical, and ontological becoming of identity. It does not connect cognition with its object in an abstract way, it does not unite the thinking and being in a coercively built construction, it does not mix the logical schemes with the phenomena of nature but experiences its own genesis as becoming and progression of the essence on the terrain of knowledge (phenomenology), logic (scientology) and ontology (a real system of philosophized spirituality). This is the tripartite structure of Hegel's philosophy conceived within the principle of identity of thinking and being, born as dialectical logos and deployed in a systematic appearance as an all-embracing ontology.

It is about a cardinally new metaphysical intuition and a new type of its discursive realization. They rely on *ratio* again, and again they are oriented to achieving beingness. Besides, theoretical results and mishaps of criticism are strictly taken account of. The consequences are the split of reason⁶ and the positing of the metaphysical isolation of its form. For Kant, reason is a source of ideas, the ability to relate them and the source of principles. But it itself has no genesis, no history, no progress. It has no being as well because in critical philosophy pure thinking is reduced to the transcendental apperception *I think*, which, however, is an empirical statement containing the statement *I exist*. Thus the form of reason turns into a typical fetish. On the other hand, reason is entirely oriented to experience, overcoming

⁶ It is fully logical to view each splitting as a result, as a consequence, of a certain cause. For Kant, however, it is a fact. Although pure and free, reason is split: "Here first is explained the enigma of the critical philosophy, viz.: how we deny objective reality to the supersensible use of the categories in speculation and yet admit this reality with respect to the objects of pure practical reason. This must at first seem inconsistent as long as this practical use is only nominally known." (*The Critique of Practical Reason*, Translated by Thomas Kingsmill Abbott.)

the uncontrolled game with ideas, imposing limits on itself. All this opens a projection for defetishizing its form. Hegel sees this possibility in the phenomenologizing of its pure becoming and in the historicizing of its cognitive objectifying. These two theoretical alternatives discover a methodological way to a new ontologizing as a systematic discursive achieving of beingness. They constitute the conceptual dimensions of a succinctly theorized post-Kantian dialectics, considering and comprising the consequences of a critical paradigm in the field of metaphysics of knowledge and a prioritized formalism. Logos once again expresses its heuristic potencies to realize the results of philosophical (metaphysical) intuition in a discursive way.

The classic rationalist principle for identity of thinking and being sets forth a logos of possibility for the successive and systematic building of ontology as a discursive self-cognition of being. This self-cognition can be conducted dogmatically as a direct imposing of the logical schemes onto the structure of objectness. The teachings of Spinoza, Descartes and Leibnitz show different versions of the rationalistic ontology, priority of which is taken by beingness-intuition, realizing itself via reason in a monistic, dualistic or pluralistic image of the world. These images bear the stamp of existence which has beforehand limited the self-realization of reason. Reason is not achieved in its own reasoning (cognitive) essence as it is beforehand limited to preliminary being images. They are laid externally against it in a way which, on one hand, violates and deforms the infinite openness and activity of thinking (Kant overcomes this by means of the essential and functional specificity of the transcendental synthesis); on the other hand, it erects a hard and insurmountable border in an ontological respect. Classical rationalism cannot overcome this border because it is *a priori* present as a marker of the metaphysical intuition that engendered it. And it is, above all, of being, although finding rational fulfillment which consequently ontologizes the reason itself.

Classical rationalism does not exhaust the discursive potential of logos because it apriorizes being with regards to thinking beforehand. The latter by itself is not and cannot be immediate ontology; yet, through its rational nature and activity, existence is conceptualized in the form of ontology. Going beyond this theoretical situation, the dialecticized logos paradigm can rediscover a new and boundless field of realization of itself provided only

that it finds that immanent discursive form through which thinking is self-presented as logically necessary and strict (about being). This principally new and essentially ontological projection of thinking is theoretified by Hegel in the dialectical essence, structure, and function of the concept. Word becomes concept. In it, the metaphysical intuition (the principle) for the identity of thinking and being finds adequate discursive expression whereas philosophy finds possibility for consecutive and systematic building in the bosom of the powerful logos tradition.

The concept is the absolute discursive expressive and explicative form of thinking through which it realizes itself in a way which is immanently inherent to it. It is not borrowed from anywhere and it is not formed by accident. It reflectively reproduces itself in the form of a logical, i.e. necessary, self-sufficient and internally non-contradicting structure. The empirical view of existence does not and cannot have these three predicates since by its own means it cannot manage with the problem of the phenomenal contingency. Therefore Hegel highlights the concept not only “as thinking in general, as something general”, but also as “the essence of things”. It is “an object, a product and content of thinking”, which has adequate topology in a new formulation of logic, “which constitutes metaphysics proper or purely speculative philosophy”.⁷

The second part of *The Science of Logic* (subjective logic) is started by Hegel with the curious statement: “The nature of the notion cannot be immediately indicated as the notion of another object cannot be immediately indicated.”⁸ Hegel took into account that in the identity of thinking and being the concept is the absolute ground of the process of ontologizing. But it, its nature, cannot be definitively immediate because the short-comings of classical rationalism are thus repeated (flawless and uncritical acceptance of every ontologizing as a simple reflection of logical rules). Taken in its general sense, the concept cannot be relativized towards axiomatic facts and accordingly restricted and defined by this terminological facility.⁹ But, on the

⁷ Hegel, §35, §28. Blackmask Online.

⁸ Ibid.

⁹ Spinoza’s is the final formulation of this specific logical condition: “*Omnis determinatio est negatio*”.

other hand, in its quality of discursive justification and bosom of the rationalistic, principled knowledge, logic, and ontology, the identity of thinking and being, it ought not to be thematized as per something external to it. Therefore the concept ought not to be laid as a self-giveness - formally logical or cognitive - but it ought to pass the way of its own becoming. This can be compared to Kant's deduction of the pure conceptions of understanding performed in *Critique of Pure Reason*, but only by analogy and as a methodical intention. Both Kant and Hegel searched for the a priori theoretical sources of the concept but found them in different metaphysical ways: the first one - only and solely within the maze of the metaphized apriorial cognition form, and the second - within the logical scientified becoming of its contents.

Hegel perceived the naturalness of logic rather negatively. He related it to human nature, which has thinking as its main feature. But left alone - in its natural state - it does not overwhelm the limited functions of consciousness, i.e., to think objects and thus to alienate from itself in an independent and foreign objectness (as much as consciousness is always consciousness of something, it is namely thinking wherein its primary designation should be sought for, i.e., only in the external relation to something else). This is the natural state of thinking, however, not the philosophical reflection of it.

The latter ought to be perceived purely metaphysically: "If nature as such, as the physical world, is contrasted with the spiritual sphere, then logic must certainly be said to be the supernatural element which permeates every relationship of man to nature, his sensation, intuition, desire, need, instinct, and simply by so doing transforms it into something human, even though only formally human, into ideas and purposes."¹⁰ *Natural Logic* (Hegel's title) cannot form otherwise than empirical notions. On their behalf, they, by no means, can perform the role of formal justifications of thinking and assign the necessity and stringency to thinking. Therefore logic itself ought not only to satisfy Kant's criteria for formality and contentuality (within the context of the transcendental logic), but also dialectically metaphyze the essence of being in the paradigm of the logosness tradition. According to Hegel, logic such as this is not only contentual but also objectively conten-

¹⁰ Hegel, §14.

tual. Behind this qualification two types of necessity are hidden - the formally logical and the onto-logical. Thus logic is turned into a universal scientology in the sense of the ancient logosness (for instance, Heraclitus') and of the enlighteningly comprehended scienticity (for instance, Fichte's).

Under objective logic, Hegel comprehends logic which treats the sense of being (immediacy) and the essence (the reflexiveness as mediation and self-mediation). The important moment here is that this succession of theoretical thematizing indicates objective logic as a genetic exposition of the concept.¹¹ In the course of philosophical study it comes up at a relatively late stage. Before it, as more abstract and, accordingly, more incomplete and empty of contents, concreteness and truthfulness, stages of cognition are sensuality and experience, but in the quality of objective substantiality. The latter does not present a form of being that is self-sufficient, self-caused, etc. These are explicit (direct) views of being, specific to the representatives of the classical rationalism. Hegel substantiated the concept as a contentual cognition form which comprehends itself as a pure and a priori structure as well as a self-progressing being. Thus the concept becomes the justification of being knowing itself (via thinking as a natural property) and of the reflective knowledge (of the essence of being), i.e., a justification but also an element and a tool for metaphysical philosophizing. Hegel calls this concept of the concept: "Therefore the realm of freedom revealed in the concept. The concept is free as the identity, being in itself and for itself, that contains the necessity of substance, has at the same time being as sublimated or as a positing and this positing as self-reflecting is that same identity."¹²

These Hegelian formulations cease to be dark and incomprehensive after heeding to the specifically non-classical thematizing of the rationalistic principle of identity within the context of the metaphysically dialecticized logos. It entails

¹¹ "The concept is that absolute unity of being and reflection, that being in self and for self exists only through the fact that it is so much reflection or positing and that the positing is the being in self and for self. This abstract result is clarified through the exhibition of its particular genesis; this genesis contains the nature of the notion; but it should precede its formulation."

¹² Hegel's formulation of "concept of the concept" reminds us of Kant's "metaphysics of metaphysics": in a letter to Markus Hertz, Kant called his critical project a "metaphysics of metaphysics": "This type of study shall always remain arduous as it contains the metaphysics of metaphysic."

logic reforming which goes beyond the perceptions and forms of the traditional Aristotelian logic, captured in bivalent formality. Hegel's objective logic regulates the known rules for non-contradictive and consistent thinking so much as the necessity of the phenomenal expressions of existence. The latter indeed has a rational nature, not as a direct imposition of mental structures over it but as an explication of becoming of the system of being in the concept.

The key to this type of non-classical rationality is again the logos specificity of cognition philosophizing, character-ology of the specific metaphizing of thinking not only in its a priori form but also in its pure, dialectically expressed contents. This is principally a new phenomenology, which has nothing to do with the empirical systematizing of the phenomenon in and via the notions of experience. On the contrary, it has to do with the metaphysical experience of thinking, which expresses itself through explication of the progress of its immanent contentuality. The project is typically of logos and is set onto the non-classical deployment of the rationalistic principle of identity of thinking and being. Based on the metaphized dialecticity of the form and contents of thinking beyond the classical rationalistic paradigm, Hegel's scientology predicates the real possibility for non-conservative extension (contentual progressing) of ontology beyond the narrow limits of bivalence and, consequently, it opens a projection to reforming the traditional logic within formality. Hegel succeeds and achieves the most significant, cognitively principled, formally justified and dialectically developed monistic ontology as a complete system of being in the history of philosophy.

Already on the first page of *Phenomenology of Spirit* - the first major writing with which he starts his colossal philosophical system - Hegel notes that philosophy presents the universality which subsumes the particularity. Behind this seemingly trivial moment, an eminent cognitive intuition is hidden according to which the forms of cognition and their relevant contents are of the same necessity, "that constitutes the life of the whole". Kant defends such a view which disproves the unnecessary arranging of cognition (against the capacity of the senses, experience and rationality to attain the truth) by empiricism and rationalism. But whereas he arranges the forms of cognition and judgingly "exercises" their interrelations regarding the experience, i.e., as a justification of its necessity, sufficiency, and verity, Hegel stakes on the cognitive becoming of truth itself. It is not a "minted coin" (A. Beshkov says that it is not "an upright stone"), but is becoming along with all transitional forms of the singular and specific

universality of knowledge - not, however, as a “broth of color” (Hegel) but as an attained end along with all its key steps.

The difference is huge. The project is not transcendental, it is not conducted as an embracing of something living (experience) by something “dead”, fixed, unchangeable, pure, etc. (the chart of once and for all deduced categories). On the contrary, Hegel is after the living whole, without knowing what it will be at the end of the system. In fact, he knows well that, by the force of the initial principle of identity, at the end of the study of absolute knowledge as a form, absoluteness as an object shall conform to it. Even if it can be speculated that God shall necessarily present this absolute, infinite and eternal object (of knowledge), in no way it can be known through what phases, turns, stages and territories knowledge shall pass through in order to achieve the complete system of beingness. One thing is certain, it must not miss a single expression nor a single independent object structure. Thus knowledge expresses itself, however not in the transcendental way, externally towards objectness and invariably within its own structure, but as a realization of its own self, based on the principle of identity. The second essential point here is that in this way the starting principle does not stay far from the cognitional course and its result but is methodically knitted in both. An intention of logos has always been the unity of principle, knowledge, method and ontological product (finalized in the universal and true judgment for absolute existence). However, something has always been missing for the consistent and continual realization of this philosophical potency.

The new expression of logosness in the field of the theory of knowledge is called by Hegel phenomenology. It is not a system of cognitional forms, external to phenomena (such as Kant’s chart of the pure conceptions of understanding), but is becoming and a progression of knowledge to its supreme levels, solely as self-abandonment in objectness. The latter is meant by Hegel that knowledge is achieved neither as a pure form nor is completed via a certain preliminary aim. It is such a self-abandoning ontologizing as an immanent logos structure of phenomenon: “For the real issue is not exhausted by stating it as an aim, but by carrying it out, nor is the result the actual whole, but rather the result together with the process through which it came about.”¹³

¹³ Hegel, *Phenomenology of Spirit*, translated by A. V. Miller.

In this logos, formulation of cognition is about to rise to the thought of object in general. This corresponds to the genesis of the concept which is to “live”, i.e. to ford across all forms of conceptualization of the specific expressions of a given contents so as to be able to highlight its general sense not so much against the background of all the rest (according to the above-mentioned formulation of Spinoza for definition¹⁴) as a finite form of self-progression. Thus the concept ceases to be external structure referring to its foreign sensations, visions, perceptions, etc. (from Aristotle till Kant it has been comprehended like this) and becomes mentally born contentuality, which, however, within the cognitional evolution of objectness, has reached its immanent universality. In his peculiar terminology, Hegel calls this motion from “in-self” (natural thinking of external objects) through “for-self” (reflection of thinking on its own nature in relation to objects) towards “in and for itself” (concept presenting the nature and existence of the particular universal object). This is the self-same contents knowing itself in its universality. Or, in other words, the concept is the substantial contents in its “logical nature” (Hegel). It is its internal nature since it is an expression of the universal in the particular. “With this introduction of the content into the logical treatment, the subject matter is not things but their import, the notion of them”.¹⁵ From an activity, constitutional and constructive over the experience within the transcendental paradigm, in Hegel, thinking turns into a slow and persistent work in the maze of objectness until reaching the expression of the concept however not as a mechanical synthesis of thinking and objectness but as a substantial identity of their internal contents.

Hegel comprehends the activity of thinking (“Reason is purposive activity”) not as an imposing of its schemes over the empirically summarized structures of sensitivity and experience, nor as a closed within the formal rules game of notions, judgments and inferences, but as an immanent becoming of contentuality. Therefore, the philosophical method relevant to this non-classical rationalistic concept is not an *organon*, not an external tool for handling a material given in an unknown way, not obtained accord-

¹⁴ Hegel’s qualification is indicative: “According to the formal, non-philosophical method of sciences, a definition is initially sought for and required for the sake of at least the external scientific form” - my translation.

¹⁵ Hegel, §28.

ing to the subjective assumptions and moods of this or that, being a private person, philosopher, allegedly not objectively dependant on an objectness foreign to it. The method is the self-reflexive activity of thinking which highlights its progression as objective becoming of the world of concept. Hegel presents this cognitional process as phenomenology which starts from the abstract opposition between consciousness and object and reached to the absolute knowledge. The results of this long phenomenological way is the concept of science. It is a notion deployed as a systematic concept which implies the ontological nature of existence.

This is the new logos form of the objective logic as a universal scientology. It not only unites the known but also form and matter, already differentiated by Aristotle. But based on the methodologization of the principle of identity, Hegel builds a new vision of scienticity: not only as its “face” but also as its whole “body”. In *The Science of Logic* Hegel admits that this reminds him a little bit of medieval metaphysics, for which “the real truth” in things is their intellectual unity with thinking. In this respect it seems as if the Modern Age steps back in theoretical terms because it erects an insurmountable barrier between them which it then surmounts either by means of arranging the forms of cognition and mechanical identification of the supreme amongst them with the essence of objects (this is how empiricism and rationalism proceed regarding the truth) or (as in Kant’s) reason simply surrenders to the unknowability of their nature by itself (the so called *Dinge an sich*), although it is namely the supreme cognitional ability (this is also supplemented by its entanglement with immanent paralogisms so it cannot by itself truly complete its own knowledge potential).¹⁶

However this allusion of Hegel ought to be understood only as an analogy to the older metaphysics. His objective logic has nothing to do with Logos-Christ, with the divine intellect, with the tenets of the Christian mentality, with the revelation of the religion. Externalistically viewed, it is a

¹⁶ Hegel always insists on the seemingly simple rule that true in philosophy is the correspondence between notion and reality. Behind this correspondent requirements stands the theoretical statement that the reasonable philosophizing of the object is not its external observation, it is not the internalization of reason into it but “the object is for itself reasonable” as “science only has the task to bring this proper work of reason of things to consciousness” – my translation. §82.

typical product of the Modern Age, of its liberating and enlightening ambitions and initiations. Internalistically presented, it is a conceptual development of a new form of metaphysical intuition which, within the tradition of logos, theoretifies in a new rational way the principle of identity of thinking and being. As an ontologem of this objective logic the spirit is presented: "That the True is actual only as system, or that Substance is essentially Subject, is expressed in the representation of the Absolute as Spirit, the most sublime Notion and the one which belongs to the modern age and its religion. The spiritual alone is the actual; it is essence, or that which has being in itself; it is that which relates itself to itself and is determinate... The Spirit that, so developed, knows itself as Spirit, is Science; Science is its actuality and the realm which it builds for itself in its own element."¹⁷

In this way an intellectualistic comprehension of the progress of world history is imposed inasmuch as a voluntaristic methodologizing of freedom in the spiritual nature of the human interrelations. This moment is given heed to by Descartes, Spinoza, Hume, Montesquieu, Wolff, Kant, and many other philosophers of the modern epoch. They bind the will with freedom and search for their realization in the social forms of consciousness. For all of them, will is an element of reason and is incorporated in the rational structures. Hegel is no exception to this rule; but he not only thematizes the universal interest against the background of the different particular aims and subjective passions and actions but dialectizes the self-reflection of the spirit in the transition from the natural state in itself; i.e., the realization of the common universal aims as a spiritual nature of humankind - to the reasonable state for itself - i.e., the substantialization of the spirit as an immanent nature of the existence. This transition requires comprehension of will less as a blind element, mad passion or flaming enthusiasm and more as the moral essence of the spirit.¹⁸ Kant also presents practical reason as a realm

¹⁷ Hegel, *The Phenomenology of Spirit*.

¹⁸ For this study it is extremely interesting how, by means of the will, Hegel demonstrates the self-expression of the spirit as a kind of ontological continuation of the intelligence: "The spirit is initially intelligence and the definitions through which it advances in its progress - from the sensation through representation to thinking - are the road of its manifestation as a will which, as a practical spirit, is the successive truth of intelligence" - my translation. §53.

of action for free will which goes beyond moral problematics and even rigorously forms a universal moral law. However, the great Konigsberg thinker does not succeed to connect the intellectuality with freedom although he subsumes them under the common “auspices” of reason - as a theoretical (speculative) and practical (postulative) reason. Therefore he normally does not reach the totalizing ontological formulation of the spirit as a logos master of world history.

The objective spirit is projected contentually (phenomenologically) as a moral reality of civil society and state in their multilayer structure. This is a particular spiritual contents which is the essence of the state law and world history. Hegel analyzes in detail how the principle for unity of the logical and historical is deployed in an absolute sense of the idea (categorical contents of the concept) of the given social being in its historical (and, to a certain extent, social) progression. Freedom and truth become world which reaches the form of necessity. The law reflects the universality of the reasonable will not only to acknowledge but to persist and impose the moral nature of the freedom in the world. This is the right which regulates the validity of good and evil in social life. Therefore, according to Hegel, morality is the completed being of the objective spirit, phenomenally projecting itself as vital wisdom and spirit of people. In the context of fundamentalized freedom and normativized definitenesses of obligation the objective spirit maybe slightly reminds the features of Kant’s practical reason. But unlike the latter, as it was already shown, it has definitively ontological nature, besides, it is essentially implied not in the abstract purposive activity but in the particular “self-determining and self-realizing notion”.¹⁹

The being of this substantiality of the concept (which, as a logical procedure, is the final step of the ontologizing power of the principle of identity

¹⁹ In his usage of the notion spirit Kant is either quite sparing or quite sceptic. In the first case he treats the spirit only cognitively and comprehends it as a general human source of knowledge. The spirit is a primordial essence of knowledge but it has no usage. Kant reduces this essence to the receptivity of perceptions and spontaneity of thinking. In the first *Critique* they have no transcendental or empirical usage but rather have psychical roots of knowledge. In the second case, the spirit is comprehended more generally in metaphysical terms. But then Kant observes the spirit as an empty and wrong notion, as “a notion for a bodiless thinking creature” - my translation.

of thinking and being) is the constitution of the absolute spirit. Hegel reminds us of this in the seventh chapter of book twelve of Aristotle's *Metaphysics*, in which the self-cognition of Reason is defined through its "participation in thought" as the two are the same thing. Because reason is active, "when it possesses [thought]" and its divinity is hidden exactly in this, in the reality and not the possibility of the possession. And this is the life "for the actuality of thought is life".²⁰ Hegel defines the concept of the spirit as a spiritual reality and the spirit itself, as a free in itself and for itself intelligence which, in the process of overcoming its alienation in its own objectness, achieves the form of its concept as an immanent reality. The spiritual substantial essence completely passes the differentiation (alienation) of subject and object, of knowledge and matter. On the way back of reflexive self-liberation from the external objectness, it achieves the identity of the total contents (obtained as a result of the phenomenological methodology of the sublating synthesis) with the pure logical form of its concept.

This is the absolute spirit which, in distinction to Kant's critically carved pure reason, does not close itself in apriorized and metaphized spaces of cognition but in the form of scienticity (the concept as a logical structure of the idea thinking of itself in abstract contents) it conceptualizes the substantial essence of being as an ontologem. Hegel views art and the religion of revelation as phenomenological expressions of the absolute spirit. The immediate beauty, the genius element, the sublimity of the ideal belong to it on one side and the particular singularity of divinity, the substantial power of the creator, the salvation might of the paraclete - on the other. As their consecutive and completing synthesis, the great German thinker indicates philosophy. Not in terms of love of wisdom, esoteric rumination or a deep insight imposed on the experience, but as a true logos realm of the unified absolute spirit in its reality giving substantial essence of the existence of the world.

²⁰ Aristotle, *Metaphysics* 1072 b 19-30 (translated by W. D. Ross).

What is a Fiction?

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We would like to point out some lines of thought for a reflection on the notion of *fiction*, which will be considered principally from the point of view of its epistemological interest, probably as a priority in social and psychological sciences, but also in other sciences. One may grant Bentham that that the notion appeared mainly in the domain of law, politics, and ethics since the Latin *jurisconsults* very early talked of a *fictio juris*. Nevertheless, what, from the XVIIIth century, has been called *aesthetics*, which has, for much longer, consisted in a reflection on images, paintings, sculptures, architectures and poetry, largely contributed to give the word *fiction* an important part of its meaning, through the problematic of likeness, which is still topical. Following the Greeks¹, the Latins opposed *facere* (to make) to *fin-gere* (to feign), which resulted in the word *fiction*². The different meanings got intertwined in what Bentham called the same “import”³ of the word, but will not be disentangled here. The limited aim of our talk is not so much to trace the genealogy of the notion of *fiction* as to root a certain number of concepts into that notion, taking as a fact that it inherited diverse threads woven together. But, though this reflection is made within deliberately more restricted limits than those it should have and is carried out, on principle and preferably, in epistemology and history of sciences, it will not be exhaustive nor even conclusive. To reach such a level, it would have to be much subtler, in particular in the domain of logical technique, and based on the questioning of many more authors than those whose books have been consulted

¹ The word *πλάσμα* was used to talk about that notion.

² That is the meaning given to it by some XVIIth century authors as Descartes or Pascal, who, in *Pensées* (Br., 453, Laf., 211), talked of *figmentum malum*. Bentham also gave that meaning to the word *fiction* when he made it an equivalent of “a mere figment of imagination” in some of his formulas (*The works of Jeremy Bentham*, éd. Bowring, 11 vol., Edinburgh, London, 1838-1843, reprint Thoemmes Press, Bristol, 1995 ; III [1843], 244). This vol. will be quoted as follows: *Works*, III, followed by the page number.

³ That is the meaning of the word, together with its etymology.

here. It is nevertheless already possible to look at a few aspects of the history of that notion and at a few perspectives it opens up.

What is first remarkable when one considers the notion of *fiction* is, on the one hand, the discrepancy between the subtlety and precision showed in punctual uses by ancient and classical authors and, on the other hand, the very modest reflection and degree of generalization they managed to reach on that notion, which seemed destined for a higher fortune, similar to that of the imagination or passions. Thus did Descartes, Pascal, and Leibniz with refined subtlety use the notion of *fiction*, which they did not mix up either with *mistake* or with *falsehood*. The English were as subtle. Bacon, Locke, Berkeley, and Hume also distinguished it from *mistake*, *error*, and *falsehood*. Yet, apart from Hobbes, who took care to define it⁴, not many authors before Bentham tried to generalize the knowledge on fictions (which is present in laws, politics, and ethics, as well as in the sciences philosophy, and what we call aesthetics) and to build a *theory of fictions*. Bentham himself did not even invent the expression “theory of fictions”, which was proposed by Ogden as recently as 1932. The notion of *fiction* everywhere assumes a fundamental as well as covert role, and is used in a rather homogeneous way, whatever the domain it is applied to, at least apparently. Yet, nobody before Bentham desired or wanted to unify that knowledge, whose value no one questioned. The useful, decisive, as well as surreptitious, uses of the notion of *fiction* did not allow it to be efficiently theorized. Moreover, when Bentham tried to realize that unification and that theorization in his work *A Fragment on Ontology*, starting from a legal and political reflection, particularly in *Chrestomathia*, to the domain of what could be called *epistemology*, and then to logical and ontological reflections, not many people followed suit. His work was not pursued, but only repeated without being enriched, or reinterpreted in rather a poorer way, if one is to judge from John Stuart Mill’s *System of Logic*. The latter devoted a whole book of his work to *fallacies*, but understood them in a completely different way than Bentham since he very directly linked them to the logic of induction that he advo-

⁴ In *Elements of Law natural and politic*, Book I, Chap. III, § 4, he defined what is commonly called fiction as a “composition” of “chimeras, and other monsters, which are not in *rerum natura*, but have been conceived by the sense in pieces at several times”.

cated, as was foreseeable, while losing the essential part of Bentham's project by transforming the *theory of fallacies* into a simple *theory of sophisms*; that is, by identifying *fallacy* to a mere error of reasoning. The problem is then as follows: how was it possible that a theory which, to twentieth and twenty-first century men, seemed at least as important when the foundation of sciences was at stake? Critical projects (e.g., those of Kant, some Kantians like Cassirer, Hegelian, Marxist and phenomenological projects), having given their measure, apparently did not have the hour of fame that all the essays we have just mentioned had. Was the opportunity missed, as far as the theory of fictions is concerned, or did the project fail for necessary reasons due, for example, to the little scientific value of the notion of *fiction* and to the impossibility of sketching a logic of it? There is no point, out of some resentment, in us redoing history and advantaging a notion that did not develop nor get the importance one might wish. But the question may be asked today whether it is possible to inherit a technique and a knowledge that have not shown their worth. During the second half of the XXth century, some conscious efforts were made by linguists like Jakobson and psychoanalysts like Lacan, while some efforts that were fruitless or unconscious of their legacy were made by semiologists (A. J. Greimas, J. Fontanille, H. Parret), sociologists, or ethnologists (like B. Vernier), aesthetics philosophers (like N. Goodman, M. Riffaterre), and more recently in epistemology (of mathematics in particular⁵), to reactivate that knowledge of fictions. Is it possible to say what those efforts allow us to think that is original and specific? Can the knowledge of fictions be active and likely to be integrated in a contemporary reflection on what perceiving, feeling, and mathematics are, and even to contribute to the history of a few subjects? Our project is double: to understand what hindered the development of the notion of *fiction* while asking whether that hindrance is contingent, in which case it could be erased, or whether it is intrinsic to the notion, which would make that defect resistant and unacceptable.

⁵ With H. H. Field and M. Balaguer.

I. First of all, what are we talking about when we talk of *fiction*?

Is it not the great heterogeneousness of the notion, of its foundations and of the developments it engenders, which is the very problem? Bentham tried to unify the notion. His attempt must be assessed through the question of what can still be made of it and whether it entangled things so much that this could explain the relative failure of its theorization up to now. In order to assess the diversity of meanings of the notion of *fiction*, some examples are necessary.

The extra-territoriality of an embassy refers to the small space which the capitals of states reserve on their land for all the other states to signify that this space is inviolable and *must be considered as* a small fragment of the state in question, so much so that it is unacceptable that some police or army operation should be conducted by the host state, at least not without the assent of the authorities of the guest state. It is through some fiction that the parents or tutors of an under-age child are *considered to be* responsible if the latter has caused an accident or committed an offence. Even if they have not directly committed it themselves, it all happens *as though* they had at least made it possible through their relationship to the minor and their attitude towards the latter. In political philosophy, the *social contract* is called a fiction when the obedience to a government is being allegedly legitimated or contested, rightly or wrongly so. The citizens of a state will be *considered as if* they had unanimously accepted their being governed by such and such sovereigns⁶ at least once, though such a promise or engagement was probably never made and consequently is never really enacted or perpetuated, though the hypothesis that it is being feigned. Anyway, even if such a promise were made in the past, how would it still bind us today? If a more real, more concrete foundation were found, of collective interest or utility to obedience, would not that supposed promise seem at once to be fallacious? But caution is necessary: would the collective interest or utility, though more real than the different types of promises that the theories of contract consider, completely cease being fictions?

⁶ Be it a monarch, a majority in Parliament out of which the government and the ministers are formed, or any other sort of government.

On a completely different level, should not one consider the continuity of objects to be a fiction, as Hume did, though the impressions that allow us to infer them or to infer their existence are themselves discontinuous? One may indeed, against the very evidence of discontinuity, assume stable objects outside our impressions that would supposedly give the latter a real foundation, but there is no possible point of view to warrant a sort of double or parallel existence of impressions and of the objects that are supposed to correspond to them. How could objects be assumed without the help of impressions, and how could one, from discontinuous impressions, project continuous objects without elaborating a risky construction that could not be taken as given by the things themselves without some strange faculty to forget what one does to build them? It may happen that such a manoeuvre, contrary to what happens in the case of the “social contract” for example, be unavoidable in order for one to live in a stable world. It is nonetheless true that it is a fiction to assert the continuity of objects. As it is one, in still other modes, to state the unity, identity, and personality of the *ego*. When we talk of the *ego*, we never deal but with a flux of impressions and ideas that we think we can immediately refer to an ego and structure out of an ego, as if it were possible to know spontaneously where the ego starts and where it ends, as if we had to believe that sort of spontaneous construction, without first carefully reflecting on the laws that control the working of that flux and on the spatial, temporal, and causal illusions which it entails. The illusions of the unity, identity, and personality of the ego, grasped as immediately true and of a substantial reality, are fictions that are assuredly fallacious, but which are nonetheless necessary for the equilibrium and health of men, who, without them, would give way to the most dangerous psychosis, and are above all necessary to the spontaneous respect of the law, in particular of property law.

In a quite different mode yet again, a methodical one this time, a great number of results in the sciences would not be obtained without more or less deliberately resorting to fictions. Leibniz had undoubtedly shown that space is a fiction, above all so when it is given a function of inherence and when it is considered that the relations between the different geometrical beings are in it, as in a sort of substance. The relations - and the relations of relations - are enough without our having to invent a being that would shelter them, or that they would inhabit. Yet, such an illusion is in a way unavoidable, and it is

quite impossible to give space some existence, even though it did not have any reality. But the fictions in mathematics do not only cause interference on methods through an illusion of transcendence they share with language, they often coincide with methods themselves, as in the case of the “indivisibles” and the “fluxions” or “differentials” at the beginning of the infinitesimal calculus and in the way it was practiced throughout the decades, if not the centuries, that followed. In order to put an end to rectifications, quadratures, and calculations of centres of gravity, it is necessary to identify small fragments of curves or of curvilinear surfaces with minute segments or minute planes, which are so minute that they are near-zeros and may be treated as such, so that when they are neglected singularly or in small numbers, nothing as such is neglected. But at the same time - and such a double treatment irritated Berkeley against the irrationality of the mathematics of his time - those small quantities may be added, when they are taken in an infinite number, otherwise it would never be possible to assimilate a curve to a polygon, or a curvilinear surface to an infinite number of planes, etc. The very method of mathematics, which is based on the principle of contradiction, stretches that principle in order to get results, in a very utilitarian way. Berkeley objected to the mathematicians of his time for mixing truth and utility. In fact, things were much more complicated, and Berkeley was defending an outdated and fruitless rationality, for unless reason is given a sort of eternal nature and unchangeable substance, it is changed by the results it gets. Through infinitesimal calculus, the great principles of identity and contradiction are defined differently. Within the logic of that calculus, A is not really A any more, but A must differ from A only by a quantity which is as small as wanted, which opens the door to all sorts of inventions and audacities. Fiction may thus signify not only some dubious, evanescent intermediary which is forgotten as much as possible as long as some Berkeley does not come to proclaim his bad conscience with lessons of rigour and logic, or some disputable mediation between two conceptual moments, but much more the powerful moment of the concept, which modifies the principles themselves. Berkeley was conscious that his adversaries were not only Newton and the Newtonians, but Leibniz himself who had dared to write that “the principle of the principles is the good use of ideas”⁷.

⁷ *New Essays on Human Understanding*, Book IV, chap.12, §6.

Fiction produces its own rationality.

It is possible to establish it in yet another way in the domain of mathematics where situations, in which possibility counterbalances⁸ existence and is even more important, are measured with a degree of precision that is perfectly rigorous. Probability is a strange object which cannot have existence. Only such and such events have had or will have any existence and yet it is possible to assign a value to probability with indisputable rigour. Of a situation it is possible to say that it has one-in- n chances of happening. It is even possible to say that one may have one-in- n chances of being wrong when one ascribes such and such degrees of probability to an event. The object thus described has even less reality than a square, a circle, or a cycloid, even though as abstractions those figures have no empirical existence. Yet, fictitious though they may be (for probability or expectation are as fictitious as the point of view of the superior intelligence which would know of no probability that Laplace dreamed of), such a probability and the measure that goes with it have nonetheless an effective value and influence on the thinking and assessing of reality and real practice. In that last sense, fiction is the creation of a point of view which has no empirical existence, but has sense only for an intelligence which would not know the necessity of things, without nonetheless being deprived of all practical and decisive power by such an ignorance, which thus would be in an intermediary state between existence and non-existence, between existence and possibility, whose ontological status would be delicate but could be calculated and be the object of universal acknowledgement.

The example of probability also reveals that the thinking of experience itself does not go without fiction, not only through the resorting to experiences of thought which, for example, in Leibniz' system, have us resort to *void* and *atoms* in order to give infinitesimal calculus the material points it needs, even when *motion* is concerned, which Bentham constantly used as an example to establish the existence of fictitious entities. Fiction may thus be given yet another sense, which, this time, is close to that of abstract ideas. For Bentham showed that we create the nominalized notion of *motion* from what we experience in moving objects, as we substitute the ordinary discourse $A > B$, the more learned one, which can reveal itself to be more useful and more rigorous in certain cases, of $A/B > 1$. The notion of ratio,

⁸ If we may use that archaism.

which is fictitious, is given existence and is talked about **as if** it existed in the same way as one of its terms. In the same manner, *motion* is called uniformed or accelerated, or uniformly accelerated, etc., **as if**, in experience, it directly designated something which could be qualified in the same way as a substance is, which is obviously not the case.

This list of examples, which is too long and at the same time much too short, could be continued, for nothing has been said, following in Bentham's silence, of fictions in the literary or, more generally, the aesthetical meaning of the word. In order not to make our talk too long, nothing has been said either of perspective, of shadows, and of the strength of colours.⁹ But the problem is there already: Do all the fictions we have just referred to have the same meaning? What allows us to link them together and call them all *fictions* if they are not so in the same sense? What is common between the "as if" of some of them which allows some gleaming of legitimacy, the status of general ideas or abstractions of other fictions, the "considering as true" which forces contradictions or overcomes them, and the creation of places that have no reality? Undoubtedly, groupings are possible. Undoubtedly, behind each one of these examples, whole galleries of very different cases emerge, of which the classification may seem possible. But it is difficult to deny the differences between the treatment of the indivisibles and the treatment of motion, between political legitimacy and the conception of the ego as identity or substance - especially since some of those fictions seem to be the result of unacceptable computations, and even of trickeries, while others seem to play a perfectly rational role, and even a role that creates rationality. How is it possible to establish a common measure or, if that is not possible, a system of those diverse notions? That is the task Bentham undertook, and we must now assess his success¹⁰.

⁹ We nonetheless tackled that issue in an article entitled « Plaisirs d'espaces » (in: *Le paysage et la question du sublime*, Association Rhône-Alpes des Conservateurs, Réunion des musées nationaux, 1997, p.119-136) and more recently in *Théorie de la perception. De l'espace à l'émotion*, PUF, Paris, 2000).

¹⁰ The following analysis, which we are summing up, was many times undertaken by Bentham. See the bilingual edition of *De l'ontologie* Seuil, Paris, 1997 for a more complete presentation. See also the bilingual edition of *Théorie des fictions*, éd. Le Discours psychanalytique, Editions de l'Association Freudienne Internationale, Paris, 1996.

II. Bentham's theory of fictions

Bentham talked of *fictitious entity* as opposed to *real entity*. First of all, it is to be noted that it is at the moment when entities (i.e., substantives and nominal functions) are produced in discourse, that the question of knowing whether they are *real entities* or *fictitious* ones appears. As Berkeley and Hume quite rightly saw it, one of the properties of language is to make believe in a sort of reality of the thing that the noun designates. Thus “a real entity is an entity to which, on the occasion and for the purpose of discourse, existence is really meant to be ascribed”¹¹. Note the close connection of the *reality* of an entity and of the *meaning* it is given. *Reality* only has sense in relation to a discourse, in its function of nominalization, and not to a *belief*, which is more intuitive than discursive, as was the case in Hume's work. “A fictitious entity is an entity to which, though by the grammatical form of the discourse employed in speaking of it, existence be ascribed, yet in truth and reality existence is not meant to be ascribed”¹². It is treated *as if* it were real, and all the more so since discourse does not allow proceeding differently, but it is a known fact that it is not real. Bentham sometimes established lists of what could be considered real, simply adding that what was not a real entity was a fictitious one. Fortunately, he went further than the dogmatic and realistic interpretation of his doctrine, whose real sense, as he himself showed by deliberately getting us out of sensualism, was relativistic, for in his discourse, the mathematician cannot hold *as real* the same beings as the physicist. What the essence of the real entity and of fiction is, in language, the act of considering something real or fictitious, it being understood that the act of considering something to be fictitious (a fictitious entity) presupposes the act of considering something to be real (a real entity): “Every fictitious entity bears some relation to some real entity, and

¹¹ *Théorie des fictions*, p. 44. The reader who would here think that this is a definition of real entity would have any right of contesting Bentham's use of the adverb *really* in his definition. But it is not, to Bentham, a definition. It is a *paraphrase*. What is important in that paraphrase is the possibility for the real entity to transcendently establish the intended import following a certain mode. In the real entity, the structure of the sentence goes hand in hand with the *meaning*, the signifying intention, whereas structure and signifying intention are contradictory in the fictitious entity.

¹² *Théorie des fictions*, p. 48.

can no otherwise be understood than in so far as that relation is perceived, a conception of that relation is obtained”¹³. Understanding a fiction means being able to link it, through a certain number of relations, to a real entity, without which it would be meaningless. The number of relations that is between the real entity and the fictitious entity in question gives the degree of remove of the fictitious entity. “Reckoning from the real entity to which it bears relation, a fictitious entity may be styled a fictitious entity of the first remove (first order), a fictitious entity of the second remove (second order), and so on. A fictitious entity of the first remove is a fictitious entity a conception of which may be obtained by the consideration of the relation borne by it to a real entity, without need of considering the relation borne by it to any other fictitious entity. “On the contrary, a fictitious entity of the second remove is a fictitious entity, for obtaining a conception of which it is necessary to take into consideration some fictitious entity of the first remove”¹⁴. To illustrate his ideas, Bentham takes the example of *motion* and follows the mathematical method of derivatives in a near paradigmatic fashion¹⁵. It is also possible to imagine, though he did not do it explicitly, that he drew his inspiration from Bayes’ system of probabilities, which distinguishes between the “probability” of an event and the “chance” of being right (or wrong) in assessing it. *Chance* is a *probability of probability*, as *motion*, in its characterization, may entail a *motion of motion*¹⁶.

The characterization of Bentham’s fiction is now detailed enough for us to stop for a moment and look at it.

The first reflection that those formulations of Bentham inspire is that they give an impression of unease and embarrassment, though they were indefinitely repeated, from the beginning to the end of the work, with a few variations which we will have to come back to later. The invariant is the as-

¹³ Idem.

¹⁴ *Théorie des fictions*, p. 48-50.

¹⁵ Thus I may say that a body moves and make of the motion a “first-remove fiction”, but I can also qualify the motion and say that it is continuous, regular, irregular, by creating the substantives “continuity”, “regularity” and “irregularity” of the entities “of the second remove”, and so on.

¹⁶ When the speed of a trajectory and the speed of that speed, that is, acceleration, are observed.

sersion that the fictitious entity is, as the real entity, what is considered to be real in discourse, which is embarrassing on the logical level, for it does not allow for the expected distinction. The difference is simply that the real entity is presupposed for the fictitious entity to have any meaning, while the reverse is not true, that is, the real entity does not seem to need the fictitious entity to be stated. But such a formulation is disputable and was so even for the author, who readily acknowledged that there could not be any discourse without fictitious entities and, above all, showed himself relativistic enough not to posit real entities that would be of the first remove in themselves. What exists is the distinction, in every discourse, between real and fictitious entities, though such a separation is linguistically undetectable, which justifies the resorting to ontology. Was Bentham able to express that separation which, through language, affects all our psychic acts?

His theory of *meaning* oscillates between a voluntarist conception of the speaker who wants to assert or challenge a reality¹⁷, and a conception that makes it a property of language, in particular of syntax - what Bentham called *grammatical form*. Fiction is quite indicative of the conflict which is supposed not to happen in the case of real entities where the signifying intention goes hand in hand with syntax. In the case of fiction, syntax alone leads us to assert a reality that we desire or want to challenge, since we do not intend to give the fictitious entity any existence, truly and in reality. But *who* does not mean to give it any existence? A fictitious entity can mislead the listener as well as the speaker, for it is possible to lie or to be deceived by fictitious entities. They are even essential instruments of lies and abuses in law, politics, and ethics, and even in the sciences where they can delude us by making us believe that something of ontological import is being said, though only words are being used. *Fiction* is, as real entity is, a place of mistake and lie, but Bentham's wording does not quite indicate it. It would even insist, in the text quoted, on the consciousness of falsehood and unreality. But there is an equivalent of mistake in *fiction*: this equivalent is called

¹⁷ Following a voluntarist conception, I voluntarily bring in my discourse a being of which I know that it does not exist as a mere thing.

*fallacy*¹⁸. This *fallacy* is precisely different from *mistake* in that it contains a particular intention of deceiving, be such an intention unperceived by the person who falls victim to it and transmits it, or be it the deliberate deception of someone who sets a trap for his listener in order to obtain particular advantages. The formulation of fictitious entities is therefore at fault, for it lacks clarity. Bentham directed the fictitious entity towards ideology, but did not go to the end of his intention in the paraphrase or definition which he gave of the fictitious entity. But was it possible to define or paraphrase it better?

Apparently, for it to be a fiction, the notion must encompass a contradiction, and, for reasons other than truth, since the contradiction compromises it, it is nevertheless accepted, reflected as it were by a sort of *screen* which prevents it from escaping and bursting.

III. A theory of fictions therefore necessarily contains a dialectic

It has certain similarities with the work that can be found in the *Critique of Pure Reason*, in the chapter about “Transcendental Dialectic” and it contains certain differences. *Dialectic* is here understood in the Kantian sense of systematics of specious reasoning and contradictions which reason enters when it tries to focus on objects that are beyond all possible experience, though neither Hume nor Bentham used that term in that sense, though Bentham’s contacts with Kantianism were apparently quite limited. This word (*dialectic*) nonetheless perfectly qualifies Bentham’s work, in which the proposition is considered to be more fundamental than the word, and, consequently, the contradiction or the interplay of contrary propositions more fundamental than the substantive of fiction itself.

Everybody could see that real entity comes into play with fictitious entity so that what is considered as a real entity can be seen as a fictitious entity from another point of view. Is it to say that, far from solving the contradiction (the chief aim of dialectic), the theory of fictions makes us fall back

¹⁸ In the XVIIth century, the word “fallace” was still used in French. Coste, Locke’s translator, naturally used it to translate *fallacy*. Leibniz used it as well. It is a great shame that it is no more used and really deserves to be reintroduced, for it is absolutely necessary in French.

down in the same skepticism from which it expected to get out? To take an instance in Descartes' work: Is it the fiction of the "new world", the world of principles, laws, and the hypothesis of material swirls (*vortices*) that explains the ancient world, which must be taken for the real one? Or, conversely, is it the new world that is the real one, whereas the ancient is nothing but a fiction (i. e., the totality of phenomena that cannot be explained without the keys of the new world)? The discourse of fiction seems to admit this double approach. Is the discourse of fiction a revival of skepticism or may it pretend to transcend its contradictions?

My idea is that fiction may be considered as the solution or the transcending of a contradiction. To use now the example of Hume, who did not explicitly consider the notion to be a fiction, *sympathy* seems to have been elaborated to solve a contradiction or a group of contradictions. The flux of impressions and ideas that the mind of men is can be structured in the opposition between the ego and the other, without it being quite easy to know where the limits of the ego and of the other are. But it is apparently impossible to feel anything of the other that does not happen in me. Similarly, nothing is mine which was not first sculpted, like an image, by the other's presence, even though I would not feel it anymore. How could such a contradiction be solved? By sympathy. Sympathy gives us the impression that we cross the infinite, modal distance that is between us and the other. This is at least what we think. Through the significant of sympathy, we do as though the difficulty, and even the impossibility, were overcome. We do as though some point of view were possible and could be adopted to harmonize the feeling of our self with that of the other. We are inventing, on that point, but we do as though we felt it and discovered it, even though it is deeper still than anything that can be felt of it. Out of sympathy, men feign to find themselves capable of feeling the same thing in the same manner, while they imagine and can only imagine such a posture. The fundamental confusion, as Pascal well saw it, is that of *feeling* and *imagining that one feels*. Sympathy is a construction that denies itself. It does not recognize itself as a fabrication and feigns to discover itself as a feeling. Fictions can symbolically cross contradictory positions. Their function is to do *as though* they were crossed, as founding the possibility of crossing them. Through this latter

feature, it can be observed that we must not underline too strongly the deliberateness of the fictions and that we can be lured, while making them, by their invention we take for a discovery (or: we unconsciously consider as a discovery). The deliberate fabrication does not exclude unconsciousness, which would be rather the evidence that the fabrication was a success.

The difference between such an attitude and the attitude of transcendental philosophy is clear. The latter would quite willingly start from the fact that a connivance or a contact with the other is felt and would wonder how it is possible, whereas the theory of fictions can question the supposed experience, not “believe” it and suspect that it is a delusion. It gives more importance to skepticism than a critical theory looking for the conditions of possibility does. The theory of fictions allows us to detect some supposed experiences to have in reality a status of fiction. Whereas critical philosophy does not believe the contradiction in its dialectical part and while it does not give anymore the choice between one proposition and the opposite, the theory of fictions is an instrument that deals with reversibility and that seeks the right balance between contrary propositions.

The particular difficulty of those fictions, of which we have just studied the example of sympathy, is that there is no general agreement on their “solutions”. Hume, as a thinker of fictions, took as a fictitious entity a notion which another thinker, such as Bentham, disagreed with. The utilitarian thinker thought that sympathy was nothing more than the affective and deceitful expression, the fictitious entity of a relation to the other, the symbolical aspect of which was more essentially, more really, expressed in laws, rules, and institutions than in affects¹⁹. This at once poses a serious problem for the theory of fictions: is it possible for it to rule the difference between acceptable and unacceptable fictions? Is it possible for it to establish by itself what ought not to be taken for a real entity and what ought not to be taken as a fiction? Is it possible to conceive of a theory of fictions that would in itself indicate who, between Bentham and Hume, is right, and if, for example, sympathy is an acceptable fiction or not? In other words, do we

¹⁹ Even though, as Hume showed, affects themselves require to be instituted. Hume used the expression “to establish the passion” (*Treatise on Human Nature*, Selby-Bigge, Oxford, 1978, pp. 335, 357). Passion would never become love or hatred..., without a point of view to give it that name and establish it as such.

have to integrate imagination and affectivity into the fiction that allows us to imagine or to believe that we are attuned to the other, as Hume thought, or must we completely reject them and keep only a linguistic theory of the symbolic system, as Bentham proposed, and as Berkeley had already tried to do in the more limited frame of a *Theory of vision*?

It is true that Bentham himself hesitated, for he sometimes presented fictions as deeper than language itself²⁰, and language as one of the productions of fictitious activity. But, even though the identification of the symbolic to the linguistic system, which has been done too rapidly, must be thought again, Bentham seems to be more accurate than Hume on that point, for it quickly appears that, in the Humean way of the working of passions, the theory of the double association is possible only if impressions, be they of sensation or of reflection, are stable enough and mixed no more than ideas, which is only possible if language finds them. Thus, *some problems may be solved* as soon as the theory of fictions is considered to be a theory consequent to the symbolical system. Up to a point, the theory of fictions analyzes the difficulties and carries on the inquiry to a solution of analytical style.

But, most of the time, it is necessary to construct the solution between the two contradictory theses by enduring the contradiction. The work to be done then quite resembles that of mathematicians when they are treating “inverse problems”²¹. What we called the *screen* of fictions is transformed by the mirror dialectic in such a way that the stating of a problem that the fiction is supposed to solve is inverted. Thus, to take the example of sympathy²², which we should better call from now on “identification”, from another angle, it is possible to assert that if men had the same nature, they

²⁰ After saying that “to language, then - to language alone - it is, that fictitious entities owe their existence—their impossible, yet indispensable, existence”, Bentham at once added that fiction was “as much as a sort of verbal reality”, “contrivance but for which language could not have existence” [*Bentham’s Theory of Fictions*, ed. C.K. Ogden, (New York, Brace & Cy ; London, Kegan Paul, Trench, Trubner & Co. Ltd, 1932), 137].

²¹ For example, the demonstration of a proposition is not identical with its converse. The law of large numbers (law of Bernoulli) is inverse to the rule of Bayes.

²² Which is solved when it is understood that the symbolical dimension runs deeper than the imaginary effects to which sympathy is often reduced to.

would all feel the same thing in the same conditions (given nature), but, conversely, that if men manage to do the same thing in the same circumstances and to imagine that they feel the same thing in the same circumstances, they are only imagining that they belong to the same nature, as Caesar's soldiers imagined they were of another essence because they belonged to the same legion, though they were recruited in the most diverse provinces of the Roman empire, and not among the most honourable citizens (constituted nature). When it is not possible to decide whether there is a nature or not, it is possible to elaborate the fiction of *identification*, in the same manner as the solution to Bayes' problem implied the making of the notion of *chance of being right* (or wrong), as long as it is impossible to know whether it will some day be possible to apply the law of large numbers to the events that must be considered in too small a number for the time being, or rather as long as we know we do not have enough information on them.

The main difference between a theory of fictions (be it in Hume's sense or Bentham's sense) and Kantian dialectic is that the latter resolves its contradictions by dissolving them, that is, by showing that in fact they are not so and that the opposite propositions would never have been opposed if they had been understood within their limits, or if, for example, phenomena had been distinguished from things in themselves, while the former *builds* its solutions *up* and forces its way through oppositions. Fiction is not the same thing as some recognize. It always is a *construction*, even though this were forgotten, or even though it made itself forgotten under the appearances of some reminiscence²³. A fiction becomes a *fallacy* when its begetter (or its listener) forgets that it is a construction. Whether one accepts or rejects the existence of a human nature, sympathy or identification makes the explanation of behaviours possible.

One of the difficulties nonetheless is to know whether a contradiction is really solved by the elaboration of a notion which, by incorporating or integrating contradiction, feigns to become positive. Is the consistency of a notion thus made *ad hoc* to be believed to be able to solve contradictions? Moreover, the

²³ Bentham was as critical as Pascal of that notion of reminiscence which, to both of them, seemed to cover the reality of experiences. Pascal thus contested M. de Roannez on that theme and Bentham launched an attack on the system of *common law* by feigning to presuppose the existence of a law established before any writing.

idea of *dialectic* contains that of systematicity of contradictions and sophisms. Without wanting to discuss whether Kant managed to realize that systematicity in his own dialectic, we ask the question whether it is possible for the theory of fictions to satisfy it. Up to now, we have understood that the analytical work of a theory of fictions may be conducted in an original and specific manner by the inspecting of the contradictions of each notion thus proposed, in whatever field, of its seams, when notions have been fused, and of the reasons that led to those seams, which may be linked to a pressure quite different from that of truth. In that sense, the criticism of notions as it is done in the theory of fictions is always at the same time that of the ideology or ideologies that surround them: the values of truth can never be separated from other considerations with which they are intertwined. But is there a link from the criticism of a fiction to the criticism of another? And is it possible to conceive that that link be of a logical nature, as Kant suggested, in *Critique of Pure Reason*, in the deduction of his categories as much as in his dialectic?

Kant's criticism of empiricism is well known in which he must have thought of Hume: empiricism is a wandering *nomadism* and it follows no logical order. It is true that Hume did not explain the passage from the criticism of time and space to that of cause, which he studied for a long time, nor to that of substance, be it of external objects or of the ego. From a Kantian point of view, the same may be said of Bentham's *Fragment on Ontology*.

But is it not the very project of logically conducting a dialectic that is apparent and disputable? Is not dialectic essentially linguistic, or, at least, does it not fundamentally find its starting point in particular languages? It is obvious, for example, that the disputing of substance, be it that of the *I think* or that of external objects, cannot be made with the same insistence in English, in which, thanks to the gerund form, verbal forms can be nominalized without being completely transformed into nouns, while keeping their factual nature, as it is in French, in which the speaker is obliged to give substance to what he wants to nominalize. When, moreover, the primacy of the active voice over the passive reinforces the nominal feature in a language like French, it is clear that the dialectic urgency, on that point, is not the same as in a language in which, through passives, the speaker is easily given a place that they too much tend to forget in the former. Languages are situ-

ated in such a fundamentally different way towards what they refer, that the dialectic through which they criticize themselves cannot have the same function in them all. All languages may welcome the Kantian dialectic in them, but it does not seem as relevant in each of them. Bentham was undoubtedly right in *Deontology* (more precisely in *A Table of the Springs of Action*) when he pointed out the deep link that existed between the language he was working in (English) and the objects or materials²⁴ he was dealing with, that is, classifying and organizing. He gave a still more interesting research orientation when he proposed a different distribution of his objects according to the different languages²⁵. Thus Bentham recommended a real dialectic of dialectic, though he did not globally realize it, which was quite in accordance with a motion that the theory of fictions had pointed to. That author may at least be read that way.

Transcendental philosophy quite readily imagines that it can overcome, if not simply ignore, the plurality of languages and state its problems (that of analytic or dialectic) independently from the language in which it is exposed, in a certain way as one imagines that objects are seen in a theory of perception expressed in mathematical terms. From one point of view or from any other, one in the end sees the same objects, according to the ideology of perspective, and one even imagines that one can deduce, situated as one is, how one would see the same things if one were situated otherwise. In the same way, even when one expresses oneself in one language or in another, one is, according to transcendent ideology, in the end related to the same objects and problems. But nothing is less certain. And it is as wrong to think that one may at once overcome the singularity of a language, without even formulating the problem, or even taking time to look at its solution, as to think that the mathematical conception of perspective gives the truth of all positions. The singularity of a language is such that it only apparently occupies places accessible to another language. The interplay of notions,

²⁴ Affective, legal, political, economic and religious.

²⁵ *A Table of the Springs of Action* presents the idea of elaborating the tables of pleasures and pains in different languages. *Deontology*, ed. Amnon Goldworth, Clarendon Press, Oxford, 1983, p. 88, (n.7): "Constructed in different languages, a Table of this sort would afford an interesting specimen of their comparative copiousness and expressiveness".

which one precisely cannot separate from languages, cannot similarly appear in one of them and in another. Translation is a *coup de force*, as dialectic is one, in its ontological and transcendental pretension, when it dissimulates the fact that it is an invention under the guise that it is a systematic reflection. In privileging the linguistic domain rather than the logical one, the dialectic of fictions may be fairer than that of the transcendental philosophies, in which the construction of their solutions and, even more, the linguistic singularity of their point of view are ignored.

Given the relation to such a promotion of the symbolical system, which Hume did not encounter, difficulties remained from Bentham. Bentham talked of *psychological dynamics*, by which he referred to the forces that underlie the perceptive and the symbolical systems, and which the philosopher must decipher. But the promotion of the symbolical was such for him that it did not leave any room for what could appear as an independent force of the interplay of perceptions and above all of language, so that one wonders how he could realize his idea. Hume, who practiced *psychological dynamics* without mentioning it, as Monsieur Jourdain did with prose, did not encounter that problem since the symbolic was articulated for him with the interaction of forces given by affectivity, so that it was affects that, for Hume, indicated the reality of the psychic processes and asserted their truth.

There still remains a difficulty of the theories of fictions. Though the promotion of the symbolic is too insisting, it does not allow the development of the dynamics that is necessary to explain psychic processes, above all if criticism is a denunciation of ideologies. On the contrary, if the symbolical coexists with the affective, the latter constantly tends to decompose under the effect of the former. The theory of fictions needs to be accompanied affectively or dynamically by the symbolic, but it does not manage to preserve it, quite simply because it destroys it of its own motion.

Another difficulty in the theory of fictions is this one; it can easily be pointed out in works by Descartes. Fiction is a being of the will (that can be introduced and withdrawn as we like) as well as a being of the understanding (that cannot be withdrawn after having been introduced). But where and how to stop a fictitious fable? Is it possible to draw rules of limitation from the theory of fictions? Must we receive them from outside and where from?

IV. What is that union of concepts and values?

In Book VII of his *Seminar* (among other texts²⁶), Lacan, who saw in Bentham someone else other than the promoter of the “Panopticon”, and who understood that the theory of fictions was the core of his work), completely disassociated the theory in which he could see some foundation for human sciences. In a certain way, he turned the strong part of Bentham’s philosophy, that is, the promotion of the symbolical, against the feeble part of it (which to him was constituted by a philosophy of social happiness inherited from eighteenth-century utopias) and showed the self-dissolution of Utilitarianism. Lacan’s diagnostic is interesting, for it is at the heart of our subject.

Undoubtedly, Lacan did not think that a society may be ruled by the famous calculation of pleasures and pains made by a learned legislator, whose only care would be the coexistence of those pleasures and pains. The society of concupiscence, as Pascal would have said²⁷, seemed absolutely refuted and radically untenable. Utilitarianism is a fiction that is as developed, and may be even worse, than the political and social fictions that he refuted. Lacan may be right, but the strongest point is elsewhere. His diagnostic on the utilitarian ideology was that it was born out of the collapsing of mastery²⁸. Though strange it may first appear, such an assessment is of

²⁶ Together with the seminar entitled *L'éthique de la psychanalyse* (1959-1960), Seuil, Paris, 1986, the seminar *Encore* (1972-1973), Seuil, Paris, 1975, largely developed the theory of fictions.

²⁷ *Pensées*, Br. 451: “Concupiscence was used as best we can to make it serve to the common good, but this is mere sham and a false image of charity, for fundamentally it is just hate.” Br. 453: “Out of concupiscence were made admirable rules of polity, ethics and justice, but, at root, that bad heart of man, that *figmentum malum*, is only concealed; it is not pulled up.” See Pascal, *Pensées*, Penguin Classics, London, 1995

^{28c} What happened at the beginning of the XIXth century, was the utilitarian conversion, or reversion. The moment of the radical decline of the function of master may be specified. It was undoubtedly historically conditioned... It is in Hegel’s work that may be found the extreme devaluation of the position of master, for he is made the great dupe, the magnificent cuckold of historical evolution, since the virtue of progress is obtained through the ways of the vanquished, that is, of the slave and his work. Originally, in his plenitude, the master, when he existed, in Aristotle’s times, was quite different from the Hegelian fiction, which was nothing more than the reverse, the negative and the sign of his disappearance. It was shortly before that end stop that, following a certain revolution affecting inter-human relationships, the so-called utilitarian thought appeared, which is far from being the pure and simple platitude that it is supposed to be.” (*Séminaire*, Livre VII, Le Seuil, Paris, 1986, p. 21)

rare depth and underlines the essential, which lies in the notion of *authority*, of which we would like to show the value in a theory of fictions, all the more so since Bentham partly missed it, and even disputed it. Authority in a way freed itself from its almost exclusive investment in the figure of master (in all its forms, not only pedagogical, but also political, religious and economic) and largely pervaded all concepts, all norms and all harmonies of concepts or norms. The theory of fictions is fundamentally a theory of authority. To understand it, it is necessary to follow a detour.

Concepts often delude. They readily stand in an analytical isolation which is consecrated by the uniqueness of a noun and they appear to be separated from other concepts, trying to be externally related to them. The analytical purity seems to imply that such a situation is unavoidable, or the ordinary language would mix up all the notions and would not make it possible to reach an authentically scientific expression. It often happens, among the classical authors (as Berkeley) as well as among modern (as Carnap in *Der logische Aufbau der Welt*) that scientists and philosophers play on two levels, and, after giving a purely analytical version of what they think is the truth, give another version in vernacular language, which is considered to be more confused (in that it gives more room to things than to relations). But one has to ask, as Hume did, whether that supposed analytical purity is not a false clarity, whether a concept may exist in a state of isolation, whether a notion is not precisely true when it is intrinsically linked to other notions, *intermingled* with others, *rooted with others*, as is said in the essay *Of the Origin of Government*²⁹. Apparently, Hume did not dare launch, in the theoretical domain, assertions as neat as he did in the practical domain.

On the practical side, Hume defended the idea that a feeling, an action or a behaviour cannot be said to be ethical if it has not been ordered by other reasons than ethics itself.³⁰ The question is not here to know whether those reasons are natural or cultural. What is important is that there are other rea-

²⁹ Hume, *Quatre Discours Politiques*, Centre de philosophie politique et juridique, Université de Caen, 1986, p. 146, note 40.

³⁰ In *A Treatise on Human Nature*, Hume asserted that “no action can be virtuous, or morally good, unless there be in human nature some motive to produce it, distinct from the sense of its morality” (Book III, Part II, sec. I, ed. Selby-Bigge, At the Clarendon Press, Oxford, 1978, p. 479).

sons than ethics that hang over moral judgement itself. It is not difficult to show that it is the same in the theoretical domain. No doubt, *probability* may be defined as a ratio of cases or, what is not the same and entails formidable problems of coherence, as a fraction of certainty. Nevertheless, as is seen in Pascal's calculation, which was its birth certificate in mathematics, the notion of *expectation* (*espérance*), as was considered in the recurrent mode of reasoning that was imagined to solve the problem of division, only had any sense in a certain way of considering the relation to riches and business, which was not much dependent on arithmetic, but much more indebted to a liberal structure of the economy in which conceptions of business and inheritance were imposed beyond even the political obstacles of the time. Besides their logical connection, concepts are *related together* in such a way that it is impossible to grasp one of them without taking into account all sorts of relations it has with others, of which it is only detached through some abstraction whose limits must be clearly understood.

Values are related as concepts are. The value of truth of the stating of the problem of division and its solution in Pascal's work cannot be separated from that of equity or fairness that ruled the new modes of considering share-outs³¹. Socrates used such a relation. In the middle of a conversation on justice, he blamed Callicles for ignoring the value of geometry. No value could possibly play its part while being separated from the others. A theory of fictions may be the best theory to look at that type of quasi-parental dependence. It is all the more so as it makes it possible to lay the stress on such and such notions by each time modifying the degree of their fictions, that is, their way of aiming at or being linked to such and such entities that are considered to be real. The strength of the theory of fictions is that all that it holds is necessarily intertwined with the rest and that the intertwining is respected in its analyses. There is no concept without concepts, no value without values, no concept without value: the coherence of a notion, the fact that it overcomes the contradiction that divides it, are made certain by the fact that it can never be isolated

³¹ "The settling of what is to be given [to the players] must be so much proportionate to what they had the right to hope from fortune, that all must be equally prepared to take what is given to them and go on with playing" (Pascal, *Oeuvres complètes*, NRF-Pléiade, 1954, p. 115). The right to hope is inscribed in the very axiom that gives the rule of the solution.

from other notions and values. It is noticeable that valorisation, affectivity, non conceptual binds are linked to the conception by language. The linking of conception by one or several words can go so far as to contradict the concept on main points. It is the fact that it is impossible to separate from practical values (as utility, interest, happiness, etc.) that gives its cohesion to fiction, which would collapse without them. Bayes' probabilities, which are used by the economists, would have no sense without some investment of desire, which is at once and gradually contested, that is, measured and assessed according to the information that is found as time goes by.

The insistence on desire and even on the relation between values, between concepts and even between values and concepts, allows for a question, which is at the same time a remark. Is it a matter of chance that one of the best chances of a theory of fictions, in human sciences, nowadays seems to point towards structuralism as it is implemented in Bernard Vernier's analyses of the family relationships that still prevailed a few decades ago on the Greek island of Karpathos? Vernier exposed a family and economic structure which seemed untenable and consequently unstable when presented *in abstracto*, since it radically favored the eldest who inherited all the family goods, while the younger were completely excluded. But such a structure, which may seem to us quite unfair, prevailed for centuries thanks to some affective compensation which linked the younger to the eldest, and by all sorts of by-constructions, more or less aberrant, which nonetheless enabled the younger to survive and to make their way according to dubious but recklessly asserted likenesses with more or less distant relatives. Without its affective lining, which is not simply a reflection, the family structure would have collapsed because of its own contradictions. This is a structure of fiction which is exemplary of all the other structures, not only of concepts and their semantics, but also of values.

It is an exemplary, not a simple analogy. If a family structure gives such a good idea of what happens in the domain of values, it is no doubt because the mind is constituted in the phantasmal mode with the objects and relations it builds outside itself and then interjects³². It is not only truth

³² We use that psychoanalytical term, which, especially in its Lacanian meaning, insists on the mind's borrowing features to the objects that are outside it, or to the inherent qualities of those objects.

which has a structure of fiction. The mind itself is constituted in that mode, projecting itself outside and organizing a sort of reflexive return. It is not possible to mention them all, but a good number of explicative schemes can be applied to themselves a second time in the reflexive mode, after being applied in the determining mode, and thus seem to give a second identity to the mind. Thus, *perspective*, which seems to apply directly to sense experience, can again apply to itself in the affective mode, as Merleau-Ponty showed, when he wrote in *The Primacy of Perception* that “any consciousness is perspective, even the consciousness we have of ourselves”³³. This may be understood in two different ways: the first one, which is not of much interest here, in which perspective is some immediate and elementary data of consciousness, while in the second it is a constitutive element of consciousness, so that its identification by a sort of interjection is made possible. If objects may be interjected, why would relations not be so? Is not relation an intrusion of relation in the understanding, in the manner the understanding interjects so many other objects?³⁴

But, though we now understand or at least perceive that the notion of *fiction* may be of great use when what is at stake is the articulation of values and concepts, we still have not solved the problem of knowing why some fictions are fallacious while others may be accepted. This is where the notion of *authority* comes into play. As to why a theory of fictions is necessarily a theory of authority, we can now suggest the beginning of an answer. The theory of fictions places us at the crossroads of a logic of truth and an

³³ *Le primat de la Perception*, Verdier, Paris, 1996, p. 42. *La Phénoménologie de la Perception* (NRF-Gallimard, Paris, 1945) refined that point when it established the existence of a “mythical space in which the directions and positions are determined by the residence of great affective entities.” (p. 330), and developed it, as is seen in the use that is made of perspective, p. 379: “No doubt, the world gets its profile first in space. [But], deeper, spatial profiles are also temporal: a place that is elsewhere is always something that has been seen or could be seen. And even if I perceive it to be simultaneous with the present, that is because it belongs to the same wave of duration. The aspect of the town I am approaching changes, and I can experience that, when I stop looking at it for a moment and then look at it again.” Merleau-Ponty gave perspective a role that implied the working of the whole consciousness.

³⁴ It is quite the sort of logic Hume used, when he seemed to found legal rules on the laws of imagination (SB, 510-3). Are not those rules a pure fantasy of the mind which interjects legal rules in an attempt at justifying them?

axiology, and that constitutes the very difficulty of it.

For as long as any fiction only becomes stable thanks to different values, other than truth, since fictions are contradictory, those values are necessarily opposed the one to the other, in order to be accepted or rejected. What is the principle of such a competition? Is there a value of values that would allow us to understand what happens between pleasure, happiness, the true, the fair, and the useful that would not be the simple arbitrary choice of one of them, which choice would be doomed to failure? There are undoubtedly several values of values - is not tolerance typically one of them, and in a way, is not any value a value of values? Yet, among them, *authority* must be distinguished. It must be so, for quite obvious reasons, for it is quite exactly the expression of a competition between values. Before concluding, we would like to say a few words on that fundamental value of *authority* in a theory of fictions.

V. A theory of fictions is a theory of authority

Bentham hesitated on the question of *authority* and took up contradictory stances towards it. Sometimes he made *authority* the prototype of *falsehood* and opposed it to reason itself, following the rationalist tradition. That was what happened in the *Handbook of Political Fallacies*³⁵. On the contrary, in *Chrestomathia*, in a much more refined way, and above all in a way more in keeping with his theory of fictions, he disputed the ideas of *cause* and *effect*, which seemed eminently dubious to him, whatever sense was given to them³⁶ and found that the notions of *author* and *authority* were more real³⁷. He may have found that second stance already quite firmly established in Hume's work.

It is true that in Hume's work, as in all the works of political philosophy, the *authority* of politicians is mentioned without any pretension to

³⁵ The first part of the book is dedicated to *A Treatise on Political Sophisms* (in: *Fragment sur le gouvernement. Manuel des sophismes politiques*, Bruylant LGDJ, Paris, 1996, p. 193ff.).

³⁶ See, for example, *De l'ontologie*, Le Seuil, Paris, 1997, p. 129-151.

³⁷ Causality is a fictitious entity of authority: "cause, when that word is used in its proper meaning, is the name of a fictitious entity. If you want the real name of the entity that corresponds to it, substitute the word *author* to the word *cause*" (*Chrestomathia*, p.280).

originality, as well as that of magistrates, of governments and the governed, of a state upon a territory, of a state upon another state as is the *authority* of the people, public *authority*, and the *authority* of parents, and it then designates, in the ordinary meaning of the word, the manner of a power, its legitimacy, or the simple ability and skilfulness in exercising it. But *authority* was given a much wider sense in Hume's work, for he talked of it not only as the entitlement of a person to do such and such a thing, have such and such activities, but also as the entitlement for an object to bear such and such a name, for a representation, an experimentation or a reasoning, and even reason itself impose themselves on our minds. He even talked of an authority of authority, of a right to authority, which is the same as legitimacy. The change from the authority of persons to the authority of things is made through the authority of a rule of law or of language. The *mind* does not only know physical forces, but also forces that are much more ideal and fictitious, though they be exercised with as much, if not more, efficiency, for they leave less room to manoeuvre to the mind, which cannot escape the comprehension of a sign, of a perception, or of an affect, though it might feign it through some specific psychic activity. At least, if the mind manages to escape it, it is often with less room to manoeuvre than towards some physical force.

Though Hume indicated, and insisted upon the fact that *authority* is an essential concept, as important as *sympathy* for example³⁸ (he dedicated the last words of his work to authority, since *Essay of the Origin of Government* ends upon its consideration), he nonetheless never stated it with as much energy as sympathy. He simply pointed to where the problem was, by marking, as was his wont, by *and* or by *or* the link between the two concepts (*force and/or authority, power or authority* [SB, 315], *weight and/or authority* [SB, 324]), *immediate cause and author* [SB, 349]. It is the link between force and authority, between weight and authority which should particularly be the focus of attention, so crucial is the problem in the philosophy of affectivity and in the philosophy of perception. In his *Treatise on Colour*, Goethe made all sorts of calculations of forces. Of course, those

³⁸ P. 321: "These two principles of authority and sympathy influence almost all our opinions".

forces are not physical ones, though our body is called upon by the forces in question, as being their condition of possibility. But those forces that, for lack of better words, I call *ideal*, may not be physical ones, it would not be more absurd to have a look at the way they work, oppose one another, are associated, are named and added, than to do it for forces that are said to be physical, and are not less symbolical³⁹ than the first, though in another sense. It would at least be possible each time to sketch their specific topics and dynamics. The aesthetical reflection may be decisive on all those points, for it is true that a color in a certain context, a line, a musical theme, a concord, may exert considerable forces upon our minds. This, the “authority of the works”, as Hume said, or the authority in the works, may be the starting point for our understanding of the notion in all the meanings we point out.

The only consistent indications of Hume on that point, besides his interest for the degree of vivacity of impressions and ideas, concern his considerations on the displacement of authority and of the modalities of its transfer or of its translation, as if authority were changing from signifier to signified, without reaching an ultimate signified (SB, 508, 540, 551, 552, 559). As if, at the end of the day, there were no definition of authority, as if it were what is being passed on and given.

One may argue that the notion of *authority* we are here sketching will not help us much in making the difference between the acceptable fiction and *fallacy* in comparison with the pressure that the notion of *utility* could exert on contradictions. At least, we lose nothing in comparison with Utilitarianism, and it appears more plausible and less arbitrary to account for the competition of values. But, in both cases, it is through a strange mixing of different values that a notion imposes itself, without it being possible in advance to say what the criteria that such a mixing must satisfy to consist in. But do we better know, supposing we pretended we could take into account only criteria of truth, what clarity, distinction, or adequacy are? Criteria are not more stable than the notions they are assessing are fixed. They simply do not evolve to the same rhythm as notions. Hume evoked the question of the ageing of titles (SB, 508) and of the future of authority (SB, 552).

³⁹ Physical forces have meaning only in a location of material points in a time and space where their mass, their speed and acceleration may be grasped and related.

It may be argued that the undertaking we here recommend under the names of *dynamics* or *topics* of authority, which seems to be the essential figure that the competition of values takes, is contradictory in that it itself pretends being true while disputing the supremacy of truth, through its very practice and contents, since truth is opposed to other values, which is at the very origin of the problem of authority. Here is one of the multiple ways Husserl had of attacking skepticism and particularly that of a theory of fictions that he easily attributed to Hume as being a “hard perspective”, before punishing it by calling it absurd⁴⁰. But Husserl’s arguments, which were inspired by what could be called a “dogmatics of the true” cannot trouble us. No doubt, the situation of a theory of fictions is contradictory. But do we have any choice? Do we decide upon that strange situation in which we treat the true at the same time as a sort of object of investigation and as what we cannot prevent ourselves from soliciting? *Fiction is a cipher of our condition* and we cannot declare that the fact that “all that through which knowledge transcends impressions and ideas” is treated as a fiction is absurd without ourselves absurdly feigning to overcome that condition.

Conclusions

1. The question that remains about such a transfer onto *authority* of the major problems of fiction is to know whether it is more efficient than their transfer towards values such as *utility* or *interest*. The main difficulty that is encountered when thinking that those last values make it possible to find the coherence of fiction and to disentangle the fictions that are acceptable from those that are not, is that those values are part of the interplay of values and could not possibly be more entitled than others to set themselves as ultimate. That leads us, because of the competition of fictions, to look for the title of their distinction into *acceptable* and *not acceptable* in the ascendancy that one takes over the others. But *authority* itself presents difficulties. The *first one of them* is that it is not because a fiction overcomes the others that it is the better founded. In other words, force is different from authority. Overcoming the others is not yet the evidence of a supremacy of authority. But how can authority be distinguished from force? What

⁴⁰ See particularly: *L'idée de la phénoménologie. Cinq leçons*, PUF, Paris, 1970, p. 42.

is best entitled to dominate may be crushed by force. But saying that is falling into a *second* difficulty. If victory is not a good sign of authority, does it not become unavoidable to present authority as serving other values (justice, happiness, utility, or whatever else) than itself, as if it had no consistency in itself? But authority has its own value, if only that of being able to settle values into reality, since they are not naturally in it and could not possibly be there spontaneously. The problem is, and that is a *third* difficulty, that we may find again the abyss that threatened on the side of fictions. Who, indeed, what instance, will be able to say, without exerting any coup de force (which authority intends to distinguish itself from) on what side the validity of the overcoming of a configuration of concepts and values is? The regression could well go on endlessly.

2. We confess that we are little convinced by M. Scheler's way of locating the authentic value of authority when he created the idea of a *moral discernment* which would specially allow to recognize values⁴¹. That sense of values that would qualify real authority, be it detected in the agents themselves, who invest themselves, or in another, gives the impression of a *deus ex machina*, which transforms the problem into the solution. The insufficiency of such an inversion is clear: if authority is not force but some institutionalization in reality, neither is it what may be detected by some "moral sense", whose *ipsedixitism*⁴² is obvious. But then, what gives authority to fictions, if it is not the very fact of some domination, or the certainty of being more entitled than others to assume such a domination? To answer that, it seems difficult to avoid considering a to-and-fro motion which, from the reality of the conflict or the competition between the configurations of concepts and values that the fictions are, goes up to consider rules and laws, and then goes back to that reality loaded with new assessments that are always too chimerical, but whose intention of rectifying reality is not altogether absurd and completely out of place.

3. One may here ask where the great principle of Hume is - that the shift from "to be" to "ought to be" needs to be examined better and denounced. Are not our previous considerations come to such a degree of con-

⁴¹ M. Scheler, *Le formalisme en éthique et l'éthique matérielle des valeurs*, NRF Gallimard, Paris, 1955, p. 335-336 [339-340].

⁴² To use Bentham's expression.

fusion? But could Hume himself respect his principle, when he talked of measure creating its own phantasms, which the history of techniques itself allowed to correct, or when he talked of cause following the psychic dynamics from which it results, while giving it logical rules? Apparently, it is difficult to *a priori* define rules that would make it possible to distinguish between fictions without going through unending historical processes, which would look like the slow and infinite uplift of law by *Common law*.

4. Of the theory of fictions (is it necessary to add that?) we have presented only a simplified vision here, for we do not have all the necessary instruments, nor a precise idea of its expanse. We have shown, at least in some diverse sectors, that the theory of fictions perfectly applied and allowed for original characterizations. It seems reasonable to wish that such researches allow to go further, though Bentham quite legitimately thought that they were a matter for ontology, that is the science that is desired or looked for, as Aristotle called it.

Neither do we have a precise idea of its logic. But I think it is possible to work towards one. The actual difficulty is that it is possible but it is not so easy to withdraw it after it has brought its effect. We introduce it to beget an effect but the withdrawing of it is difficult. Nevertheless, I suppose that a solution may be reasonably expected on this point.

5. Such a theory is a critical one, which, far from endeavouring to confirm a sort of analytics of elements that would be set beforehand, finds out about its objects and the motion of their concepts, whose increasingly sophisticated folds allow the mind, through some sort of interjection, to identify to them or to be assimilated into them on a more or less long-term basis. That procedure, which is not preceded by anything else than cultural acts themselves, which produce methods, results, works, and values, has meaning only insofar as the person who allows that interjection works on those objects and their concepts without placing themselves too much outside them. This is approximately that type of task that P. Kaufmann undertook about K. Lewin's "theory in the field" and in the domain of psychoanalysis itself, which he practiced.

6. The last conclusion is that we had better talk of the theory of fictions as a theory of culture or of civilization rather than as analytics; for example, though it does have some properties of the latter, no concept is analyzed without being related to others that belong to different fields, nor any value isolated from other

values. A theory of fictions is therefore constantly stating its object while always suspecting the discourse that seems to be on the object to be at the same time, and maybe more fundamentally, a discourse on another object. A discourse on relations of likenesses within families is as fundamentally a discourse on the perception as a discourse which is supposed to be more directly on perception is a discourse on a manner of considering language or politics, for behind it a conception of perspective, a conception of translation or political power, is visible. A theory of perspective can also inspire a theory of affectivity. The theory of fictions is a generalized practice of the mirror, which inverts the direction of the schemes and theses that offer too easy supports, and makes it possible to wonder whether it is not the contrary, that perception should be read from translation or the theory of perspective from affectivity.

It appears that fictions are classifiable under three headings: the hypothesis we make while we know that it is false; the intrinsic contradiction; the effect of screen or inflexion by which a notion or a proposition gets its “transcendence” and seems to return upon itself. Furthermore, each one is relying on the other; so the difficulties of contradictions are solved by making some transcendence. But we have still a long way to run before solving the question of admissibility (validity) or inadmissibility (invalidity) of a fiction; except by the criterion that the construction stands fast or does not.

Bentham said that truth was “a powerful and strange sort of character, a sort of a slippery eel”. Lacan also said more gracefully but with a touch of sexism, that it was a sort of nice girl coming out of a well, shivering and nude⁴³. It seems that it is playing on the interaction of reflection of mirrors that does not make the same be symmetrical, but displace it. That displacement and transformation allow the differentiation and efficiency of the work of fiction in its distance from the provisory real entities. From the moment one is convinced that sciences and theories are fundamentally *constructions*, that they are neither a return to an origin, nor dependent on some original soil, that they are no more descriptive in the meaning of a copy or of a lay out, but that they are productions of fictions, philosophy only has to interfere in that interplay of theses so that they reflect one another and oppose one another, for their authority to better reveal itself.

⁴³ Lacan, *Écrits*, Le Seuil, Paris, 1966, II, p. 232.

II. POWER, COMMUNICATIVE ACTION, OR LOOSE FEDERALISM?

An Alternative Conception of Power: Some Implications

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Introduction

A particular conception of power has dominated much of the discussion on the nature of opposition in its various forms; namely, unilateral control by one over another. Whether one is talking of the state (or a similar group) or of an individual, it is assumed that its power over the other or others means that it has dominance or authority such that the other loses its freedom. Accepting its power means obedience or compliance. Rejecting or resisting it can take various forms, such as revolution, revolt, civil disobedience, etc. Underlying both reactions is the same conception of power.

In this essay I will like to put forward an alternative conception of power. Here power is understood as respecting the autonomy of the other; and the exercise of power takes the form of influencing, appealing or attracting the other rather than controlling it. Because such a conception of power is rooted in the metaphysical category of creative synthesis, as discussed by the American philosopher Charles Hartshorne, it is important to examine it in some detail. If power is conceptualized in this way, I believe that it will necessitate a re-thinking of our reaction to such a power, whether positively or negatively, and will lead to a different discourse on opposition. Limited to drawing out this implication, this essay aims to highlight the importance of revisiting the assumed concept of power in many discussions. Whether such a conception of power is credible and workable will need to be critically examined.

The Concept of Power

Power is generally equated with authority. Thus, when one possesses power, one is deemed to have some authority. An individual can have power, and so can a body of individuals, like the government or the state. In connection with this general understanding one could ask about the kind of power one has, its basis, its legitimacy, and even the extent to which it applies and so on. But to some extent, power is really a relational concept. It does not simply connote possession but it also implies its exercise over another, the recipient of the action. Having power, despite the description, is thus more than just acquiring an entity or enjoying a particular status. There is the general expectation that whoever is regarded as powerful stands in a particular relationship with another, but the relationship is unequal since the powerful has authority over the other, and not vice versa.

The nature of that relationship, as exercised by the powerful, is the focus of this essay. The usual understanding of power is that one has unilateral control over the other. Thus, an important corollary to it is the concept of freedom since the other can become restricted in its exercise of whatever freedom it has by accepting the authority of the powerful. Thus, it is said that the more powerful one party is, the less free the other party becomes. On the other hand, assuming some freedom on the part of the other party, it can assert itself by opposing it. Hence, there is talk of the various forms of opposition such as rebellion, resistance, civil disobedience and so on. Such talk will necessarily involve other issues, but it seems to me that it rests on “what one does with the control over one” by the powerful. If this is true, then perhaps a case could be made for re-examining that very basis. The claim that is being made here is that a different conception of power will have significant implications for our conceptions of resistance, opposition, rebellion and so on.¹

¹ This point is well illustrated in the different understandings, with implications, of America’s role in international politics in the context of the current crisis as articulated by presidents Obama and Bush.

Creative Synthesis

In putting forward an alternative conception of power, I should like first of all to discuss at some length Charles Hartshorne's concept of creative synthesis since it is really the core of what power means in this context. Creative synthesis can perhaps be succinctly described as a metaphysical description of the workings of reality. Given the hostility in some quarters to anything that smacks of metaphysics, it is essential to add that the term "metaphysical" as he uses it is quite different from the usage of that term that has led to the criticisms of those who have opposed any reference to metaphysics in any philosophical discussion. Moreover, it will be asserted that such a conception - far from being a merely theoretical construct - is actually based on some scientific interpretation of the nature of reality.

In Hartshorne's philosophy, "metaphysical" means that the description can be said to be applicable to the whole of reality.² Creative synthesis as a metaphysical category is thus a description that covers all of reality and is necessarily true of every reality. According to Hartshorne, in every happening or event there is an old as well as a new (or creative) element. The old consists of previous happenings or experiences which give rise to and which persist in the new. There is permanence since in the synthesis the prior data are preserved, the synthesis being the holding together of data. The many become one, which in turn produces a new many, and so on. It is an accumulation of these prior acts or a "putting together" of factors into a whole. But the resulting synthesis is a new actuality or experience because a different kind of experience has emerged from the coming together of past experiences. Previously there was the separate existence of the included realities, but now there is a unity. Furthermore, the synthesis is spontaneous or free because none of these experiences - individually or collectively - dictated the exact unity that would arise. A synthesis emerges rather than being determined. Hence, an experience or happening cannot be fully described in its total unitary quality merely by specifying what its constituents are. Each experience enriches the totality of reality by being an additional member.

² For further discussion of Hartshorne's understanding of metaphysics, see his *Creative Synthesis and Philosophical Method* (London: SCM, 1970), chs. II and III.

The concept of creative synthesis (or simply, creativity) is really Hartshorne's interpretation of causality. Every act is viewed by him as creative. However, each creative act is influenced by its past acts and does require them even if it cannot be determined precisely or fully by these antecedent acts, which are simply earlier cases of freedom. These acts, those of ourselves and of others, restrict the freedom of the new act, establishing and limiting the possibilities for an otherwise free and creative activity. On the other hand, they never determine them fully. Thus, Hartshorne defines causality as the way in which any given act of creativity is influenced or made possible, but yet not completely determined, by previous acts.³ Because past free acts narrow down any creative act, there can be a certain measure of prediction. Hartshorne uses the analogy of the banks of the river which give the flowing water its direction but do not entirely determine its movement. As he puts it, "Causality is the boundary within which resolution of indeterminacies takes place. Causal regularities mean not the absence of open possibilities but their confinement within limits."⁴

Hartshorne thus repudiates the deterministic version of causality. In his view, absolute determinism regards a happening as already completely predefined in its antecedent causes, each state of the world described as containing in reality an absolute map, as it were, of all subsequent and all previous states. Absolute determinism does admit that humans will never be able to read the maps except in radically incomplete and inaccurate ways. But Hartshorne regards this doctrine as an incorrect reading of the universality of causation because it is too strict an interpretation. Causes, as far as he is concerned, never determine the effect in all its details. A cause is necessary in the sense that without it, there can be no effect. But when all necessary conditions for an event have been fulfilled, it does not follow that the event will take place in precisely the way it is predicted, merely that it may take place. A cause is necessary, but not the effect. There will be an effect but not a specific or a fully determinate effect. The creative aspect of a particu-

³ Hartshorne, "Philosophy after Fifty Years" in P. Bertow (ed.), *Mid-Twentieth Century American Philosophy: Personal Statements* (Atlantic Highlands: Humanities Press, 1974), p.143.

⁴ Hartshorne, "Can Man Transcend His Animality?" *Monist*. 55 (1971), p.216.

lar effect, therefore, lies in that it is never literally anticipated. According to Hartshorne, “To ask ‘why may not the antecedent cases completely determine the given?’ is to show that one has not grasped the meaning and pervasiveness of creativity or spontaneity”.⁵ There is a certain originality or freshness in every effect. Inasmuch as it is creative, it is partly unpredictable, undetermined in advance.

Some Logical and Metaphysical Underpinnings

To understand more fully Hartshorne’s concept of creative synthesis, we need to examine its logical and metaphysical underpinnings. It will be noted that the term creative synthesis indicates a certain amount of duality (as opposed to dualism) in the description as well as in reality itself. It is a concept that is grounded in the logic of what Hartshorne calls the law of polarity and supported by his general metaphysical scheme. To these we must now turn.

According to the law of polarity, which Hartshorne says he has taken over from Morris Cohen, “ultimate contraries are correlatives, mutually interdependent, so that nothing real can be described by the wholly one-sided assertion of [ultimate categories such as] simplicity, being, actuality and the like, each in a ‘pure’ form, devoid and independent of complexity, becoming, potentiality and related categories”.⁶ However, although polarities are ultimate, it does not follow that the two poles are in every sense on an equal status. As mere abstract concepts they are indeed correlatives, each requiring the other for its own meaning. But in their application to the reality itself, one pole or category includes its contrary.⁷

This law is said to pervade reality. If one reflects sufficiently, one can expect to find all of reality revealing certain abstract contrasts, such as complex-simple, relative-absolute and so forth, which are ultimate or metaphysical contraries. The two poles or contrasts of each set stand or fall together. Neither pole is to be denied or explained away or regarded as “unreal”. If either pole is real, the contrast itself, i.e. the two poles together, is

⁵ Hartshorne, “Philosophy after Fifty Years,” p.143.

⁶ Hartshorne, *Philosophers Speak of God* (with William Reese) (University of Chicago Press, 1953), p.2.

⁷ *CSPM*, p. 99.

also real. Although only one expresses the total reality, its correlative also says something about that reality since it is included in the other pole. There is a basic asymmetry or one-sided dependence: what is concrete includes what is abstract, not vice-versa. As a result, metaphysical categories as exemplified by concrete realities are always to be found in pairs. No concrete individual is merely simple, it is also complex. There is no such thing as pure effect. The same entity is, in another aspect, also a cause. No concrete entity can be said to be solely necessary, for in a different context it is also contingent. No happening is merely a synthesis, it is also creative.

The pairing of metaphysical categories runs through Hartshorne's metaphysical system. He does not see any contradiction in ascribing opposite metaphysical categories to the same reality provided they refer to different aspects of that reality. According to him the law of non-contradiction is incorrectly formulated as "no subject can have the same predicates p and $not-p$ at the same time". What needs to be made explicit is they cannot be applied in the same respect. Hartshorne explains that a person can change in some respects without changing in every way and the world may be finite spatially and infinite temporally. In all of these the predication of contrasting attributes is not on the same ontological level for one set refers to the concrete aspect while the other to the abstract.

Turning now to his metaphysical scheme, it should be clear at this stage that reality for Hartshorne consists of events or happenings, not substances. The concept of creative synthesis is in fact a description of activity or of action rather than of things. It is for this reason that the term "process" has also been used with reference to his philosophy inasmuch as process or becoming, rather than being, is the fundamental reality. Reality thus is a series of events or activities or processes, interconnected in creative synthesis.

Hartshorne introduces a metaphysical distinction which has a bearing on the concept of creative synthesis. Calling the concrete state of any reality its actuality, Hartshorne says that actuality is always more than bare existence. "All existence ... is the 'somehow actualized' status of a nature in a suitable actuality, this actuality being always more determinate than the bare truth that nature exists, i.e. in some actual state."⁸ That the defined abstract nature is somehow con-

⁸ Hartshorne, "Tillich and the Other Great Tradition", *Anglican Theological Review*,

cretely actualized is what Hartshorne understands by existence. How it is actualized, i.e. in what particular state or with what particular content, is what is meant by actuality. The abstract definition of something, its essence, exists if and only if it is actualized or concretized somehow or is in some concrete form. However, one cannot deduce actuality which is concrete from an essence which is the abstract definition of the thing. In other words, actuality never follows from essence. Thus, the essence ‘humanity’ exists if there are men, no matter which men or what states are actualized. But from ‘humanity’ one cannot ascertain which men are actualized.⁹ There is a manifest difference between existence (the truth that an abstraction is somehow concretely embodied) and actuality (how that embodiment occurs).

Since actuality is concrete, it is finite. This means that some possibilities are left out and thus prevented from being actualized. Actual reality in all cases is limited. Actualization is determination which, in turn, implies partial negation. It is the acceptance of limitation. It means choosing this and therefore not that. Hartshorne maintains that concrete actuality must always be competitive; that is to say, it must at all times exclude something else which could be equally concrete. Thus, as events come together or are “synthesized”, other events are being excluded. It would be more accurate in this metaphysics to say that the resulting synthesis comes into actuality (rather than into existence).

Creative Synthesis as a Conceptual Model for Power

Taking power in the first instance as implying a certain amount of autonomy - rather than exercising authority or control - creative synthesis means that there is truly a plurality of powers and that every reality is endowed with some power. In other words, to be is to have some power because it is the actualization of some potentiality. This is because actualization is to some extent self-creation. A plurality of beings therefore connotes a plurality of powers. For Hartshorne, every item of reality is creative and thus exercises varying degrees of power. It can to some degree decide what

43, 3 (1961), p.258.

⁹ Hartshorne, “How Some Speak and Yet Do Not Speak of God”, *Philosophy and Phenomenological Research* 23, 2 (1962), p.276.

it wants to be. Every reality has its own appropriate form of creativity.

This variety means that every concrete effect has numerous real causes. But every cause is also an effect. Creativity means freedom and novelty but it also signifies partial determination by previous creativities or creative acts. In being determined in this way, any creative act is at the same time, though not in the same respect, an effect. Activity and passivity are correlatives: what cannot act cannot be acted upon, and what cannot be acted upon cannot act. Power is thus acting upon other genuine powers. Every reality thus sets limits to the freedom of others but does not destroy it.

Recognizing the genuineness of the freedom of others means, not taking away or preventing the freedom of others, but fostering and inspiring that freedom. The powerful - in this conceptuality - is like the creative orator, thinker and artist who inspire creative responses in others. The powerful is one who encourages appropriate originality in others, rather than dictates specific actions. The powerful rulers are those who place others in a position to make fruitful decisions of their own. Such people awaken creativity in others, inspire them by providing them with opportunities and by fostering creativity in them. The powerful can impose limits on disagreements, conflicts, and confusion, but cannot simply eliminate these things. For that to be true there must be a monopoly of power, which is what is rejected in this conceptuality. This is not to deny people their existence since the meaning of power is, contrary to its more frequent usage, not controlling but eliciting responses which are partially self-determining or free. The ideal form of power does not monopolize power, but allots to all their due measure of creative opportunity.¹⁰ It inspires freedom in others, thus enabling them to act freely yet in such a way that a coherent and in general harmonious world comes about. There is nothing ideal about possessing total control and reducing others to powerlessness. Hartshorne maintains that such idealization is actually symptomatic of weakness. It is the inferior, weak beings who yearn to be able to manipulate everything. Concentration of decision-making in the one being is in principle undesirable because the values of life are essentially social, involving the interactions of more or less free individuals.

¹⁰ Hartshorne, "Biology and Spiritual View of the World: A Comment on Dr. Birch's Essay", *Christian Scholar*, 37, 3 (Sept., 1954), p.409; also his, *Omnipotence and Other Theological Mistakes* (SUNY Press, 1984), pp.10-26.

Understood this way, power over others is comparable to the control of one mind over another. A mind is influenced by what it knows, its object. A mind which knows A but not B would be different from one which knows B but not A. Change is effected in the mind through a change in the object. By altering the object of our awareness, the powerful also influences us. When it changes, we as other knowers change in response to the altered state. The powerful thus influences us not by controlling every detail of our action but by determining its own action, which is the inclusive object of our thoughts. We can still disobey but not disregard it. In reacting against its suggestion the disobedient is still influenced even though negatively. A state of rebellion or resistance to a suggestion is not the same as the state of unawareness of the suggestion.

Governance in this scheme is taking each successive phase of development and making good use of that phase in one's own and furnishing others with such guidance or inspiration as will optimize the ratio of opportunities and risks for the next phase. The truly powerful sets the best or optimal limits to freedom. Optimal limits mean that they are such that, were more freedom allowed, the risks would increase more than the opportunities, and were less freedom permitted, the opportunities would decrease more than the risks. Those in power set optimal limits for the free action of others by presenting at each moment a partly new ideal which influences our entire activity. Thus, no guarantee of perfection results, because no power could insure the actions of others. There is no complete determination of any action by one will. Rather, all realities form themselves and form each other within limits. It is the setting of these limits which constitutes the ordering of all activities.

Some Observations

Given such a conceptual model of power, what are the implications for our understanding of the various forms of resistance? One important consideration is that such a description of the workings of reality - generalized to include human actions - means that the relationship of one cause with another does not result in the loss of freedom of the other causes, even when there is an attempt to do so. Rather, they become included or incorporated into the original cause, resulting in a new entity. In others, there is no absolutizing of the control that one exercises over the other. There is no robbing of anyone's autonomy. The other remains an

entity in its own right, and there is no loss of its own power, so to speak. Another consideration is that the attempt to exercise unilateral control; and it is merely an attempt in this way of thinking which, in fact, has an effect on that party as well. It becomes an integral part of the actuality of that party, and therefore has a real consequence on that party. In other words, one becomes a different reality because of what one does or tries to do.

It could be objected that such a conception of power is idealistic. If by this judgment one means that it cannot be regarded as effective for bringing about change because it is dependent on its acceptance by those who have or are in power, that may well be true. It is for this reason that it is indeed legitimate to discuss various forms of resistance, even radical ones. It would, however, be regrettable if this is the only recourse we have. On the other hand, if by “idealistic” is meant that it is too theoretical, that would hardly be true if indeed we take into account, not how we perceive the workings of nature but how, at a deeper level, reality actually works. This conceptuality, as clarified earlier, is based on a certain scientific explanation of reality. If this is indeed correct, then it is more realistic than idealistic.

Admittedly, this is not an easy task, and one would be naïve to think otherwise. Changing one’s direction or adopting another perspective involves much more than just consenting to it. That difficulty becomes greater when one must think also of implementing it, as would be the case if we discuss not just a concept of power but how the other would respond or react to it. It is for this reason that there is a real need to continue to reflect and evaluate various forms of resistance to power as traditionally understood. On the other hand, our difficulty at times is continuing with our entrenched conceptions in our discourse regarding human activity. We do need to engage in what Herder Camara called “a cultural revolution”. Otherwise, an unfortunate consequence here is not just confusion but also questionable behavior. And if we are to correct that, it is important that we do regularly and consistently uncover our assumptions and subject them to a critical appraisal. In the present context, the challenge of re-thinking our conception of power really means that there is a need to direct people towards a fundamental issue as it will have implications not just on how we are to think but also on how we are to live.

Relearning Federalism: The Lisbon Treaty Reminds America of Its Roots

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Human nature is the same on every side of the Atlantic, and will be alike influenced by the same causes.¹

Thomas Jefferson

The American experiment in constitutionalism is under-appreciated as a source of insight into federative implications of the Lisbon Treaty. The result of the world's first attempt to create a republican federation on a large scale, America's experience yields over two centuries of evidence upon which to assess the philosophic foundations of popular sovereignty, multi-level governance, and the rule of law. Uncodified assumptions of the framers of the United States Constitution regarding their hybrid notion of federalism (compounded by our imperfect knowledge of their intentions) precipitated considerable interpretation, redefinition, and acute political divergence among their successors. Consequently, the young federation's fundamental law was susceptible to transformation that abetted a centralist arrangement for society and a policy-setting role for the judiciary. There are parallels between some phenomena of American federalism and the potential for similar manifestations in Europe exist, should comparable provisions of the Lisbon Treaty be manipulated to advance particular agendas.

The peculiar dynamics of 21st century governance in the United States provide evidence of a unique circumstance in political evolution. A society that once embraced the core republican doctrine of popular sovereignty within the rule of law lost sight of its roots, forcibly compelled unity from a voluntary union, and became captivated by nationalistic policies veiled by creative jurisprudence. Now institutionalized, this arrangement is held in

¹ Harvey C. Mansfield, Jr., ed. *Thomas Jefferson: Selected Writings*. Wheeling, IL: Harlan Davidson, 1979. p.31.

place by the sheer scale of its federation and its growth is abetted by an entrepreneurial judiciary. Although circumstances in Europe today are vastly different from 18th century America, as the European Union more closely integrates its political, economic, and social functions pursuant to the Lisbon Treaty, some important comparisons with the perturbations of federalist theory in the United States warrant consideration.

A study of early American federalism and its weakening as a result of untoward events during the mid 19th century could become entangled in the personalities of the prominent actors on the political stage of that era. Without assessing the moral ethos of any particular person or situation, or rushing to indict any action or catalyst, the bold experiment with certain concepts of governance on one side of the Atlantic can be compared to similar but time-distant implementation on the other. Political radicalism in America during the 1800s and the ensuing catharsis of the remnants of federalism in the United States drove deliberate as well as inadvertent enablers of the centralist agenda to shift the fundamental character of popular sovereignty away from that intended by the founders of the republic for the united American states. Today, the people of these now homogenized American political subdivisions stumble over the lessons of their history and then, without introspection, pick themselves up and continue on as if nothing happened. Responsible citizenship, however, asks more of them. While Woodrow Wilson made clear his opinion that the nation was not really born until after the Civil War, he acknowledged that the South was right in law but wrong in history. In contrast, he stipulated that the North was wrong in law but right in history.² Europe can be right in both.

Without postulating solutions to the complex challenges that confront the peoples of Europe as they pursue a federal structure for their multi-lateral union, it is useful to consider the array of weighty lessons embedded in the experiences of their American cousins with the world's first large scale republican federation. An often unseen or concealed threat to the citizenry of such a system of governance is the inevitable temptation for centralists to curtail the authority of member states and blend regional tradi-

² William Edward Dodd. *Wilson and His Work*. NY: Doubleday, Page & Company, 1920. p.28.

tions. Thus, as those in power further their agenda, be it benevolent or not, the unwitting citizen is alienated from the principles of states' rights. Consequently, the capacity of a system based on multi-level governance to avoid nationalistic dominance is weakened. The American experiment in republican federalism, just as the Russian experiment in communism, was an untested and relatively new-found political theory instituted on a grand scale. A death knell resonated through both some seventy years after their births when eleven states seceded from the former and fifteen from the latter. Secession from the USSR, explicitly authorized by the Soviet Constitution, was relatively peaceful; secession from the United States, an implicit right taken for granted by the founders,³ was prevented by the bloodiest war of the 19th century.

While such a dark political horizon is unforeseen under the Lisbon Treaty, consideration of Eurocentralist processes as they gain traction within Eurofederalism is an anxiety-laden pursuit, a multifaceted project, and a worthy endeavor if for no other reason that to invite attention to potential concern for multi-level governance in Europe. When pressed toward integration on a broader plane, toleration of diversity and distributed authority will become a necessity in a federated Europe. The present accumulation of international agreements and other supranational governance structures in Europe are fundamentally a confederative arrangement. It remains to be seen if that decentralized character can remain under the Lisbon Treaty.

Nations tend to federate for protection, to synchronize their economies, and to promote fundamental human rights within a wider social context. From the theories of Aristotle, Plato, and Althusius to the philosophies of Hobbes, Locke, Hume, Rousseau, and Montesquieu, the core reasons why societies organize and federate are to guarantee peace and security; assure social justice; protect the rights of the individual, and to provide economic regulation and development as well as public services beyond the competences of the individual and community. These philosophic influences with others offered the founders broad perspectives. However, unlike those

³ The constitutions of Massachusetts, North Carolina, South Carolina, and Vermont, and the ordinances of New York, Virginia, and Rhode Island ratifying the U.S. Constitution affirm state sovereignty or unilateral authority to resume powers delegated to the federal government.

great thinkers who never actually had to experience the social structures they theorized and advocated, the men who framed the American experiment in federalism provided the world with a rare example of philosophic accountability. America's first home-grown philosophers ingeniously fused ancient with, for them, recently developed social theories to form the world's first concept of large scale, representative, multi-level governance under the rule of law. *The hybrid arrangement of society created by the American founders must be recognized as significant world philosophy.* Not before or since have such important theories of social arrangements been developed by a handful of men in such a compressed timeframe. Without the luxury of being insulated from reality and urgency or the comfort of being absolved of accountability for their ideas as many philosophers enjoy, they constructed a model for a unique society then labored to implement it. They not only devised and instituted a totally new social system but they had to live under it, too. Prominently, the ideas of Rousseau's popular sovereignty and Montesquieu's separation of powers were embedded in the synergistic vision of the founders and resonated in their pursuit of a new style of mixed government.

The American hybrid experiment in federalism was marked by time-urgent implementation of an extraordinary new theory of governance that thrust the theoretical concepts of a variety of political philosophies into the real world. Building upon this fresh idea and analyzing its subsequent struggles with large scale republican federalism, similarities and potential lessons can be applied to the European Union's recent commitment to pursue a closer federative arrangement. America's volatile history is a clear looking glass through which Europe's new initiatives in federalism can be viewed. At 162,000 words - more than thirty times longer than the United States Constitution - the Lisbon Treaty projects clarity of intent but also presents the European Union with similar contentious potentialities. At the same time, it incorporates substantial remedies. The phenomena that reveal the fundamental nature of governance in the United States is also evidence of a unique set of causes and effects that can be directly contrasted with constitution-like initiatives in Europe today. Although supranational law in Europe is vastly different, America's experiences nonetheless provide important in-

sights into possible consequences when member-state sovereignty is abrogated and with it the ultimate means to trump the actions of a central government that overreach conferred authorities.

The American experiment with republican federalism demonstrates the human tendency to consolidate control and influence by those with the opportunity and means to do so. While American and European constitutional development and implementation are in some ways parallel, in others they are clearly divergent but both of their unique paths to (potential) centralism contain the political disabling of sovereign republican principles and ultimately arrive at judicial review as a de facto policy-setting process. Vigorous judicial engagement in the political process was not intended but nevertheless evolved in America; it is distinctly intentional under the Lisbon Treaty to promote European integration. America's experience highlights many ways by which the centralist agenda has been advanced; it relates to Europe in some direct and some to-be-realized fashions:

Popular Sovereignty

John Locke purported the only legitimate governments are those that rule by consent of the governed⁴ but the will of the "the People" is difficult to distinguish, giving rise to competing voices claiming to be their spokesperson.

Disenfranchisement

(Circumvention of states) By promoting a direct connection with citizens via amendment, statute, and judicial decree, the central government undercuts the power of the states. Unlike the EU, revenue generation/taxation is also direct. (Citizen democratic deficit) At some size, a representative loses touch with those he represents; at some size, an assembly is not able to engage in effective dialogue. The U.S. House of Representatives is artificially but statutorily capped at 435 members causing a constituent ratio roughly 1/700,000 today. In two hundred years, the average constituency increased by 18.8 while the number of members increased by just over 3.

⁴ John Locke. *Second Treatise of Civil Government* 1690, #222 (Lasslet Edition). NY: Cambridge University Press, 1960. pp. 460-461.

The average American now has a representation quotient that is only 5.3% of that experienced in 1803.⁵ Furthermore, based on the 1941 reapportionment act,⁶ inequality of district size is US law. Montana's sole district is over 1.8 times larger than Wyoming's district, which translates to a Montana resident-to-representative ratio of only 55.7% of his fellow citizen in Wyoming.

Size and inertia

At some point, a polity is simply too large to be responsive and becomes disconnected from its citizenry. Now strongly centralized, America is home to almost 310 million people. From a philosophic perspective, Montesquieu recommended city-states of 60,000; Rousseau, about 25,000; da Vinci asserted 30,000; Saint Sir Thomas More's Utopia had cities of 60,000 to 96,000 people; Plato stipulated 35,000 to 40,000 and Aristotle suggested 30,000 to 50,000 people. The sociological verdict is that as cities get bigger, they increase in density, fragmentation, crime, social stress, loneliness, selfishness, and racial and ethnic segregation - problems begin to arise at about the 100,000 level.⁷

Human biology

Three natural considerations challenge the human capacity: the sense of proportion per da Vinci's *golden ratio*,⁸ primal interactivity (for optimal involvement, groups should contain five to seven members), and span of control. While theory and experience cannot define precise limits, at some level supervision breaks down; four factors can cause it to vary: function, personality, time, and space.⁹ Social theorists posit the maximum number of

⁵ Calculations based on data from the US Census Bureau (all residents, not only citizens). Total population numbers were used, including free white males and females of all ages as well as all slaves (counted by a factor of 1).

⁶ Method of Equal Proportions; U.S. Census Bureau.

⁷ Kirkpatrick Sale. *Human Scale*. NY: Coward, McCann & Geoghegan, 1980. pp.192-193,195.

⁸ Ratio of 1 to 1.618... (e.g., aesthetically pleasing proportion, the ratio of the longer side to the shorter).

⁹ Rumki Basu. *Public Administration: Concepts and Theories*. New Delhi: Sterling Publisher Ltd, 1994. p.189.

subordinate relationships to be between 57 and 186.¹⁰ American federalism is non-conformant.

Judicial review

The U.S. Constitution did not provide one branch authority over another, and therefore was silent on which branch would have the last word on constitutionality. Given the Lisbon Treaty mandate that the European Court justices have only European integration in mind,¹¹ the EU is destined to repeat America's failure to hold political action above legalism, but this potential may be attenuated since Member States maintain direct influence on the selection of European Court justices.

America's inheritance from Europe is manifested in the resilience of its early pioneers and the passion of immigrants who sacrificed everything to chisel a country from an unknown wilderness. Less recognized is the philosophic bequest of the great European thinkers who inspired colonial leaders to embrace the fundamentals of individual liberty within an idiom of shared political competences under the rule of law. Never before have men progressed from new political theory to placing it in practice in so short a time span, nor have philosophers had to construct and then govern by the social arrangements that they advocated. While the seed of modern federative thought was planted and sprouted in parts of Europe, it blossomed in 18th century America. The framers of the U.S. Constitution envisioned the need for continued cultivation to maintain its relevance and even for pruning it from time to time. However, its federative-republican roots clearly extend to Europe and its evolution offers important insights for those who pursue similar arrangements for European society today. Of concern, American federalism is now manifested by serial autocracy in the White House (the epicenter of patronage), an entrepreneurial judiciary whereby policy can be set by five unelected people (majority on the Supreme Court), and a Congress that is virtually unaccountable to the people (94.2% of incumbents who seek reelection are reelected). Clearly, the intended checks and balances are not working. At the federal level, horizontally, the three branches

¹⁰ Ibid.

¹¹ Effectiveness principle; *effet utile*.

rarely cross swords; vertically, the states as entities are impotent to rein things in.

The American conundrum is that it presents two incompatible republican characters: one Jeffersonian and one Lincolnian. This is a fundamental difference that portends a basic concern for Europe. In the wake of the colonies' secession to abate absorption into the Hobbesian British home-state, the Jeffersonian tradition postulates a society prior to government; man will give up some rights to achieve social order. The task of government is thus to provide and to preserve the general order of pre-existing society. In Lincoln's Americanism, this arrangement is not possible since the states are *not* sovereign and the Union is *indivisible*. The states did not create the Union, the Union created the states. Accordingly, reflective of Thomas Hobbes as well as Jean Bodin,¹² the states are not and never were sovereign political societies. Since the American people in the aggregate are sovereign, it therefore follows that the states are mere administrative units of the central government through which the will of the American people is expressed. Per this rationale, the central government is *not* a service agency of the states but instead the ultimate legitimate voice of the people with the right to define the limits of its own powers. Thus, the task of the federal government is to mold and shape a national society.

The Lisbon Treaty, as seen through the looking-glass of constitutional evolution in the United States, presents several significant provisions of federalist and republican theories for comparison to historic precedents. As the first large scale implementation of uniquely interleaved philosophies, the American experiment in federalism provides an exemplary model for analysis when mirrored in Europe's ongoing efforts to transition from a system of treaties to a closer federation. Many contentious issues that have afflicted America seem to have been moderated by the precision of the Lisbon Treaty, enhanced by its clear intent to respect Member State sovereignty by very specifically delineating federal competences. Although potentially mired in detail, the Lisbon Treaty's provisions check naturally evolving and man-devised circumstances that served to foster centralist consolidation and

¹² Elizabeth Kelley Bauer. *Commentaries on the Constitution, 1790-1860*. NY: Columbia UP, 1952. p.212.

usurpation of authority in 19th and 20th century America. In theory, it effectively shunts such potentialities but the history of its practical implementation has yet to be written. Citizen awareness, aggressive involvement in the affairs of their governments at all levels, vigilant defense of Member State prerogatives, and earnest support of subsidiarity and proportionality will fortify the European Union for the inevitable assault upon (or decay of) the tenets of its new federative social arrangement.

A careful distinction must be made between the institutions of the United States and democratic institutions in general. ... the laws of America appear to me to be defective in several respects, and as I can readily imagine others, the peculiar advantages of that country do not prove to me that democratic institutions cannot succeed in a nation less favored by circumstances if ruled by better laws.¹³

Alexis de Tocqueville, 1835

The movement to create a constitution for Europe redirected its momentum to the project of modifying existing EU treaties when the *Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community* was signed on December 13, 2007 in Lisbon, Portugal by the assembled EU heads of state/government. The drive for a single constitutional document to codify fundamental law in the European Union stalled when unanimity among all Member States became unattainable. The Lisbon Treaty, which contains much of the intended policy synthesis and procedural synchronization desired in the proposed constitution, became the implementation vehicle that served to amend the European Union's two foundational treaties: the 1992 *Treaty of the European Union* (Maastricht Treaty) and the 1957 *Treaty establishing the European Community* (Treaty of Rome), thereby creating a new political arrangement for Europe. The Lisbon Treaty renames them as the *Treaty on European Union* (TEU) and the *Treaty on the functioning of the European Union* (TFEU), respectively. The characters of the treaties are, however, significantly altered. Upon im-

¹³ *Democracy in America* Bk I, Ch 17. 1830-1835 in Henry Reeve, trans. Cambridge, MA: Sever and Francis, 1863.

plementation of the Lisbon Treaty on December 1, 2009, EU functions continue to be directed by an arrangement of lateral treaties instead of one supranational document but it is the virtual collection of all fundamental EU law, *acquis communautaire*. The Lisbon Treaty contains five sections. The first two are the TEU and TFEU. The third section is the incorporation of the European Commission on Human Rights (ECHR) as the Charter of Fundamental Rights (CFR) of the European Union. The fourth and fifth sections contain Protocols that have the force of European law and Declarations that do not. Declarations are tantamount to formal documentation of the intention of the drafters of the Lisbon Treaty, not unlike the oft-sought but illusive founders' intent of the U.S. Constitution.

A constitutional document or fundamental law by its very nature is a creation and instrument of man - and subject to imperfection. In the worst of cases, it becomes not the rule *of* law but the rule *by* law¹⁴ when men figure out how to circumvent its controls to manipulate original intent and unanticipated ambiguities via redefinitions or reinterpretations that support their own agendas. The U.S. Constitution yields pertinent lessons. In tying this to the present European situation, it is more important to offer America's experiences - good and bad - as a backdrop for the several crucial questions that arise from the Lisbon Treaty as it attempts to bring new structure to the three pillars that constitute the European Union: the idea of one European community, a common foreign and security policy, and police and judicial cooperation.

It is important to understand that federalism in America was born within a republican idiom out of an emergent need to create a government from scratch. The drafters of the constitution for the united American states had no empirical model, only theory upon which to sculpt their new hybrid and innovative form of governance. They did not have a long tradition of self rule as independent sovereign states or as a federated union. In contrast, the Member States of the European Union have experienced centuries of national autonomy and several decades of economic and societal integration coordinated by a supranational body. This is a significant distinction.

Subsequent to secession from England, the loosely aligned American states did not have to contend with an entrenched central bureaucracy with

¹⁴ Otto von Habsburg. Interview. Pöcking, Germany, September 23, 2007.

its own agenda and inertia as do those who advocate structural change to the European Union. Unlike Europe, however, young America was rushed to decide on its style of confederation. It availed itself of some untested and then-radical philosophic and political theories to set forth a federal arrangement for the newly sovereign and independent former colonies. Providing foundational principles, the constitution for this unique polity was to be sustained via a robust modification process to accommodate unforeseen and evolving circumstances as the experiment progressed. In contrast, the Member States of Europe were under no particular pressure to quickly seek a closer union and they are able to fully analyze the concepts of further integration through the lens of their own experience. Years of dealing with EU institutions and a lack of urgency to re-empower them afford the citizenry of Europe crucial insights into the functioning of the European bureaucracy and the luxury of unhurried debate over modifications to their current web of treaties. Upon signing the Lisbon Treaty on December 13, 2007, Member State governments set about convincing their citizens to ratify this international treaty and confer further competences upon federal European authorities but success was to be elusive since ratification had to be unanimous. After substantial debate, it was ultimately ratified and became effective December 1, 2009. Set upon the backdrop of America's experience, the following considerations relate to the implementation of a strengthened federative arrangement for Europe:

- EU Member States have strong traditions of separate national sovereignty.
- Europe has traditions of modern federalism (established top-down) that have linkage to innovative developments in early 19th century America.
- The Lisbon Treaty is precise, complex, and largely unambiguous but is inequitable by Protocol. Its drafters' intent is contained in 52 Declarations.
- The Lisbon Treaty implements some instances of inconsistent law among Member States to allow social harmony and political unanimity.
- The EU government is empowered but adequately constrained, in theory.

- There are economies of scale in the areas of the conferred competences.
- The EU embraces the principles of subsidiarity and proportionality.
- The Lisbon Treaty requires the judicial process to favor actions that promote European integration.
- Member States are empowered; sovereignty is preserved via specific conferral of competences.
- Member States retain substantial control of European Union mechanisms.
 - Heads of Member States set policy and elect the “President of Europe”.
 - Members of the Council of Ministers are representatives of and directly accountable to Member State governments, similar to Austria, Germany, Belgium, and Switzerland; unlike the U.S. Senate after Amendment XVII.
 - Member States appoint judges to the European Court of Justice.
 - Unanimity is necessary for fundamental changes to the Lisbon Treaty.
 - Member States can withdraw (secede).
- The Lisbon Treaty largely avoids the inherent vulnerabilities of the U.S. Constitution in establishing its pragmatic version of America’s model of federalism.
- Special interests are thwarted by codified procedures that cause legislation to be drafted by the European Commission for one subject only and prevent bobtailing (unrelated amendments).
- Intended to level the specialized lobbying impact, policy inputs are sought from private/non-governmental sectors.
- The European Union is vulnerable to expansion of the impact of human rights via judicial activism.
- The revision process to implement substantial changes to the Lisbon Treaty requires simple majority of the European Council to consider amendments but unanimity via the same procedure as original ratification (TEU Article 48.4).

While not all issues and concerns rooted in the evolutionary political landscape of the U.S. are relevant to the development of a constitution-like arrangement for Europe, there are basic considerations that transcend America's experience and offer a launch point to compare explicit and implicit similarities. Some activities are perceived as enablers as well as checks, suggesting the duality of certain policies that may contain unobvious consequences if implemented without sustained oversight. Among the many fundamental provisions of the Lisbon Treaty, five key areas of this new European social arrangement generally relate to issues that arose within just a few decades after ratification of the U.S. Constitution; they continue to have tremendous impact on the functioning of government in America. As Europe's unique style of federalism settles into operation, its politicians, Eurocrats, and the peoples of its Member States will be gripped by the evolving issues of national sovereignty, asymmetric distribution of power, assurance of core personal liberties, expanding authority of those who interpret its laws, and the resilience of organizational mechanisms that serve to check the unintended influence of any particular sector. Of these Eurofederal processes, some appear to have been structured in a manner that avoids problems experienced by America's experiment in multi-level governance while others flirt with situations that portend potentially similar pitfalls under European circumstances. Skeptics of the Lisbon Treaty brought a great deal of scrutiny to bear on the initiatives to broadly amend the existing treaties governing the EU. This bodes well for a continued watch on the new processes of European governance:

- *Member State Prerogative*. The European Union principles of subsidiarity,¹⁵ proportionality,¹⁶ conferral,¹⁷ Qualified Majority Voting, opting-out (non-opting-in), and the withdrawal clause provide checks on the legislative process and place minority protection in practice. They serve to dull apprehension by seemingly bringing safeguards to bear against potential excesses by the central govern-

¹⁵ Principle of resolution/action at lowest competent level.

¹⁶ Principle of optimal/measured response.

¹⁷ Principle that all EU competences are voluntarily conferred by Member States; it has no competences by right, thus areas of policy not explicitly agreed by all Member States remain the domain of Member States.

ment. They provide checks on the central rule-making process as a deterrent before rising to a governmental crisis. However, the principle of subsidiarity can cut both ways. At the same time it supposedly precludes central government interference with issues that can be resolved by Member States, it suggests circumvention of Member State prerogative by also supporting actions that can be effectively implemented by a sub-sovereign entity. Further, the European Commission has established a close and direct connection to the individual citizen via the Citizens' Initiative¹⁸ which fosters circumvention of national authority.

- *Democratic Deficit.* The Lisbon Treaty advances some approaches to mitigate the so-called democratic deficit in the European Union but codifies others that institutionalize it. Article 233 TFEU sets a goal – but without deadline -- for the European Parliament to draw up a proposal to lay down the provisions necessary for the election of its members by direct universal suffrage. This is to be a uniform procedure in all Member States and in accordance with principles common to all Member States. An elementary observation suggests that this will be a significant undertaking since Member States (e.g., Germany, Hungary, et al) have an entrenched method of proportional representation whereby, with limited exceptions, a citizen casts his vote for a party, not for an individual. On the other hand, the Lisbon Treaty has generally expanded the use of qualified majorities, which has the effect of dampening direct democracy. Augmenting its guarantees of minority and citizen rights, QMV assures that important policies are enacted by substantial double majorities regardless of simple majority approval. The Lisbon Treaty has retained the practice of degressive representation for the composition of the 751 member European Parliament. While continuing to theoretically allay concerns of small countries of domination by larger Member States, asymmetric citizen influence has been intentionally institutionalized in the European Union. Reflective of the inequita-

¹⁸ One million citizens from Member States have the right to call on the Commission to create new policy.

ble influence factors caused by unbalanced district apportionment in the U.S. House of Representatives, the number of MEPs apportioned to each Member State (6 to 96) produces a broad range of MEP-to-constituent ratios -- the average Maltese citizen has over 12.5 times greater representation than his German counterpart (68,000 to 856,000 per MEP).

- *Citizen Rights*. Assessing human freedoms requires consideration of a variety of complex, multifaceted issues surrounding citizen entitlements and related assurances that governments struggle to provide. Moreover, as societies evolve, the meanings they attach to such rights may call upon definitional and interpretive assistance from their legislatures and judiciaries. However, whether strengthened or (re)engineered, the resulting liberties are hardly more than abstract notions if they are not ultimately put into practice. The Capabilities Approach is a method to tangibly gauge the ability of the individual, singularly not collectively, to participate in the fullness of his community. Guaranteeing freedom of the press means little in an illiterate society. The investigation by Amartya Sen into human capabilities and subsequent identification of basic enablers by Martha Nussbaum have provided a framework to assess whether acknowledged rights are actually realized by those who theoretically possess them. Their efforts have provided an apolitical means to look beyond mere possession of the effective tools of citizenship to the robust ability to use them effectively. Significantly, the essence of the Capabilities Approach has been embraced by French President Nicholas Sarkozy, which portends its increasing visibility as a method to assess the meaningful reach of citizen rights in European society. In 2009, among other conclusions, the study he commissioned recognized the important role for governments in today's economies and in providing a range of collective services such as security and trade facilitation, and those of an individual nature like housing, health, and education. The United States has endured volatile social anxiety for over two centuries and now has calcified many tensions provoked by insufficiently detailed legal rights and

poorly codified civil liberties. The Lisbon Treaty, which incorporates the Charter of Fundamental Right (CFR) into European law,¹⁹ has subjected the European Union to similarly general social standards. Therefore, the Capabilities Approach may offer important - and tangible - perspectives to the possible implications of simplistically written statements of human rights as now lay upon Europe.

- *Judicial Review.* Critical comparisons between U.S. and European judicial functioning distill to two fundamental and intertwined concerns. They deal with the primacy of federal policy and formalized deference to its expansion, and containing intermediaries/hindrances to a direct relationship with the general population when expedient for the central regime to have unfettered access to the individual citizen. In both unions, legalism has emerged as a self-conferred form of legislative action and policy implementation; in many cases, it has proven to favor centralization and deliberately mitigate the sovereignty of the component members of the federation. As in the U.S., ultimate adjudication is embodied centrally in the EU, meaning that the ECJ is empowered to definitively decide an issue. However, unlike the U.S. Supreme Court, its justices are appointed by Member States so they retain theoretical linkage and empathy with their national roots although they are sworn to act independently. While the Member States control the composition of the ECJ, it is nevertheless formally charged to adhere to the effectiveness principle that requires the court to rule in the manner that promotes European integration. TEU Declaration 17 clearly requires that the principle of effectiveness, *effet utile* (practical effect), be followed.²⁰ Thus, unless formally addressed to the contrary, EU solidarity has preeminence over Member State law.²¹
- *Checks and Balances.* Maintaining equilibrium and stability of a social system within a federal idiom requires that there be inter-

¹⁹ See also Article 21 TEU regarding human rights and fundamental freedoms as general provisions for external action (foreign policy); and Article 5.3 TFEU regarding Union initiative to ensure coordination of Member State policies.

²⁰ See also Article 24.2 TEU regarding “ever-increasing degree of convergence”.

²¹ See *Van Gend en Loos (1963)*; *Costa v. ENEL (1964)*.

leaved but fundamentally autonomous components upon which each piece of the whole depends. This arrangement potentially exists in various sectors but in the context of multi-level governance, two dimensions are paramount. The branches of the central government are arrayed horizontally while the association between the federal and distributed governments can be described as vertical relationships. Each entity is established with a defined mission and specific authorities to carry it out, and they are concomitantly empowered to check the other components of government from exceeding their designated limits of action. Tangibly, the American experience has shown this balancing process to be vulnerable to circumvention via political maneuvering and to being overwhelmed by deliberate use of force. The Lisbon Treaty instituted discrete mechanisms and procedures that in ways exceed those that were put in place by the framers of the U.S. Constitution. While Lisbon Treaty language is generally unambiguous in critical policy areas, as an imperfect document, it will likely be subject to challenges and reinterpretation. As America can attest, if there is any vagueness or loopholes in the authorities conferred upon the central government, redefinition of law becomes an implied prerogative of the courts.

In the context of these concerns, the following overview, while not intending to be exhaustive, reflects important representative elements of the Lisbon Treaty. They provide some surety that Member State sovereignty will not be filleted and that parochial political interests will not be unduly facilitated by the federated European government.

1. Organization

(Executive)

- European Council. The President of the European Council, titular President of the European Union, is elected by simple majority of the members of the European Council, but cannot be a current head of state/government. US: No parallel. Such a position would be a constitutionally empowered Chairman of the National Governors Association, but not a sitting governor.

- European Commission. The European Commission is staffed and overseen by the legislature of the EU. US: No parallel. Tangentially, Congress has a role in approving the senior staff of the Administration; U.S. Cabinet Secretaries, proposed by the President, are confirmed by the Senate.
- The President of the Commission is nominated by the Council of Ministers and approved (elected) by the European Parliament. US: No Parallel. Although essentially the governmental bureaucracy of the EU, the Commission's mission could be compared to the U.S. Administration and Cabinet Secretariats but its functioning and stand-alone authorities are abundantly dissimilar.
- The High Representative of the Union for Foreign Affairs and Security Policy, appointed by the European Council, serves as a Vice President of the Commission. US: No parallel.
- One commissioner is appointed from each Member State. Per Article 245 TFEU, there is to be no influence applied by the Member State on "its" commissioner but he would nonetheless carry the perspective of his Member State. US: No parallel.

(Legislature)

- The Council of Ministers (the "Council") is composed of representatives of each Member State, one per nation at the ministerial level per Article 16.2 TEU. US: Prior to ratification of Amendment XVII, U.S. Senators represented state governments; after ratification, they are now popularly elected and state government influence is deliberately circumvented.
- The European Parliament (EP) is elected by the citizens by the Member States in accordance with an asymmetric/degressive apportionment plan per Article 14.2 TEU. Theoretically to offset the influence of the significantly larger nations, smaller countries have been given disproportionately enhanced representation, amounting to an explicitly counter-majoritarian system. US: The House of Representatives is the parallel body to the EP. However, whereas EP apportionment is intentionally unequal, reapportionment in the

U.S. Congress is by a formula that misaligns district size unintentionally.

(Judiciary)

- Member States appoint the members of the ECJ for staggered six year terms, one per each Member State in accordance with Articles 19.2 TEU and 253 TFEU. While there is to be no influence by the Member State on “its” member of the court as stipulated in Article 254 TFEU, that justice would nonetheless carry the perspective of his Member State. US: The President nominates justices to the U.S. Supreme Court; there is no state input.

2. Procedure

(Executive)

- Per Article 15 TEU, the European Council via consensus (unanimous) decision sets “general political direction” for legislation and other union policy. US: No parallel. In terms of U.S. structure, this would be a formalized association of state governors charged with setting strategic policy and providing guidance and priorities for the federal government.
- Per Articles 11.2 and 11.3 TEU and Article 300 TFEU, the European Commission must include inputs from civil society and representative associations in its research and eventual consideration of legislation and regulations. Of note, one such entity is the Committee of the Regions that assembles 350 representatives of regional or local officials to provide collateral advice to the Commission. US: No parallel. In theory, this practice solicits the expertise of non-governmental and other civilian organizations in formulation of EU policy. Conversely, such input *with substantial affect* upon Congress largely comes from lobbyists who wield (financial) clout and other tangible forms of influence. The Commission is not subjected to such an overtly distorted process of persuasion.

(Legislature)

- There is virtual monopoly given to the Commission in proposing Union law. Per Article 17.2 TEU, the European Commission drafts

secondary laws to execute its mission and conduct the business of the Union. While initiating legislation is not the exclusive purview of the Commission, it does compose its substance, thereby controlling its structure and assures its intended purpose (Article 102(d) TFEU germane). The Commission is responsive to requests by the Council or EP (Article 241 TFEU), and there are other ways to initiate legislative action per Article 294 TFEU (e.g., Citizens Initiative, group of Member States, ECJ). US: No parallel. Congress drafts its own bills and thus legislation can be as ambiguous or agenda-setting from its creation as its partisan drafters' desire.

- Voting is a convoluted process that can be followed if one digests in depth and interpolates Articles 293 and 294 TFEU, et al. Furthermore, QMV voting thresholds vary based on the gravity of the issue.
- Qualified Majority Voting. The QMV process impedes majoritarianism (simple majority voting) by establishing a higher standard for passage in the Council. Per 238.2 TFEU, legislation that is not prepared by the Commission or the High Representative of the Union for Foreign Affairs and Security Policy requires an enlarged qualified majority vote by the Council, defined as 72% of members (20 of 27) representing 65% of the population of the Union (at least four countries with largest populations: Germany, UK, Spain, and France). US: Although not codified, the member-determined Rules of the Senate have set thresholds for certain activities, such as 60% for some procedural votes.

(Member State)

- Amendments to the TEU and TFEU regarding changes to Union competences require unanimity of all Members States via their national constitutional requirements, per the ordinary revision procedure (Article 48.2 TEU). US: Ratification of constitutional amendments requires concurrence of only three-quarters of the states.
- Per Article 48.7 TEU, amending the TEU and TFEU in non-competence areas (internal policies and actions of the Union) can be accomplished via the simplified revision procedure (e.g., Part III,

TEU). If a national parliament makes known its opposition within six months, its non-concurrence (a virtual veto) puts the proposal back into the ordinary revision process that necessitates unanimity. US: Ratification of constitutional amendments requires concurrence of only three-quarters of the states.

- QMV offers the spirit of a veto or blocking capability, albeit asymmetric. Per Article 16.4 TEU, after 01 November 2014, the Council must act via normal QMV but per Article 31.2 TEU some areas such as military and foreign policy require an enlarged QMV. Normal QMV means that fifteen Member States (the minimum number of smaller Member States needed to meet the dual percentages) can adopt a proposal but the four largest Member States can block (veto) the measure.²² US: No Parallel. In essence, QMV introduces a semblance to the EU legislative process of a double majority as well as nullification, given that members of the Council are the direct representatives of the Member State governments.
- Per Protocol 2, national parliaments can practically nullify Commission legislation -- or at least cause it to be scrutinized and reassessed -- if they claim breach of subsidiarity. Per Article 7.2, if one-third of the parliaments object to draft legislation or, per Article 7.3, if one half of them objects to proposed legislation, the Commission must reconsider the measure.
- Withdrawal procedures per Article 50 TEU provide a path for a Member State to leave the EU. This provision codifies the unilateral right to withdraw from the Union so the matter is not in question but its execution may be tedious during the potentially two year negotiation process. US: No parallel. Secession was a unilateral authority arguably assumed by the framers of the U.S. Constitution. However, it was rejected by force as the remedy to irreconcilable political divergence among the sovereign principals to the American social contract.
- Revenue generation. Although TFEU (Articles 310/312) is non-specific and defers to Council and EP action, the Member States

²² Per Article 16.4 TEU, at least four Member States are needed to block the measure.

control the flow of revenue to the EU (portion of national VAT and GNI; EU customs duties). US: taxation is generally direct, circumventing state involvement.

Interest has developed around the themes of the hybrid nature of fundamental law in the United States, the importance of understanding it in the way the founders intended, the likelihood of competing agendas finding paths to achieve their ends, the specificity expressed in the Lisbon Treaty, and -- wittingly or fortuitously -- its avoidance of the failings witnessed by America's lengthy experiment with federalism. Until the finely specified, philosophically rooted, experienced based, and socially conscious arrangement for Europe created by the Lisbon Treaty has endured the challenges of time, its effectiveness can not be adequately assessed but only deduced. This is precisely why America's experience can provide invaluable insights and cautions. Its unique blend of philosophy, though visionary and bold, was loosely codified. The intent and assumptions of the founders and the ratifying states were to be set aside when the Constitution of the United States was transformed by those with the savvy and wherewithal to advance their agendas. Three significant changes occurred.

- *Agent-principal reversal.* Under the constitutional arrangement, the states were the principals and the federal government was its executive agent for some limited functional areas. However, within seventy years, that was to change by reinterpretation, force, and redefinition. Today in America, the cause of states rights attempts to wrest power back from a gluttonous central government but the movement would be better constituted if it were focused more broadly on restoration of state sovereignty. Addressing states rights only as a mechanism to check federal government actions that stray beyond its conferred competences abandons the original nature of the interstate contract wherein the states as principals were to set policy as well as oversee its accomplishment by their central agent.
- *Centralized federalism.* With the evisceration of states' rights after the war to prevent Southern independence, the core ideals of Althusius through Montesquieu faded from American governance. As the

states' unilateral prerogatives and ability to exercise control over their central government withered, a social arrangement that reflected deliberate tension between the levels of government was effectively flattened. The states became hardly more than dispersed administrative units. As the country grew, its sheer size allowed it to grow farther apart from its component states, precipitating less awareness of governmental activities and thus less accountability of public officials. Combined, the disenfranchisement of the states and their people who are the de jure sovereigns become the de facto subjugates of a polity unimagined in 1789.

- *Judicial review.* Quick to assert its status as arbiter of constitutionality and inject the concept of judicial review into the process of defining law, in 1803 Chief Justice Marshall solidly positioned the Supreme Court as a wholly unelected part of policy making.²³ Progressing from what was once thought to be the least dangerous branch to the one with the strongest per capita potential to adjust the course of the nation, just five justices can not only strike down state and federal law but in essence rewrite the Constitution itself in the fashion that they believe to be appropriate and reflective of their own prejudices. Nevertheless, the self-sanctioned authority of the judiciary to step in during periods of social stagnation can keep the machine of government running. When the legislative process becomes dysfunctional as a means to break political gridlock or when visibility would deter elected officials from taking a public stand on sensitive issues, the judiciary has seen fit to craft law in many areas such as reproductive rights and so-called social justice. U.S. Constitution and Lisbon Treaty amendment processes inhibit the ability of American and European fundamental law to function as living documents that evolve with society; this exacerbates the necessary role of judicial review in pragmatic governance.

New American social philosophies became manifest in the Constitution of the United States but this document ultimately failed America. As-

²³ Marbury v. Madison, 5 U.S. 137 (1803).

sumptions in thought, imprecision in text, and misplaced trust in the altruism of those who would eventually achieve control gave birth to a country that would become the most powerful on earth but would, through time, lose its federal soul. As they hurried to cut the umbilical cord with Mother England, the Founding Fathers failed to account for the pervasive agenda of the midwives of human greed, amoralistic capitalism, and political ambition. Now unwittingly complicit in their own subjugation, the citizens of the United States are relegated to a role hardly more than electoral validators whose only choice at the ballot box is between centralism and evisceration of checks upon it. What Thomas Jefferson perceived to be the mortal danger to the republic was that the “Constitution had given all power to the citizens, without giving them the opportunity of being republicans and of acting as citizens. In other words, the danger was that all power had been given to the people in their private capacity, and that there was no space established for them in their capacity of being citizens.”²⁴ A citizen who is informed, involved, and votes has more at stake in the maintenance of the good in society than a one with a dependency attitude does.²⁵

Etienne de la Boetie tells us, “. . .the power of the political elite can be explained only by the fact that people *accept* to obey the laws.”²⁶ However, such acceptance can be due to acquiescence because people have given up hope, concur with present policies, or simply do not care. The American government has provided its society with bureaucratic rigidification, administrative inefficiency, legislative ineptitude, judicial inequity, bribery and corruption, inadequate government regulations and enforcement, the use of repressive machinery, abuses of power, ineradicable national debt, collapse of the two-party system, and defense overspending.²⁷ While some cantilevers of social stress cause social coalitions to rally, citizen apathy is nevertheless a common condition.

This epitaph of America’s original conception for its federal union offers practical implications for the continued evolution of federalism in

²⁴ Lewis White Beck, ed. *On History*. NY: Macmillan, 1963. pp.145-146.

²⁵ Kirkpatrick Sale. *Human Scale*. NY: Coward, McCann & Geoghegan, 1980. p.97.

²⁶ Etienne de la Boetie. *The Politics of Obedience: The Discourse of Voluntary Servitude*. H. Kurz, trans. NY: Free Life Editions, 1975. p.48.

²⁷ Kirkpatrick Sale. *Human Scale*. NY: Coward, McCann & Geoghegan, 1980. p.21.

Europe. If the United States is attentive, it can relearn in an unbiased and historically untainted manner from 21st century Europe that its founders had it right. Their original arrangement for America and their unspecified but understood social principles have been resurrected in many of the processes contained in the Lisbon Treaty. Significant among them are:

- Member State control of federal policy and direct influence over executive, commission, and judicial selection and functioning.
- The general notions of nullification and interposition as evident in opting out (not opting in) and virtual vetoes in areas requiring voting unanimity.
- Withdrawal/secession
- Member State government control of the Council of Ministers (U.S. Senate pre-Amendment XVII)
- Measures that thwart funding of parochial projects, political pay-backs, and patronage such as term limits and barriers to pork-barrel bobtails to omnibus legislation (as in the Confederate Constitution).

Europe is more soundly positioned than were the fledgling thirteen states upon the ratification of their constitution in 1788. The American founders plainly received their passion, steerage, and inspiration from a variety of European philosophers as they set about creating their own synthesized social thought. Many of the fundamentals of European law now formalized in the Lisbon Treaty can claim direct lineage to the same philosophy but much of its validation came through painful real world experiences as it detoured from Europe through America and back again. Today, both continents nurture environments of personal motivation within a society that values opportunity and enables its citizens to create the laws they live under. America established a republic with unique federal orchestration that was designed to achieve and maintain social equilibrium. It failed to do so. The European Union has developed a web of treaties that appears to have struck a balance among European integration, Member State integrity, and social justice. Its functioning portends transparency but more importantly, visibility. Its structure promises to mitigate representative inequity, democratic deficits, and disenfranchisement. The specificity of its regulations seems to

have set an unambiguous course to achieve meaningful social stability. Eurofederalism has improved upon the cumbersome and self-aggrandized arrangement of governance in America. The Lisbon Treaty may not be a supranational constitution but it has nonetheless established fundamental law for Europe that will likely avoid many of the untoward experiences that continue to haunt the world's first experiment in republican federalism on such a large scale.

From the perspective of a concerned citizen, there is much the American union can relearn about its own constitutional roots from Eurofederalism as manifested 220 years later in the Treaty of Lisbon.

The Three Theses of Jürgen Habermas

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Following the far reaching changes in European societies since at least the first half of the nineteenth century, an intensive philosophical debate has been taking place on the question whether the narrow scope of the naturalist-scientific view is to be blamed for the “crisis of humanity”. Suggestions have been made to grasp scientifically various phenomena conceived as a mere corollary to the abstractions of the contemporary natural sciences. One of the resulting notions was the concept of lived life, i.e., life in the daily experience of the world. By looking at the origins of this concept, we will be in a position to examine its transformed nature in the critical social philosophy of Jürgen Habermas.

Life-world and the crisis of European man

The concept of the life-world can be traced back to Edmund Husserl’s work *The Crisis of European Sciences and Transcendental Phenomenology: An Introduction to Phenomenological Philosophy* (1936).¹ Though, the idea was closely related to his earlier works² and responded to contemporary questions of philosophy. It had been since the beginning of 1930s that Husserl became interested in phenomenology as universal philosophy. Probably as a result of the political situation in Europe, particularly in Germany, Husserl was driven to deeper thinking about relation between philosophy and society. A letter which Husserl sent to the International Congress of Philosophy in Prague in 1934 was devoted to the “mission of philosophy in our time”. It probably already contained an early formulation of the ideas later expressed in a lecture delivered in Vienna in May 1935, often

¹ E. Husserl, *The Crisis of European Sciences and Transcendental Phenomenology: An Introduction to Phenomenological Philosophy* (1936). I paraphrase here from the Czech translation of the book: *Krise evropských věd a transcendentální filosofie*. (Praha: Academia 1996).

² See Husserl, *Ideas Pertaining to A Pure Phenomenology and to a Phenomenological Philosophy* (1913). The Hague: Martinus Nijhoff Publishers 1983), §§ 27-31.

referred to as The Vienna Lecture.³

The full title of the lecture was “Philosophy and the Crisis of European Man”, pointing to philosophy of history as well as to philosophy of science. In the very beginning Husserl expressed the intention to develop “the philosophico-historical idea of European man” and he made it clear immediately: “The European nations are sick; Europe itself they say is in critical condition”. Despite this fateful situation, humanistic sciences continue to fail in their mission to provide us with a suggestion for reform.

It is in this lecture where Husserl coined the expression “environing world” as a predominantly spiritual structure to which our actions and concerns are directed. Dwelling in this environing world is characteristic for extra-scientific culture, not yet touched by science. Horizons of such cultures are limited, not yet opened to infinity. Another feature of this attitude is that the horizons, the world itself, is not thematized (*thematic*, in Husserl’s own words; that towards which man’s attention is turned) and life is lived as “naïve direct living immersed in the world”.

In Greek philosophy, for the first time, the limits of finitude were crossed and human thinking embraced infinity. This task was not accomplished for any vocational or professional purposes but as a purely “theoretical” activity which is “based on deliberate *epoche* from practical interests”⁴; as a consequence, the environment in which humans happen to live is of spiritual character, be it in terms of pre-scientific or of philosophical attitude. Unfortunately, later scientists attempted to understand it in purely naturalistic terms, and were necessarily dragged into the confusion. This is how “the crisis of European man” came into being.

Even though the Vienna lecture contained these important notions of “environing world” and “natural attitude”, we must turn to *The Crisis of European Sciences* in order to find a more detailed description of the process. Husserl ex-

³ P.J. Bossert, “A Common Misunderstanding Concerning Husserl’s Crisis Text”, *Philosophy and Phenomenological Research*, Vol. 35, Nr. 1 (1974), pp. 20-33.

⁴ Here, Husserl also mentioned other universal attitudes, namely practical universal attitude and mythico-religious attitude which he considered basically interconnected. For both, world is a practical theme. This was the case of ancient Indian, Chinese, or Babylonian “philosophies”. Only in Greece do we see philosophers as disinterested spectators, overseer of the world.

plores ideas connected with the establishment of a scientific approach (whose fragments and beginnings can be identified in Greek natural science, mathematics, Euclidean geometry, and made explicit in Galileo's mathematization of nature.⁵ Husserl aimed his criticism at particular forms of theorizing, those allegedly building an objective, detached world. He reconstructs the basic idea underlying this development. Provided the world is given subject-relatively in pre-scientific experience (not assuming that such a multiplicity of worlds does not exist), should we not search for the "true world, true nature" which does exist independently from the subjects?⁶ The final realization of this basic idea happened to be Western natural science.⁷

Husserl described how this objectivism came step-by-step to rule all the sciences, what is the most important in it, and how it became an ideal of the humanities and even a measure of our own understanding of the world as such. But it is a deficient attitude to the human world; for, as he wrote, "Sciences about mere facts are likely to produce people knowing mere facts."⁸ And yet another danger is subjection to science in its lowered form of specialized science: the art of *tekhnê*.⁹

The life-world (*Lebenswelt*) is employed as a means of "recalling" the spiritual uniqueness of human condition in which we naturally conceive of the world. It is also the methodological starting point for phenomenological analysis. Herein we are supposed to start from natural dwelling in the world and ask how the world is given to us in preliminary and immediate experience.¹⁰

Jürgen Habermas and the public sphere

The concept of life-world, despite being developed in relation to epistemology, was rooted in a particular conception of modernity and in a persistent feeling of crisis. The same can be said about its application in social

⁵ Husserl, *Crisis*, § 8.

⁶ Husserl, *Crisis*, § 9.

⁷ "From the art of surveying develops geometry; from counting, arithmetic; from everyday mechanics, mathematical mechanics; etc. Now, without anyone forming a hypothesis in this regard, the world of perceived nature is changed into mathematical world." (Husserl, *Philosophy and the Crisis of European Man*)

⁸ Husserl, *Crisis*, § 1.

⁹ *Ibid.*, § 56.

¹⁰ *Ibid.*, § 43.

and critical theory. The transfer of the life-world concept into explicitly socio-political terms, and the comprehensive interpretation of modern society around it, is associated with German philosopher Jürgen Habermas.¹¹

Being a member of the younger generation of the Frankfurt School, he is often counted among philosophers working within the tradition of critical theory. However, it should not be forgotten how much his social critique differs from his Frankfurt School predecessors, namely Max Horkheimer and Theodore Adorno. Their attitude, as articulated in *Dialectic of Enlightenment*, fitted into a chain of works, represented also by Husserl and Heidegger, whose critical edge took aim at the narrow and meaningless use of reason. In the *Dialectic*, for example, Enlightenment reason was blamed for being the source of manipulative potential inherent to contemporary society. With perceivable hopelessness, they were occupied with dangers brought about by the amalgam of consumerism, power, and organization which seemed to lack any possible cure. For society appeared caught between the Scylla of private selfishness, and the Charybdis of overwhelming power concentrated in public institutions, always ready to assume totalitarian rule.

It was Jürgen Habermas who cleared the way for a less pessimistic view. His habilitation, *The Structural Transformation of the Public Sphere* (originally published in 1960 but with its English translation coming as late as in 1989), identified a missing link omitted by Horkheimer and Adorno between private selfishness and public tyranny. This structural component of modern societies is the public sphere.¹²

Habermas' concept of the public sphere refers to the sphere of the sociability of *private* persons who are involved in a debate about *public* matters. This special kind of sociability established itself in eighteenth and nineteenth centuries as a continuation of the literary public. It contained readers gathered around "purely human" questions taken up by early-modern novelists. The scope of debate, Habermas suggests, later shifted and focused not

¹¹ It is admitted, of course, that Habermas was not the only one who did so. To name at least the most influential, we cannot omit Alfred Schutz, Peter Berger, and Thomas Luckmann, who worked in the context of phenomenological sociology.

¹² The fact that the *Habilitationschrift* was rejected in Frankfurt shows how contradictory it was to the opinions of his predecessors. Habermas then finished it in Marburg under Wolfgang Abendroth.

only on literary production but on political activities as well. The principle, however, remained similar: free discussion of independent private persons interested in public questions. Crucial achievement of the public sphere is the implementation of *ratio* (reason, argument) as the guiding principle of public affairs in contrast to *voluntas* (will), representing intellectually inert power politics. The *ratio* is reached by means of public debate within which normative claims clash in the institutions of the public sphere (e.g., the press, coffee-houses, salons, etc.).¹³ Though these claims and opinions may differ, the debate remains rational and, most importantly, equal and free of power compulsion. It is meant to be a clash of arguments, not of powers. Moreover, the political sphere is interpreted by Habermas as consisting of persons representing humanity as such, not particular interests. That was an illusion behind what Habermas called *bourgeois* (because it was based on the fictional identity of bourgeois and universal human ideals) or *liberal public sphere* (for it was rooted in political liberalism and separated from the sphere of formal politics):

The fully developed bourgeois public sphere was based on a fictitious identity of the two roles assumed by the privatized individuals who came together to form a public: the role of property owners and the role of human being pure and simple.¹⁴

There are two important points to be added: first, that the normative attitudes taken in the public sphere be binding for public authorities; second, that the unique character of public debate be a device for mutual understanding, i.e. coming to terms. The public sphere thus provided for mediation (on the rational grounds) between the private and the public. Though, in *Structural Transformation*, this communicative aspect was not systematically explored.

Instead, a transformation is explored which took place in the nineteenth and twentieth centuries and which distorted potential for the consensus. The liberal public sphere was exposed to double pressure from public regulatory poli-

^{13c} Public debate was supposed to transform *voluntas* into a *ratio* that in the public competition of private arguments came into being as consensus about what was practically necessary in the interest of all" (italics by Habermas).

¹⁴ J. Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*. Cambridge: MIT Press, 1989.

cies on the one hand, and from economically grounded private interests on the other, i.e. just what Horkheimer and Adorno had feared. According to Habermas, the nineteenth century saw the entrance of numerous newcomers into the originally *bourgeois* public sphere: workers, women, peasants, artists, etc. The increasingly fragmented character of the public sphere meant that it must have suddenly embraced both bourgeois and non-bourgeois participants in public debates. *Bourgeois* members could no more sustain the flattering self-image of being the representatives of all humankind.

The interests of newcomers, and also their ways of expressing those interests, were far from naturally harmonious. Mutual incompatibility of the world-views led the actors of public debates not to seek understanding but to use certain means to bypass troublesome discussions in order to make way for their interests. One possible way was to summon the state for back-up. In the case of workers, it meant to counter-balance employers' superiority by legislative measures and tariff agreements; in the case of entrepreneurs it brought about police protection of private property from popular unrest and riots. As a result of the transformation, the public sphere ceased to be an arbiter to the state activities, but the state became an arbiter to competing interests within the public sphere. Communication, too, lost its deliberative character for which Habermas praised the liberal forum. Public debate was alternated by persuasion and deception, mostly mediated by advanced PR strategies.

Habermas and communicative action

We can see that the distortions of public debate and communication had already been thematized in Habermas' early work. But it is formulated explicitly only later, in his comprehensive two-volume book *The Theory of Communicative Action* (1981). This book took its inspiration from Max Weber's concept of rationality, the one that in visions of the first Frankfurt thinkers had allegedly permeated modern technocratic societies. The second volume also comprised the distinction that I intended to study here, that between life-world and system.¹⁵ This distinction is now grounded in Habermas' theory of action. Drawing upon

¹⁵ Both concepts, of course were present in Habermas earlier, though in less comprehensive form. See: "Technical progress and Social Life-World" in *Toward a Rational Society* (orig. 1967), *Legitimation Crisis* (1973).

speech-act theories and Weber's typology of social action, Habermas distinguished two distinctive types of communication: *strategic* and *communicative*.

Basically, Habermas conceived of human action as divided along two axes: first, *social* and *non-social* (i.e., whether action is directed at/by others); second, *orientation to success* and *orientation to understanding*. While non-social action oriented to understanding is obviously impossible, non-social action oriented to success is labelled as "instrumental" (the use of non-human resources or objects). Social action oriented to success is the one called "strategic"; treatment of other people is involved here but they are taken as mere means to one's success. And the last form of action is then "communicative action".¹⁶ Roughly, Habermas explains:

I shall speak of *communicative* action whenever actions of the agents involved are coordinated not through egocentric calculations of success but of acts of reaching understanding. In communicative action, participants are not primarily oriented to their own individual success; they pursue their individual goals under the condition that they can harmonize their plans of action on the basis of common situation definitions. In this respect the negotiations of the definitions of the situation is an essential element of the interpretive accomplishments required for communicative action.¹⁷

One could, of course, ask for a more precise meaning of "reaching understanding" but it is not "coming to terms" that occurs among people. The condition necessary for communicative action is the absence of outside pressures. Communicatively achieved agreement must be accepted as valid by all participants, it must be based on common convictions.¹⁸

Further, in the second volume, Habermas proceeds by interpreting other authors, like George Herbert Mead and Émile Durkheim, in order to explore the possibility of social theory built as theory of communication.¹⁹

¹⁶ J. Habermas, *The Theory of Communicative Action. Volume 1: Reason and Rationalization of Society*. Boston: Beacon Press, 1984, p.285.

¹⁷ *Ibid*, p.285f.

¹⁸ *Ibid*, p. 287.

¹⁹ J. Habermas, *The Theory of Communicative Action. Volume 2: Life-World and System*. Boston: Beacon Press, 1984, p.3f.

With respect to Durkheim, Habermas draws on his opposition between traditional societies integrated via basic *normative consensus*, and modern societies integrated “via the *systemic interconnection* of functionally specified domains of action”. By analogy to these two poles, we can distinguish on the level of individuals between harmonizing their *action orientations* and regulating *action consequences*, and on the level of society between *social integration* and *systemic integration*. What must be emphasized here is the thesis that a society is to be *simultaneously* conceived of as both *life-world of a group* and as *a system*.²⁰

I believe we can read this theory as a turn quite similar to what he attempted in his habilitation thesis. Again, mediation is involved. Why? We need only recall that the crucial words for the Frankfurt critics of capitalism was “control”, “mastery”, and “compulsion”. These words clearly belong to strategic objects (to persons) as well as to instrumentalist objects (to non-human objects). However, if one postulates the possibility of communicative action, as Habermas did, the “instrumentality” of social action can be overcome. In both works, separated by a twenty-year period of time, we can trace a similar theme: overcoming power and compulsion by unrestrained public consensus.

The liberal public sphere, for sure, is idealization; life-world is used as an abstract construction. Public sphere is represented by its institutions; but where does the life-world actually exist and how is it represented in reality? Is it a sphere of action, a world-view, or an event? Similar questions have since been raised around the concept of public sphere which Habermas had used in the *Structural Transformation*.²¹ Life-world, Habermas holds, is the notion complementary to the one of communicative action.²² Habermas was inspired on this point by one of Husserl’s followers, Alfred Schutz. This sociologist and philosopher (and, curiously, banker) developed the concept of life-world as a means of social science. He understood life-world roughly as “...that province of reality which the wide-awake and normal adult simply takes for granted in

²⁰ Ibid, p.117f.

²¹ See C. Calhoun (ed.), *Habermas and the Public Sphere*. Cambridge: MIT Press, 1992, passim.

²² J. Habermas, *ibidem*, p.119.

the attitude of common sense. By this taken-for-grantedness, we designate everything that we experience as unquestionable.”²³

Emergence of System and Colonization of Life-world

Habermas contrasts his using the term “system” to the one popularized by Talcott Parsons. While Parsons used it for all segments of society, Habermas reserved it for the institutions connected with the purposive attaining of goals; other aspects of society, like “culture, society, personality” are counted among components of the life-world. They are not for him, as they were for Parsons, subsumed under systems theory. That is why systems theory is not sufficient for social analysis; the structures of the life-world have their own inner logic, which can be grasped only by hermeneutical approaches aimed at pre-theoretical knowledge.²⁴

Both life-world and system are relevant for social analysis. But there is a difference between undifferentiated and complex societies in relative to one another. In undifferentiated societies, systemic integration was closely interrelated with social integration. Life-world and system were closely related. Political organization, for example, is rooted in kinship, and therefore respects the norms appropriate for the familial segment of the life-world. In modern societies, the system integration consists of institutional structures that are objectified and consolidated as independent, norm-free *systems*. Instead of social norms based on shared life-world, these systems are integrated via value-independent “media”: power and money. Habermas holds that this is what we know as “organizational reality”. One’s action is no more directly related to the life-world but has to handle this organizational reality first.²⁵ I call this claim the *uncoupling thesis*, for it concerns uncoupling the life-world and system.

Politics and kinship can hereby serve as an example, again. The political power in undifferentiated societies had been tied to social integration, as

²³ A. Schutz, T. Luckmann, *The Structures of the Life-World*. London: Heinemann, 1974, p.3.

²⁴ J. Habermas, *The Theory of Communicative action, Volume 2*, p. 153. I refer here to the paragraph followed by footnote 10, which shows that this methodological imperative is already used by Husserl.

²⁵ *Ibid.*, p. 153 ff.

mentioned above. Then a new sphere was constituted: the State. Leadership of societies ceased to be based on prestige of the descent groups; as a result, the control started being exercised by institutions disposing of judicial power detached from the kinship with which it is incompatible.²⁶ We could similarly study the unchaining of the economy (i.e. of exchange), and show how that particular sub-system developed a distinctive logic independent from restraints of non-economical values.

From the point of view of everyday knowledge, rooted in the life-world, the growing complexity of systems is troubling. System, represented by organizational reality, becomes increasingly counter-intuitive for actors whose everyday communicative practice is made irrelevant.²⁷ “The transfer of action-coordination from language to steering media means an uncoupling of interaction from life-world context. Media such as money and power... encode purposive-rational attitude... and make it possible to exert generalized, strategic influence on the decisions of other participants while bypassing processes of consensus-oriented communication”.²⁸ Instead of communication practice they use symbolic rewards and punishments rooted in systemic imperatives

To put it simply, those who dispose of steering the media can bypass the hardships of seeking consensus and may proceed using the systemic means to reach their goals. Life-world loses its overwhelming character and is replaced by functionally defined and relatively separated spheres of action, all guided by purposive rationality. And after all, the systemic pressures start disrupting the world itself.²⁹

Under these conditions it is to be expected that the competition between forms of system and social integration would become more visible than previously. In the end, systemic mechanisms suppress forms of social integration even in those areas where a consensus-dependent coordination of action cannot be replaced, that is, where the symbolic reproduction of the life-world is at stake. In these areas, the *mediatization* of the life-world assumes the form of a *colonization*.³⁰

²⁶ Ibid, p. 165.

²⁷ Ibid, p. 173.

²⁸ Ibid, p. 183.

²⁹ Ibid., p. 188.

³⁰ Ibid, p. 196.

Such is, briefly stated, what I label Habermas' *colonization thesis*. But the question might be raised as to why this very process could be negative. After all, classical sociology described the transition from traditional to modern society in terms quite close to Habermas' view. It starts with Marx and Durkheim, respectively, continues in concepts of rationalization by Max Weber, and is intellectualized by Georg Simmel. All of them commented on the growing reification and abstract character of modern institutions that developed into new spheres of practice, ignoring - even negating - the validity of traditional visions of good and evil. But they usually found the tendency positive with respect to the efficiency of production. On the contrary, Habermas' diagnosis concerns a threat which is present behind the rational facade, and which is identified to be a chronic tendency of the systems-based societies to crises.

Legitimation Crisis

Habermas' understanding of the process of the colonization of life-world by systems is specific. He holds that the society that failed to sustain the vital life-world is inherently unstable and displays tendencies to crises. The triumph of the systems is far from being ultimate, for by distancing itself from the life-world, and in contrast to it, systemic integration has lost the taken-for-grantedness - to use Schutz's term to express Habermas' idea. Or, to translate it into more genuinely Habermasian terms, unlike the life-world, system is in constant need for legitimacy. Complex societies with advanced division of labor and scientifically-upgraded exploitation of nature may seem advanced from any systemic point of view. And it is unquestionable that they are better off in terms of material production. But at the same time, their development is accompanied by growing inequalities and moral dilemmas that call for legitimacy.³¹ Despite this need, neither the economic system, nor the other systems, are capable of it, for their values and principles do not show themselves as taken-for-granted, they *are* questionable. This, Habermas' diagnosis, is what I call the *crisis thesis*.

We can clarify the very concept of life-world now. The idea itself is

³¹ For example, the growing disproportion between the extremely poor and the extremely rich calls for justification of the inequality. Or, technologically attainable option to clone people requires we find it morally acceptable.

therefore based on the distinction between social integration (ensured by institutions “in which speaking and acting subjects are *socially related*”) and system integration (society as a system, self-regulating and aimed at *mastering environment*). If we talk about the life-world of a society, we have in mind its values and culturally-based institutions. When society as system is involved, we thematize technocratic steering and the governing of society.³²

When writing about the reality of late capitalism,³³ Habermas shows that his model entails social critique. Members of societies have certain social identities that are rooted in their life-world, i.e., in a system of values and institutions; if life-world becomes inappropriate with respect to what is going on in their society, the result is anomia, as described by Durkheim. Consequently, the society is perceived by its members as being in crisis. That was, according to Habermas, the case with late capitalism. The *uncoupling*, *colonization*, and *crisis theses* are interconnected, for the crisis is primarily caused by interaction between the uncoupled life-world and the system. In other words, Habermas shows societies as unstable due to the difference between the logic implied in world-views (represented by the life-world), and the logic of the growing complexity and power of the system.

Modern capitalist society developed in a way that it is about to undermine its own foundations. Habermas studied this problem in his earlier work *Legitimation Crisis* (1973). Functional subsystems, meant for maintaining system integration, fail to produce required outcomes; the economic system does not produce consumable values; the administrative system does not produce rational decisions; and the socio-cultural system does not produce culturally rooted meanings and motivations in the interests of the members of society to function as systems units. Each of these drawbacks entails a kind of crisis.³⁴

³² J. Habermas, *Legitimation Crisis*. (orig. 1973) London: Heinemann, 1980, p.4f.

³³ And it must be mentioned here that Habermas wrote the study at the beginning of 1970s, at the period of “organized or state-regulated capitalism”, and, as analysts later will call it, at the breaking point between the first and second modernity. The energy crises of 1973 and 1979 were still to come, as well as restructuration of economies, large organizations of Fordist fashion prevailed in both private and public sector, and the dismantling of the welfare state was not yet taken into serious consideration.

³⁴ Habermas, J., *Legitimation Crisis*, p. 49.

There are principles, inherited from earlier stages of social evolution that are exploited by recent forms of capitalism. We can even say that certain components of the life-world are necessary for the system's smooth functioning. They are closely related to liberal societies of the nineteenth century, or even to Protestant ethics, as described by Weber. Habermas shows that these values are profoundly affected by the very functioning of the systems. For example, one of them - the so called "civil privatism" - complemented with "family-vocational privatism" means that the system requires citizens interested in public affairs but only to a certain extent. Their motivations should consist of "family orientation with developed interests in consumption and leisure on the one hand, and in a career orientation suitable to status competition on the other". These orientations, originally of pre-capitalistic or bourgeois origin, are being systematically destroyed by the requirements of the modern economy. And for worse, capitalist societies are unable to reproduce the traditions on which they depend: "... they fed parasitically on the remains of tradition".³⁵

Conclusion

My proposal hereby was to interpret Habermas' concept of systemic colonization as a crucial trait in his social analysis. The three theses, *uncoupling*, *colonization*, and *crisis* are formulated gradually in his works from the 1960s to the 1980s. They can be identified at the beginning of this period in his habilitation thesis *Structural Transformation of the Public Sphere* (1960) and find their detailed articulation in his *opus magnum*, the two-volume *Theory of Communicative Action* (1984). What changes is the material on which he demonstrates the main idea contained in these respective theses. While the first one is deeply rooted in historical material, thus putting Habermas in the sphere of social history, his *Legitimation Crisis* (1973) conceives of the problem in terms of systems theory; *The Theory of Communicative Action* grounds the theses in the theory of communication. It should not be omitted that Habermas also paid much effort to the normative implications of his social analysis. They were out of the scope of my consideration here, despite the fact that they create living inspiration for many contemporary readers.

³⁵ Ibid., p. 75f.

III. BOOK REVIEWS

**Nina Power, *One Dimensional Woman*,
Winchester, UK, Zero Books, 2009,
74 pp., \$14.95.**

K. Lamač

This is not really a book at all; it is an intervention, even in that deplorable sense of friends and family taking a problem individual in hand and shaking an ill-sorted mind right again, but with none of the intolerable sanctimony. The individual in this case is “feminism,” or at least that part of it that has let itself be lured into the cul de sacs prepared for it by contemporary ideology. Nina Power candidly takes her inspiration from Herbert Marcuse’s *One Dimensional Man*, extending the latter’s withering analyses of consumerism and manipulation, but also thinking the specifically gendered mutations these have undergone in recent years.

Power warns at the outset that the text contains little cheer. Yet neither does it contain the glumness and depression associated with the Great Refusal. The tone instead veers between the icy and the satiric, but mainly tends to the latter; and if the satire is sometimes exasperated, impatient, running the risk of repeating the declamatory style of its object, it never abandons its sense of proportion. Power’s writing displays humor, rather than irony, and rescues its baleful observations of disaster from appearing final. This is much harder to do than it may sound.

For Power is struggling with a new world order, one in which it is difficult to keep a grip on the sense of feminism: “Almost everything turns out to be ‘feminist’—shopping, pole-dancing, even eating chocolate.”¹ If this is the “personal” side, which promotes self-realization in harmony with the

¹ Nina Power, *One Dimensional Woman* (Winchester, UK: Zero Books, 2009), p. 27.

prevailing order, or in order to give it a hedonist sheen, there is also another and equally political category that bears much more collectively on current events: the enlisting of feminism for the purposes of belligerence in a supposed clash of civilizations. Power, who has ably translated and edited some of his writings, cites Badiou approvingly on the contradictions of the “hijab affair”;² yet the unintended result of this temporary exposure to shrill indignation is to leave the reader much more appreciative of Power’s own tone: another victory for humor over irony.

Covering up and its opposite are a constant concern in an argument that has a tendency to leap from one focus to another with abrupt speed. The short chapter on Sarah Palin keeps all of these aspects in constant play, much like its subject and her various manifestations in the media. Here Power’s satire is at its most consistently successful, targeting not only the uses and abuses of the term “feminism” in the campaign to make a family values advocate the new sex symbol of empowered womanhood, but also in the anxieties and obsessions that this reveals in some men (Power is especially amusing about the Lacanian Jacques-Alain Miller). Exposure becomes a more nuanced matter as the book examines the “feminization of labor,” and its inverse, as now the question combines the philosophical and the sociological: the demand that everything now appear on the surface, leaving no interior for the individual, man or woman, to reserve from the circuit of capitalist living. Here the imperatives of the market entail new transformations of subjectivity and call for new categories in which to think the latter.

A more serious extension of the same notions appears in the treatment of pornography, where Power tries to recover some of the “utopian” potential of pleasure and sensuality in their social dimension. Pornography is not treated in the moral terms of right-wing condemnation, or with the indignation of some feminists who regard it as intimately related with violence to and oppression of women, but as “a paradigmatic mode of work.”³ This is both the most promising section of Power’s study and the most frustrating; here, brevity seems too brief, and it is almost a pity that someone who has

² Ibid., p. 13.

³ Ibid., p. 43.

shown herself a literary cinephile should not have dealt with Godard's *Passion* and its twin concern with the impossibility of filming love and work and their relation to pornography and the visual as such; or, in a different register, the work of a writer like Houellebecq for whom the "sexual revolution" and feminism itself are among the sources of the present malaise, and who also tries to use pornography as provocation. Yet Power's treatment of the subject focuses rather on alternative histories of pornography and the transformative potential contained in them—all wittily recaptured in the sloganeering title of one of the last chapters: "Socialism Must Not Exclude Human Sensual Pleasure From Its Program!"⁴ It is this indomitable drive to recover the sense of real alternatives in a situation that Power perceptively diagnoses as one of "deflationary acceptance,"⁵ that makes this a must-have text for anyone depressed by the ideals of our day.

The book clearly has its genesis in ideas tried out at Nina Power's blog, *Infinite Thought*, and the rapid swerves from one point to another, the brief treatment of heterogeneous topics, owe something to the forms of attention encouraged by the web; but Power is that rare entity, a blogger who is more interested in the world than in her thoughts about it. If the term did not carry negative connotations, *One Dimensional Woman* might be called a pamphlet. This kind of writing appears to belong to that genre of topical argumentation, engaged in the questions of the moment, ephemeral to the exact degree of its subjects, and taking a stand in an open and embattled public space, such as was practiced in the time of John Milton—or Jonathan Swift.

⁴ Ibid., p. 57.

⁵ Ibid., pp. 61ff.

Alain Badiou, *Logics of Worlds: Being and Event II*, trans. Alberto Toscano, New York and London: Continuum, 2009, 640 pp., \$29.95¹.

John McSweeney (Milltown Institute)

In his magnum opus *L'Être et l'événement* (1988, trans. *Being and Event* [2005]), French philosopher Alain Badiou deployed post-Cantorian mathematical set theory to elaborate a novel ontology of the pure multiple capable of accounting for the complexity of a postmodern world, but equally capable of rejecting the postmodern erosion of politics before infinite difference. (The pure multiple is conceived of, by Badiou, as a Zermelo-Fraenkel infinite set whose elements are themselves infinite sets, yet which, following Cantor, are countable.) Equally, he elaborated a powerful theory of the event, as an exceptional element of a situation from which the subject, acting in fidelity to it, can derive the truth of the situation. Although seminal for recent efforts to rethink the political within continental philosophy, this work, as Badiou himself recognized, remained a formal ontological analysis, which could identify the subjective function ("fidelity"), but could not adequately elaborate subjectivity as such. Furthermore, although suggestive of ways of thinking about concrete worlds, it did not yet describe a world at the level of appearance. *Logiques des mondes* (2006) – now translated as *Logics of Worlds* by Alberto Toscano, in a fine translation and timely publication – is Badiou's eagerly-awaited follow-up to *Being and Event*, which sets out to address both these issues.

The earlier work's notion of subjectivity as *fidelity*, rather than (for instance) as grounded in consciousness, allowed Badiou innovatively to propose that political subjectivity is the subjectivity of a political movement rather than that of individuals, or, again, that, in cases of love, it is the couple as couple who constitute its subject. Nevertheless, the reduction of subjectivity to an ungrounded decision for an event, and fidelity to it, risked the

¹ This review has been prepared with the support of funding by the Irish Jesuits through Milltown Institute, Dublin.

charge of decisionism. Now, in *Logics of Worlds*, Badiou provides a more complex framework within which to locate subjectivity. First, against criticisms that he limits what counts as an event rather arbitrarily, he proposes a four-fold typology of change. Alongside a decisive event, there are “modifications” (change that does nothing to alter a world but is a moment of its reproduction), “facts” (genuine but weak novelty), and (weak) “singularities” (intense quasi-events that have few consequences). Second, he further delineates the space of subjectivity, by suggesting two additional distinct possible responses to an event: the “reactive subjectivity” that denies the event and the “obscure subjectivity” that assimilates the event in a manner that circumscribes its effects. Third, Badiou argues that subjective decision arises at specific “points” within a world, where its complexity becomes condensed to a binary either-or decision, for or against an event. Moreover, he allows that these decisions are embodied, although these bodies need not be organic bodies, but e.g. the various “bodies” developed by a revolutionary force. Faithfulness to an event in a real sense thus involves becoming, point by point, the truth to which one is faithful, developing a physical impetus toward change in a given world. Finally, he offers the insight that our capitalistic “democratic materialisms” induce “atonic” worlds, that is, worlds without decisive “points.” In response, he further broadens his subjective framework to allow for some importance to strictly *pre-subjective* action and analysis, which can bring the elided decisive “points” of our worlds to appearance. Thus, acts of resistance, protest, and critique, becomes important as ways of forcing points of decision within a world.

Second, in the major focus of the work, Badiou deploys the sheaf theory and category theory associated with the mathematics of topology to construct an “objective” rather than a “subjective” phenomenology of appearance, against the post-Kantian tradition. The mathematics here is daunting, perhaps even more so than in the earlier work. Nevertheless, Badiou’s basic argument is relatively clear. Beginning from the idea that there is no one world (a “universe” that would explain the apparently different worlds we each occupy), he argues for a multiplicity of worlds each governed by a “logic of appearance.” Badiou offers multiple examples of such worlds, ranging from the manifold reality of a demonstration within a public space,

to the peaceful surroundings of a house in the country on a summer's evening. His point is that these are not simply different perspectives upon a single reality (e.g. mediated by different language-games), but that the "being-there" of pure multiples is characterized by a multiplicity of appearances of worlds. As Slavoj Žižek has put it, Badiou's multiples have no "underlying" modes of being-there apart from their appearing in multiple worlds.

Badiou can support such a conception because he defines the being-there of each pure multiple as having a degree of intensity of appearing in each world within which it appears. Within his mathematical framework, intensity is a quality of individual multiples rather than a relational quality, so that one can compare the relative intensities of multiples within a world without having to posit an interrelationship between them. (The logic of appearing is governed, Badiou argues, by the multiple having "maximal" intensity.) Thus, it becomes feasible to think multiples as having distinct intensities in multiple worlds, without these worlds becoming entangled and "bleeding into" one another. Moreover, deploying the framework of modes of change, modes of subjectivity, embodied becoming, and points, it becomes possible to think these worlds dynamically as sites of contested, multivalent change.

Although it addresses questions left open by *Being and Event*, *Logics of Worlds* is not simply an addendum to the earlier text, but a major work in its own right. It opens up significantly new terrain in political philosophy in the continental tradition, not least suggesting novel ways in which the impossible (a critical philosophy that is not bound by the subjective post-Kantian tradition) may in fact be possible. Moreover, its novel style (combining abstract mathematical analysis and a proliferation of concrete examples and autobiographical references) and intent (the conclusion is entitled "What is it to Live?") are concerned with articulating nothing less than a passionate politics and ethics, grounded in the worlds within which we live today, and specifically those in which Badiou himself is immersed and immerses himself. To echo the title of one of his earlier works, it is perhaps his most profound manifesto for philosophy, as well as a manifesto, to echo Gilles Deleuze, for "a life."

At the same time, the work is not without its tensions. Although Badiou has contextualized subjective decision and fidelity in ways that significantly reduce charges of decisionism, he is nonetheless insistent upon a sharp distinction

between the subjective and the pre-subjective that proves difficult to maintain. The problem here is less decisionism as such than that of doing justice to the continuity of what Badiou terms pre-subjective and subjective experience, or what others might simply term subjective experience. For example, how might one prepare the ground for decision without some judgment about where “points” lie, or decide for an event without some subjective sense that a given occurrence is an event? Even if events cannot strictly be known (they exceed the existing order of a situation), this does not prevent subjective processes playing a role in deciding for an event.

A second difficulty is one long since highlighted by Badiou’s commentator Peter Hallward. Hallward has consistently argued that Badiou’s mathematical models abstract excessively from human reality, a significant casualty being the notion of relationality (as has been seen, above, in his logic of appearance). The point is well made, but a qualification might be added. It is arguable that Badiou’s deployment of mathematics is part of a “truth procedure” in fidelity to the Cantorian event of thought that inaugurates modern mathematics. The purpose of this deployment would, then, according to Badiou’s own logic, be to exceed and disrupt our current ways of thinking. But as with any event, truths do not entirely displace existing knowledge but remain in a relation of disruption to them. In this light, less concern needs to be expressed over the adequacy of Badiou’s mathematics in modeling human reality, as it would not constitute such a model, but something approaching a corrective that reveals new possibilities within the situation. This, in turn, would raise questions about the status of Badiou’s ontology and logic of appearing, and whether he consistently refuses to construct an alternative order of knowledge in favor of generating a disruptive truth-procedure. Equally, it would place emphasis upon whether Badiou has succeeded in identifying a real event of thought and not, say, merely a “weak singularity.” Of course, to defend Badiou’s mathematical approach in this way is to turn attention to the question of the performative subjectivity by which he constructs his works and its consistency with the subjectivity delineated in them. This, in turn, suggests that, in spite of significant achievements in reorienting contemporary continental thought toward truth and objectivity, the principal persisting tensions in Badiou’s work circle about post-Kantian-sounding questions of subjectivity that resist reduction to his refiguring of subjectivity as fidelity.

IV. ANNOUNCEMENT

Master's and Doctoral Studies in Philosophy Taught in English at Sofia University

Sofia University was founded in 1888 following the best patterns of the European higher education. Sofia is the capital city of the Republic of Bulgaria. Bulgaria is a Member of the European Union (EU).

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The MA Program in Philosophy taught in English provides instruction in all major areas of Western Philosophy; besides, the master's thesis can be written on a topic from Eastern Philosophy as well - an expert in this field will be appointed as the supervisor. This program secures guidelines by faculty and leaves enough room for student's own preferences. The degree is recognized worldwide including the EU/EEA and Switzerland, the US, Canada, Russia, Turkey, China, Indian Sub-Continent, Latin America, and the Middle East.

Courses offered: Philosophical Anthropology, Ethics, Axiology, Philosophical Method, Truth and Meaning, Philosophy of Intercultural Relations, Social Philosophy, Continental Philosophy, Philosophy for Children, Philosophy of Culture, Logic in the Continental Tradition, Theories of Truth, Existential Dialectics, Philosophy of the Subjective Action, Phenomenology, Renaissance Philosophy

Faculty Members: All faculty teaching at the program are approved by the Bulgarian State Highest Assessment Commission. They feature successful teaching experience in this country and abroad and are well published in Bulgarian and English.

Duration of Studies: two semesters of course attendance plus a third semester for writing the master's thesis; opportunities for distance learning.

Admission Requirements: Bachelor's degree in any field of humanities, social science, science, or professional disciplines. No tests or applica-

tion fee are required (for citizens of EU/EEA and Switzerland applying for a state scholarship 16 € fee is charged and an interview is held). No previous degree in philosophy is needed.

Tuition fee:

- 1) citizens of EU/EEA and Switzerland – 500 € per school year
- 2) international students - 3 850 € per school year

Financial aid:

A) *The citizens of EU/EEA and Switzerland* are eligible for state scholarships carrying 50% tuition waiver plus a monthly stipend beginning from the second semester.

B) The Fulbright Graduate Grants are offered to *American citizens* as a form of a very competitive financial aid; for more information see www.fulbright.bg. Furthermore, the American applicants are eligible for Federal Loans; please check for more details at the Education Department web site, <http://www.ed.gov/offices/OSFAP/DirectLoan/index.html>; at Sallie Mae, <http://www.salliemae.com/>, and at Student Loan Network, <http://www.privatestudentloans.com> and <https://www.discoverstudentloans.com>. It is possible to use some other sources of government financial assistance by the American citizens (please contact the Program Director for details).

C) Financial aid to *Canadian nationals* is provided in the form of Government Student Loans by the Province where they permanently reside.

D) *The Western Balkans citizens* are welcome to apply for Erasmus Mundus/BASELEUS Project scholarship carrying full tuition waiver and monthly stipend, <http://www.basileus.ugent.be/index.asp?p=111&a=111>.

E) *Students from Turkey* can receive financial aid within the Erasmus Student Exchange Program.

F) Financial aid for *Chinese students* is available within the bilateral Chinese-Bulgarian Cultural Agreement. Please contact the Chinese Ministry of Education for more information.

H) *Students from Russia* (Financial aid for *Russian students* is available within the bilateral Russian-Bulgarian Cultural Agreement. Please contact the Russian Ministry of Education for more information), *Ukraine, Belarus, and the other CIS countries, Indian Sub-Continent, Latin America, and the Middle East* receive financial aid in the form of inexpensive dormi-

tory accommodation (about 50 € per month including most of the utilities) plus a discount on public transportation and at the University cafeterias. The same type of financial aid is available for *the citizens of EU/EEA and Switzerland, American citizens, Canadian nationals, Western Balkans citizens, students from Turkey, and Chinese students.*

Application deadline: September 30, to start in October; January 31, to start in March.

Student Visa Matters: The Sofia University in cooperation with the Bulgarian Ministry of Education and Science provides the necessary documents for student visa application to all **eligible** candidates outside the *EU/EEA and Switzerland.*

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Courses offered: Psychoanalysis and Philosophy, Philosophical Anthropology, Applied Ethics, Epistemology, Philosophy of Science, Social Philosophy, Philosophy of Intercultural Relations, Philosophical Method, Continental Philosophy, Philosophy for Children, Philosophy of Language, Philosophy of Culture, Time and History.

Eligibility Requirement: Master's degree in any field. No previous degree in philosophy is needed.

Checklist: CV, two letters of recommendation, standardized tests scores are NOT required. No application fee (for citizens of EU/EEA and Switzerland a 32 € fee is charged and an entrance exam is held).

Tuition fee:

1) citizens of EU/EEA and Switzerland – in residence: 940 € per school year; extramural: 600 € per school year

2) international students - in residence: 6 500 € per school year; extramural: 3 300 € per school year Dissertation defense fee: 1 400 €

Dissertation defense fee: 1 400 €

Duration of studies: in residence – 3 years; extramural – 4 years; opportunities for distance learning.

Financial aid:

A) *The citizens of EU/EEA and Switzerland* studying in residence are eligible for state scholarships carrying full tuition waiver and waiver of the dissertation defense fee plus a significant (for the Bulgarian standard) monthly stipend. For extramural studies only tuition waiver and the dissertation defense fee waiver are available.

B) The Fulbright Graduate Grants are offered to *American citizens* as a form of a very competitive financial aid; for more information see www.fulbright.bg. Furthermore, they are eligible for Federal Loans; please check for more details at the Education Department web site, <http://www.ed.gov/offices/OSFAP/DirectLoan/index.html>; at Sallie Mae, <http://www.salliemae.com/>, and at Student Loan Network,

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