Andrew Benjamin

Place, Commonality and Judgment

Continental Philosophy and
the Ancient Greeks

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Introduction: Measure Places

Hepetar d'en hekastó metron. (Each thing has its own measure.)

Pindar. *Olympian.* 13.47

Hélios ouch huperbésetai metra. (The sun will not overstep its measures.)

Heraclitus, Fragment 94

The lines cited above from Pindar's *Olympian Ode* and Fragment 94 of Heraclitus stage the centrality of measure. Moreover, not only is there a sense of measure that pertains to what there is (Pindar) but to the extent that the 'sun' can be generalized what there is also cannot overcome its own proper measure (Heraclitus). While it will not be pursued here, Fragment 94 also begins to define a form of justice in relation to the work of measure. Understood more broadly, the centrality of measure, what could be described not just as measure's ubiquity but, more emphatically, as its necessity, introduces an interpretive ambivalence. Measure could be linked, almost exclusively, to continuity and thus to the repetition of what there is. That reiteration, guided by a sense of Sameness, would define progress. In addition, progress would be incorporated within the progression of time as chronology such that the latter would then define historical time. The future would have been measured in advance. Each opening delimited by forms of prediction and thus each move would have been determined in advance. Measure, in the sense deployed here, has an internality that controls the future while predicating its form. Measure, from within such a setting, would be both conserving and conservative. It would seem that any invocation of measure would have to preclude, almost by definition, the possibility of any form of interruption and especially that form that would reorientate the direction of human activity thus demanding its reconceptualization. Hence the question that arises, given the apparent ubiquity of measure, has to concern the possibility of a radical form of reconfiguration

that maintains the centrality of measure. What arises therefore is the possibility of generating a conception of measure that allows for forms of interruption and thus one that can occasion the actualization of differences. Responding to the questions of measure necessitates drawing a distinction between different ways in which measure can be understood. It should be added immediately that what the distinction stages is at work continually throughout the essays comprising this volume.

On one level the distinction is straightforward. It depends on the non-identification of a particular system of measure with the indispensability of measure itself. However, what the distinction sets in place is the impossibility of any practice, event or 'thing' falling beyond the hold of measure. Any discovery, equally any invention, can either be measured or will demand the introduction of a system that aspires to be appropriate to it. The capacity to be measured is inherent to any occurrence. What occurs does so within the hold of measure even if the specific form that measure takes may need to be a *post hoc* invention. What matters, however, is how the distinction between measure as an already present condition and the practice of a specific form of measurement is to be understood? What type of distinction is it? A precondition to answering either of these questions is the recognition that what the questions presuppose, as intimated above, is the impossibility that there be either an event, occurrence of thing that takes place, or has a place, prior to measure. Were this to happen, it presupposes the possibility of a moment placed beyond measure and as a result would be one to which the language of measure would then be inappropriate. (As though there were actually a position, 'before the law'.) Measure, however, is an original condition. In fact, this is precisely the position that working on Ancient Greek philosophy and literature brings to the fore; here, of course, the limitation is the one imposed by the texts studied. Nonetheless, caution is still necessary. The originary nature of measure entails the presence of an already determined system of measurement. However, it brings an addition with it, as it is also the case that any one system is not immutable and withdrawn from the possibility of contestation. Systems of measurement bring with them an inherent relativity. And yet what is at work independently of relativity is a general sense of measure. Measure becomes an abstract term that identifies the presence of conditions of possibility. As will emerge in the discussion of Heraclitus, Herodotus and Pindar, relativity and thus error always occur on the level of conventions, rules and laws (*nomos* as a general terms covers them all). Moreover, the possibility of conflict on the level of *nomoi* is inescapable. What is not escapable, however, is that what there is occurs in relation to *nomos*. The same position takes place

in Heraclitus in regards to *logos*. The argument is that what there is takes place *kata ton logon*.[1] In other words, existence is delimited and thus limited by a relation to *logos*. To which it can be added that taking place *kata ton logon* defines what it means for something to exist, where existence is not reduced to mere empirical existence. In other words, what there is exists actually, i.e. that it has actual existence. However, that which exists actually do so equally *kata ton logon*. In a more general sense, it also means that discovery and investigation are possible precisely because there is both an already existent form and measure in play. This will be the case even if the content of the system of measure is itself the site of contestation. What cannot be contested is measure. Consequently, claims made on the level of *logos* involve conditions of possibility – in the precise sense that any claim about what exists or any claim concerning what should or ought exist has to work with the necessity of measure's ineliminability. Equally, Heraclitus also uses similar constructions in relation to 'nature' (*phusis*) and 'conflict' (*eris*). Without, at this stage, engaging with their meaning, it can still be suggested that they also need to be understood as naming the regulative and thus as naming conditions of possibility. Therefore, they also have the status of transcendental principles. (This is a position that will be developed in greater detail in Chapter 2.)

Nomos, *logos*, *phusi*s, *eris*, *diké*, *koinos* are terms whose translation and meaning are a continual point of focus within the project of these essays. They all identifying measure and thus allow for judgment. This is the case even if the sense of measure and thus the nature of the judgment may change from one to another. Equally, they all function as conditions of possibility. For example, *nomos* functions as a transcendental condition of human sociality. What the general claim means is that human activity, where activity involves the primacy of relationality, is only possible because of conventions ands norms. Hence, necessity lies in the presence of conventions, norms and laws (all can be accounted for in terms of *nomoi*) and *not* in their content. While contextually this is a position that arises initially from a study of both Aristotle and Heraclitus, it has greater extension throughout the overall argument of the essays. In other words, that independently of any actual content that is given to a range of specific *nomoi*, it remains the case that *nomos* is a necessary condition for sociality. Indeed, this is position that is implicitly present in a range of texts. While there will be important differences, a similar argument can be made for all the terms noted above.

Before returning to the question posed above concerning the possibility of a form of radical interruption that maintains a relation to measure, continuity as discontinuity, there is a further element of that needs to be introduced.

A central presupposition within this project is that while *nomos* is a transcendental condition of human sociality this needs to be understood as marking out a sense of propriety that pertains to human being. If it can be argued that human being takes place and that the taking place of human being involves the primordiality of *nomos*, then not only does this introduce a connection between human being, the regulative and place it must also incorporate within that setting the possibility of the enactment of *nomos*. That enactment appears as a concern with justice (*dikê*). Justice as a practice and thus as the province of citizens is itself placed. It must not be forgotten, however, that *nomos* and *diké* (law and justice) are sites of contestability. Thus what counts as lawful and what counts as justice are both inherently contestable. Indeed, contestability obtains even in relation to the claim that justice and law (where both are understood as having a determined content) are immutable and that the enacting of justice, just acts, occur immediately. This latter position, in the context of Ancient Greek philosophy and literature, defines justice as the province of the Gods, a setting in which justice appears in its deified form as Justice.

It can be suggested further that contestability is that which allows both for the modification as well as the transformation of law and justice. While transformation here is fundamental, what can be neither modified nor transformed is what can be described as the originary status of law and justice. Both have a double register and therefore a twofold existence. To the extent that this doubling is conceded, it points to what was noted above concerning place, namely, that *nomos* as a transcendental condition brings with it the necessity that human being and thus sociality are always already in place. In other words, that central to the primordiality of both *nomos* and *diké* is an original sense of place. Human being is placed. As such human being is always *being-in-place*. The consequence of the primordial positioning of the human within a network of concerns is that individual positions, e.g. either the named presence of an individual or even the abstract individual (the latter becomes as a consequence a 'subject' marked by its own impossibility), are positions that can only ever be present as an after effect of relationality. What this means is that if it can be argued that relationality is the original condition then individuation, which is the process that yields the particular individual, or the entity produced has to be understood in terms of a founding ecology of relations. Hence, there cannot be an abstract entity prior to the emergence of relationality that would then come to acquire qualities as a result of those relations. Nor, moreover, is there a form of abstract being that could be attributed priority such that

qualities were then deemed philosophically irrelevant because of the attribution of priority to what was taken to be a founding abstraction. At work here is a radically different sense of individuation. In sum therefore relationality, as an original condition whose location and thus a sense of location as an always already present setting, is identified by the term *being-in-place*. As will be argued in the chapters to come, this is the central insight in both Heraclitus and Aristotle concerning the relationship between human being and the *polis*. While the term *polis* may stand for a given city state, or can be identified with one, the *polis* has an additional form of necessity, namely, the *polis* as marking in advance the necessity of the placedness of human being. Moreover, there is a further component at work here once the centrality of *being-in-place* can be assumed. If human being is defined by place, then it follows that place is precisely what exists in common. Place, in this context the *polis*, becomes the locus of commonality. As will emerge, this is the position that is advanced by both Heraclitus and Aristotle. Place and commonality have to be thought as interarticulated from the start. To the extent that human being is to be defined in terms of *being-in-place*, there is another exigency at work within any definition of human being, namely, *being-in-common*. While what commonality means in this context is the project, in part, of Chapters 1 and 2, place and commonality provide a setting within which a concern with law and justice unfolds. In addition, the setting brings with it a sense of value. Value would not be defined in terms of a transcendent conception of the good but within the fabric of existence once the latter is understood as established by the interconnection of measure as a transcendental condition and measure as actualized. To the extent that such a relationship involves medicay, e.g. the temporality of the decision, decisions as inherently contestable, then both place and commonality play a fundamental role.

While place and commonality may have always been present as an ineliminable potentiality, the recognition of *being-in-place* and *being-in-common* as fundamental, a recognition that will come to be defined in terms of 'wisdom', necessitates the interruption of that position in which their presence is effaced in the name of a different conception of justice and law and thus another understanding of human being. Were that possibility to occur, it would necessitate both an interruption and an allowing. Part of the argument of Chapter 1 is that Athena in the *Oresteia* plays exactly such a role. She redefines both law and justice through conceding to the already present status of *being-in-place* and *being-in-common*. She occasions what will be developed in that context as a caesura of allowing. This is the return to the

question posed above concerning the possibility of a form of interruption and the retention of measure. Measure within the context of Athena's actions does not have an arbitrary source. It is located within what her actions allow and reciprocally what allows for her actions, namely, *being-in-place* and *being-in-common* as that which sets the measure.

There are two final introductory remarks that that need to be made. The first concerns the role of contemporary, or almost contemporary, philosophers and writers within this project, while the second concerns the original publication of a number of these chapters. In regards to the first, while the approach taken has been to work through important moments within specific texts by Aeschylus, Aristotle, Heraclitus, Pindar, Plato and Sophocles, this has occurred within a setting created by either relations with other philosophical positions where such relation are productive and illuminating, e.g. the relationship between Kant and Heraclitus in Chapter 2, or where the sites of engagement have allowed questions pertaining to place, commonality and judgment to be posed with greater acuity. In regards to the latter interpretations of Pindar and St Paul by Agamben, Derrida's engagement with the relationship between *nomos* and *anomos* in the context of his interpretation of Sophocles' *Oedipus at Colonus* as well as Hölderlin's translations of Pindar all progress the project precisely because within them all the relationship between law and justice continues to be worked out.[2] The work of Agamben and Derrida is of genuine importance for this project. Indeed, both seem to allow for the position in which there is a foundation of measure that cannot be defined in terms of measure. Measure would have as a consequence either a relation to a form of founding violence or the positing of a position outside the law, the *anomos*, as though it were an original condition and not one that was produced. The first position informs Agamben's interpretation of Pindar while the second, Derrida's interpretation of Sophocles. Fundamental to the argument being developed throughout these essays is that both these positions misunderstand what is at work in those areas of Greek thought studied here. More importantly, they define or stage a thinking of the ethical and thus by extension the political in which violence if it were not given a type of justification would at the very least emerge as an unavoidable necessity. If there is another project within this engagement with place, commonality and judgment, albeit a project whose presence is only ever there *sotto voce*, then it is to develop a conception of ethical and political philosophy in which violence was not attributed a founding role.

Finally, it should be noted that a number of these texts have been published before.[3] However, they have been subject to a sustained rewriting.

The project as initially staged always stood in need of clarification – a process that must be unending. However, it was not until recently that the ineliminablity of measure, on the one hand, and what has been described as the primordiality of *being-in-place* and *being-in-common*, on the other, redefined the overall project of rethinking the relationship between place commonality and judgment within aspects of Ancient Greek philosophical and literary texts.

Chapter 1

Staging the Ground: Place, Commonality and Judgment

The externalization of love, its having become universal, reconfigures the project of justice and law. No longer would justice or law necessitate the presence of citizens and the structure of contestable decisions. Equally, the universalization of love brings with it a radically different conception of law. Law is literalized – i.e. equated with statute – while breaking what would have been an assumed relation that law had to life. Contemporaneous with this move is that conventions (norms) could then become enforceable by law, an eventuality that is itself only possible because law will have been identified with statute and a relation between norms and law taken to be unexceptional. The triumph of love has a number of different forms. In this context, it is to be understood as the means by which Paul in a range of his writings within the Christian Bible repositions and characterizes Judaism such that the latter is suspended in the name of love.[1] The repositioning and the suspension are present simultaneously. In part, they form a fundamental aspect of the project of his *Letters*. The writings do not envisage the overcoming of Judaism. More significantly they stage its suspension. The suspension of Judaism involves two interrelated elements. In the first instance, it involves a literalization of 'law' (*nomos*) and then, second, the suspension of that law – a suspension that depends upon the process of literalization. Paul's transformation of the law is the end point of the project that concerns the relationship between place, commonality and justice and the way that it configures and reconfigures the status of the law.[2] Tracing this complex of relations, relations set in play by measure's inevitability, is the task of the essays presented here.

The process by which the 'law' (*nomos*) comes to be suspended within Paul's construction of the figure of the Jew has to be set against another suspension of the law.[3] In this other case, it is the suspension of one specific conception of justice and the subsequent enacting of a radically different one. If the overall project of these essays has a beginning, then it can be

located in the way 'justice' (*Dikê*) is reconfigured within Aeschylus' *Oresteia*.[4] The significance of that reconfiguration is that law and justice are transformed through a form of suspension, a suspension named in the *Oresteia* itself as a 'catastrophe' (*Eumenides*, 490–410). (The catastrophic will be reworked in this project and renamed as a *caesura of allowing*.[5]) What is significant about a conception of the caesura as that which allows is both the quality of that suspension, the initial catastrophe and that which comes to be staged as a result. What the caesura allows cannot be determined in advance. The catastrophic in this instance therefore occasions. Hence, it cannot be identified with forms of nihilism within which destruction occurs without a discernible end. Part of the argument to be presented is that what the suspension within the *Oresteia* brings into play is a radical transformation not just in the way law and justice are understood but also in the way their presence is effective. While the suspension is decisive, what it brings into play are two concepts – *being-in-common* and *being-in-place* – that while unstated are, it will be argued, at work within *Oresteia* in terms of the way justice is understood, an understanding that has to incorporate justice as the site of its own self-transformation, and law would be enacted. Both concepts identify sites and thus conceptual settings – 'commonality', 'place', 'being' – that are themselves already processes of transformation. As such, both can be defined in terms of their inherent potentiality. Moreover, the position to be advanced here is that the presence of these concepts cannot be restricted to the *Oresteia*. Indeed, the contention is that they play a fundamental role, precisely because they have a structuring force within the ways in which justice and law are understood within significant aspects of Ancient Greek philosophy and literature.

Prior to expanding on their presence, an essential project given the importance they will play throughout the work of these essays, it should be stated in advance that the essays gathered here are not intended to present a synoptic history of place, commonality and justice within Ancient Greek philosophy and literature. Rather they stage specific moments. Their relevance is that they chart the move integral to the *Oresteia* in which it would no longer be possible to identify justice with retribution. As a result, justice remerges as bound up with decisions made by citizens. Justice becomes that which in being freed from a structure of immediacy would then be able to incorporate both forgiveness and the process of reconciliation as integral to its operative presence, that is, to the presence of justice as a process. (It needs to be noted that forgiveness and reconciliation are straightforwardly unthinkable within a set-up in which justice is identified with retribution.)[6] Part of the argument is that the possibility for suspending the link between

justice and retribution is already written into deliberations concerning justice and law that occur within certain Ancient Greek philosophical and literary texts.

While this possibility is enacted within significant moments in those texts, it will be argued that the set-up they occasion and thus the results they put in place are suspended in Paul's *Letters*. Paul stages what might be understood as the suspension of a specific understanding of *being-in-place* and *being-in-common,* an understanding that is defined as always taking place beyond the hold of the interrelationship of essentialism and universality.[7] What is suspended by Paul is twofold. In the first instance, the suspension pertains to the conception of justice that is found in Athena's redefinition and thus re-placing of justice. This takes place in the *Eumenides* (a positioning that is also Athena's own abdication and which needs to be understood as her own productive disempowering). In the second, what is suspended is the conception of justice and the implicit conception of law that forms a fundamental part of one of the arguments concerning the nature of justice advanced by Socrates in the *Gorgias*.[8]

Clarifying what is intended by the terms around which this project is orientated – i.e. *being-in-place* and *being-in-common* – needs to start with a general claim. The opening contention is far from controversial; i.e. within Greek philosophical and literary writing, the *polis* is not just a place, rather it is the locus of human activity. Far from being a simple tautology, the '*polis*' – a peopled *polis* – needs to be understood therefore as the site of the collectivity of human being. The reciprocity here should be noted, i.e. human being is always already sited, thus always already in place.[9] The *polis* therefore is the place of *being-in-common.* Commonality is not linked to a quality intrinsic to human relations where being human is thought to be comprised of singular entities. Commonality is being together and consequently identifies a network of relations. These relations define a specific register of *being-in-common.* The argument for this position stems from an interpretation of the position advanced by Aristotle in the *Politics* in which human being is identified by the formulation *zóon politikon.* (This position is attributed here with an inherent generality allowing it to open up beyond Aristotle's immediate concerns.) What this amounts to is a positioning in which the being of being human is explicable in terms of a *polis* dwelling animal. In other words, the human is involved with place – the *polis* – though equally what can be described as the original placedness of human being necessitates a form of co-presence.

The human is with its others. While taken simply within its Aristotelian context, the conception of the *zóon politikon* located directly in the *Politics*

and by extension in the *Nichomachean Ethics* has both limitations as well as strengths. Nonetheless, what it holds open is the possibility of a location of human being in terms of a primordial relation to place and equally an always already present relatedness to others. (Relationality always moves therefore between potential and actual relations.) *Being-in-place*, which needs to be understood as a rewriting of an aspect of Aristotle's formulation, involves an intrinsic form of relationality. The question that arises, however, is how the interplay between place, relation and the 'political animal' is to be understood. Responding to this question necessitates recognizing that what is described by the formulation *zoon politikon* is not arbitrary. It is not as though the claim is that among other things human being can be expressed in this way. The claim has to be that the term *zóon politikon* describes the being of being human. Therefore, it needs to be read as the formulation of human being, i.e. the being of being human. As such, the description has an essentially ontological character. The passage from Aristotle's *Politics* in which this position is advanced is the following:

> that man is by nature (*phusei*) a political animal (*zóon politikon*); and so even when men have no need of assistance from each other they none the less desire to live together. At the same time they are also brought together by common interest (*to koiné*), so far as each achieves a share of the good life (*tou zén kalós*). (1278b)

While the passage warrants long and detailed commentary in its own right, two moments within it need to be noted in advance. They bear significantly on the project of these essays. The first is the use of the terms 'nature' (*phusis*) as providing the ground of the description of human being as a 'political animal'. The second is the further description of collectivity in terms of 'the shared' or 'the common' (*to koiné*). The use of 'nature' to qualify 'political animal' needs to be understood as reinforcing the ontological quality of the *zóon politikon*. ('Nature', in this context, names the ground for that which is, being what it is.) In other words, here, there isn't an opposition between nature and human being, of equal importance is the attribution of a conception of the shared. This opens up two important questions. In the first instance, there is the question of the quality of the shared itself. In the second, there is the question of with whom does the shared exists. In regards to issues arising from the question of the presence of the 'shared', a question posed in the immediate context of Aristotle's text, it is evident that what is shared and with whom that share occurs are others named under the heading *zóon politikon*. Nonetheless, taken more

generally, what the presence of the shared and the common reinforces is the sense of an already present relationality. In other words, the ontological status of human being is not given by the positing of singular entity. Rather, it is defined in terms of that which is, *ab initio,* part of a collectivity – neither a collectivity of singulars nor of singulars with relations but of potential and actual relations, i.e. relations that exist and only exist in the continuity of being acted out. There is an original sense of the shared that allows both a singular as well as a general sense of 'a good life'. As such, that 'good life' does not have an externally located moral source, rather it is to be located in the potentiality already there in the fabric of existence. Moreover, this particular location of the share is what gives the being of being human its original sense of place. *Being-in-common* therefore could not be thought other than in regards to what has already been described as *being-in-place.* There is a co-implication since both involve the necessary presence of relationality. *Being-in-place* and *being-in-common,* as they continue to organize and structure concerns with justice and law, are themselves continually reworked in the process. What this entails is that any conception of justice and law has to be defined in relation to the specific formulations that these positionings of human being have at any one given moment.

In more general terms and thus moving on from the strict confines of Aristotle's formulations in the *Politics,* what is being worked out in these opening considerations, ones in which a provisional compatibility of concerns can be identified in Aeschylus and Plato, is that what accompanies conceptions of justice, where justice is present as a site of transformation and repositioning, is an implicit concern with the being of being human and equally an attempt to relocate justice. That relocation means that justice would no longer to be explicated in terms of different modes of externality. Justice, as a consequence, given the realization of this repositioning, is then located within the fabric of existence. (While existence is the generality named by the continuity of relations between *being-in-place* and *being-in-common,* a continuity inscribing transformation as integral to relationality as an activity, this relocation is, of course, nothing other than the acknowledgement of a set-up that has always obtained, even if only as a potentiality.) Hence, there can be no clear separation of justice and the matter of life. Justice therefore would be part of life rather than external to it. And yet there is a division within Greek thought. There are important instances in which justice is identified with forms of externality. What is suspended within the passage that marks out the initial positioning of Justice in the *Oresteia* is Justice, in its personified form, as an externality. Moreover, one way of understanding the distinction between Plato and

Aristotle would be to argue that the former is committed to a conception of justice that is defined in terms of externality. (This would, of course, be the articulation of justice within the overall theory of 'forms'.) In the case of Plato, there is, of course, considerable justification for such an argument.[10] Nonetheless, as will be suggested in relation to the passage from the *Gorgias*, to be taken up at a later stage in this chapter, this position is not as straightforward as would first appear. The argument will be that to the extent that there is a concern with commonality and place then it is difficult to withdraw justice from what has been described as the fabric of existence. Indeed, the chapters to come and which take up differing aspects of the writings of Heraclitus, Pindar and Sophocles – engagements mediated via the way those writings figure in texts both literary and philosophical by Hölderlin, Heidegger, Agamben and Derrida – will continue to work though the differing ways place and commonality are reconfigured. For this entire project and thus for tracing the work of justice and law, work that cannot be separated from *being-in-place* and *being-in-common,* Aeschylus's *Oresteia* remains the central organizing text.

The significance of the *Oresteia*, specifically the 'catastrophe' that undoes the identification of justice with a divine source, a source entailing that what were taken to be acts of Justice had to occur immediately and the moment in the *Gorgias* in which Socrates traces the interarticulation of different sense of commonality and justice (508A), is that they present differing yet compatible expressions of the way a concern with justice and law is already a thinking of commonality and place. While it will be important to turn to Socrates' formulation, a start will be made with Aeschylus. The importance of the *Oresteia*, as intimated above, is the presence of a radical form of suspension.

In the *Agamemnon*, the first play within the trilogy, the initial staging of the question – what would it mean to be just to Orestes? – takes place.[11] The pursuit and trial of Orestes for the murder of his mother Clytemnestra structures the trilogy. However, occurring equally within the play is a profound investigation of a conflict at the heart of justice (*diké*) as well as one that takes place within the realm of law (*nomos*). Indeed, the investigation of this conflict could be understood as the trilogy's real content. In order to bring out the latter point, a number of passages will be taken up. The first occurs in the *Agamemnon* in which the Chorus gives the relationship between Justice (Diké) and human being a setting in which human being is identified with lives of 'mortals'. The other passages to be considered are from the *Eumenides*. In regards to the latter of central concern is the passage in which Erinyes as the Chorus concede the suspension of Justice by Athena.

After which they then concede, in addition, the suspension of that conception of law in which law is directed by the Gods (natural law) and in so doing allow for its replacement by a redefinition of law in terms of its connection to the work of citizens that introduces, at the same time, the problem of 'civil strife' (*stasis*). What is introduced therefore is the element – i.e. *stasis* – whose necessity both troubles and defines democracy. Indeed, it is possible to suggest that from the *Eumenides* onwards *stasis* attends democracy. This is a theme will continue to recur. As will be argued, it figures as much in Hölderlin's translation of Pindar Fragment 169a, taken up in Chapter 4, as it does in Sophocles' choral ode, the Ode to Man in the *Antigone* – a position developed in Chapter 5.

Discord is essential to the democratic. As will be noted in the chapters to come – notably in discussions of Heraclitus – 'conflict' (*eris*) and 'war' (*polemos*) cannot be readily dissociated from questions of justice. It is not only that 'conflict' (*eris*) and 'war' (*polemos*) in Heraclitus play a vital role in the reorientation of justice as a question but it is also the case that they are inseparable from the operative presence of *being-in-common* and *being-in-place*. As such, their original positioning needs to be understood as an opening towards the democratic. They identify the presence of a democratic impulse – an impulse assuming a definition of the democratic in terms of the ineliminable presence of discord – *avant la lettre*. This accounts for why it is possible to argue that 'conflict' (*eris*) and 'war' (*polemos*) are other ways of naming the presence of an original sense of discord.[12] Holding to a fundamental relation between discord and the democratic gives rise to the possibility for a more sustained examination of the consequences of Athena's suspension of the law. These consequences do not simply occur. They are allowed by this suspension. Occurring as part of the suspension, they reinforce the presence of that suspension beyond the hold of simple destruction and position it thereby in terms of a caesura of allowing.

The first passage, from the *Agamemnon* (773–779), is the following:

> But Justice (*Dika*) shines out in smoky dwellings, and humours the righteous man: gold-spangles abodes where hands are filthy she quits with eyes averted, and goes to pious ones, not revering with praise the light of wealth if it is counterfeit. She directs all things to their end. (*pan d'epi terma nóma*)

Justice – and it is Justice as a deity in this opening passage – has three qualities that are fundamental in this context. In the first instance, Justice is

external to the 'domos'. As such, it is positioned outside the place that is configured as the locus of human dwelling. Consequently, Justice illuminates that place, shining within because of having been positioned on the outside. In the second, not only does Justice avert its eyes from those whose hands are 'filthy' (*pinô*) even if they are wealthy (hence the wealth would have been ill gotten) but she seeks out those who are sanctioned by the Gods whilst at the same time treasuring the 'righteous'. As such, there would be commensurability between justice as that which 'treasures the righteous man' (*ton d'enaisimon tiei*) and 'goes to the pious ones' (*hosia proseba*). Righteousness, piety and the state of having been sanctioned by the Gods identify those to whom Justice directs herself. Hence, the 'all' of line 779 will always be divided between the pious and the impious – where piety is the state of having been sanctioned by the Gods. The final line – 'She directs all things to their end' (*pan d'epi terma nóma*) – must be understood as reinforcing both the externality of *Diké* in relation to human affairs – external, in addition, from the locus human activity – even though she distributes, directs and thus controls all ends and goals. Externality defines the place of Justice and in so doing defines the role of justice. To which the response may well be that this is not justice at all. (This possibility, one that at this stage in the unfolding of the *Oresteia* may only be able to be announced theatrically, will be realized as inherent to the drama of the *Eumenides*.)

Given the question – what it does it mean to be just to Orestes? – then were this formulation to be followed within the setting created by the externality of Justice, then justice, as noted above, would have the quality of pure immediacy. The actions of the Gods and the enacting of justice, two moments whose immediacy constructs them as coterminous, are not situated within a location that defines human being in terms of *being-in-place*. It would only be within such a set-up that justice would have an automatic link to both place and commonality. Externality positions subjects as isolated individuals who are then subject to fate and thus fated as subjects.[13] Were justice to be situated in the terms set by *being-in-common* and *being-in-place*, then both commonality and place would yield a conception of justice as internal to their presence, a presence that needs to be thought in terms of the dynamic. While the contents of this setting would have an identity that was revised continually, such revisions would be constrained to hold all three elements – place, commonality, justice – in play. While justice would not be reduced to an abstraction – abstracted from just acts – justice would nonetheless have a presence mediated by that setting. Justice as mediacy is linked to a conception of value that arises from the

maintained presence of commonality and place and in so doing is bound up with suspension of what can then be recognized as the putative sense of value arising from defining justice in relation to the Gods. (A setting whose contemporary version is the continual identification of justice with retribution and continual debates about statutes of limitation.)

While it needs great justification, it can be suggested, nonetheless, that the development of the *Oresteia* can be read as the suspending of this conception of Justice. The differing elements comprising the conception suspended by Athena are as follows: First, Justice is the personified presence of the God and of necessity, external to human affairs. Second, justice cannot be located, by definition, in the fabric of life (the life of mortals). Third, justice thus construed discriminates in advance and that acts of justice (so called) are acts of retribution that occur immediately. In order to develop a better understanding of the consequences of Athena's involvement of citizens in the process of justice – and thus justice taking on the quality of a process – the response to that suspension made by the Erines (as the Chorus) will be taken up.

As has already been suggested, the question driving the reworking of justice concerns the question of what does it mean to be just to Orestes? As a question it cannot be understood as harbouring any form of neutrality. Indeed, its reiteration throughout the play is the transformation of justice, the process of transformation such that justice itself becomes a process. There are at least two important changes in how justice is to be understood. In the first instance, the question of justice involves a specific case; hence the particularity of the case matters. The second is connected to particularity. Precisely because the case is particular – it pertains to Orestes – what is then opened up as a question is what in this instance would count as having been just and thus what is justice such that it can be enacted in this instance. (The point here needs to be understood, as a general claim, is that justice always needs to be operative.[14] Justice is in its being acted out.) The force of this repositioning is that it marks a fundamental shift in how justice is conceived. (And thus how the history of justice is to be understood.) The possibility of justice emerging as a question is already a suspending – an already present suspending – of the necessary connection between justice and immediacy that was identified earlier. Prior to moving to the central passage in which the response to Athena suspending law, her decision to chose from among citizens who will judge the case of Orestes, the position articulated in lines 976–984, two earlier moments within the play are central.[15] The first is line 430 and the second, 490–491.

While the detail of the play would need to be followed in order to trace the complexity of its own dramatic argumentation, it is nonetheless still possible to identify a number of central moments that when taken together identify the setting in which the law's suspension and repositioning of justice occurs. The first line in question, line 430, forms part of a spirited exchange between the Chorus and Athena. Remembering that the Chorus holds the position of the Gods, and hence they are the ones for whom justice will have always been identified with immediacy. What is directly at stake in the passage concerns the role of the 'oath' (*horkon*) within Greek justice. Oaths involve the equation of justice with charge and counter charge and as such become a version of immediacy insofar as they are pronounced in a way that secures for each oath a 'Divine witness'.[16] As such, they are not situated within a structure in which contestability is intrinsic and moreover where contestability pertains both to deliberations resulting in a decision and then to the decision itself. The refusal of the 'oath' by Orestes and as the audience will come to see its refusal by Athena needs to be understood as a refusal of the oath as providing an adequate structure of justice or ,more emphatically, as integral to justice. Directly after this moment, thus with the audience having been prepared for justice to have another formulation, at line 430 Athena says to the Chorus:

> You are more concerned to have a reputation for justice than the wish to practice justice (*praxai theleis*).

What is significant here is not just the contrast between the different senses of justice – justice as that to which one attends, as opposed to acting justly. Of greater importance, despite its only being implicitly present, is the shift from a conception of justice defined in terms of externality and thus in terms of immediacy to one in which justice becomes a practice. What the second half of the line indicates, to reiterate the point made above, is that justice *is* – in the strong sense of exists – in its being practised. The moment that justice can be considered a practice, then it brings with it clear consequences.

As a beginning, the most significant consequence is the necessity that there be a place where justice is practised. Justice as linked to the acts of Gods, or even as being the province of the Gods, cedes its place to justice as a civil practice. Once ceded, then not only is an architecture of justice necessary – an architecture that will be distinct from places identified exclusively with the Gods – but there will also need to be a specific temporality

of practice. Practice is not immediate. The immediacy of divine action has a different temporal structure than the temporality of mediacy. Within the place of justice, decisions will be reached and decisions can be contested. What this set-up demands is a defence both of the architecture of justice but equally a defence of the place of justice itself and finally of the temporality of mediacy. Mediacy provides the basis for undoing the identification of the sovereign decision, and thus sovereignty itself, with the immediate, thus incontestable, decision. Mediacy therefore can be represented as the time of the democratic, hence contestable, decision. Once all these elements are together, the defence noted above is of the social framework that sustains a conception of justice in which place becomes the site containing the decision-making processes of citizens. At the same time, it demands a defence of civil society, the latter as the space of disagreement. Spaces of agreement and disagreement become the way in which commonality and place occur. What is held in common is that space. There is a further implication. Once justice is thought to involve a practice, and by practice what is meant is that which occurs once justice is no longer identified with the immediacy of an act but rather with practice as a process, then justice forms part of the activity of life. Justice is not external to life. What this means is that justice in its being the site of the continuity of mediation – itself the setting of any decision – is already inscribed as an ineliminable potentiality within a set of processes that are inherently contestable. As a result, not only is justice always already there as a possibility within *being-in-place* and *being-in-common* but contestability, contestability as the ground of both agreement and disagreement, also becomes an element that is fundamental to the definition of justice itself. The inscription of contestability within justice becomes the suspension of law and justice where both were defined exclusively in terms of the actions of the Gods.

The next stage in the detailing of this repositioning of justice is to argue that the suspension is precisely what is recognized by the Furies. This recognition is voiced in lines 490–491:

> Now comes the overthrowing of ordained laws (*nun katastrophai nomón thesmión*).

These lines occur after Athena has repositioned the decision-making process in relation to justice by allocating it to the 'citizens' (*polei*, 475). While it will always need to be recognized that the question of who counts as a citizen is open to varying forms of contestation, since citizenship and the question of autonomy have their own history of contestability, it remains

the case that within the context of the play the now emergent centrality of citizens is decisive, an emergence that has to be understood as the result of a caesura of allowing. Indeed, this is exactly what the line makes clear. While the line contains a contestable word, what is not contestable is the identification of the catastrophe as occurring 'now' (*nun*). Defining the present as such, a moment is announced. The moment is further defined as the moment of 'catastrophe'. Here in the opening of the play's second stasimon, unpredictably there is the counter strophe. The catastrophe – the caesura – is staged. However, it is not a simple catastrophe, insofar as it is not a destruction thought within a form of nihilism. The catastrophe is located in relation to already ordained laws (*thesmión*). What is suspended therefore is a structure of law where the latter, as has been argued, is defined in relation to justice as immediacy and thus the enacting of justice as fateful retribution. Moreover, the presence of the already ordained precludes the introduction of new laws or, perhaps more significantly, the modification of already existing laws. This compounds the sense in which what is suspended – a suspending that is the catastrophe – is the relationship between law and the temporality of fate. (As Oedipus recognized the dictates of fate resist modification!) While there may be a subsequent evocation of Zeus and thus the evocation of a type of piety, it is already too late.[17] The Gods will have become unnecessary. They could only ever be an unnecessary presence. And yet, as shall be seen, the continuity of their evocation, an evocation after the catastrophe, becomes the burden of citizens. While it will be essential to return to this point, at this stage what must be pursed in greater detail is the nature of the 'catastrophe' named and identified in lines 490–491.

The catastrophe is a caesura. A caesura is a form of interruption. However, it is not mere interruption; it redirects and repositions what it was that was interrupted. What is interrupted is transformed in the process. The catastrophe is a caesura, in the precise sense that it is a caesura that allows. The question that is introduced by the catastrophe is what occurs after. Prior to addressing that question, or at least prior to investigating what it is that is being questioned, it is essential to stay with the conception of destruction that is located in lines 490–491.

In the lines that follow the identification of the 'catastrophe', the Chorus go on to state that this 'event' (*ergon*) will have a direct effect. It will bring all 'mortals' (*brotous*) together. The displeasure of the Chorus, a displeasure that is the compounded impact of the catastrophe, is evidenced in their use of the term 'licentious' to describe mortals and their actions. The question of whether this description is accurate – the pros and cons of the attribution

of licentiousness – is not the point. What is of supreme importance is the insight by the Chorus that, first, the catastrophe occasions and, second, that what it occasions is a sense of commonality. However, it is not just a sense of the common; it recalls what was already there as a potentiality within human being, namely, *being-in-common*. Moreover, it will allow *being-in-common* to set the measure for the actions of humans, understood as actions situated within an always already present structure of potential and actual relations. In more general philosophical terms, what this means is that there cannot be a pure event – let alone an event having the quality of a caesura of allowing – that occurs independently of recall.

Here the catastrophe as an event is an interruption of a set-up that defined subjectivity in terms of an individual's relation to the Gods. The suspension of which is the allowing. What is allowed therefore arises once a conception of subjectivity that locates the singular subject in a relation to fate and the Gods no longer has priority. There is a reconfiguration of subjectivity such that priority is given to a subject defined in terms of commonality and thus in terms of *being-in-common*. (A radically different sense of subjectivization is play.) The latter, *being-in-common* as allowed by the caesura, needs to be understood as a non-synthetic totality. This is the case since a pre-exiting form of relationality, one defined in terms of the single individual, the Gods and the temporality of fate and which was therefore, in fact, a type of synthetic unity, gives ways to a sense of relationality where relations are defined, henceforth, in terms of the continuity of their enactment. The positing of universality is predicated upon the cessation of relationality understood as a dynamic process. In other words, what comes to the fore is a conception of commonality as the continuity of a process at work without an originary essential determination and thus equally without a conception of singular universality (after all what could a singular universal be within a set-up in which the continual living out of relations – relations that are structured by difference – defines *being-in-common*?).

While differing conception of commonality as a synthetic unity, present as an abstract universal, may be thought to be original conditions, they are after effects and thus additions to *being-in-common*. There is no *a priori* reason why either *being-in-common* or *being-in-place* needs to be defined in terms of a series of abstractions that are then reimposed. *Being-in-common* could always name a collective whose commonality was defined in terms of place and then a shared participation in the fabric of existence such that *being-in-place* and participating in the shared, both of which are modes of action, defined *being-in-common* in terms of activity rather than in terms of singular identities. (What such a description generates is a ground of

judgment that is not external to the fabric of existence but stems from it.) Within such a setting, being a citizen therefore would involve acting rather than being. Within this renewed position, identities would figure as effects of the process. This needs to be seen as a reiteration of the implicit position already noted above in relation to line 430. What is of specific importance in that instance was the move away from a conception of justice understood as external and non-transformable (equally one whose decisions are non-contestable) to a conception defined by activity and incorporating the presence of a form of inherent relationality between decisions and contestability. Activity is not reducible to pragmatic acts and thus is not linked to decisions that are merely *ad hoc* and thus arbitrary. On the contrary, defining justice in terms of activity needs to be understood as the interarticulation of justice, place and commonality. Justice as an activity can be understood as that which brings together the temporality of the decision and the architecture of justice giving rise thereby to an interarticulation of activity and a specific sense of place.

The redefinition of justice in terms of activity is the possibility that the catastrophe stages. Once the term 'allowing' is linked to the caesura then, as intimated above, an important additional dimension is introduced – noting that addition prepares the way for a discussion of lines 976–984. These lines take place after the incorporation of citizens as the locus of decision making, such that justice is always a question of civil decisions. As has been suggested this is the catastrophe. The lines from the Chorus need to be understood as an engagement with the question of what the caesura allows. The actuality of the caesura, namely, the moment already announced in the 'now' of lines 490–491, is not being disavowed. The caesura's allowing is the site of the Chorus' engagement. The lines in question, 976–984, are the following:

> I pray that civil strife insatiate of evil may never rage in this city; and may the dust not drink up the dark blood of the citizens and then, out of lust for revenge, eagerly welcome the city's ruin through retaliatory murder rather they may give happiness in return for happiness resolved to be united in their friendship (*koinophelei*) and unanimous in their enmity for this is the cure for many ills among mortals.

While it is not their final speech, the Chorus, perhaps unwittingly, bring together themes central to any consideration of the complex interplay between justice, law and place.[18] In order to understand better the

implication of that which is opened by the caesura of allowing, the catastrophe whose work has been outline above, it is important to develop, albeit tentatively, the force of this passage.

With the emergence of civil decision making, an emergence that necessitates the overcoming of a conception of justice and law that is bound both to the Gods and to Fate, as itself having occurred within the trial of Orestes by citizens, the Chorus fears the possibility of 'civil strife' (*stasis*). And yet, as will be developed below, the possibility of strife between citizens attends democracy. Rather than strife the Chorus hopes – 'prays' – for reciprocity in relation to 'happiness' (more literally 'things of joy' – *charmata*). The moment of greater significance, however, is the Chorus also wants a conception of commonality defined by a form friendship, i.e. *koinophelei*. It may be that what they want is what they already know to be there as a potentiality, one whose actuality depends on their withdrawal – a withdrawal that is space creating.

Throughout the antistrophe, there is the reiteration of a literal language of place: The strife in question is civil, hence the term *stasis*, necessitating the presence of a city and of citizens; note, also, that the last line's evocation of 'mortals' (*brotois*) introduces a conception of subjectivization that is positioned outside any definition that would have its origin either in the Gods or defined in terms of a necessary relation to them. Two points need to be noted here. Both are opened by the caesura of allowing; thus both exist as potentialities, the realization of which – the continual becoming actual of potentialities – defines both activity within civil space while holding in place an implicit ground of judgment for such activities. In the first instance, the opening of civil space introduces a relation to divinities that is essentially arbitrary in nature. Civil space, even though it may contain architecture for the Gods and in virtue of that architecture may also incorporate sacred spaces, is nonetheless civil in orientation. Second, however, in this final instance what is positioned against a generalized affliction in relation to human nature, as perceived by the Chorus, is a version of commonality. Furthermore, it can be argued that from the perspective of the Chorus what stands opposed to civility is a natural impulse for revenge. Here a cautionary note is necessary. There is no suggestion in the passage of a simple opposition between nature and culture. It is not as though such an impulse is opposed to the polity. Such a simple opposition would miss the point. What is identified as 'impulses for revenge' occur within the city. They are already there among the citizens and therefore at work within the polity which were it not, as an inherent potentiality, subject to self-regulation could give rise to actual civil strife. In other words, implicit in what the

Chorus is saying is the recognition that with the overcoming of Fate and a conception of justice and law that is defined in relation Gods, conflict – a conflict the continual regulation of which becomes the project of citizens – occurs within the city itself, hence the use of the term *koinophelei* ('united in friendship') within the speech. The term evokes a sense of commonality defined in relation to a public sense of friendship. The contrast therefore is not between the threat of civil strife and commonality as though they were mutually exclusive. Both occur within while defining the city. They delimit what can be described as a primordiality of relations at the centre of *being-in-common*. Commonality is a relation. Its experiential dimension provided the implicit sense of feeling within the term *koinophelei*. It describes as much a state of affairs, e.g. the state of *being-in-common*, as it does one that is felt (hence the necessity to guard against its abuse).

What the Chorus announces therefore is the truth of the city. This needs to be set against another description of the city, a description which again is announced by the Chorus, that encapsulates the complex relation between citizens and the place of human being. The passage in question, lines 516–521, is the following:

> There is a time when fear/the unaccustomed (*to deinon*) is good and ought to remain seated as a guardian of the heart. It is profitable to learn wisdom (*sóphronein*) under the pressure of uncertainty.

The significance of the passage depends upon how *to deinon* is understood. Rather than attempting to resolve that problem, as though there is a correct and definitive translation, what matters here is the possibility of attributing to it a double register. In the first instance when the term is uttered by the Chorus, it corresponds to a sense of fear, a sense that brings with it its own conception of subjectivization. The claim would be simply that fear generates reverence for Justice (*Diké*). Moreover, in the lines that follow – i.e. 521–526 – the Chorus makes the claim that it does not matter if what is of concern is a 'single man' or a 'community of mortals' (*polis brotón*). In both instance, what is at stake is the 'same' (*homoiós*). From within this perspective, a community of mortals is simply a plurality of singulars. It is not *being-in-common*. In others words, the identification of *to deinon* with fear is the project of the Chorus. The project both envisages and depends upon the singular individual (as a singularity or a plurality) as the subject of fear. While the reality of this position is not to be questioned, it is nonetheless possible to locate within the same lines another alternative – not just an alternative interpretation but one that is compatible with the interpretation

of the *Eumenides* as staging the suspension of the reiteration of the identification of justice (justice as a process and thus an activity necessitating both the place and the space of justice) with Justice, an identification that itself identifies the subject of the political with the individual (where the latter is understood both as a singular and a plural term in which the plural is not an original condition but rather is no more than a plurality of singulars).

The alternative necessitates allowing another register in these lines to predominate. In this instance, it would involve emphasizing the relationship that *to deinon* has to the work of wisdom (*sóphronein*), wisdom as that which is acquired and deployed and as such is, *ab initio*, worldly. Within this setting, *to deinon* can be understood as the response – and it may be fear – to that which is unaccustomed (*to deinon* would be the unaccustomed). However, it is not the unaccustomed that comes from an external source. Rather, the unaccustomed inhabits the city. It is the element that cannot be mastered but which demands constant engagement, an engagement guided by wisdom. It may be therefore that the 'unaccustomed' is *stasis* – the terms stage a similarity of concerns. However, it would not be *stasis* as the actuality of civil strife. Rather *stasis* would be that which was already present within the democracy. Namely, *stasis* names the necessity within the democratic – perhaps even as definitional of the democratic itself – of ineliminable forms of contestability. Democracy involves the recognition and affirmation of forms of powerlessness – the undoing of tyranny – and the repositioning of power as that which is demanded by the redefinition of justice in terms of *being-in-common*. As such, of course, Athena becomes the exemplary figure of the democracy. Her abdication and her embracing the power of powerlessness is the catastrophe and thus the caesura that allows. She is not external to the creation of the democracy.

'The unaccustomed' therefore is not to be feared, or rather 'the unaccustomed' can only be feared if the link to wisdom has been severed. While the Chorus might want the connection between *to deinon* and *sóphronein* to be maintained within an already determined frame work, one in which *to deinon* entailed fear, it might be countered that as wisdom cannot have fear as its prompt, it is probably more accurate to locate the force of *to deinon* within 'the unaccustomed' thereby reinforcing the link to 'wisdom'. 'The unaccustomed' prompts thought. Fear would not. Wisdom, moreover, involves the endlessness of negotiation with that which cannot be mastered, namely, the city as the locus of contestability. 'The unaccustomed' becomes that which falls beyond the hold of predication and calculation. 'The unaccustomed' would be therefore that which was allowed and equally that which allowed. There is, however, the other aspect of 'the unaccustomed' (*to deinon*) and of *stasis*.

What endures within the democracy is not just contestability. From its inception the democracy will always have been inhabited by that which would undo it. There are remainders. Those remainders are not chance occurrences. They are that which the caesura of allowing bequeathed as having been undone – e.g. the identification of Justice with retribution, the pervasive nature of Fate – but which were not subjected to annihilation. Hence, while in the *Eumenides* even though the Furies are led off, they remain, enduring as the displaced. Despite this displacement, they will always recall that other possibility within the democracy, the realization of which would be the destruction of the democratic itself.[19] Hence not only does *stasis* have a double register but also integral to the creation of the democratic is the necessity that, on the one hand, it incorporate that which would undo it while, on the other, the reciprocal necessity of that very unmasterability that leads to the incorporation of such an element generates that with which it becomes possible to judge, namely, 'wisdom'. There are two points that need to be made in this context concerning wisdom. The first is that it provides the means by which it is possible to engage and thus work with both contestability and the democratic's own internalized threat. The second is that wisdom, and thus its enactment as judgment, is not only sustained by the fabric of existence but also the potentiality for its realization forms a fundamental part of that fabric.

The relationship between wisdom and commonality is precisely what figures in a central investigation of justice that occurs in the *Gorgias*. If there is a more general statement that will allow Socrates' engagement with the question of justice to be incorporated independently of this link, then it inheres in the following questions: Is there a ground of justice that can either be recovered from an investigation of justice (and by extension law)? Or is there an externality that founds both justice and law? – an externality that would be external to that which it founds and therefore was regulated neither by justice nor law. If this were the case, then such a foundation would involve that which was violent, fearful or fateful.

The context, in the *Gorgias*, in which wisdom and commonality are drawn together is the ongoing discussion between Socrates and Callicles concerns the nature of justice. Even though it is a position that may go in the direction of looking for the 'essence' (*ousia*) of justice or law, it nonetheless introduces a range of different possibilities. As part of his response to Callicles, Socrates suggests the following:

> And wise people (*hoi sophoi*) tell us Callicles that heaven and earth and Gods and humans are held together by communion (*tén koinónion*) and friendship (*philian*), by orderliness, temperance and justice (*dikaiotéta*);

and that is the reason why they call the whole of this world by the name of order (*kosmon*) not of disorder (*akosmian*) or dissoluteness. (508A)

While there are a series of arguments which were they to be adduced would secure this passage both within the Dialogue as a whole and equally within the overall project of Platonism, it is nonetheless still possible to locate within the passage a series of possibilities that cannot be explicated automatically in Platonic terms as conventionally understood. Of the many, three of these possibilities are central. The first involves the identification of the 'wise'; the second is the evocation of a relationship between commonality, order and justice, and then finally there is the presentation of the world in terms of order.

While what is regulative pertains both to 'the Gods' (*theous*) as well as 'humans' (*anthropóus*), this recognition of the regulative is not the province of the Gods, let alone of humans in opposition to the Gods. That recognition is clearly defined in relation to 'wisdom'. In other words, it is the consequence of a human disposition, which can be understood in this instance as a form of reflective awareness in which it becomes possible to make a claim about both the Gods and human being. Moreover, it is a disposition that assumes a conception of commonality, though perhaps more accurately it is the assumption of an already existent sense of commonality. The claim is that integral to the way in which there is a form of coherence is that it is defined in terms of *being-in-common*. This will be as true for the Gods as well as humans. In other words, what the passage suggests is that integral to human being – and note that the claim does not pertain to the human in his or her singularity but to being human understood as a plurality (and thus as a form totality) – is what has already been identified as *being-in-common*. Socrates' invocation of a relationship between the 'common' and 'friendship' recalls the position already noted in Aeschylus in which the common is also defined in relation to friendship, i.e. *koinophelei*. Friendship is not an intimate relation that refuses generality. Friendship, in this context, names that which accompanies *being-in-common*. Thus, the overall point that needs to be reinforced is that what 'friendship' does not name are intimate relations that in more contemporary terms are called friendships, namely, relations that are by definition exclusive and intimate. Friendship in this precise context is inherently public. More significantly, friendship in the passages from both Plato and Aeschylus is linked to a potentiality: commonality, while there, is there to be realized (hence the allusion to the relationship between wisdom and reflection as already implicitly present in the claim made by Socrates).

In regards to the actual formulation of Socrates' argument, what remains to be taken up is the reference to 'order'. While it is possible to emphasize different aspects of the claim made by Socrates, in this instance significance will be attached to the connection made within the passage between 'order', 'commonality' and 'justice'. Once it can be conceded that part of what holds order in place is justice, then order is not imposed by Fate; equally, what has been ordered will not exist in advance of events. And yet, there is order. The world could not be other than ordered, hence the use of the term *akosmian* ('disorder') to describe a set-up that would be impossible as the basis of generalized account of what there is. Nonetheless, the refusal of fate (and thus 'order' as the expression of the will of the Gods), on the one hand, and the necessity that there be a process allowing for interventions and thus imaginative acts of creation on the other, establishes a setting in which what matters is not freedom of action but the ground in relation to which actions – interventions – within order, thus within measure as an always already present state of affairs, are to be judged. While, Platonism may go on to create other answers to questions of the nature of justice where the latter is understood as a specific type of question.[20] Nonetheless, if the setting provided by *Gorgias* 508 is to be followed, what then emerges is that the ground of judgment will not necessitate recourse to version of the eternal or the transcendent. Rather, the ground will always have been there. If there is an ordering processes – and it is vital to note that both humans and Gods for Plato will be subject to such processes – then their identification and use will involve forms of extrapolation from what is already at hand. However, what is at hand cannot be reduced to the merely pragmatic. What is at hand is the already present interplay of commonality and justice. If that is the case, then what such a set-up recalls is what has already been noticed in Aeschylus. In other words, once commonality and justice are taken as elements that are already there within what has been called the fabric of existence, then it can argued that implicit in the Socratic formulation is a commitment both to commonality and place and thus *being-in-common* and *being-in-place*.

The defining aspect of these preliminary deliberations concerns what has already been identified as the caesura of allowing. The significance of the suspension of the temporality of fate, equally the suspension of the identification of justice with divine presences whose actions are always immediate and involve retribution, is to be located in what it allowed. If it were not for the allowing, the suspension would be no more than simple destruction. The allowing is an opening. However, it is an opening without determination and that which occurs within it cannot be calculated in advance.

And yet that does not mean that what occurs is without relation. On the contrary, a network of relations emerge with that suspension. The suspension allows for them. The site of relationality is the recognition of the always already present status of *being-in-common* and *being-in-place*.

Two final points need to be noted. The first is that both *being-in-common* and *being-in-place* have an originary position. In other words, their presence has to be understood as marking the necessary impossibility of there being a state prior to their presence. They are already present, presence therefore as originary and originating, within the setting in which there is human being. As such, law as *nomos,* where *nomos* names 'order' or measure, is not preceded by that which is outside the law – as though *nomos* had its origin in either violence or disorder where both had temporal as well as foundational priority in relation to the setting in which justice and law obtain. What the *Oresteia* stages is the movement from one conception of *nomos* and justice to another. That move is itself predicated upon the original status of *being-in-common* and *being-in-place* as the already present condition of human being. If there is a conception of that which is outside the law, the suppliant or the stranger, as outside the law, then such a positioning can only ever refer to specific laws or conventions.[21] What cannot occur is a position that has as its original quality that which is outside the law.[22] Such an eventuality would depend upon the possibility of locating the presence of human being as originally singular and independent – a move that would be the reduction of human being to a human being, a reduction denying the inherent relationality that defines human being.

The second point is that once it can be conceded that measure and order are original, and this is a position that has already been noted in Plato and as will be seen is also present in Heraclitus, Pindar and Sophocles (remembering that they comprise just three possible moments), then what matters is the way in which that originary status is operative. That law and justice are both names whose status is being reworked continually is located in their ineliminability within the concerns of Ancient Greek philosophy and literature.

Placing *Being-in-Common*: Working through Heraclitus

Place and commonality will have always comprised an open field of concerns. The terms, as has been indicated, designate as much an original condition as they do network of activity. Equally, once 'justice' and 'law' are no longer taken to harbour an essence the recovery of which defined the philosophical project, they can then be located within processes comprised of the vary degrees of contestation that occur in relation to what they are taken to designate. This process has just been traced, albeit in outline, in relation to the role of *diké* and the implicit conception of law (*nomos*) in the *Oresteia*. However, the presence of different conceptions of law and justice is not the site of simple relativity. The actual fact of the conflict, as has been argued, locates the ineliminability of *being-in-common* and *being-in-place*. They enable concerns with *diké* and *nomos* to be central to the complex ecology of relations within which human sociality can be located and thus placed. Once commonality and place are emphasized, then what occurs as a result is a repositioning of the subject or agent. Rather than the posited centrality of the subject, which could be understood provisionally as abstract human being, centrality would be attributed to relationality. *Being-in-common*, as has been suggested, marks the primordiality of relationality, and thus what counts as human being needs to be incorporated within a relational ontology. The project here is to trace that movement and thus the presence of such a set-up within the fragments of Heraclitus.[1] An ineliminable part of such an undertaking concerns the way 'law' (*nomos*) and 'justice' (*diké*) are formed, and reformed, within the fragments.

Given that what is at work within an undertaking is a complex of relations that position concerns with law and justice within a setting created by *being-in-common* and *being-in-place*, beginning can be made by focusing on relationality. Hence, in order to signal what is at stake in claims about relationality, an emphatic point of entry is provided with death and thus with that conception of the philosophical that locates the singular and

thus abstracted conception of human being as given within a singular relation to the possibility of its death.[2] If there is a way in to the task of differentiating the relational from the singular, then it involves thinking through a possibility that locates the subject as given within relationality and thus as always already relational. Repositioning the subject, thus redefining the locus of agency, needs to begin by starting otherwise, i.e. by locating death in relation to life (and not therefore by defining it in terms of a form of non-relational singularity). After all death interrupts life. However, and here the difference is fundamentally important, that interruption cannot be located within a singular relation. The interruption opens up a complex of concerns. On one level, it is the life of the individual that is interrupted. And yet, of course, precisely because of the individual's death, while occurring in connection to a form of singularity, the individual in question also interrupts and intrudes into the lives of others – a fact that may make the solitary nature of dying that much more insistent. Dying would be solitude within relationality. Death as an interruption is incorporated, and yet there is a form of continuity through discontinuity. What this can be taken as signalling is the presence of a relation between death and singularity rather than that which would have been given by defining death only in relation to a generalized form of human being who would then be the subject of death. The question of who dies cannot be severed automatically from death's registration. The shift in register is from the individual or a generalized abstraction to a more complex form of relationality and therefore towards the presence of the singular within the relational. Death occurs within relationality and thus takes place within as well as part of *being-in-common*. The death of the individual becomes the insistent singular within the relational. The complex of commonality – a complex in which the relation between singularity and relationality figures – is *being-in-common*. Opening with death as staging a relationship between singularity and relationality is the predicament that appears, in part, in Fragment 27.

> What awaits men (*anthrópous*) at death they do not know or even imagine (*dokeousi*).

What the fragment suggests is the proposition that while it is always possible to position death in relation to the individual of equal significance are the structures of anticipation or expectation (*elpontai*), on the one hand, and those of imagining or conjecturing (*dokeousi*), on the other. Rather than a concern with death, it is more germane to ask: what, now, is it that is anticipated or imagined? However, this 'now' needs to be understood as

much as the temporal instant that can bear a date as it is a marker of the present (the time of expectation and imagination). The latter, the 'present', is the temporal marker identifies while being identified by structures of expectation and the imagined. Individuals and subjects are given within them. They are its after effects. Hence, what has to be taken up is the subject of the present as given within these structures (and thus also given by them). Note, in this regard, that Heraclitus' formulation of human being is not the singular term, as though it identified only one individual, or just the abstract individual. The subject in question is always involved in a set of original relations. In the first instance, this occurs because there is an inherent plurality of subject positions. In the second, the presence of an original form of relationality is to be accounted for by the fact that subjects are held together in a loose and indeterminate hold within structures of expectation and imagination. Relations pertain as much between subjects as they do in regards to the expected and the imagined. As such, it can be argued that relationality is defined by a location in which commonality has an always already present form of insistence. What is significant here is not what is there with death (where the latter is defined in terms of its radical exclusivity) but that the subject of what is happening now – the 'now' or the present as the locus of that which happens and thus as the continual site in which activity and its potentiality play themselves out – occurs within the setting that can be identified by the terms *being-in-common* and *being-in-place*. Precisely because it is *being-in-common* that locates expectation and imagination, there are the formal concerns that they open up. Equally, there is a more pragmatic consideration, namely, the content of imagination and expectation as they pertain at a specific moment. (Here, of course, are intimations of what is at stake in finitude.) In other words, and while the language cannot be equated with any specific formulation found in the fragments, it can still be argued that what is introduced by the move to a formal presence involving commonality – i.e. *being-in-common* – is a concern that comes to define one of the central ways in which the philosophical engages with *being-in-common* (remembering that *being-in-common* is a site of contestation rather than as that which admits of an essential determination), namely, in terms of conditions that allow. While within such a positioning *being-in-common* as naming the possibility of activity and *being-in-place* as naming location must take the form of a concern with the public, the conditions of allowing need to be understood as having a transcendental quality.

In order to develop the interplay between *being-in-common*, the public and conditions of allowing, a start can be made by noting the way they are

present in Kant's *Critique of Judgment*, specifically in §40. As will emerge, Kant opens up the possibility for a reconsideration of the public that moves away from the public understood as the private individual (specific or abstract) having become public through a change of location towards a conception of the public as a produced spacing. In other words, a concern with the public is in fact a concern with what has already been identified as *being-in-place*. The public is defined therefore beyond the hold of an insistent anthropocentrism. Moreover, what occurs with Kant is a move towards the definition of the public in terms of the production of space, and therefore of the affirmed presence of an original sense of *being-in-place*, that has its correlate, as will be argued, in Heraclitus, especially in Fragment 44.

In §40 of the *Critique of Judgment*, the presence of the shared and commonality are formulated, by Kant, in the following terms.

> By 'sensus communis', however, must be understood the idea of a communal sense, i.e. a faculty for judging that in its reflection takes account (*a priori*) of everyone else's way of representing in thought, in order, as it were, to hold its judgment up to human reason as a whole and thereby avoid the illusion which, from subjective private conditions that could easily be held to be objective, would have a detrimental influence on judgment. Now this happens by one's holding his judgment up not so much to the actual as to the merely possible judgment of others, and putting himself into the position of everyone else, merely by abstracting from the limitations that continuously attach to our own judging; which is in turn accomplished by leaving out as far as is possible everything in one's own representational state.[3]

While a passage of this complexity warrants a detailed analysis, a certain brevity is nonetheless still possible. In the first instance, it should be noted that the *sensus communis* is an 'idea'. What this means is that it cannot be realized as such (and therefore attempts to realize it are constrained to founder). For this precise reason, it is not construed as a utopian possibility; indeed, it functions as the ground for a critique of such possibilities. In being an 'idea', the *sensus communis*, in Kantian terms, becomes a conception of universality that is envisaged by the singular judgment. Moreover, it is in terms of its being an idea that it is possible to understand the claim that the *sensus communis* is 'shared'. Indeed, in this context, of central importance are the consequences of the claim that the *sensus communis* is shared.

What here in this context does it mean for something to be shared? What is the in common? Understanding the 'shared' must begin with the recognition that the common is not shared out, nor is the common that in which 'we' share. For Kant what is shared is 'power'. The 'power' in question pertains to a capacity in all others to allow an object to be presented to a subject. Understood on this level, the power pertains to what can be described as generalizable conditions of intuitability. Again, it is vital to note Kant's actual formulation. The comparison is not between an individual judgment and the judgment of all others. There is no move from the singular instance to the universal, if universality is understood as the totality of all individuals. On the contrary, the comparison is between an individual act of judgment and what is identified as 'human reason as a whole'. The use of this formulation becomes a reiteration of what is shared. Taking what occurs in general as marking out a relationship between the particular and the universal, in other words, the power of reason in general, then within Kant's own argumentation this is counter-posed to the 'subjective' and the 'private'. Prior to pursuing what is meant by both the 'private' and the 'subjective', an important task as these terms occur in this precise context, there is an additional aspect of the nature of the shared that needs to be identified. The additional element is the distinction between the content of specific judgments and the shared. Engaging with the 'shared', even as present in Kant's own text, is already an engagement with *being-in-common*.

After having defined the relationship between the individual judgment and the shared, Kant then goes on to locate the move that allows this relationship to take place. What is involved is a 'comparison'. Hence the question of what for Kant is the comparison between? His response is precise. In the first instance there is the negative point. It is not a comparison between a given judgment and other 'actual' judgments. It is not, in other words, between a judgment that has an already identified temporal location, a judgment that occurs 'now', and other judgments having the same temporal actuality. The point of comparison is between the judgments (defined in terms of the 'now' of judgment, i.e. the finite and dateable specific judgment) and potential judgments. The latter would then be defined in terms of potentiality since what is at stake is not finite presence, the already determined, but the potentiality that is an inherent part both of the present as well as that which is always already there within the finite judgment in terms of latter's necessary mediacy. Mediacy underlines the inherent contestability of judgments. Inscribed in the distinction between

that which has a form of actuality, on the one hand, and potentiality, on the other, is a difference that yields spacing at the centre of its formulation. Kant is clear, 'this happens by one holding his judgment up not so much to the actual as to the merely possible judgment (*bloß mögliche Urteile*) of others'. Between actuality, the now of judgment, its occurring here in this place now and the actualization of what now exists as a potentiality, is a spacing. Having located a spacing at the centre of a distinction between actual and possible existence, Kant moves on to delimit further the nature of the comparison.

A form of comparison occurs since the possibility of judging for all others does not pertain to the content of a judgment as such but to the judgment's 'representational state'. Since judging for everyone occurs because, for example, beauty pertains the form of the object – i.e. the object's generalizable conditions of intuitability – comparison, in the sense it is being used in this context, is linked to these generalizable conditions and not to the specificity of a given determined content. If there is to be an agreement, it is not because the content of the judgment is accurate: It is because the same generalized conditions of intuitability were being exercised in relation to that content. In other words, the possibility of agreement is not based on content *per se* but on that which makes judgment possible in the first place. That is the reason why Kant grounds the comparison in §40 in what he describes as 'the formal features of our presentations or of our presentational state'.

Locating the ground of comparison in these generalized conditions means that they pertain *a priori*. There are therefore three elements that define what Kant understands by the *sensus communis*. The first is its presence as an 'idea'. The second is that fundamental to its presence as an idea is a conception of the shared (what will open up, as indicated, as a form of *being-in-common*). Finally, integral to the structure of both is the presence of an ineliminable and constitutive spacing that holds the possibility of agreement in place precisely because it holds the now of judgment apart from the yet-to-come of agreement. The spacing is the public sphere which in its being opened up defines another related sense, of the shared. The *sensus communis* as envisaged and presupposed by the judgment of taste reiterates the position that spacing, a spacing constitutive of judgment, is the public sphere understood in terms of that which is shared. While the details of Kant's position will always stand in need of further clarification, it can still be concluded, albeit provisionally, that commonality and the shared relate to a mode of being that is always already placed: in other words, being within the domain of the public, the co-presence of *being-in-common*

and *being-in-place*. There is more, however, that needs to be added, since Kant linked the shared to a power.

Kant deploys the language of power. Kant's text has 'power' as integral to the very formulation of judgment. In §40, the distinction between 'the power of judgment' (*der Urteilskraft*) as a sense and its extension beyond the merely private is that it is 'a common sense' (*eines gemeinschaftlichen Sinnes*). The shared is not an abstraction in any direct sense. The shared marks out the *a priori* grounds allowing for judgment. The full force of Kant's argument is that overcoming the private and therefore the refusal to allow prejudice to impede judgment is not found in the universality of method (as would be the case in Descartes) but in that which grounds the possibility that a singular judgment is able to seek universal assent.[4] As has already been indicated, what this means is that the *sensus communis* is both presupposed and envisaged.[5] Integral to this formulation is the distinction between the private and the public. While the private is maintained as the site of the idiosyncratic and thus of prejudice, it is not as though the public stands in a simple opposition to the private. Rather, the public is both presupposed by yet emerges in the offering of a judgment or, more directly, in the formulation of an act (a judgment) that is taken to be communicative. Such acts either seek assent or seek to be recognized as communicative. What is at work is the construction of an opening. The public is that which is opened by the communicative and is thus that in which what is communicative can be communicated. The ground of the public, for Kant, is the *a priori* quality that is shared.

While what is designated as the public can be understood as a ground, on its own this description is not sufficient. The public sphere is also a spacing. As such, it is created and recreated by the distinction between the now of judgment and the yet-to-come of agreement. The spacing is shared – and shared out – in the continuity of its recreation. What this means, as a beginning, is that the public is not the making public of that which is private. Nor is the public an abstraction of, or from, the private. Nor, finally, is the public the site in which an abstract human quality is exercised. If there is a formulation that can be given to this set-up, then it can be defined in terms of *being-in-common*. It will be by working through Heraclitus that the interplay between *being-in-common* as a power and thus as marking both relationality and potentiality and place, *being-in-common* as presupposing place, thus *being-in-place*, are to be developed.

In the writings of Heraclitus – the fragments – what has already been indentified as *being-in-common* is bound up with the philosophical question of identity. The latter, within the fragments as a whole, has a

complex structure. There are two significant senses of identity in Heraclitus. The first sense is clear from Fragment 61 in which the 'sea' is described as being both the 'purest' and the 'foulest'. While on one level this description can be explained in terms of what is often described as the 'unity of opposites', of greater significance is the distancing of a conception of identity in which identity is the result of a causal relation between universal and particular. Within such a relation, the universal would be the cause of the particular's identity (in the *Phaedo*, for example, Plato attributes a form of causality (*aitia*) to the 'form' or 'idea').[6] The argument to be advanced here is that the fragments as a whole envisage a conception of the universal in which, even though there is a regulative principle to the extent that there is a relation between universal and particular, the quality of the relation is fundamentally different to the one at work in the *Phaedo* (the *Phaedo* as an example of a set-up in which the universal 'causes' the identity of the particular.) There is, however, a second, and in this context far more significant, conception of identity that can be recovered from the fragments. In this instance, identity is no longer articulated within a structure defined in by the 'unity of opposites'.

For Heraclitus the *logos* is shared.[7] This position is counter-posed to one in which the knowledge of *logos*, and hence *logos* itself, would be an individual or private concern. What will be argued in the analysis to come is that the public nature of the shared does not form a unity with what could be taken as its opposite, namely, the individual or the private. The shared and *being-in-common* have a more complex sense of identity than one provided by the so-called 'unity of opposites'. However, this is not to deny that there is a unity of opposites in the overall argumentation of the fragments. Rather something else is at stake, namely, the necessity to position *being-in-common* as demanding a different sense of identity. In sum, therefore, commonality, which can be treated as *being-in-common*, gives rise to its own specific formulation of the identity of its particulars. Merely outlining this position is, of course, not sufficient. In order to establish it, a number of introductory points need to be noted.

In Fragment 2, it is the *logos* that is shared. In this context, what is shared is linked, necessarily, to 'thinking'. In Fragment 89, it is the *kosmos* that is shared. The presence of the shared is reiterated in Fragments 114 and 113. It is in terms of Fragment 113 that the nature of the shared can begin to be analysed. Two elements of the formulation of Fragment 113 provide the way in. The first is that what is shared is 'thinking' (*to phroneein*), and second it is shared by 'all'. The nature of thinking cannot be separated from the 'all'. The fragment reads as follows:

Thinking (*to phroneein*) is shared (*xunon*) by all (*pasi*).

The 'all' is a form of unity. The identity is provided by 'thinking'. More explicitly, it is given by 'thinking', understood as that which is shared by the 'all' (and in addition shared among the 'all' where the share defines the 'all' as the 'all'.) Without attributing any quality, as yet, to the nature of thinking, it is still possible to begin to delimit its locus. The first element in such a process is to situate the domain of 'thinking' within the fragments. Precision is vital. What matters is not the nature of thinking, as though thinking were no more than cognition, but the place where thinking occurs. (Note that simply being able to pose the place of thinking as a question recalls the public nature, thus the non-personal nature, of structures of 'expectation' and 'imagining' noted in relation to Fragment 27.) Moreover, in the context of the place of thinking a certain reciprocity is essential since it is also the place that is opened up by thinking. That opening does not occur once. It has to be understood in terms of continuous activity. In other words, a concern with this domain should be distinguished at this stage from any question concerning the content of thinking. Delimiting the domain is essential because it will have a determining effect on how the nature of that thinking is understood.

The task of locating the place of thinking as defined by the shared can be pursued in a number of different ways. In this context, it will be taken up in terms of the distinctions staged in Fragments 2 and 89. Both are concerned with the place of 'thinking'. (With this concern, as will be noted, *being-in-common* and *being-in-place* come to be positioned in relation to each other.) While it will be necessary to return to their detail, it is vital that the fragments be noted in advance.

> Fragment 2: While the logos (*tou logou*) is shared/common to all (*xunou*), people (*hoi polloi*) live as though thinking (*phronésin)* was that which they had for themselves alone (*idian echontes*).

> Fragment 89: The world of the waking is one and shared (*hena kai koinon*) but the sleeping turn aside each into his (or her) own private (*idion*) world.

In each instance, what is important is that the shared, be it *logos* as in Fragment 2 or 'world' (*kosmos*) in Fragment 89, is always positioned in terms of the necessity of its differentiation from the private world. And yet the shared is neither linked to an external element nor does it transcend life in that the shared is not positioned in contradistinction to the human in a way that

the human would then be differentiated from the divine. Rather, an interruption occurs within the space of the human, an interruption that enacts two divisions. Once the division is established, what then has to be taken up is the question of their relation. In other words, the nature of the relation between the public and the private cannot be assumed in advance.

In the case of Fragment 2, there is a distinction between the public and the private in which the public is sustained by a link to *logos*, while the private is the realm of the differentiated individual. In regard to Fragment 89, the division concerns the state of being awake as opposed to being asleep. As has already been intimated, this is not a straightforward division or opposition. In other words, it is not an opposition that allows, for example, for the identity of the 'road' being the unity provided by the opposition up/down (Fragment 60) or the sea whose identity is comprised of the opposition pure/foul and that subsequently necessitates responding to the question of the nature of an identity that comprises that which should be, or at least should have been, mutually exclusive. While there may be a harmony of opposites, what is being presented as distinctions in these two fragments – 2 and 89 – resist any immediate incorporation into a sense of identity defined merely in terms of opposites. There is something more significant at work. This accounts for why the distinctions in question need to be interpreted within that further translation that steals then away from any reduction to the literal. This is after all the interpretive model suggested by the threefold distinction between concealing', 'stating' and 'signifying' as set out in Fragment 93. This formulation of differing modes of presentation needs to be pursued as it is essential to developing an understanding of what is at stake in the way the question of identity is to be understood once it is no loner positioned within a logic of oppositions.

Consequently as the interpretive model in Fragment 93 is central to the overall argument being developed here, and which will be taken up in further discussions of Heraclitus throughout the book as a whole, it is vital that its outline be sketched. The fragment reads as follows:

> The God whose oracle is in Delphi neither states (*oute legei*), nor conceals (*oute kruptei*) but signifies (*alla sémainei*).

What the fragment presents is twofold. In the first instance, it provides the interpretive frame through which the fragments as whole need to be read – i.e. always *contra* their reduction to the literal – thereby emphasizing the opening provided by the *oute legei* ('not stating') where 'stating', as providing the locus of meaning and understanding, would indicate a

commitment to the ontology and epistemology of empiricism. Working *contra* the literal entails that meaning (signifying) has to be discerned. It delimits an activity. Second, the description of comprehension and incomprehension that are detailed by the fragments themselves is consistent with this model. Failing to understand the way things are is to believe that things are self-evident and thus simply there given to be understood and thus said. Equally, the hermeticism of 'concealing' needs to be distinguished from the activity of discovering meaning. Interpretation is necessary. This occurs as meaning and signifying (and in addition acts of investigation and related projects of discovery) are held apart from any reduction to 'stating'. The interpretive project of the fragments, taken as totality, involves therefore neither mysticism nor empiricism but the careful activity of the discovering and discernment of meanings articulated within specific projects of investigation and discovery. Once this project is generalized, it provides a way into the fragments as a complete work.

It is within the terms set by this model that Fragment 89 should be interpreted. The important distinction occurring within it is between *koinos* (understood as the 'shared' or the 'common') and *idios* (understood as the 'private' or the 'idiosyncratic'). As has already been noted the fragment reads as follows:

> The world of the waking is one and shared (*hena kai koinon*) but the sleeping turn aside each into his (or her) own private (*idion*) world.

The fragment contains a number of interrelated elements. It is structured by the distinction between being awake and being asleep. That structure defines the locus of the shared (*being-in-common*). Finally, it allows for the identification of that which stands opposed to commonality. While it is clear that Plutarch has offered a paraphrase of Heraclitus, and as most commentators agree Heraclitus' *xunon* has been replaced by Plutarch's *koinon*, what remains the case is that commonality is counter-posed to *idios* and thereby to the realm of the private and the individual.[8] What this recasting of the distinction opens up is a way beyond the simple opposition between comprehension and incomprehension. In this instance, the distinction is between that which is private and idiosyncratic, on the one hand, and, on the other, that which is public and which brings conditions of allowing, the transcendental, into play. In the formulation of Fragment 89, the world of the awake is the public realm. What is shared is that realm. There is an important reciprocity between the public and the nature of the shared. This will work, moreover, to redefine the 'all' of Fragment 113 as the realm

of the public as opposed to the domain of individuals. The public of the 'all' is more than a collective or the totality of people (*hoi polloi*). The conception of the public is therefore more than the abstract form of individuals as a collective. In other words, the public is not to be understood in terms of a posited abstraction (i.e. a conception of abstract human nature) or the identification of an abstract quality within individuals. Within the fragment, there is the clear emergence of a set of terns that are all interconnected. The public is defined in relation to the 'all', both of which are defined in relation to *being-in-common*; i.e. it is defined in relation to the shared. No one component of this internally defined set of relations could be excised (or be modified) without it having significant consequences on all the others.

As should be clear from the discussion of Aristotle in the previous chapter, there is an important connection between this possibility and the way *being-in-common* is presented by Aristotle in the context of the *Politics*. In that case, not only is the *polis* in Aristotle's use of the term defined as *koinónia* – i.e. as a site of commonality that is held in common – but also that such a set-up is regulated by *diké* ('justice').[9] Justice therefore is not an external element but is proper to the being of the *polis*. (This is clearly a reiteration of the move already noted in relation to the *Oresteia* in which the initial externality of *diké* gives way to its inscription within and as part of the life of the *polis*.) As such, justice cannot be divorced from the processes that allow justice to have an operative quality. The defence of the *polis* would occur therefore in the name of the site of *diké*. What is defended is a spacing inscribed within while constituting *being-in-place*. This spacing is, of course, the original placedness of *being-in-common*, i.e. the place where the complex presence of commonality is continually acted out. While there is no suggestion that there is a direct causal link between the ways in which Heraclitus and Aristotle define the common, it remains the case that for Aristotle justice occurs within the *polis* as the setting of *being-in-common*. While justice may have conditions that allow for specific acts of justice, the conditions of allowing are still positioned in relation to the necessarily mediate nature of justice. Indeed it makes justice as mediacy possible. The claim that can be made here is that what is emerging from within the series of fragments as discussed thus far is a definition of the common as having both an actual as well as a transcendental component that has to be taken up. It is this latter point – the emergence of the interplay of the actual and the conditions of allowing – that needs to be pursued. (It is, of course, precisely this point that had already emerged in the context of the opening engagement with §40 of Kant's *Critique of Judgment*.)

In Heraclitus, in Fragment 2, the division between the public and the private, a distinction within which the actual and the transcendental also occurs, is staged with an exacting rigour. Leaving aside the additions made by Sextus, the fragment reads as follows:

While the logos (*tou logou*) is shared/common to all (*xunou*). People (*hoi polloi*) live as though thinking (*phronési*) was that which they had for themselves alone (*idian enchontes*).

The contrast sets the tone. The shared, and here what is shared is the *logos*, is the contrast between what most 'people' (*hoi polloi*) (and it should be noted, as has already become clear, that this is does not denote the 'all' – the term naming the common – but people as an amorphous collection) presume, namely, that thinking is linked to the individual. If that link were allowed then, first, thinking would have become the province of the individual (and thus be defined in relation to the singular individual) and, second, that thought would be no more than an abstraction from that which pertained uniquely to the individual. Contrary to these possibilities, what is at work within the fragment is a distinction between a conception of thinking (perhaps even of cognition) that takes the individual as its locus and point of investigative departure and a conception that takes what is necessarily external to the individual – an externality that becomes a form of relationality in which the individual will always be an after effect – as central. The external that positions the individual is named initially as the 'all'. What needs to be pursued is how the 'all' is to be understood. The question that needs to be addressed is the following: What conception of universality can it be taken to name?

In his edition of the fragments, Marcel Conche notes that Sextus substitutes *koinos* for *xunos* in the opening words that he (Sextus) added to the fragment. The consequence of the substitution is that Sextus interprets *xunos* as the universal since that is the way the term is used in Sextus' own writings.[10] It is not as though this is an error. The problematic element here is that the nature of the universal remains unspecified, and the claim concerning the lack of specificity will be equally true in regard to commonality or the shared etc. Prior to any attempt to provide that specificity, the contrast needs to be reiterated. On the one hand, there is the link between the *logos*, as that which comprises the shared or the common and thus implicitly the truth of thinking. On the other hand, there is the presumption that thinking is the province of individuals and that therefore it proceeded from them and originated in them. With such a set-up, the subject would be the

locus of thinking – a position signalled in the fragment by the formulation that thinking is taken as that which they – those who claim to think – have 'for themselves alone'. (Here methodological individualism and solipsism coincide.) Implicitly, within the latter formulation, there is no recognition that specific acts of thought take place in relation, and only in relation, to that which accounts for the possibility of thought. (What accounts for thought is in part that which allows for its presence. More generally, this can be understood as conditions of allowing, conditions that include the place of thinking.) And if it can be assumed that there has to be an account of thought's possibility, an account that would not be derived from the process of abstraction, then such an account must bring conditions of allowing into play. This will be case even if that quality of those conditions remains unspecified. Conditions of allowing, the transcendental, pertain as much to sociality (e.g. the *polis* as regulated by *dikê*) as it does to the shared. Again these elements are of necessity interrelated.

Specifically what this means is that individual acts of thought always take place in relation to that complex set-up that is the interconnection of that which occasions thinking, what allows thinking it be thinking and its being placed. In the case of Fragment 2, the relationship is between thinking and *logos*. This position is reinforced by Plutarch's paraphrase. The importance of the distinction between being awake and being asleep, as has already been indicated, is that they do not form a strict opposition. Turning away from the state of being awake is to turn towards the private and thus away from the public. Equally, it is to turn away from the shared. Given that the shared – *being-in-common* – has to be interpreted such that it cannot be reduced to either the individual or as an abstraction from the individual, the question that then arises concerns how that quality is to be understood. Part of the answer is provided by Fragment 80. It stages the relationship between the 'all' and the shared. The staging, however, introduces other components that are fundamental to the philosophical project of the fragments.

> It is necessary to know that war is shared and conflict is justice and that the all becomes itself in accordance with conflict. (*Chrē ton polemon eonta xunon, kai dikén erin, kai ginomena panta kat'erin kai chreōmena.*)

There is no quick summation of what is taking place here. The initial point of interest, however, is the description of 'war' (*polemos*) as shared. Any understanding of the role of the shared or of commonality depends upon being able to move from the description of 'war' to 'thinking' since

Fragment 113 has established that 'thinking' is also shared by the 'all'. This is not to suggest that 'war' and 'thinking' are the same. Rather, the point is that they both open up the possibility of understanding conditions of allowing as that which is positioned in relation to the shared or the common. In Fragment 53, 'war' (*polemos*) is defined in terms that present it almost as being a productive or generative Deity: The precision of the opening elements of this formulation needs to be noted. The fragment reads:

> War is both the father of all and the king of all. (*polemos pantón men patér esti, pantón de basileus.*)[11]

Despite the initial difficulty of these terms, it can still be argued that 'father' here can be interpreted as that which generates what there is and that 'king' can be understood as the regulative within the order of things. The order of things, identified in the fragment by the word 'all' (*pantón*), cannot just be nature, where nature is understood as external to what pertains to the human and thus other than the human. Examples used by Heraclitus in other fragments refer to instances that are more directly social. The point in this instance is that 'kingship' refers to what is regulative within the order of things. (Reciprocally, therefore, the order of things is already regulated. Measure is original; thus, the argumentation made in relation to the *Gorgias* is recalled.) The order of things is the 'all'. What this means is that a sense of propriety is intrinsic to what there is. (This will become clearer in the subsequent treatment of Fragment 114 in which Heraclitus establishes a connection between the shared and the *nomos* of the *polis*.) Parenthetically, it is worth reiterating the point that has already been noted in relation to Aristotle for whom there is a regulative principle within the *polis* defined as commonality (therefore present, as has been argued, as a staging of *being-in-common*). The principle is 'justice' (*dikê*). Justice in this sense is intrinsic to, and cannot be thought other than in relation to, the good of the *polis*. Justice is there within the fabric of existence. It should be added immediately that the presence of justice as a regulative principle within human sociality does not entail that all acts undertaken in accordance with justice are immediately just. This would be to fail to understand the essentially mediate nature of justice. There will always be a distinction between *nomos* understood as the transcendental condition of human sociality and the reduction of law to statutes. What this means in relation to Heraclitus is that 'war' (*polemos*) understood in a generalized sense becomes the name for an already present quality in the order of things. For Heraclitus, the shared and thus *being-in-common* depends upon this quality.

Moving to the next part of Fragment 80, it should be clear that the identity of 'justice' (*diké*) and 'conflict' (*eris*) is complex. Taking them up is essential in this context though all the issues raised by the assumption of their identity cannot be addressed fully. If, as the fragment indicates, one is the other, then what is *diké* other than its being *eris*? The same question can be posed in the either direction. Both questions address the possibility that each term may have a self-identity that is not given by the posited identity of *diké* and *eris* and thus not announced in the formulation 'and justice is conflict' (*kai dikén erin*).

The fragment, as it has been transcribed by Origen, notes after the claim that 'war (*polemos*) is shared, that, as has already been indicated, *dikén erin.* The initial difficulty for any interpretation of this formulation is the absence of the verb 'to be'. While grammatically it is unnecessary, there is still the problem of word order and therefore of emphasis. The assumed presence of 'is' (*esti*) does not solve the problem. Even if their identity can be assumed, a question remains – in what way are they identical? Is there a further identification that their posited identity would take as its ground? Answering this question depends upon drawing on a broader understanding of *diké*, specifically the role of *diké* in Hesiod. Pietro Pucci, among others, has demonstrated that *diké* refers in part – and that part is more than merely etymological – to the presence of a boundary marker.[12] The divisions between plots of lands were fixed by agreements between farmers; *diké* was linked therefore to a conception of agreement, and precisely because of that link it took on, among other things, a pragmatic quality. And yet it could not be reduced to the pragmatic. The impossibility of effecting this reduction occurs for a number of reasons. The most pressing in this instance is that agreement, the interplay of justice and the decision giving rise to judgment can always be renegotiated. This is what was referred to earlier as the inherently contestable nature of justice as mediate. As a generalized claim, what this means, in addition, is that while norms may change normativity itself is not pragmatic. Normativity understood as a transcendental condition allows. Rather norms, understood as the specific content of normativity, are the pragmatic result of their conditions of possibility. This opens up the second reason. The pragmatic as the moment of agreement, the now of the decision, is necessarily distinct from that which ground it. If the agreement or decision – the pragmatic – is the expression of finitude *par excellence*, then that which provides it with its ground is a form of the infinite. The claim therefore that 'conflict is justice' needs to be understood in terms of a conception of finitude in which the finite is positioned

by the infinite. Prior to taking up the question of the nature of this infinite and more importantly its relation to the transcendental, the final part of the fragment needs to be discussed. Two questions arise. In first instance, how is the 'all' (*panta*) to be understood? In the second, there is the problem posed by the formulation *kat'erin*. The latter is a form of expression that is used a number of times in the fragments. While *eris* ('conflict') comes to be replaced by *phusis* ('nature') or *logos*, what is of significance is that such replacements occur within the same structure; the question concerns therefore what that structure stages.

Any answer to that question is, in part, a philological matter concerning the use of the preposition *kata*. In addition, it is a philosophical question in that what is located within the formulation comes to have a decisive impact on how what is is to be understood. Precisely because understanding the nature of the shared and the common depends upon how the formulation *kat'erin* is understood, an oblique approach will be taken. A setting is provided by the two fragments that position speaking and listening in relation to the 'all', where that relation is defined in terms of either understanding or wisdom. They are Fragments 50 and 114. A beginning will be made with the first. The fragment reads as follows:

> It is wise (*sophon*), listening not to me (*ouk emou*) but to the logos
> (*tou logou*), to agree (*homologein*) that the all (all things) are one (*estin hen panta einai*).

The reason for starting with Fragment 50 is that, as with Fragment 89, it is structured by an opposition between importantly different elements. In the first instance, there is the possibility that the individual may be the locus of truth; in the second, such a locus is given by *logos*. Even though there is an autobiographical reference in the fragment, the sidelining of the 'me' and its replacement by an unnamed, perhaps even unacknowledged, 'us' has to be understood as the move from the domain of the individual to the domain set by the interplay of the public and the transcendental. (Again, this is not the 'unity of opposites'.) Not only does this fragment contain a definition of wisdom, namely, listening to the *logos*, but it also contains a linguistic play – as many commentators point out – between *logos* and *homologein*. The play has important consequences as it positions agreement – such that agreement is defined as that speaking which takes place in accord with the *logos*. The ground of agreement therefore does not depend upon the individual. Even at this early stage, it is perhaps possible to define wisdom as acting

in accordance with that which occurs, or takes place, *kata ton logon*. (Again, it is this formulation that marks a form of externality, therefore a transcendental ground of judgment.) What this means is that acting wisely is a deliberate action based on a form of recognition. There is therefore a type of intentionality at work here. It is not the intentionality of following a rule. More accurately, it is the recognition that wisdom and, by extension, the philosophical are modes of activity. It will be essential to return to this point, since Heraclitus defines the philosophical in terms of activity in Fragment 35:

> It is necessary that men of wisdom must indeed be inquirers
> (*historas*) into the many.

On the basis that the form of Fragment 50 warrants analysis – not independently of content but as integral to the way it works as a bearer of meaning – then it is essential to begin with the opening formulation "not to me" (*ouk emou*). While it is obvious, it is still worth noting that the contrast here is between the ego and the *logos*. Hence, when Heraclitus writes 'not me' (*ouk emou*), while there is an unambiguous autobiographical component, it is only really there in its being effaced. It is not as though the contrast is between the author and the *logos*. Rather, the nature of the distinction is between the individual as the source and locus of truth and the *logos* (understood as the ineliminable presence of the regulative measure) as that source. The response to the *logos*, however, does not occur immediately. There will be the inevitability of a form of mediation. Consistent with what occurs in a number places in the fragments, there is the privileging of the ear. And yet the ear has to be taken as staging a distinction between the immediacy of vision and the considered nature of listening, and therefore it is a distinction defined by time rather than the eye versus the ear. Again, this is consistent with the threefold interpretive structure presented in Fragment 93. There is a real affinity between listening to the *logos* and the centrality of signifying overstating.

There is, however, a further consideration. There would seem to be an important interconnection with the pragmatic result of discussion – that pragmatic possibility stemming from an agreement and which is announced in the history of *diké* – and the primacy of the ear and thus listening. Both give centrality to forms of deliberation and thus to the time of discussion and decision, i.e. to the necessity of mediacy. However, simply because there is a discussion and decision, it does not follow that what is absent is that

which would allow for judgment. Indeed, it is the possibility of judgment – its ground –that inheres in the prepositional constructs of which 'in accord with *logos*' (*kata ton logon*) is the most straightforward expression. At this stage, the significant point is that the contrast between ego (the self of the "not me") and the *logos* repeats the distinction that has already been noted between the locus of the individual, on the one hand, and the transcendental, on the other, and therefore between the private domain, which is the place of the individual and the public one – the latter being the continually produced space, hence the continuity of spacing, as the locus of the common and the shared: the Heraclitean staging of *being-in-common*.

What emerges from the rest of the fragment is that which the play between *logos* and *homolegein* provides. What the relationship between these terms – *logos* and *homolegein* – enacts is an 'agreement' involving a 'same saying' and thus the articulation of an accordance. The latter could be formulated as 'being in accord with'. A state of affairs that will oscillate between actual repetitions and the recognition of the effective presence of a more pervasive yet nonetheless as significant a sense of 'being in accord with'. What is provided therefore is a state of affairs in which speaking wisely and being in agreement mean speaking/acting after having listened – reflected/thought – and that this can only take place *kata ton logon.* This is what is occurring if 'one' is wise. While it is not the intentional following of a rule, it can be seen as a version of rule following, and to that extent it can be judged. Speaking or acting in regard to what occurs *kata ton logon* does not mean stating that which is there to be stated. Following from what has already been identified in relation to Fragment 93, this is because what is there is not there to be 'stated.' It is not transparent. Thus, it demands an interpretive response – one linked to signifying and which, in being thus linked, eschews both the empiricism of stating and the mysticism of concealing. Speaking occurs in relation to the *logos* and thus not simply as *logos* (this distinction is of fundamental importance.) What this entails in the context of this fragment is the agreement that 'all things are one" (*hen panta einai*). In order to understand the force of this claim, it is essential to distinguish between the use of the verb *kruptesthai* (to be hidden) in Fragment 123 (cited below) and its cognate in the already cited Fragment 93. In the latter, it refers to that which could never be understood and thus which becomes pure hermeticism and thus a form of mysticism. In the case of the fragment 123 – *phusis kruptesthai philei* – once *phusis* is interpreted as the 'nature of things" or the 'all," then what emerges is an important relation between *panta* ('all') and *phusis.* Once this takes place, the central point within the fragment then

becomes clear. The fragment allows therefore for the following translation:

> what there is (*phusis*) is accustomed (*philei*) to eschewing the
> self evident (*kruptesthai*).

What this means is that even without there being a commitment to what is meant by *phusis* it remains the case that its defining elements – that which is proper to *phusis* as *phusis* – are not at hand. In other words, it has the same status as that which, while forming part of the public realm and thus not merely a private matter, cannot be identified as though it were a simple possession, as would be the case in regard to the contention of an intentional act. While what there is takes place in relation to *phusis,* for Heraclitus that relation is not self-evident. It involves a set-up whose insistence has to be elicited from a detailed reflection on and investigation of the nature of things. In other words, it becomes the province of philosophy, once philosophy is understood as an activity determined by discovery rather than description. The impossibility of the self-evident provides the framework within which it becomes possible to interpret the final words of Fragment 50. What they establish is the object of the agreement that defines wisdom and thus what it is wise to say, namely, that 'all things are one' (*hen panta einai*). What is this 'one" (*hen*)? The answer is that ontologically, it is the 'all' that is 'one.' Hence, the real question is what is the 'all' such that it is 'one'? There must be both a historical and a contemporary answer to this question. The historical answer would involve a detailed elucidation of the cosmology that pertained at the time of the 69th Olympiad. An example is necessary. Within that cosmology, 'fire' (*pur*) – the dynamic element within the *kosmos* (Fragment 30) – might have been actual fire.[13] By 'contemporary', what is meant is the possibility that, in working through the formulation, what would then be allowed is a distancing of the hold of the already given determinations of the history of science. (Working through provides a space in which the formulation is given another repetition.) The formulation 'all things are one' would thereby involve a reiteration of a different conception of the philosophical. It will be essential to return to the presence of fire in order to clarify further the results of working through.

At this stage, it is possible to join Fragments 113 and 50. Rewritten and thus expressed beyond the confines of their strict citation, their joint claim becomes the following:

> [T]hinking is shared by all and what is thought is that all things are one.

The force of joining them in this way is that while it identifies 'thinking' as 'shared' and thus as marking the 'all' – defining the 'all' as what it is – it does not follow that what is then thought is that 'all things are one'. The need for the philosophical (and in addition the way that the philosophical is understood within such a setting) can be located in this disjunction. Moreover, as a separation or a division, the disjunction determines and locates the centrality of the transcendental. The claim that 'all things are one' does not mean that all things are identical or are the same. Rather, the claim is that all things are explicable 'in relation and only in relation to logos' (*kata ton logon*). The 'all' is the articulation of the same regulative principles but only to the extent that those principles are understood as a transcendental ground. This latter point emerges with telling force in Heraclitus's critique of the 'mysteries'. In Fragment 14, he suggests that

> [t]he mysteries current among men (*ta nomizomena kat' anthrópous*) initiate them into impiety.

The key term here is *ta nomizomena*. What it signals is that what is 'current,' namely, the popular *nomos*, is in this context the source of error. Normativity therefore cannot have its ground in the prevailing norms, nor can it be equated with the content of specific current norms, nor moreover can it be an abstraction from what is taken to be a norm. However, as with both 'thinking' and 'war' (*polemos*), there is a *nomos* that is shared. This position is also advanced in Fragment 114. This is a difficult and demanding fragment, and as such, in this context, only the first part will be used:

> Speaking with understanding (*noó legontas*) they must hold to what is shared by all (*pantón*), as a city (*polis*) holds to its law (*nomó*).

The analogy in this context is between, on the one hand, *noos* (understanding), speaking, and the shared, and on the other hand, 'the city' (*polis*), law (*nomos*) and acting. The use of *nomos* here has to be distinguished radically from an identification with either private belief or even a generalized and thus abstracted form of private belief; *nomos* – not as statute but as the transcendental condition of human sociality – is intrinsic to the *polis*. Not only therefore is it integral to the definition of the *polis* but also it defines it in terms of the shared and thus in terms of an inherently regulative principle. It is not inherent as though it were the subject of agreement. On the contrary, it inheres to the extent that it is a transcendental condition. Its being what it is – the self-referential identity of the *polis* – is given by

the shared. The shared therefore, and with it any discussion of commonal-
ity and *being-in-common*, has to be seen as already part of the nature of the
polis. They are intrinsic, not just to its ontological nature, but that quality
entails the space in which the continuity of *being-in-common* continues to
be acted out. Integral to that continuity is the continual production of
space; thus, what is demanded is the continuity of spacing as the place
of commonality. The place in question is the public repositioned as folded
within *being-in-place.*

   Commonality, the shared and spacing come to define a form of universal-
ity. It is in terms of universality that what is shared allows for judgment – i.e.
failing to comprehend is not a generalized epistemological claim. The failure
in question is not to have acknowledged the presence of a transcendental
ground and thus, for example, in those terms, failed to comprehend that
things occur *kata ton logon.* Before addressing the question of the shared
it is essential to reiterate the point that judgment occurs in a specific site.
In other words, there is an ineliminable reciprocity between the public
and judgment. While judgment delimits the public, the failure to have
judged correctly is due to the conflation of the totality of judgment, includ-
ing the particularity of its instantiation and its conditions of possibility,
with an intentional act. Defining judgment in relation to the individual,
rather than in relation to the shared, is to refuse the reciprocity between
the public and the shared. The question that arises therefore concerns the
nature of the quality that can be given to the shared and to the common.
The first point to note in any attempt to answer this question is that the
quality cannot be reduced to particulars, nor can it be abstracted from
them. This is why the oppositions public/private, awake/asleep and shared/
individual are not explicable in terms of the unity of opposites. A different
philosophical project is at stake.

   There are two defining characteristics that pertain to the shared. The first
is an anthropological one. This is clear from Fragment 113. Here, the 'all'
becomes a term defining the being of being human. Defining that being, in
the sense of that which is proper to the being of being human, is thinking.
The definition delimits *being-in-common*: a formulation that is, of course,
always betrayed in its actualization, betrayed in the dual sense of shown and
denied. And yet there is an actualization. The second element is that what
occurs and thus what is are explicable in terms of modes of organization
that are knowable because they are discoverable. The province of and the
need for as well as the very possibility of inquiry (*histores*) demands a state of
affairs of this nature. Regulative principles dissolve the distinction between
nature and society (*phusis* and *polis.*) The regulative is a transcendental

ground in two senses. The first is that it is a primordial presence that is discoverable in terms of the continuity of its actualization as the possibility of particulars. Second, it provides the possibility for judgment. (That possibility continues to be presented in the fragments in terms of *kata* constructions.)

Now, is there a related set of questions that would pertain strictly to the content of that which grounds judgment? In other words, is there a question or series of questions that concern the nature of *phusis, logos, kosmos*, independently of the continuity of their actualization. Another way of putting this question would be to ask whether the distinction developed by Dodds in his commentary on Plato's *Gorgias* between what he identifies as *ti*-questions and *poion*-questions is of use here. The example from the *Hippias Major* states the distinction with disarming clarity (287d). Socrates dramatizes the point by indicating that what is being asked of Hippias is

> [n]ot what is beautiful but what beauty is (*ou ti esti kalon, all' hoti esti to kalon*).

The first question is satisfied by providing examples; this is the *poion*-question. The other question, the one that orientates Socratic questioning, has to be divorced radically from the province of examples. Its concern is with what beauty itself is. This is the *ti*-question. While it can always be conjectured that Socrates may not know the answer to what Dodds identifies as a *ti*-question, it remains the case that what Socrates does know, in this specific instance, is that this is the question that defines the philosophical (in Plato's sense). Is the distinction identified in this line germane to Heraclitus? The Platonic mode of questioning seeks to identify the essential nature – in Plato's formulation, the *ousia* – of the term in question. Hence, Platonic questioning would work with the assumption that each of these terms had an essential nature. Moreover, the province of philosophy would involve thinking its specificity. The answer as to whether this form of questioning can be given philosophical space in the fragments has to be in the negative. With Heraclitus, there is an importantly different sense of the philosophical. This can be opened up by indicating why it is that the mode of questioning – a mode within its own ontological commitments – that is at work in Plato is not present in Heraclitus.

Fragment 30 establishes – if only by juxtaposition– an analogy between the *kosmos* and 'fire' (*pur*). This provides the way in. In answer to the question 'what is fire?' – recognizing that this question is posed and can only have interrogative force because of its place within the analogy between

'fire' and the *kosmos* and therefore almost as an explication of *kosmos* – the response has to be that 'fire,' rather than having an essential nature, is what it is, in the continuity of its measures. If 'fire' has a rhythm, it is also that 'fire' is its own rhythmic unfolding. This is the implication to be drawn, first, from the description of 'fire' as 'ever living' (*aei zóon*) since the 'always/ever' (*aei*) captures the sense of pure continuity, and second, from the formulation of 'fire' as 'kindled in measures and in measures going out' (*haptomenon metra kai aposbennumenon metra*).[14] The process of continuing to be, where being involves an initial differentiation on the level of measure, presents the ontological nature of 'fire.' Fire' can only be understood in terms of the continuity of its own instantiation. Once it can be assumed that in this context it is philosophically impossible to pose the question of fire *qua* fire, then the space in which a question that attempted to uncover the identity of the universal, a question therefore posed in its necessary radical differentiation from particulars, is itself excised. In sum 'fire,' though by extension that will provide a way into each of the terms linked to transcendental conditions, cannot be divorced from its activity. Activity becomes the interplay of potentiality and actuality. Hence, *logos*, for example, is not prior to the continuity of its insanation.

What then of the shared? As a conclusion, it is essential to return to the fragment that provided the point of departure, 113:

Thinking (*to phroneein*) is shared (*xunon*) by all (*pasi*).

There are two different, though in the end interrelated, lines of approach that can be taken here. The first involves beginning with the 'shared' as that which joins 'thinking' and the 'all'. What this defines is a conception of the shared as that which will allow both for the transcendental and a form of materialism. The transcendental inheres as the ground of thinking. The materiality is the content of thought in so far as that content is not regulated by the realm of ideas or essences. Materialism is not empiricism. At the minimum, it is a form of anti-idealism. The nature of the materialism in question delimits the second line of approach. Here, it needs to be argued that terms such as *kosmos, logos, phusis* all designate different senses of the regulative and therefore mark both the primordiality as well as the ineliminability of measure. What that means is complex. It is not as though each will sustain a question concerning its own nature. Nor is each unknowable. Rather, what they are – in the strong sense of the identity proper to them – cannot be differentiated from the activity that the terms identify.

In each instance, the name names the continuity of its self-realization, a continuity that, as has already been indicated, is necessarily differential. Here, of course, is the link to a conception of justice (*diké*) that is defined in terms of its operability – a conception that is as evident in Heraclitus as it is in Aeschylus.

When, for example, in Fragment 1, Heraclitus insists that 'the all becomes itself in relation to the logos' (*ginomenón [gar] pantón kata ton logon*)'; what such a formulation entails is that what has to be discovered are relations that will always inhere between what there is, even though those relations are not self-evident. What this establishes is a conception of the 'all' that demands both the transcendental and the material. Their interplay is, in part, what is shared. The space of the shared is therefore as much the continuity of this interplay as it is the public sphere in which judgments and discoveries are contested and thus lived out.

Chapter 3

Spacing as the Shared: Heraclitus, Pindar, Agamben

A contemporary preoccupation with Plato's *Timaeus* has brought to the fore a logic of production that is bound to the discussion in the dialogue of *chóra*.[1] That production can be reformulated in terms of what could be described as specific logic of *chóra*. The argument is straightforward. The production of form can neither be marked by let alone have the form of that which gave rise to its inception. If this were not the case, then a regress of production would have to occur. Each inscription of an origin would itself give rise to a question of its origin. The logic of *chóra* means that the nature of the distinction between production and what is produced must be more than mere opposites. And yet, while complicated, what is at work here is the necessary impossibility of the inscription – in whatever form – of the founding moment within that which it founds. If what is at stake is the formation of law, then it cannot be that it is simple lawlessness that is outside and thus constitutive. It is rather that law's production designates a state of violence that is not law's absence but a state of original indifference. The question that has to endure is what occurs if this site of indifference – not indifference as such but the place at which it can be situated – comes to be inscribed within the activity and therefore the history of law. Once this site is present, then what is held in place is, as a consequence, a radically different conception both of production and, then by extension, of the ontological status of what has been produced.

Allowing for the presence of this originating site cannot be accounted for as though all that were present was an addition or that which ornamented an already determined fixed presence. Once present within law, the site of indifference may be understood as that constitutive element that holds law in place. Moreover, it is present within the history of law as a potential, the actualization of which may be that which causes law to differentiate itself from a classical tradition and take on a modern form. While this entails a conception of change that locates change as internal to law and thus as

flowing from its constitution as a complex what is at work is more sustained. There are two elements that need to be noted. The first is that rather than it involving the logic of *chóra*, which yields a site of indifference that is always 'external' and thus which has to be a 'third genre', the inscription of the originating site becomes foundational. There is neither site, nor place, nor genre that is prior to *nomos*. (There is no 'before the law'.) The second is that ontological considerations come to be central. As part of the engagement that will take place here, a reformulation of potentiality will need to be developed. As will be seen, it is a conception of potentiality necessitating what can be described as the 'already-present' status of *nomos* and thus a conception of *nomos* situated within primordiality of *being-in-common* and *being-in-place*.

   One way of opening up some of the elements at work in Giorgio Agamben's engagement with *nomos*, both within this period and within modernity, is to understand and to situate his concern with sovereignty and law in relation to the set-up staged by the logic of *chóra*.[2] If there is a challenge to such a conception of production and with it an account of the inception of law – not legality but 'law' as a translation of *nomos* – then it resides in Agamben's complex interpretation of sovereignty and thus his specific discussion of modernity in terms of the relationship between sovereignty and the 'homo sacer'. Part of that challenge involves his argument that *nomos* inscribes the state of exception as constitutive of any theory of sovereignty. While there is a particularly modern form of sovereignty and therefore it is possible to write the history of sovereignty, it remains the case that another logic of production will have been found.[3] And yet even here a further cautionary move is necessary. Rather than simply reiterate the historical and philosophical account of the strategic role of the 'homo sacer' within the history of thought, a different approach is needed in order to bring out other elements that have to be connected to a historical sketch of *nomos*. This has the twofold effect of developing the way the relationship between 'law' and 'justice' presented thus far can be taken further and, second, stage a sustained encounter with Agamaben's work in this area. Instead of simply accepting the account of *nomos* as it is presented in Agamben's work, a detour via Heraclitus will be undertaken. What the detour allows is a nuancing of the conception of *nomos* by drawing on the conception of commonality and the shared that have already emerged and thus to refine further the incorporation of the distinction between the public and the private into the engagement with *nomos*. Part of the argument is that once attention is paid to way in which *nomos* is articulated within Heraclitus and also within Pindar Fragments 169a and 215a, this will

provide further evidence showing that the term is inextricability bound up with the concept of commonality. Moreover, commonality needs to be understood as a repositioning of the distinction between the public and the private. What this means is that there cannot be a concern with *nomos tout court* as though other elements were not involved. In sum, what has to be shown is that *nomos*, both in Heraclitus and Pindar, has a more complex economy that simply raising questions to do with sovereignty.

Emphasizing *nomos* is not simply a way of approaching a central element of Agamben's work.[4] There is a more decisive reason. Agamben is concerned to develop a philosophical understanding of the present and thus to develop a philosophical thinking of the nature of the time in which 'we are . . . living'. Central to that task is thinking through the term *nomos*. There is an even more decisive reason that has to do with how, according to Agamben, the modern version of *nomos* has been formed. He argues in *Homo Sacer* that the Camp not only works to define the present but more emphatically that the Camp also defines the contemporary political space. He argues the following in relation to the camps.

> What is a camp? What is its juridical-political structure that such events could take place there? This will lead us to regard the camp not as a historicized fact and an anomaly belonging to the past (even if still verifiable) but in some way as the hidden matrix and *nomos* of the political space in which we are still living. (167)

What this means is that for Agamben the term *nomos* has come to acquire a greater significance than marking out the space or the site of law. Pursuing some of the detail of the history of *nomos* becomes even more important given that, in the above formulation, the *nomos* of the modern is bound up with the camp as the locus defining human being.

Part of the contention here – a contention that will allow an encounter with Agamben's thought to take place – is that at its inception *nomos* brings with it determinations that complicate its history. The history of *nomos* reveals the term never to have had a univocal determination. Not only is that history one that has to admit of complications, their presence allows for the encounter with Agamben's work. Moreover, in outlining another history of *nomos*, it will be seen that the legacy that is provided by Greek philosophy is not to be found in its containing a potential that is yet to be realized or in its determining the nature of thinking that either does take place or should take place today. At its most stark, the legacy is that

the necessary equivocations concerning *nomos* mean that the distinction between the democratic and the autocratic is a potential within social formations in virtue of being social formations. The fact that a social formation can move from one positioning to another may have to do with the fact that both possibilities are already inscribed in commonality as the very condition for human collectivity and thus is already a staging of *being-in-common*.

Heraclitus 33, 44, 113, 114

With the context of this project, three fragments can be taken as providing Heraclitus's sustained treatment of *nomos*: 33, 44, 114. In addition, Fragment 113 provides the setting within which that treatment has to be interpreted.[5] In this context, 114 can be taken as providing the frame of reference through which the other two are to be interpreted. The justification for the move is that what 114 brings into play is not only the centrality of nomos but it also demonstrates that *nomos* is already interarticulated with the different formulations of commonality that have played a significant role in other fragments.

Fragment 1 defines the *logos* as that which orders thought. It is not just that what there is takes place *kata ton logon*; it is also the case that thinking uncovers the ordering principle proper to what there is. Thinking is linked to the investigation and discovery of measure. What is indicated thereby is how all things are to be thought, namely, 'according to their nature' (*kata phusin* 112). This does, of course, reinforce the position of a form of transcendentalism within Heraclitus. Once both these positions can be assumed, then thinking or understanding need the context provided for them by Fragments 33, 44, and 113 since they indicate how thought is to itself to be understood.[6] This context is supplied by Fragment 113. The claim of 113, as has already been detailed, is that 'thinking is shared by all'. What this means is that thinking or understanding what there is, is fundamentally and inextricably bound up with the 'shared' and thus with *being-in-common*. Thinking and the shared and hence *logos* cannot be separated. They are interarticulated from the start. What this founding interarticulation entails is that any discussion of thinking is already a discussion of the shared. Commonality and thinking are, *ab initio*, interconnected.

In Fragment 114 *polis* and *nomos* are joined together. The relationship between them is positioned by both *being-in-common* and *being-in-place*.

While 114 demands detailed consideration, the interconnection and the analogy allowing it to be presented are clear. The part of the fragment central to this concern reads as follows,

> Speaking with understanding (*noó legontas*) they must hold to what is shared by all (*tó xunó pantón*), as a city (*polis*) holds to its law (*nomó*).

In regards to this fragment the contention is that the first part not only links understanding and the *logos* but also more significantly that commonality determines the link. Speaking 'with understanding' (and speaking must be seen as involving a domain of action that moves beyond strict or literal speaking) occurs in relation to the recognition that things take place *kata ton logon* since that is what is 'shared by all'. The joining of understanding and speaking captures that recognition. At this point the analogy is staged. The same relation pertains between *nomos* and *polis* as the one that characterizes the relation between understanding and speaking. What defines the relation in both instances is that *nomos* takes the place of what is 'shared by all' (*tó xunó pantón*). This reinforces the position of *nomos* as the transcendental condition of human sociality. As has already been indicated, this formulation is also present in 113 where Heraclitus claims that thinking (*phroneein*) is 'shared by all'.

Prior to pursuing the content of the analogy, it is important that its structure be carefully delineated. 'To speak with understanding' necessitates 'holding fast to' that which is shared. The translation of *ischurizesthai* by 'holding fast to' is Kahn's formulation. Marcovich translates the term as 'rely on' while Conche translates it as '*tirent leur force*'. While each translation differs in terms of emphasis, what remains the case is that in every instance a strict connection is established between 'speaking with understanding' and that which is 'shared by all'. Again, the former is defined in relation to the later. This is not as simple a claim as that thinking is done by the 'all' and that therefore there is an implicit conception of the human within the fragments. There is no simple identification of being human with thinking. Thinking is not explicable in terms of its being a cognitive activity, or at least it is not straightforwardly a cognitive activity. Thinking opens up a relation both to the public realm and thus to *being-in-place*. As has already been argued the decisive fragment here is 89.

> The world of the waking is one and shared (*hena kai koinon*) but the sleeping turn aside each into his private (*idion*) world.

While the fragment warrants a much longer commentary, part of which was already undertaken in Chapter 2, it nonetheless needs to be recalled that what is significant is that the world and thus place are both defined in terms of the shared and that what is shared is the public realm. (From the very start therefore the shared or the common are linked to an original spacing within *being-in-place*.) The move from simple cognition to the interconnection of the cognitive and a concern with place marks the departure from an anthropocentric conception of the shared or the common. In other words, it is a departure from a conception of thinking that is defined in relation to either a description of human activity or an abstraction from it. Consistent with this move, as noted above, is the impossibility of reducing the common or the shared to an abstraction from what is common to all who think. All these elements define the realm of the individual. In contrast to the public world is the world of the individual. Fundamental here is the nature of the contrast. Public and private do not comprise a simple opposition. Sleep provides a metaphor through which this position is expressed. Sleep designates not just the realm of the individual; more significantly it captures the enclosure of the individual in his or her private world 'as though they turn from the commonality and place' from the affirmation of *being-in-common* and *being-in-place* – in sleep. The contrast staged in the fragment therefore – and it is a contrast that determines how the shared is to be understood – is between the public and shared, on the one hand, and the individual and the private, on the other. The move from the latter to the former does not take place via a generalization of one into the other or the identification of abstract qualities that allow one to be incorporated in the other. The public domain is the domain of the shared, what has already been identified as *being-in-place*. What this means, in the case of Heraclitus, is that the shared brings with it a complex opposition between the public and the private. That opposition determines how the relationship between the share and *nomos,* as formulated in 114, is to be understood.

Given this setting, it is possible to return to the concerns of Fragment 114. What 'speaking with understanding' means is not the expression of private wisdom but those utterances that accord with the regulative understood as the necessity of transcendental conditions. The position from which speaking takes place is the realm of the public. It is thus that what is said – said publicly – can be judged. And what is judged is the extent to which what is said or done demonstrates that understanding. The shared functions as that which is presupposed in an utterance being public as well as providing the ground for any such judgment. While judgments

accord with the nature of things, their possibility as judgments is the shared. The question of the comparison between speaking and acting, on the one hand, and *nomos*, on the other, becomes even more acute given the common or the shared provide the possibility for judgment and thus activity in the public domain. What does it mean to say that this situation is comparable to the way the polis holds to its *nomos*? Prior to answering that question, the concerns of Fragments 33 and 44 need to be identified since they provide the material necessary to understand the comparison. The fragments read as follows.

> Fragment 44: The people (*ton démon*) must fight for the law (*tou nomou*) as for their city wall (*teicheos*).

> Fragment 33: It is law to obey the will of one (*nomos kai boulé peithesthai henos*).

Fragment 44 deploys a structure of comparison, while 33 defines *nomos* in relation to the 'one'. Again, it is clear that what is being staged in both these fragments is a conception of commonality that exists in complete differentiation from the private and the idiosyncratic. While there may be a direct reference to the city-state of Ephesus in the reference in 44 to the city wall (*touteicheos*), what is far more significant are the possibilities that the 'wall' opens up. Put at its most emphatic, it can be argued that the defence of the city wall is a defence of what it encloses. What it enclosed is the public sphere, the place of *being-in-place* and thus of an already present commonality. The public is not pure externality as opposed to pure internality. Such an opposition would misunderstand the complex way in which public and private are juxtaposed in the fragments. The defence of the wall becomes the defence of the locus of judgment. Maintaining *nomos* is maintaining that which is the expression of judgment. Whether that expression has a formal character, as would be inscribed in either a constitution or a formulation of law, or whether it is linked to a more straightforward conception of judgment understood as normativity and thus as a translation of *phronésis*, is at this stage not the point. What matters is that the defence of the domain of judgment is comparable to a defence of the actualization of judgment, its conditions and formulations. What this raises is, of course, the question concerning the nature of that *nomos*.

Fragments 113 and 44 define *nomos* in terms of a comparison, while 33 opens up the possibility of identifying with greater precision the nature of *nomos*. The latter fragment defines *nomos* as obeying the 'council of one'.

What is meant by this specific formulation is the question that has to be addressed. While it is possible to identify the 'one' with one ruler, it is equally possible to identify the one with one ruling principle. As such, the politics of the fragment is neither straightforwardly autocratic nor unequivocally democratic. It would be too quick, however, to look for the political expression of the fragment in terms of a possible ambivalence between the democratic and the autocratic. To the extent that it brings a political element into play, it inheres in the ontological determinations at work within the fragment as a locus of philosophical thought. And what this entails is that a different type of interpretation is needed.

The 'one' appears a number of times in the fragments. The most important occurrence is Fragment 50 in which the response to the *logos* is to agree that 'all things are one' (*hen panta einai*). While the 'council of one' allows for other possibilities, it also allows for an interpretation in which 'one' can be replaced by 'the all'. What such a moves opens up is a definition of *nomos* as bound up with the understanding that things take place according to principles. This position is reiterated throughout the fragments. It is there, for example, in the claim that things are to be 'perceived according to their nature' (*kata phusin*), or that 'all things takes place in accordance with the logos' (*kata ton logon*), or that the 'all comes to pass in accordance with conflict' (*kat' erin*). What is involved here is a definition of the 'all' in relation to a series of principles or the regulative. Each terms defines both a sense of propriety and the ineliminability of measure. Externality delimits a sense of the proper as linked to the common. Equally, however, the common is there as the site of judgment understood as the domain of the public. Public being – *being-in-place* – is as much common as the principles defining the nature of the things. In sum, this is the argument of 33 and 44 once they are interpreted in relation to each other. It is in terms of this interpretation that it is necessary to return to 114.

It can now be argued that a city 'holding to its nomos' involves a defence of the city wall understood as a defence of the location of judgment, the original spacing defining the public realm. This recalls, of course, the space opened by Athena's suspension of the identification of justice with the immediacy of decisions made by the Gods. Equally, it involves a defence of the common against the idiosyncratic, on the one hand, while, on the other, it – implicitly at least – has to resist a conception of commonality based on an abstraction from the individual. Part of the way in which the limit of abstraction can be understood is to recognize that the term 'individual' is itself always already an abstraction. In other words, 'commonality', as has been argued, cannot be abstracted from individuals, or be taken as an

abstract quality of individuals, precisely because the term individual is itself
abstract. As a term, it has no specificity outside a further act of individua-
tion in which the individual becomes that person. Refusing abstraction
means allowing the fragments to have developed a conception of commonal-
ity that avoids any form of oscillation between the individual and the col-
lective. As such, what it escapes is the hold of what has already been described
as an anthropocentric view of commonality. Rather than taking either the
abstract individual or the abstract collective as the ground of commonality,
commonality becomes participation in a space – participating as an activity.
Therefore, the space in question is the continuity of spacing. It is the space
disclosed by the city wall, the space of agreement and disagreement.

   There is a twofold move occurring within the claim that holding to the
common is analogous to holding to the city wall. In the first instance, it is
the move against the anthropocentric conception of the common. The sec-
ond is that once the analysis is staged in terms of an allowing then the city
wall becomes that which allows; it defines a space by yielding a space. The
importance of the wall should not be overlooked. Walls, be they physically
present or simply there as a line on a map, allow. That allowing, however, is
far from straightforward. Walls delimit spaces. They occasion spacing
and are the occasion of (and for) spacing. Equally, however, the wall or the
frontier restricts, discriminates and structures inside and outside in terms
of the relation of self and other. Walls mark the ineliminability of alterity.
This is, of course, the possibility that has already been noted in terms of
having to acknowledge the already present force of the 'unaccustomed'
within the city. Given that alterity is ineliminable – and thus has to be main-
tained, the 'unaccustomed' as constitutive presence within the *polis* – the
question of maintaining alterity can be understood as the question of the
different ways of 'holding' to the wall. Equally, if the analogy between wall
and *nomos* is itself allowed, then the question of alterity will also always con-
cern how the content of *nomos* is to be understood and thus how and in
what form it is to be maintained.

   As will be seen in the move to Pindar, there is no reason to think that a
disclosed space is automatically a democratic space. Indeed the argument
has to be subtler than would be evidenced by such an assertion. It is vital
that the procedural steps of the argument be stated. First, *nomos* is essential
for human activity. Second, there can be no a radical distinction between
nomos and life (hence the earlier argument that justice is there in the fabric
of life). Third, what allows for the maintenance of *nomos* is the space dis-
closed by the city wall; what is disclosed is the space of judgment, the public

realm. Fourth, walls of necessity involve relations of inside and outside and thus the relation between same and other. Fifth, what this disclosure entails is that the inescapability of questions of justice which involve nothing more or less that a negotiation with (and within) this original setting mean that there is nothing other than the relationship between *nomos* and life. Even if that results in the position that justice may not have been done, it remains the case that justice becomes the way of understanding how those negotiations are to be understood.[7] Finally, these elements can be brought together once it is recognized that they define commonality. What there is in common is the space disclosed by the wall. What is shared is the inescapability of self/other relations. Holding to the wall, and holding to *nomos*, means nothing other than holding to the commonly disclosed space of judgment, i.e. the public realm.

Pindar Fragments 169a, 215a

Pindar figures in *Homo Sacer*. Pindar also figures in Schmitt's *Der Nomos der Erde*.[8] Here, rather than a direct concern with the way his work figures, almost as a prelude to that concern, it is essential to pursue the presentation of *nomos* through two fragments. While it remains the case that Fragment 169a is cited by both Agamben and Schmitt, it is not possible to let that fragment function as an end in itself within the context of Pindar's work as a whole.[9] Hence the question is what would have happened were Fragment 215a also able to figure. The significant elements of each fragment read as follows.[10]

169a
Nomos ho pantón basileus
Thnatón te kai athanatón
agei dikaión to biaiotaton
hupertata cheiri. tekmairomai
ergoisin Hérakleos.

Law, the king of all,
Of mortals and immortals,
guides them as it justifies the utmost violence
with a sovereign hand. I bring as a witness
the deeds of Herakles.

215a
alla d'alloisin nomina, spheteran
d'ainei dikan andrón hekastos.

Customs vary among men, and each man
Praises his own way.

The contrast is between the singular designation of *nomos* as the 'king of all' in 169a and the plural formulation in 215a. In regard to 215a, it is precisely the inscription of a founding plurality that would be the necessary guide to any interpretation of the fragment. (As will be seen, Herodotus cites Pindar to this end [3. 38. 4]). What then of the differences staged by the fragments?

As a beginning, it should be noted that there is a way of turning the relativity of 215a into a formulation that accords with an interpretation of 169a which attributes centrality to the Gods. The argument would be that the reference to Apollo that occurs at the end of the fragment would allow a distinction to be drawn between human relativity, on the one hand, and, on the other, following the direction laid down by a God and thus following those inspired by a God. Relativity would have been excluded in the name of the singularity of divine leadership, or if not leadership *per se* then at least in the name of directions coming from a divine source. And yet, even if the distinction between the human and the divine is allowed, it can still be argued that this only reinforces the overall relativity of *nomos*. The presence of that relativity would stand in sharp contradistinction to the divine. What this means is that once there is a concession to the relativity in which justice could have two possible sources, then what that signals is the catastrophe whose potentiality was already there within the relationship between the human and the divine. The key to the interpretation of Fragment 169a, as Agamben indicates, is found in the reference to Herakles. *Nomos* becomes the justification of violence. And yet there is a genuine question here: How is this violence to be understood? Is it unmediated violence? (Unmediated violence could be defined as that which occurs at the point of indistinction between law and violence.) If the opening of the fragment is all that is cited, then it looks as though *nomos basileus* is the name for unmediated violence. *Nomos*, within the strictures of such an interpretation, allows violence – indeed it allows *to biaiotaton*. And yet once the rest of the fragment is brought into consideration, something else seems to occur and the initial interpretation is checked. Violence is no longer unmediated but mediated by its incorporation into activities and thus into a circuit in which it is the articulation

of a response. Law, understood as a specific decision, may justify violence but it is not unmediated violence. It is always contextual. In other words, the 'violence' is the result of a decision and thus is the presence of a form of justice. What is being contested is not the presence of violence or even the possible identification of justice and retribution. The point of contestation is the possibility that there is a decision that lies outside the law recognizing, of course, that the terms 'law' as well as 'justice' designate sites of conflict – loci of original disagreement – in which at stake is that nature of law and justice. That contestation is an always already present state of affairs.

Part of the justification for this position lies in that which provided the ground, namely, a sovereign *nomos*. Moreover, precisely because *nomos* rules over both 'mortals and immortals', this means that it has priority – both temporally and in evaluative terms – over the actions of both humans and gods and as such is the place of justice, even that justice which may allow, at times, violence. *Nomos* can, once again, be understood as linked to a disclosed public space, the space of public life.

The role of *nomos* and thus the interpretation of the fragments can be given a more emphatic register by focusing on the interpretive conflict between Pavese and Hugh Lloyd-Jones concerning the interpretation of 169a.[11] Lloyd-Jones argues against Pavese's position that, in Lloyd-Jones's formulation, 'Law . . . in the person of Heracles, brings to justice the evil deeds of Diomedes'. For Lloyd-Jones the contrary is the case. His argument is that what is occurring is the 'making just what is most violent'. That is why overall Lloyd-Jones can conclude that, in response to his own question, '. . . did not Heracles act justly?'

> Surely, he did, Pindar answered, for in attacking these common enemies of gods and men, Heracles was carrying out the will of Zeus and helping to enforce the order of the universe.[12]

It is not necessary to pursue the concluding point made by Lloyd-Jones that *nomos* 'was identical with the will of Zeus' in order to appreciate the full force of the argument. What is involved is the claim that *nomos* defines order. What the relativity of 215a brings into consideration is a subtler claim, namely, that while the content that may be given to any ordering system is marked by a type of relativity, the system as a system defines coherence and therefore is neither relative nor arbitrary. *Nomos* defines the coherence of the people. The important point here is that what provides coherence may allow specific acts of violence to be just. While Lloyd-Jones does not allow for the position, it can also be concluded from this set-up

that Zeus is subject to the law that he creates. This has important conse-
quences insofar as it has a significant effect on positioning in relation to
nomos. Once it can be argued that Zeus is subject to his own law, and thus
there is not an external position enacting what was identified earlier as the
logic of *chora*, then this has inescapable consequences. Positions within
the public realm, positions of life, are always defined in relation to *nomos*.
As such, it is no longer possible to be outside the law or even before the law.
Once the possibility of being before the law is defined either temporally or
in terms of spatial distance, then such a positioning becomes impossible,
precisely because it misunderstands the nature of *nomos*. Such a position
conflates law with statute and *nomos* with pragmatic determination. The
exclusivity of both these possibilities is undone by Fragment 215a.

The relativity of 215a points to the impossibility of understanding human
activity outside a relation to the regulative and thus an already present sense
of measure. What this means is the growing impossibility of effecting an
easy separation between law and life. The distinction between law and life
would be based on the identification of law with statute and thus the insist-
ence that the responses to law were always immediate. Once it can be argued
that there is a type of reciprocity between law and life, then a different set
of responses is set in place.

Despite the difficulties that it brings with it, it is worth looking at the
claim made by Herodotus in relation to the inherent plurality of *nomoi*.
Even though it is a lengthy passage (3. 38) it identifies the problems with
great acuity.[13]

. . . if it were proposed to all nations to choose which seemed best of all
customs (*nomaioisi*) each, after examination made, would place his own
first. So well is each persuaded that its own are by far the best. It is not
therefore to be supposed that any, save a madman, would turn such things
to ridicule. I will give this one proof from among many from which it
might be inferred that all men hold this belief about their customs: when
Darius was king, he summoned the Greeks who were with him and asked
them what price would persuade them to eat their father's dead bodies.
They answered that there was no price for which they would do it. Then
he summoned those Indians who are called Callatiae, who eat their par-
ents, and asked them, (the Greeks being present and understanding by
interpretation what was said) what would make them willing to burn their
fathers at death. The Indians cried aloud that he should not speak of so
horrid an act. So firmly rooted are these beliefs; and it is, I think correctly
said in Pindar's poem that nomos is King of all (*nomon pantón basilea*).

The importance of the final line is that even though it sanctions the identification of *nomos* with a divine presence, it still allows *nomos* to be identified with a regulative principle. While there is some suggestion that Herodotus has confused the two fragments and that 215a best serves his purpose rather than 169a, it is also possible to argue that sovereignty does not demand a universal *nomos* but that *nomos* is sovereign even if – on the level of content – it cannot be generalized and yet as a transcendental presence remain as the necessary condition for human sociality. The conclusion would be that Herodotus has in fact chosen the correct fragment. Sovereignty is not external to *nomos* but is its actualization. Hence, what will need to be taken up is how the continuity of that actualization is to be understood. Indeed the force of the passage from Herodotus reinforces the argument concerning the impossibility of generalizing on the level of content but not the impossibility of generalizing the centrality of *nomos*. While it goes beyond the obvious concerns of the passage, it is nonetheless essential to note that his agreement with Pindar can be interpreted as an agreement that is precisely not concerned with content of a given *nomos* but with *nomos* understood as what has been described as a transcendental condition. Moreover, it also reinforces the identification of *nomos* as that which discloses the space of human activity: the continual interrelationship between *being-in-common* and *being-in-place*. *Nomos* becomes that which allows life. Reciprocally, of course, life is that which is allowed by *nomos*. Allowing is not the state occasioned by law, or even defined by law, if law is equated with statute. Allowing is an occasioning. What is allowed is the occurrence of life.

Nomos is linked to the presence of *being-in-place* as inextricably bound up with spacing. Moreover, it is a spacing that does not constitute life but is how the continuity of the public is to be understood. *Nomos*, in this context, is therefore what is shared. *Nomos* as a transcendental condition is what there is in common. It is at this point therefore the connection with Heraclitus emerges. What is at work within the connection is a reworking of *nomos* as that which is always already implicated within public life. If Pindar can be attributed a pluralized conception of *nomos*, then the connection with Heraclitus involves the relationship between *nomos* and spacing. In other words, it concerns the relationship between *nomos* and the wall. The question that arose within Heraclitus arises at this point as well. Is there a conception of *nomos* that can be radically differentiated from life? What this amounts to asking is the possibility of a conception of *nomos* that can always be distinguished from its application. If the answer to such a question is in the negative, then force and *nomos* can formally never be distinguished.

Nomos is the continuity of its actualization. This is the possibility that can be seen as arising from the interpretations of Heraclitus and Pindar offered thus far.

Agamben: The Inclusion of the Exception

The argument of Agamben's *Homo Sacer* is complex. Not only is the book concerned to rework a conception of sovereignty but also the rewriting of sovereignty becomes another formulation both of the history of *nomos* and the history of the Western philosophical tradition. To the extent that the argument is accepted, what is accepted is, at the same time, a different account of how modernity comes to be differentiated from the Classical. Within the argument of *Homo Sacer,* the modern is the release of a possibility that marks the incorporation of some of philosophy's founding oppositions. Prior to any engagement with that element of the text, a start will be made with the way Pindar figures in the overall argument. Opting for this way in is not an arbitrary point of departure; Agamben's argument concerning the centrality of Pindar is unequivocal,

> Pindar's fragment on the *nomos basileus* contains the hidden paradigm guiding every successive definition of sovereignty: the sovereign is the point of indistinction between violence and law, the threshold on which violence passes over into law and law passes over into violence. (32)

The question that arise here are therefore those that concern how Agamben interprets the fragment and thus how he allows it to play such a determining role.

In this explication, the central point is to provide the detail of Agamben's interpretation and use of Pindar. The opening move is that for Agamben Pindar 'defines the sovereignty of the *nomos* by means of a justification for violence'. Within Agamben's interpretation, *nomos* provides both for the textual juxtaposition and the conceptual unification of *bia* and *dikē*, violence and justice. Their union is brought about by *nomos.* The role played by *nomos* in Solon and Hesiod is mentioned by Agamben to show that there is a more decisive turn in Pindar. Thus, Agamben can conclude that Pindar is 'the first great thinker of sovereignty – the sovereign *nomos* is the principle that, joining law and violence threatens them with indistinction'(31). The contention that has been developed thus far is the opposite – namely, that both Heraclitus and Pindar are fundamentally concerned to stage the founding separability of violence, justice and law. The next stage of Agamben's argument involves two interrelated moves. The first is to show

that Schmitt misunderstands the force of Pindar's conception of *nomos*. And yet, and this is the point made by Agamben on behalf of Schmitt, Schmitt's work provides the basis for its correct interpretation. The second is to show in what way a reiteration of Pindar's positing of an indistinction between violence and justice, once articulated within a distinction between *nomos* and *phusis* at work in Plato, sets the scene for the contemporary construal of the relationship between nature and society. It must be remembered that what is being played out here is Agambens's interpretation.

Schmitt attempts to rectify Hölderlin's translation of *nomos* by *Gesetz* by arguing that contrary to what such a translation entails '*nomos* in the originary sense is, rather, pure immediacy of a juridical power not mediated by law' (32).[14] What Schmitt misses in Hölderlin is that Hölderlin is attempting to ground law in something that is higher than law. Here there is an accord with the spirit of Schmitt's undertaking, since Schmitt is also concerned to ground law in 'nomos as a sovereign principle'. What Agamben sets in play therefore is a distinction between law and *nomos*. *Nomos*, to use his language, will always be 'higher'. Prior to any consideration of the justification for the move, it is essential to note the extent to which it informs Agamben's interpretation of Plato – the point of departure for which is, of course, Plato's citation of Pindar in the *Gorgias*. As significant, however, is the passage from the *Protagoras* that Agamben takes to be an 'implicit citation' of Pindar. It is this latter interpretation that is of direct concern here precisely because it stages a formulation of the distinction between *nomos* and *phusis* that is reiterated in the *Laws* and informs subsequent discussions of the relationship between *phusis* and *nomos*. The passage from the *Protagoras* is a position taken to be Socratic though it is advanced by Hippias.[15]

> You people who are present, I maintain that you are all relatives, neighbours, and citizens by nature and not by law. The similar is related to the similar by nature, but the *nomos*, the tyrant of men, commits many acts of violence against nature. (337c)

The argumentation of this passage is reiterated in the *Laws* (690b–690c). For Agamben, what concerns Plato in both instances is what Agamben describes as the 'coincidence of violence and law as constitutive of sovereignty'. What emerges from the passage is that while the distinction between *nomos* and *phusis* can for Plato lead to the argument for the non-violent nature of *nomos*, it can be turned around, as is the case with the Sophists, for whom the same opposition can be used to establish the 'union of *bia*

and *dikê* (35). The effect of this opposition is considerable. It underwrites the distinction in Hobbes between nature and the commonwealth and comes to have a determining effect on how sovereignty is understood.

The next stage of the argument though complex is crucial. Agamben wants to argue that the opposition *phusis/nomos* allows for sovereignty – though it has to be noted this is a very specific formulation of sovereignty. The full statement of this position is the following.

> Sovereignty thus presents itself as an incorporation of the state of nature in society, or, if one prefers, as a state of indistinction between nature and culture, between violence and law, and this very indistinction constitutes specifically sovereign violence. The state of nature is therefore not truly external to nomos but rather contains it virtuality. The state of nature (certainly in the modern era, but also in that of the Sophists) is the being-in-potentiality of the law, the laws self-presupposition as natural law. (35–36)

Part of what this positioning involves is the localization within the totality of the 'state of exception'. That state is the one which in being excluded from law is able both to ground and suspend law. The indistinction between violence and justice (*bia* and *dikê*) is integral to *nomos* as its constituting act of suspension. This is what Agamben identifies as the 'paradox of sovereignty'. Before tracing the way, this argument becomes the basis for the interpretation of the 'homo sacer' and more particularly the way it gives rise to a fundamental turn in the politics and philosophy of the body; it is essential to begin to question the basis of the interpretation of the Greek texts (by Agamben) presented thus far.

There are a number of fundamental points that need to be examined. The first is the question of whether there is in Pindar a point of indistinction between violence and justice. Second, that *nomos* has a consistent semantic range such that it is possible to move between Pindar and Plato in order to argue that the Platonic distinction between *physis* and *nomos* can be used to understand the role of *nomos* in Pindar. Finally, though this is the position that is the most difficult to express, that there is within the realm of the texts being analysed the incorporation of the site and state of exception. While this looks to be a reiteration of the first point, what is being asked in this final question has to do with a particular cartography, one determined by an interpretation guided as much by the literal presence as by the symbolic presence of the city wall. What is central to all of these points is the relationship between law and life. In regard to the first, it is as

though there is a moment in which law's withdrawal allows for a life not constituted in relation to *nomos*. In regard to the second, it is as though life were a category that could be placed within the opposition between *phusis* and *nomos*. In regard to the third, what is being questioned is the place of human life.

The vitality of the pre-Socratic tradition is not its uniformity but the complexity staged by its distance from Plato and Aristotle. Though this distance is not great and even though pre-Socratic texts are continual sites of investigation and interpretation within the Platonic and Aristotelian corpus, it remains the case that the distance provides a site of deliberation. One group of texts cannot be readily assimilated to another. When in Fragment 123 Heraclitus claims that *phusis kruptesthai philei* (Nature is accustomed to hiding itself) this has to be interpreted not as a claim about nature – if nature is thought to exist in a simple opposition to *nomos* – but in regard to the nature of things. The fragment is suggesting that that the nature of things in not being self-evident has to be discovered. What there is, in other words, is the subject of inquiry (what is – 'is' in the emphatic sense of what exists – is there to be discovered) – a position reinforced by the claims of Fragment 35 that wisdom is linked to those who are 'inquirers into many things'. While the position is not identical, the claim made by Hippias in the *Protagoras*, the passage cited above, continues by claiming that quarrelling should not really occur among those 'knowing the nature of things' (*tén phusin tón pragmatón eidenai*) (337D3). Hippias's point is not the same as the one found in the Heraclitean fragment. And yet what both positions involve is a conception of *phusis* that is linked to a founding propriety rather than one that stands over against *nomos*, let alone one that can be identified with nature if nature is thought to have any relationship to Rousseau's 'state of nature'. What this is opening up is the possibility that *nomos* and *phusis* in Herclitus identify regulative principles that can be reformulated as transcendental conditions. They are not in strict opposition and as such would not allow a retroactive interpolation of the distinction between human and nature back into the initial formulation.

This provides a setting in which to address the problem of the interpretation of *nomos* (and other cognate terms). Once again, this is not to claim that these terms have an identical usage in Heraclitus and Pindar. Moreover, the shift in terminology between the fragments from Pindar indicates the difficulty of establishing a complete and all-encompassing interpretation. It appeared that the overriding interpretive problem bequeathed by the comparison of Fragments 169a and 215a lay in the attempt to reconcile relativity and universality. The way through the problem involved the

recognition that there was not a conflict. Rather, there was the need to distinguish between a formal claim concerning the universality of *nomos* and the specific claim concerning the actual relativity of *nomoi*. As has already been intimated, there is an important link that can be established between Heraclitus and Pindar at this precise point. Both can be interpreted as having a conception of *nomos* that is bound up with the disclosure of the space of judgment. Public space is that which is fought for. The dramatic conclusion is that it is impossible to conceive of life other than in an originary relation to *nomos* and by extension therefore to *diké*. Indeed, it is this link that necessitates that the connection Agamben established between his interpretation of Pindar and Plato and the 'homo sacer' be examined in much greater detail.

The 'homo sacer' plays a pivotal role in Agamben's reworking of the history of sovereignty. The structure of sovereignty as it is found in Pindar, for Agamben, allows for the indistinction between violence and law, though equally it must also allow for their distinction. It is in terms of this copresence that 'bare life' is able to figure. The 'homo sacer' is the life that is positioned within the sovereign sphere by the indistinction between law and violence. The 'homo sacer' may be killed but not sacrificed and as such is, as 'bare life', always withdrawn from the province of law. The withdrawal becomes, in a certain sense, foundational. Prior to any questioning of the possibility of this 'bare life', further elements need to be adduced. The extension that is to be attributed to the 'homo sacer' needs to be noted.

> The life caught in the sovereign ban is the life that is originally sacred – that is, that may be killed but not sacrificed – and, in this sense, the production of bare life is the originary act of sovereignty. The sacredness of life, which is invoked today as an absolutely fundamental right in opposition to sovereign power, in fact originally expresses both life's subjection to a power over death and life's irreparable exposure in the relation of abandonment. (83)

It is not difficult to see how the posited indistinction between violence and justice that arose in the context of Pindar's fragment generates that position which has to bear this founding indistinction. In being withdrawn from law, the 'homo sacer' becomes the subject of pure violence. In the Greek context, it is essential to distinguish the 'homo sacer' from the *metoikos*. The latter is the outside or foreigner. In regards to the latter, there were a series of established conventions. The 'homo sacer' occupies a more extreme position. That such a position exists flows, for Agamben, from the argument

that starts with Pindar. The position is given greater philosophical weight by the reference to Jean-Luc Nancy's conception of 'L'etre abandonné'.[16] For Nancy, the human predicament – the ontological state of human being – is the state of being abandoned to a law. We are a-ban-doned – given over to the law. Once it is added that this being in abandonment is articulated with the state of distinction/indistinction between law and violence, then the being of abandonment has to be rethought. Hence Agamben argues, 'only if it is possible to think the being of abandonment beyond every idea of law . . . will we have moved out of the paradox of sovereignty towards a politics freed from every ban' (59). For Nancy, this position is impossible. There is only abandoning to the law. Agamben, citing Heidegger, argues for a conception of abandonment allowing for an 'experience freed from every idea of law and destiny' (60). This underscores the importance of the figure of Athena. What she makes clear is that while it is possible to suspend the determination of fate this does not mean the abandoning of the law. That is an impossible statue of affairs (as Nancy indicates). Overcoming the hold of fate is itself an already present reworking of law.

At issue here is not just the ontological constitution of being human but the possibility of a freedom that, in Agamben's terms, is defined as 'beyond every idea of law'. What this means is beyond the 'paradox of sovereignty'. If this is the challenge that Agamben's work establishes, it is also the limit. It is not as though the question is whether it is possible to think beyond the confines of law. Rather, the question that has to be addressed concerns the possibility of there being a conception of human being that is not defined in relation to *nomos* (not the relativity of *nomoi*, though that will also be the case, but *nomos* as a transcendental condition, present within and in part constitutive of the spacing that yields the locus of judgment). While it may be the case that the refusal of participation is a position, it is not the position of 'bare life' but rather the privation of autonomy. The struggle to attain autonomy, while not an end itself, is the struggle to overcome a specific formulation of alterity, in order to allow for a different conception. The ineliminability of alterity and thus the need to think the possibility of a conception of alterity that involves reconciliation to irreconcilability is that which is staged by the city wall.[17] It is not 'bare life'. In order to address the question of the possibility of 'bare life' which is, of course, the same question as the possibility of a founding point of indistinction between *bia* and *diké*, and in the guise of a conclusion, it is necessary to respond to the provocation of the claim made by Agamben that the Camp is 'the "Nomos" of the Modern'.

The language that surrounds the presence of the camps, what was undertaken within them and the nature of the legacy is marked by a profound

sense of incredulity. Part of the legacy is how to understand. It is not as though Agamben is looking for simple explanations. Rather, what explanation there is demands that the camp be positioned within the history of sovereignty. Two elements guide the analysis. The first is that camp is not an anomaly. It becomes, for Agamben, the extreme form of the possibility announced in the founding indistinction between violence and justice that marks the origin of sovereignty. In a sense therefore it is the ultimate version of the founding truth of sovereignty. The second point is that in being the limit condition it delimits the centre. What has to be pursued therefore is the way the argument is developed. Integral to that development is the moment where the Jew became the 'homo sacer'. There are two moments that for Agamben are fundamental. The first is the use of *Schutzhaft*. This was an element of Prussian law that allowed certain individuals to be arrested without having committed any 'criminal behaviour'. There was thus a potential to distinguish between 'citizens' without that having to be an actual law that was broken. From the start therefore a form of fragility marked citizenship. (Note this is not *being-in-common* but a specific form of citizenship that is given within a strict historical setting and thus having established and identifiable determinations.)

The second element that plays a fundamental role was the fact that German political history was marked by use of the 'state of exception'. In other words, that the suspending of the constitution for the sake of the constitution was such an integral part of the legal history of the period that there was nothing exceptional about the suspension of the constitution by the National Socialists. It was suspended without the expression *Ausnahmezustand* ('state of exception') being used. The state of exception could not be seen as external. What this means is that

> *Schutzhaft* is now separated from the state of exception on which it is based and is left in force in the normal situation. The camp is the space that is opened when the state of exception begins to become the rule. (168–169)

While the camp becomes the place that is removed from the rule of law and is thus not a place where law pertains, it is equally not outside. It has been internalized. That accounts for why it is possible to argue that that 'camp is the structure in which the state of exception . . . is realised normally' (170). Those inside the camp had been stripped of being the subject of right. As such, however, the position in the camp reflected the position outside the camp. In both instances right, given certain racial or ethnic determinations,

had vanished. The camp, for Agamben, can become the *nomos* of the modern insofar as the camp is the regulator of bare life. In regards to the inhabitants of the camps, he writes the following:

> Insofar as its inhabitants were stripped of every political status and wholly reduced to bare life, the camp was also the most absolute political space to have been realized, in which power confronts noting but pure life without any mediation. (170)

The most significant formulation here is 'pure life without any mediation'. On one level, it is possible to see some force in the argument that an account of what occurred within the wars in the former Yugoslavia, as well as the camps in Nazi Germany and there are other and there will be other examples, involve 'an order without localization (the state of exception in which law is suspended)' to which there 'corresponds a localization without order (the camp as a permanent space of exception.)' (175). Moreover, it is also necessary to argue that the so-called ethnic wars of recent years are not a regression to a tribal past but are bound up with the crisis of the nation state. That crisis is simply that the ground of nation has vanished, and in being reinvented acts of reinvention are marked by violence. Even in accepting such arguments, the key question is the extent to which they occur and are enacted against or in relation to 'bare life'? There is a similar question concerning life in the camps. While it may have been possible to see the inhabitants in the camp as the enactment of 'bare life', the question that remains concerns the differing ways in which survivors wrote or talked of their own lives. The difficulty would be generalizing.

Even in moving away from the camps of the Nazi period, the problem of 'bare life' remains. Is it possible to argue, for example, that whatever took place in Srebrenica took place in relation to 'life without mediation'? Or was the opposite the case? Is it not possible to argue that the extreme forms of nationalism necessitate that continual even if mythic attribution of identities and histories in order that an 'ethnic cleansing' has the force that it intends? It is almost as though what the modern period demands is that the fracturing of the enlightenment subject means that any one subject is always more than bare life. The Bosnian is killed for being a Muslim; at Omagh, men, women and children were killed for being Protestant. The examples proliferate. Those who are subject to violence had no presence other than as the particular being in question. They were not killed 'as' but for actually being what they were. While it should be admitted immediately that this attribution of an identity has an essentializing effect in turning, for

example, all Muslims into versions of the Same, it remains the case that what is defined, and thus attacked, in each case is life that is already mediated in advance. What this means is that while there may be points at which there is an indistinction between violence and law, such moments are utterly specific. While Agamben is right to argue that such victims may have been stripped of a political status, it is only partially true. The stripping which allowed them to be murdered was highly politicized. And in responses to the predicament of Nazi Germany and again of the former Yugoslavia, the refusal of law and thus law's protection can always be challenged, at the time or retrospectively, within the larger field of international law. Moreover, it is possible to see that if the nation state is in crisis and this leads to the growing impossibility of national law and thus nationally defined and determined conceptions of sovereignty to have force, then the response is to not argue for a position that is freed from the hold of law but rather to redefine the locus of law. There would need to be a move beyond national and international understood as a simple opposition.

When Pindar writes that *nomos* is King and yet that all people have their own specific *nomoi,* this should not lead to a mute philosophical or political acceptance of normativity for its own sake. What Pindar is stating is the twofold recognition of the inescapability of *nomos,* on the one hand, and on the other, the contestable nature of *nomoi. Nomos* should never be too quickly conflated with law, let alone with specific statutes. Indeed, to the extent that *nomos* can be understood as a transcendental conditon, it cannot be equated with pragmatic instances. There is a tendency for Agamben to move with great rapidity between the two. If there is a residual truth about the nature of *nomos,* then it emerges from Heraclitus Fragment 44. However, the ambivalence of the city wall must be maintained. The wall may disclose a space of terror in which 'strangers' or 'foreigners' are denied the same status as those who claim it as their own. This will occur at the same time that it discloses a space of judgment in which there is a productive openness that in being maintained becomes the public realm. In the first instance, the relativity of *nomos* allows for the judgment of such a space. The presence of any form of ethnic cleansing within the city wall would be premised on the refusal of the inherent plurality that a city wall discloses in virtue of being a wall and the related necessity that it continue to house the 'unaccustomed'. Hence, the nature of *nomos* would not be understood. The second refers to that possibility for democracy that is inherent in the complex connection between life and *nomos.* It is not realized within attempting a synthetic act of unity such that what the wall discloses is the Same. Rather, such a potential is realized when what becomes affirmed is the inherent

plurality within the space disclosed by the wall. Allowing for the democratic therefore is to recognize that there could never be 'bare life' except as an after effect, and it is an after effect that can always be challenged. The challenge should not stem from a residual humanism, which is after all no more than an attempt to found a politics on the Same but from the complex consequences that flow from the acceptance that a 'people must fight for the nomos as for their city wall'. What the wall allows is what is shared, i.e. the site of the continuity of *being-in-place* and *being-in-common*.

Political Translations: Hölderlin's *Das Höchste*

Pindar's Fragment 169a retains the question of the political. It returns, more-over, within Hölderlin's poetical project. If there is a politics in Hölderlin, it is, perhaps, more instructively found in his poem *Das Höchste* rather than straightforwardly in his poetics. This poem is, of course, a translation of Pindar Fragment 169a.[1] Not only has Hölderlin provided a translation but also the poem is accompanied by his own commentary. The fragment has attracted further philosophical investigation from thinkers as apparently diverse as Heidegger, Schmitt and Agamben (as was noted in Chapter 3). The project of this chapter is to investigate the way translation and com-mentary – recognizing immediately that there will be an inevitable conflu-ence between them – provide an important type of access to the politics implicit in the poetic fragment as a translation.[2] Rather than assume that the political concerns the relationship between law and violence in which the former regulates and allows for the judgment of the latter, in this instance the concern of the political involves a return to the original differ-ence already noted within law. As a result of taking this as a point of depar-ture, violence will have to be explained in terms of the differences that mark the founding presence of *nomos* (law). Those differences which have already been noted with the *Oresteia* as well as in the fragments of Heraclitus can be summarized in the following terms. In sum, the differences are threefold. In the first instance, there is a conception of *nomos* as a transcendental ground of sociality, and in the second, it is the equation of nomos with law and statute (though equally with convention). Finally, there are a series of relations in which *nomos* as a transcendental ground is refused in the name of externality – e.g. 'nature', the Gods which are then taken to function as the external ground of law. External, in this context, however, does not mean transcendental. On the contrary, it means external to the social, i.e. external to the *polis,* as such. As has already been argued, externality yields a conception of justice as immediate. The project here is to take up through the way these distinctions are at work both within Pindar Fragment 169a

though more significantly in the way they have a structuring force within Hölderlin's translation and commentary on that fragment. A way in is provided by working through the differing permutations to which these distinctions give rise in the use made of Fragment 169a by both Plato and Herodotus. They set the scene for what figures, and what does not, in the translation by Hölderlin. In regard to absence, it can always be argued that it is a form of figuring.

This difference between law (*nomos*) as a transcendental condition and law as a statute is not as straightforward as it first appears. The relation, be it disjunctive or conjunctive, between these two senses of *nomos* allows for different configurations. Those differences become all the more marked once Hölderlin's commentary begins to play a fundamental role in the interpretation of the actual translation of the Pindar fragment. On one level, the commentary can be understood as a further translation. It can be argued that what are translated are the poem's concerns. Moreover, it is the commentary's necessity that underscores the presence of *Das Höchste* as, in fact, a translation.[3]

Even though politics and translation are, from the start, interconnected, one of the most exacting problems still concerns the way into the poem. The fragment, as has been mentioned, is deployed by both Plato and Herodotus. In regards to the poem itself, Hölderlin only translates what can now be taken as the first four lines. While it will be essential to work through both the poem and Hölderlin's commentary, what has to be noted is that the commentary ends with a definition of 'king', an act the significance of which is twofold. In the first instance, significance stems from the fact that the fragment is often referred to as *Nomos basileus*. In the second instance, the significance is located in the continual referral to 'kings' and 'princes' at important moments throughout Pindar's writings. (A clear example, one which will be taken up at a later stage, can be found in another Pindar translation, *Von der Ruhe*.) In the Commentary to *Das Höchste*, reference to the 'King' rather than pertaining to the 'the highest power' (*die höchste Macht*) has a different orientation. It is, for Hölderlin, 'the superlative that is only the sign (*das Zeichen*) for the supreme ground of cognition (*den höchsten Erkentnißgrund*)'. The identification of King with a 'ground' harbours, it will be argued, that turn to transcendental conditions that is, potentially, already at work within *nomos*. Thus, 'supreme ground', hence the King, can be provisionally interpreted in terms of a transcendental possibility (as the continual ground for actuality). In order to return to the distinction between power and possibility, the role of the poem in Plato and Herodotus will provide the way in.

In the case of Plato, the dialogue in question is, once again, the *Gorgias*. The poetic fragment is cited by Callicles, at 484b1–c3, as part of an argument, one that will be countered effectively by Socrates, concerning the power of the strong over the weak.[4] In this context, he refers to the strength of an individual who overcomes specific laws or conventions (*nomoi*) because they are 'all against nature' (*tous para phusin*). Noting here, of course, that this 'nature' is already located beyond the hold of *nomos* and, moreover, its being thus positioned is the basis for refusing the particularity of a given set of *nomoi*. In this move what arises, and it does so with the mastery that stems from revolt at its most emphatic, is a state of affairs positioned, for Callicles, within a conception of justice that is determined by 'nature', i.e. the justice that accords with nature. Both elements of that accord need to be understood in their radical separation from any original connection between *nomos* and the social. After making this point, Callicles adds that in his opinion evidence for this conclusion is found in Pindar. Callicles then quotes the lines most of which Hölderlin translates. In this instance, what matters is not the viability of the argument advanced by Callicles against Socrates. On the contrary, what is significant is the way that *nomos* is deployed both within the formulation of his position and in the way that Pindar's fragment is taken to reinforce that position. After citing lines 3–5 of the fragment concerning the 'deeds of Hercules', lines not included in Hölderlin's translation, Callicles comments that the strong taking the possessions of the weak, or the superior taking those of the inferior, are not aberrant states of affairs. The contrary is the case. Such actions, for Callicles, are both the expression and the presence, thus the enactment, of 'natural justice' (*tou dikaiou phusei*). This is the justice that is positioned on the side of 'nature' where nature, as has been argued, is understood as necessarily distinct from the domain of *nomos*. (An occurrence which only holds to the extent that *nomos* is equated with convention.) This is an important argument. The position is that the only division emerging from Callicles' use of Pindar is between *nomos* and thus the *polis*, on the one hand, and nature, on the other. Within the overall argument in which Pindar's fragment is deployed by Callicles, there is no discernable division within *nomos* between *nomoi* understood as specific norms or statutes that pertain at a given point in time and *nomos* as a transcendental condition within and for human sociality (thus recalling the opening deliberations concerning 'measure'). For Hölderlin, as will be argued, it is exactly this division that defines the significance of Pindar's fragment when it comes to be named *Das Höchste*.

The specific use Callicles makes of Pindar accounts for why the link in his argument between law and justice involves an equation between *nomos* and prevailing norms – precisely because the equation pertains to norms as opposed to normativity. (Normativity in this context needs to be understood as a transcendental condition that is always originally without content and through enacting or grounding comes to acquire it. This will then allow for a trivialization of specific norms.) This trivialization occurs because the equation means that norms that are not located in 'nature' are arbitrary and therefore lack force. Once again, nature is understood in its absolute differentiation from the place of norms and normativity, i.e. the *polis*. What this equation exposes is a form of vulnerability. In other words, if it can be argued that *nomos* does not have its ground in nature but in the transcendental condition for sociality – this being the mark of the fold within *nomos* – then the setting in which this relation is acted out, a setting which equates to the *polis*, has become vulnerable. Emphatic revolt – that conception which in the language of the *Antigone* is structured by the *apolis* and therefore is not pitted against identifiable *nomoi* but their condition of possibility – will be occasioned by that vulnerability. Though, as has been argued in the context of the *Oresteia*, this is precisely the condition which attends democracy. For Callicles, this vulnerability and the exposure it reveals leads to an overcoming that takes place in the name of a different sense of *nomos* – a sense in which it is identified with a form of sovereignty whose ground is 'nature'. In that specific context, sovereignty is not just the capacity to exercise political power and any subsequent enactment of that capacity. More fundamentally, sovereignty becomes the politics in which nature acts against the *polis* where the latter is understood as a transcendental condition. Within this context, and only with it, 'justice' also has its ground in 'nature'. Nature, of course, is that which is given in opposition to a conception of 'justice' that is interarticulated with *nomos*, i.e. justice as mediacy (where *nomos* is understood as 'convention' as detailed within the argumentative strategy of the *Gorgias*). Here, as has already been intimated, it is not a question of whether Callicles is correct in his use of Pindar. What counts is the formulation that is given to the relationship between *nomos* and *diké*. In the case of the *Gorgias,* this cannot be separated from a concern with 'nature' (*phusis*). Indeed the division between types of justice and equally two senses of sovereignty (and by extension the sovereign) occurs due to a posited division between, first, that which pertains to human organization as a necessity, even though once enacted are arbitrary and relative (the last two determinations pertain to content), and second that which

endures independently of differing and possibility incompatible modes of human organization, namely, nature.

Pindar is taken as holding to a conception of *nomos* and the right of the strongest both of which have their ground in that which is beyond human organization. Whether this mode of organization pertains to an Orphic conception of the divine or whether it is rooted in a natural order as opposed to a human order is not at this stage central. What is significant is the positioning of *nomos* beyond the locus of human negotiation and thus within the domain organized by nature (though equally it could have been organized by fate) and in which justice is of necessity always immediate. What matters therefore is how this beyond is to be understood. It should be reemphasized that Hölderlin does not translate the line of the fragment that deploys the example of Heracles. The opposite is the case with both Callicles and Pindar. This refusal to let a politics of translation be drawn into questions of exemplarity is fundamental to the formulation of Hölderlin's own translation. As was suggested, what is not translated is of genuine significance. However, at this stage, what is of concern is the definition of *nomos* as situated beyond the place of human interaction. The reason for allowing this question to emerge will become clear from a comparison with the role played by elements of the same fragment in Herodotus.

Herodotus does not cite the lines of the fragment that pertain to violence and power. He only quotes the first line. The fragment is deployed in order to substantiate contingency. Beliefs and customs vary. Their presence within one social organization is necessary though the content concerning a particular custom may be incompatible with the content of another custom concerning what would ostensibly be the same theme. The latter is the contingent element.[5] While the reference is intended to address and underscore this contingency, the effect of the words *nomon pantón basilea* ('*nomos* is king of all') opens up a different question. In other words, and contrary to the spirit of Herodotus' clear intention, the employment of the term *nomos* brings more into play than the mere presence of norms. What any use of the term demands is a consideration of the following questions. If custom is internal to social organization, how is the sense of what is internal to be understood? Is there a link therefore between a positioning of *nomos* as a necessity that is beyond human negotiation and its presence as an internal organizational principle where the principle is necessary even though the specific nature of its content is not? It is essential to be clear here. While the use made of Pindar allows for the presentation of an argument in which

the presence of certain lines becomes the evidence for a form of relativism, it remains the case that the very instability within *nomoi* – an instability made clear, for example, by the presence of contradictory contents – can always be taken as argument for the necessity of *nomos* (where the latter is understood as a transcendental condition.) Hence the emergence (and inescapability) of the questions posed above. Relativity, in this context, merely attests to content. At no point is the actual presence of *nomoi* challenged – presence as opposed to content. *Nomos* remains a necessity. Even within an apparent relativity, therefore, what endures as ineliminable is the transcendental condition for sociality itself. These issues, to which it will be essential to return, open up the concerns of Hölderlin's translation.

What is being translated is clearly not just a fragment of poem. On the contrary, the difficulty of attributing a final determination to the term *nomos* refers to the fact that it is one whose meaning lacks final determination from the start. While any translation is already a determination insofar as one word comes to take the place of another, the words themselves are the sites of what can be described as the originally indeterminate.

With Hölderlin's translation, as has been indicated, there is both the poem and the commentary. It is as though the presence of the latter is already an acknowledgment of a sense of the indeterminate. The Greek text reads as follows:

> *Nomos ho pantón basileus*
> *thnatón te kai athanatón*
> *agei dikaión to biaiotaton*
> *hupertata cheiri.*

Hölderlin's translation plus commentary presents the poem in the following way:

> *Das Gesez,*
> *Von allen den König. Sterblichen und*
> *Unsterblichen; das führt eben*
> *Darum gewaltig*
> *Das gerechteste Recht mit aller höchster Hand*

Das Unmittelbare, streng genommen, ist für die Sterblichen unmöglich, wie für die Unsterblichen: der Gott muß verschiedene Welten unterscheiden, seiner Natur gemäß, weil himmlische Güte, ihret selber wegen, heilig seyn muß, unvermischet.

Der Mensch, als Erkennendes, muß auch verschiedene Welten unterscheiden, weil Erkentniß nur durch Entgegensezung möglich ist. Deswegen ist das Unmittelbare, streng genommen, für die Sterblichen unmöglich, wir für die Unsterblichen.

Die strenge Mittelbarkeit is aber das Gesez.
Deswegen aber führt es gewaltig das gerechteste Recht mit allerhöchste Hand.

Die Zucht, so fern die Gestalt ist, worinn der Mensch sich und der Gott begegnet, der Kirche und des Staats Gesez und anererbte Sazungen, (die Heiligkeit des Gottes, und für den Menschen die Möglichkeit einer Erkentniß, einer Erklärung) diese führen gewaltig das gerechteste Recht mit allerhöchester Hand, sie halten strenger, als die Kunst, die lebendigen Verhältnisse fest, in denen, mit der Zeit, ein Volk sich begegnet hat und begegnet. 'König' bedeutet hier den Superlativ, der nur das Zeichen ist für den höchsten Erkentnißgrunnd, nicht für die höchste Macht.[6]

Hamburger's translation of this particular German translation of the Greek is the site of further decisions, in other words, the locus of further acts of determination. (His translation of the Commentary has also been added.)

> (The law,
> King of all, both mortals and
> Immortals, which for that very reason
> Compellingly guides
> The justest justice with a sovereign hand.)[7]

The immediate, strictly speaking, is impossible for mortals, as for immortals; the god has to differentiate several worlds, according to his nature because heavenly goodness, for its own sake, must be holy, unalloyed. Human beings, as cognizant ones, must also differentiate between several worlds, because cognition is only possible by contrast. That is why the immediate, strictly speaking, is impossible for mortals and immortals.

But the strictly mediate is the law,
And that is why, compellingly, it guides the justest justice with a sovereign hand.

Discipline, in so far as it is form in which human beings and the gods meet, the laws of Church and State and inherited statutes (the god's sanctity, and for human beings the possibility of recognition, an elucidation), these compellingly guide the justest justice with a sobering hand, more strictly than arts they stabilize those vital conditions in which, in time, a

people has encountered itself and encounters itself. 'King' here means the superlative that is only the sign for the supreme ground for cognition, not for the highest power.

Rather than a straightforward concern with the accuracy of Hölderlin's translation, what becomes significant is the way that this translation is then put to work in the commentary and thus the way the commentary must be worked back through the translation.[8] Prior to pursing the commentary, there is one aspect of the translation that needs to be noted from the start and that is the apparent complication of the presence of violence. Not only is there the textual problem of registration of 'violence' within the fragment and then in its citation by Plato but it is also the case that the relationship between *nomos* and violence even in Pindar is not straightforward. Once violence no longer figures directly or unequivocally, then the question of law and its relation to a form of direction, if not directing, a complex introduced by the connection between '*das Gesez*' as law and the verb '*führen*' (guides), also takes on a different quality.

The acceptance of violence in the use made of the fragment by Callicles is significant. As has been suggested, within that argument, violence is bound up with a distinct version of *nomos*. And yet the fragment still harbours the possibility, contrary to the intention of Callicles, that it is law that brings order (in the form of justice) to violence – thereby opening up the real question that pertains to violence. Namely, is there a violence that is not bound to any sense of law and which, in virtue of being not bound, comes to found law? This would be sovereign violence. There is in the work of Agamben, for example, as has already been noted, an interpretation of the fragment that allows for such a suggestion.[9] Significantly, however, there is another possible interpretation of the 'same' fragment which, while allowing for a distinction between the two distinct senses of *nomos*, i.e. *nomos* as an transcendental condition and *nomos* as either statute or norm/convention, nonetheless does not make violence an exception that would then becomes the basis of law (*nomos*) itself. The philosophical challenge here is to maintain a real distinction between these two different formulations of the relationship between *nomos* and violence. The distinction is clear. In the first instance, *nomos* can be understood as a transcendental condition. As such, while internal to the *polis* it grounds activity insofar as it is linked to questions of judgment. The defence of the *polis*, once posed in these terms, becomes a defence of the transcendental condition for sociality rather than a defence of pragmatic *nomoi*. In the second instance, the contrary position is that there are conventions (*nomoi*) justifying violence because the ground

of the *nomoi* and thus the enacted violence is always external to any sense of
sociality. This is the position that finds voice in Callicles reference to what
he describes as 'natural justice'. Integral to the argument to be advanced
here is that the project of Hölderlin's translation is to avoid the positing
of a founding violence beyond either sense of *nomos*. Moreover, it can be
argued that Hölderlin is looking for a conception of law that is always
mediated. In other word, a conception defined by a sense of interiority
and as such one that is not positioned as external to what there is. To the
extent that such a position can be maintained, the immediate will become
the name both for that externality and its impossibility. It may be therefore
that the mediate is another way of maintaining the necessity of the
transcendental.

The commentary, as has been noted, begins within an evocation of the
'Immediate' and its impossibility.

> The immediate (*das Unmittelbare*) strictly speaking is impossible for mor-
> tals, as for immortals, the god has to differentiate several worlds, accord-
> ing to his nature, for heavenly goodness must for its own sake, must be
> holly unalloyed. Human being as cognizant ones must also differentiate
> between several worlds, because cognition is possible only by contrast.
> That is why the immediate, strictly speaking, is impossible for mortals, as
> for immortals.

What is the 'Immediate' and why is it 'impossible'? The poem as translated
by Hölderlin suggests that 'law' (*Das Gesez*) is sovereign over 'all' (the 'all' is
comprised of mortals and immortals). In virtue of that 'sovereignty', it
guides, with force, the most exacting conception of 'justice' (*Recht*), and
it guides it with the 'highest hand'.[10] The formulation '*allerhöchster Hand*'
repeats the conception of Kingship or sovereignty that has already been
brought into consideration by the description of 'law' (n*omos* translated as
'*das Gesez*') as the 'king'. Moreover, the title given to the fragment turns part
of the adjective – *allerhöchester* – into a substantive, *Das Höchste*. Hence '*aller-
höchester*' becomes the poem *Das Höchste*. The commentary links the impos-
sibility of the 'immediate' to both 'mortals' and 'immortals'. The reason
why immediacy is impossible for immortals is that 'god' must be able to
differentiate between worlds. This pertains to the nature of 'heavenly good-
ness' (*himmlische Güte*). Differentiation demands mediation. For 'mortals' the
result is similar. At stake here is not just the immediate. Rather, what comes
to be identified as impossible is a conception of the Absolute understood as

always other than the mediate. The disjunction between immediacy and mediation is the retention of that conception. To the extent that the mediate intervenes and mediation endures as a founding condition, then it is the Absolute, as the 'immediate', that becomes impossible. It is precisely this philosophical project in relation to a certain conception of the political – the political in Hölderlin's translation rather than the politics of Pindar – that is unfolding in the Commentary.[11]

This reflection on sovereignty continues to be reconfigured within Hölderlin's writings. Of the many productive occurrences, one of the most significant can be found in the letter written to von Sinclair on 24 December 1798.[12] The force of the letter resides, at least initially, in the way it plots the impossibility of 'the absolute monarch' (*die absolute Monarchie.*) Such a conception of the 'monarch' is given within its (the monarch's) own self-overcoming. The 'way' will need to be traced.

> It is also a good thing and even the first condition of all life (*Lebens*) and all organization that there is no monarchical force (*Kraft*) in heaven or on earth. Absolute monarchy supersedes itself everywhere (*Die absolute Monarchie hebt sich überall selbst auf*) since it is objectless, in the strictest sense, it has never been.

One sense that can be given to the 'objectless' nature of 'absolute monarchy' which, given the direction of the letter would need to be understood as an 'earthly' conception of the 'immediate', would be the absence, indeed impossibility, of an original sense of measure. The difficulty, however, with the evocation of measure is that everything then becomes calculable as though the measure, in its opposition to the Absolute, would seem to engender pure determination and thus freedom's absence. This latter point, the distancing of freedom and its having been replaced by repetition (repetition as the having already been determined), would then become the predicament of a certain conception of making – a making that would include poeticizing. More exactly, it would become the predicament of poetry precisely because it is understood as an activity and thus a version of making. Making, as was intimated, holds open the possibility of a mechanical form of repetition. In contrast to the mechanical there is a relationship between what Hölderlin refers to as a 'lawlike calculation' (*gesezliche Kalkul*) and the creation of a life (perhaps '*der lebendige Sinn*'). This is, of course, the famous formulation of the 'Remarks on Oedipus'.[13] In a passage which, despite its complexity and apparent distance, needs to be understood as

bearing directly on this project, Hölderlin adds after noting the centrality of the 'lawful calculation' that

> (T)hen one has to see in what way the content (*Innhalt*) differentiates itself from it, through what type of procedure (*Verfahrungsart*) and how in the infinite but constantly determined relation (*bestimmten Zusammenhange*) the specific content is related to the general calculation. [14]

The 'Remarks' continue with the recognition that the issue confronting poetry is the continual relation between calculation and that which falls outside its hold. What appears does so in accord with law and rule; however, appearance (both as a content and as a working appearing, i.e. appearing as a productive site eliciting the response of criticism) cannot be determined in relation to the quality (the 'look') appearing always has. The constantly determined has a ubiquity. However, to think that there was only ever that which was determined constantly or that it only ever existed in terms of a mode of appearing defined by determination as both *arché* and *telos* would then entail that the 'constantly determined' were no more than pragmatic (hence singular) entities thought within a pervasive empiricism. If it is possible to go beyond such a state of affairs, then it need not be via recourse to a form of Platonic idealism but to the enacted difference between a conception of law that allowed both the infinite and the constantly determined.

What is important about the refusal of Platonism has to do with the way a Platonic 'idea' produces. Production, as caused by the 'idea' (*eidos*), locates the source of the quality of the appearance as external to the appearance. (Externality pertains as a matter of necessity.) Moreover, while the 'idea' appears through the process of participation, it remains the case that the mode of questioning that is most properly Socratic concerns the recovery of the *ousia* of the 'idea' (or 'form') in question, where the 'idea' is conceived in its absolute differentiation from any type of instantiation.[15] Hence, and allowing for a confluence of concerns, the Platonic idea would have become the 'absolute monarch'. Within Platonic idealism, the relationship between idea and appearance is ontologically disjunctive. To claim of the monarch that it is 'objectless' is to resist that philosophical project in which it becomes possible to pose the question of the Absolute as though the object of that question was radically distinct. Rather, the Absolute is always at work within appearance as a continuity; therefore, within a reconfiguration of appearance is not a static given but a dynamic process and hence as 'the appearing'. (As a consequence, the static becomes a moment individuated within that continuity.) Appearing involves therefore a greater degree

of complexity than the possible though in the end putative project of pure giveness.

This mode of argumentation has two interrelated components. One is that it comprises, in essence, the force of the conception of tragedy outlined in texts such as 'The Significance of Tragedies' and in the two sets of 'Remarks' to the Sophoclean translations. The assumption fuelling that conception is that 'nature' in Hölderlin's sense can only ever appear in a form other than itself, a weaker form. As he writes, 'Properly speaking the original can only ever appear in its weakened form'.[16] Nature therefore, in the abstract, pure externality as pure immediacy, depends upon art to appear. Art is the 'weak' form. Nature's appearance is always mediated in advance. The mediate is a sign, an instance of which is the hero of the tragic drama. The other component does not resist the register of tragedy; nonetheless, it would not take as central the tragic as a named *topos*. Rather, what would be taken as central is that conception of the external that must always overcome its externality both for the occasion of its presence and as that occasion. As such, the question of sovereignty loses the hold of the monarch and becomes the play of forces between *nomos*, as a transcendental ground, and the continual process of grounding. And here it is the continuity of grounding that needs to be emphasized. That continuity is the political as a continual state of enactment, what has been referred to throughout this project as *being-in-common*. What that continuity entails therefore is a conception of sovereignty in which sovereignty is identified with the maintenance of continuity and thus the defence of a conception of continuity within which continuity is always open to the continual reinscription of discontinuities. The discontinuous marks the contingent status of *nomoi*. Sovereignty becomes the continual realization of the potentiality within, and for, grounding ('the-appearing'). Pursuing this point necessitates recourse to the translation of a different Pindar fragment.

Von der Ruhe (Of Repose) is a translation of Fragment 109. Though it is an implicated site. Implicit within it is the treatment of violence that occurs in Fragment 140c. The latter is essential for an understanding of *Von der Ruhe* because of the way violence is treated. Fragment140c evokes actions in which the 'violence' (*biaion*) of the sea is calmed.[17] With the abating of the sea repose is brought about.[18] Violence therefore was always internal – present as a quality, though only ever as a possible quality rather than a necessary one, of what is. Both this location and its interarticulation with (and within) a founding contingency are essential to Hölderlin's translation project.

Within Hölderlin's translation of Fragment 109, the continuity of 'the public sphere' (*Das Öffentliche*) depends upon citizens having grasped the

necessity for repose, what, in the translation, is called 'The holy light of lordly repose' (*Großmänlicher Ruhe heilliges Licht)*. The fragment positions repose against revolt, thus implicitly against what was identified earlier as sovereign violence. The commentary locates this in relation to law. However, that act is more complex than first appears. Repose is 'lordly'. Moreover, it is given 'before laws' (*Ehe die Geseze)*. While the positioning of the 'before' is important, of equal significance is the presence of 'law' in the plural. It is not therefore a question of what occurs before the law, or before law *tout court*, but before *laws* in which the use of the plural denotes the actual presence of law (Law's actualization, its appearing). Prior to that actualization, the Gods searched equally for a 'legislator' or a 'prince' to stem the hold of violence and enact repose. The commentary on the translation continues by placing – i.e. continually locating – the project of repose; placing by insisting on the necessary geography of repose. Hölderlin writes of a 'country's destiny' and the receptivity of a 'people' both to that project as well as to the attempt to take on that destiny. Such a conception of place, and equally such a conception of the relation between people and destiny, becomes the condition for repose; this can be understood therefore as a specific Hölderlinian thinking of *being-in-place*. And, it should be noted, that in the formulation of the fragment, '*Das Öffentliche*' is a translation of *to koinon*, the latter is a term that brings with it as much as sense of the public as it does of commonality, thus *being-in-common*. Implicit in the move from Pindar to Hölderlin therefore is a refusal of commonality as a singularity such that the common would, or more disturbingly, must have unique determination. What occurs in its place is the move that defines commonality in relation to *nomos* as a transcendental condition. What is common therefore is *nomos*. Having linked repose and destiny such that they are only ever placed, Hölderlin then continues with the most striking lines of the Commentary on this translation.

> *Dann sind die Geseze die Mittel, jenes Schiksaal in seiner Ungestörtheit festzu-*
> *halten. Was für den Fürsten origineller Weise, das gilt, als Nachahmung für den*
> *eigentlicheren Bürger.*

> Then the laws are the means of maintaining this destiny undisrupted. What is valid for the prince in an original manner, is valid for a citizen as imitation.

While the last line presents the 'prince' in opposition to the citizen, earlier in this particular Commentary, the prince is positioned in a relation of

equivalence to 'a legislator' (*ein Gesezgeber*). In other words, the evocation of the 'lordly' does not involve a straightforward distinction between royalty and citizens. Again, the distinction between that which pertains to the king as opposed to citizens is not in fact presented as an opposition. If there is a unity then it pertains to the 'people'. Not the people of a nation, let alone the people as a nation, but people as a collectivity and thus in terms of *being-in-common*. The lines with which the Commentary to the translation of Fragment 109 ends necessitate joining together the plurality of law – *nomos* in its continual actualization as *nomoi* – and the means by which 'repose' is maintained. Maintaining repose is not the imposition of an order but the recognition of an intrinsic and thus always already present ordering process. The question concerns how the evocation of 'imitation' is to be understood.

'Destiny' opens a way towards tragedy. Within it, 'destiny' would always need to be reconfigured as fate. While recognizing that such a predicament is possible, another opening is present. If 'destiny' (*Schicksal*) were inextricably tied up with laws, then its realization, one that can accurately be described as the continuity of life, would be a description of the life of human being – not the life of a human being but the continuity of the being of being human. Life, in this latter sense, cannot be thought other than in an original relation to place and thus to an already present inter-articulation of *nomos* and *polis*: the terms that are already the identification of *being-in-place*. This original relation has at the very minimum a twofold register, one that has already been noted in relation to *nomos*. On the one hand, what is original is law as the transcendental condition. Equally, what is also original is the continual realization and actualization of that ground in and through both the necessity of *nomoi* and the always already present demand for a place of actualization. If 'destiny' were to be disrupted, then this need not be understood as equivocation or even conflict on the level of *nomoi*. Disruption, understood as that which is to be eschewed in the name of both 'destiny' and 'repose', would have a status similar to the emphatic sense of revolt that undoes the *polis* as the site of continuity – recognizing, of course, the ineliminability of this possibility with the advent of democracy.

Even though only the 'prince' is named in the final line of the Commentary, the original condition pertains equally to the 'legislator'. In both instances, maintaining laws within a domain of repose – taking this over as 'destiny' – is 'valid' *ab initio*. That validity, however, is extended to the 'genuine citizen' (*eigentlicheren Bürger*). The extension involves a form of mimesis. What, however, does 'imitation' (*Nachahmung*) entail in this context?

Perhaps the most germane way of answering this question is to let it emerge within the acknowledged presence of the abeyance of Platonism. If what prompts the necessary distancing of Platonic idealism is the positing of an unmediated outside, that not only is it able to figure as an object of philosophical inquiry but also is causally involved in the generation of a given particular's identity, then what is also put to one side is the Platonic conception of the mimetic. In the Platonic context, the mimetic can be understood in terms of a showing in which the mimetic relation involves a form of making present that will always construct the relationship between what comes to presence (that which is shown in terms of its essential quality) and the showing.[19] The problematic element within such a relation concerns the conflation of the shown with the essential quality of what it is that comes to be shown. In general, for Plato, imitation – *mimeisthai* – involves a continual slippage in which the inauthentic, as a continual risk in and for appearance, determines presence. Indeed, it is the inscription of this form of determination that makes the link established in the Commentary between imitation and authenticity so significant. To repeat the position already noted, what was originally 'valid' for the 'prince' and 'legislator' 'is valid for the authentic citizen as imitation'.

The presence of the word 'authentic' has to be interpreted from the start as an interruption of the Platonic. What is interrupted at the same time is a structure of imitation that involves both externality and showing. The place of the opposition between outside and inside has been taken by a complex setting in which there is a continual acting out. (Here mimesis adopts a form that takes it much closer to the action-orientated conception found in Aristotle.) Imitation brings two defining elements with it. The first is the acting out. The second is a structure of response that is neither deterministic nor purely directive.[20] The directive would be the following of a rule or law that was ground neither in 'repose' nor in 'destiny'. On the contrary, nature, or the 'idea' thus pure immediacy would ground such a set-up. What this means is that sovereignty located within immediacy is always marked by impossibility – a state of affairs that can only be maintained with violence. That particular sovereign's response to the impossible therefore, the sovereign for whom the unmediated's impossibility is disavowed continually and thus precisely not the response, that is of either the 'prince' or the legislator', becomes a way of understanding violence. Imitation is linked therefore to the differing senses of continuity and acting out that have emerged thus far. Imitation defines freedom. (With this definition, the already noted 'law of calculation' returns, its ubiquity and necessity underscored.) Even within Hölderlin, there could be a further translation, one in which imitation was positioned beyond the hold of tragedy.

What then, now, of *Das Höchste*? If there is a moment that allows for a continuity of concern to be taken up, then it is the two lines that occur in the middle of the Commentary.

> *Die strenge Mittelbarket ist aber das Gesez.*
> *Das wegen aber führt es gewaltig das grechteste Recht mit allerhöchste Hand.*

> But the strictly mediate is the law.
> And that is why, compellingly, it guides the justest justice with a sovereign hand.

What emerges with these lines is the explanation of law's law like quality. That quality inheres in law being the 'strictly mediate'. Its compulsion, even its 'violence', to allow for the range of translations suggested by '*gewaltig*', is always subordinated to its original state of mediation. Moreover, what also needs to be brought back is the link between law and 'king'. Law is originally mediate. Law is 'king'. It is important to note that the force of the originally mediate figures in Hölderlin's writings as much in the claim that law is only recognizable through punishment or the adoption of the Fichtean conception of self in which there is an original state of mediation in relation to the recognition of self-consciousness. There is always production through acting – a position that is there in the final lines of the early text *Judgment and Being* in which the affirmed position is that identity is not equal to 'Absolute being'.[21] Indeed, it is consistent with the argument that continues to be at work, namely, that Absolute being is of necessity an impossibility. Once that position is able to open up the concerns of the Commentary, then the force of the argument is that the already present mediation of the law (and here how that mediation occurs can be left to one side, perhaps as an act of translation) is what closes down the possible link between law as an Absolute and law's realization. (One will always be at work within the other.) The Absolutization of law would have to locate the force of law within Absolute being. Were this to be the case, then law would not have any regulative force because it would have been enacted through unmediated violence. Compulsion, for Hölderlin, has to do not just with the Absolute's impossibility. That would be a merely negative description, and hence it would enjoin a 'not possible' that was irrevocably touched by a structure of loss.[22] More productively, compulsion involves, of necessity, the constancy of enactment. Opposed to the static and a conception of the Absolute as having the status of the singular and the always separated is the continuity of mediation. This sense of constancy, once linked to freedom and thus in refusing simple repetition, becomes the source of plurality.

(While that constancy may contain echoes of Fichte's conception of a 'self-acting I', it need not be reduced to it.[23])

Das Höchste then because a form of staging; not only is the staged linguistic, one in which words from one language encounter and echo within each other, an echoing, to use Rainer Nägele's felicitous formulation, that is as much to do with the word as it is the structure.[24] The continual need to provide determinations – a move that becomes a description of translation – will have demanded, in addition, both the content as well as the form of judgment. Two elements continue to intertwine. There is the text and its interpretation. Equally, there is the inescapable problem of translation. In regards to the latter, it can be succinctly stated that the interpretive struggle concerns, on the one hand, the relationship between *nomos* and violence and, on the other, the connection between sovereignty and *nomos*. In regards to the latter, there is an important division within it between the identification of sovereignty with either the personage of the king or with law. The latter makes sovereignty importantly impersonal – an impersonality within which kings and rulers are only ever after effects. The question of translation, of course, does not admit of neutrality. Translation is not indifferent to interpretation.

What occurs in both instances is a determination. Both, therefore, are finitude's having been enacted. However, if this is the case, that is each act of translation or each interpretation takes on the quality of the finite, how is the infinite to be understood? There is the possibility of avoiding this mode of questioning by seeing both interpretation and translation as structured by the question of truth such that what matters is the extent to which a given translation or interpretation is true. The limit here is that differing translations (and the same will be true for interpretations) cannot be resolved by a simple recourse to truth. Indeed, the term that is appropriate in such contexts would be accuracy. The question of the relationship between the finitude and the infinite endures therefore. Posed this way, it becomes clear that as an abstraction the question of translation/interpretation is precisely what is being acted out within *Das Höchste* – not literally within it, as though its presence were explicable in terms of its word-by-word presentation and line-by-line realization. It is being acted out in terms of its concerns. Those concerns are the relationship between the finite and the infinite. That abstraction, however, is only ever present as sites of enactment. When Pindar moves through Hölderlin – a move that has an inescapable reciprocity – there is a specific form of presence. The form pertains to the capacity of both texts to stage the concerns, within the act of

translation, that work to define the present. The interpretation of Pindar Fragment 169a matters. It matters that Hölderlin can be understood as refusing a founding link between violence and the law and locates that relationship within a place and for a sense of commonality. However, what matters, and the identification of it as mattering – an identification in the case of art work that is given within the continual encounter of appearing and criticism – is to return to the concerns of translation. However, any return to those concerns is already to engage with the insistent problem of the how finitude and thus singularity become possible and thus how such possibilities are positioned in relation to forms of universality or commonality (and thus how that relation is to be thought). While such problems have an initial generality, they can be quickly assimilated such that they are able to define contemporary political problems such as the divide between citizenship and subject of right or more exactly the role of violence within and for democracy (recognizing immediately that the term 'democracy' has become a counter within a large political game). These questions and problems have an insistent contemporary setting. That setting is illuminated, not by positing the presence of Pindar Fragment 169a or Hölderlin's *Das Höchste* – as though the Classical edified the present – but by working through their concerns such that they are able to appear, perhaps in the form of a productive juxtaposition, as mattering now.

Chapter 5

Placing Speaking: Notes on the First Stasimon of Sophocles's *Antigone*

Opening

One of Valéry's entries in his *Cahiers* stages what could be described as another formulation of the caesura of allowing. He wrote the following:

> *si toute connaissance est le résultat d'une certaine machine ou organization, et de son fonctionnement, il est naturel de chercher à la tourner contre elle-meme.*[1]

What is underscored here is the possibility of turning that which is against itself, and thus in staging a beginning in which other possibilities are opened up. There is an inherent generality with such a recognition insofar as the inevitability of continuity coupled to the necessity for discontinuity seems to define the way both the political and the theoretical emerge as problems within the current situation as well as in significant moments comprising the history of Ancient Greek philosophy and literature. To that extent therefore there is an important affinity between objects of analysis and the method of analysis. While this works to locate a situation that is extremely general, what that generality identifies is the presence of an opening defined by an ineliminable potentiality. The potentiality has to be thought in terms of the actuality of interruption. However, the interruption is not simple spontaneity. The analogy is not with a mutation the potential for which is already inscribed such that any alteration is explicable merely in terms of a system's operation. Rather, the interruption is one that is occasioned. (Hence, the role of Athena in the *Oresteia.*) It occurs because a potential has been released. What causes the release has a relation defined by externality. In terms of a conception of historical time, that opening – the one harbouring potential – is the 'present'.[2] Not the present as the simple moment that interrupts the passage between past and future and

which would be defined by the 'now' – mere temporality – but a conception of the now in which there is an always-possible link between potentiality and action. Athena becomes therefore a figure of modernity in the precise sense that she stages the interruption of continuity thus rendering continuity's fateful repetition merely apparent. Continuity is denatured in and as the process.

In a formulation of this nature, the initial link is clearly to the writings of Walter Benjamin. When he writes in 'On the Concept of History' that 'every image of the past that is not recognized by the present as one of its own concerns threatens to disappear irretrievably', the force of the argument – indeed its very possibility – is the assumption that the image (*Bild*) has a potential of this nature.³ Recognition in the present has a transformative effect both on the object and the subject of that recognition. Moreover, what this yields is a specific conception of the present. One as much marked by images of the past, as it is by the possibility of their transformation through a type of recognition. Potential and action are not just interconnected; they are the sign of a temporal and ontological disjunction that delimits the present. This interplay of the ontological and the temporal is that which allows the present to be a site of the future. As such, the present becomes a place of possibility. Another way of defining it would be in terms of the temporal gap housing the past, present and the future. To a very real extent therefore interruption, understood as a form of rupture, works to define place not just in terms of possibility but the potentiality and possibility evidenced by the originality of what has already been identified as *being-in-place* and *being-in-common*.

The interarticulation of place and possibility has to be connected to what was noted above as the interplay of the temporal and the ontological. Once taken together, what then emerges is in broad terms a philosophical geography. In other words, bringing place and possibility into connection – place now as the site of ineliminable potentially one drawing on its past thereby allowing for its future – means a rethinking of what is traditionally and therefore unproblematically designated as regions, territories and sites. Giving centrality to possibility amounts to privileging potentiality over the fixed and determined on the one hand and a literalization of place on the other. What this means is, in addition, that any formulation, and therefore any subsequent reformulation, of terms such as regions, sites, etc. already has a direct relation to different conceptions of action. The aim here is to sketch the parameters of such a philosophical geography (the latter contains the thinking of an original sense of placedness, thus *being-in-place*.) Within this project there is an important distinction between

a physical geography and a philosophical geography. The first has a series of aspirations defined by description. (While they may involve a type of transformation that would not have been the original intention.) The second position introduces a series of different configurations within which the relation to the land is always in terms of transformation. The transformation involves therefore an already present relation. In order to open up this distinction and thus develop some of the elements of a philosophical geography, a start will be made with reference to place and location in Sophocles' *Antigone*. Particular attention will be paid to the first stasimon of the Chorus known more generally as the *Ode to Man*.[4]

The link between Greek tragedy and the concerns of the present have always been a restricted field of operation; indeed, Kierkegaard, for example, has already indicated the same in terms of the fundamentally differing relations between fate and subjectivity in regards to ancient and modern tragedy.[5] Nonetheless, part of the argument to be developed in this Chapter is that the way in which the complex relation between 'law' (*nomos*) and 'justice' (*dikê*) comes to be worked out in the play's unfolding necessitates an understanding of place, the place of human activity, thus *being-in-place* as the site in which the complex relationship between law and justice continue to be worked out. However, that working out is not simply programmatic. This setting retains an insistent actuality.[6] The site delimited by this deferring needs to be understood not just as the necessity of spacing, but the continuity of spacing involves an opening up in which the hold of determination will have been loosened. In sum, what the evocation of this specific understanding of freedom entails is a conception of site beyond simple location and which, in addition, demands the recognition of a fundamental link between justice and freedom. The freedom in question is not, however, the freedom to act – it does not refer exclusively to a subject – but the freedom to establish the claims of justice and the hold of law. In other words, it necessitates a definition of place in terms of a site in which an inherent capacity for agreement and disagreement, what has already been described as place as the locus of contestability, is acted out. As a consequence, freedom becomes the consistency of its realization. Subjects act freely rather than merely being free to act. Within the context of *Antigone*, and in the continual re-enactment of its concerns, what has been identified as freedom involves the retention of 'wisdom' (*phronésis*) and a commitment to negotiation where both are defined as placed activities. What will emerge is the necessity to think of this original sense of place, the placedness of human being, *being-in-place*, as defining, in terms of location and nature, the locus of human activity.

The content of the *Ode to Man* is as well known as it is debated. Rather than pursue, in all its detail, the Chorus' attempt to develop a philosophical anthropology, given that the question of the site of human activity is fundamental to such a project, priority will be given to the Ode's two references to place. The first is explicit and concerns the way in which the 'earth' figures in the Ode. The second is implicit and thus demands greater elucidation. In sum, it involves the recognition of the centrality of place at work in the way the human comes to be defined as the one who has learned speech and developed thought. (A position whose formulation opens the Ode's second strophe.) Both the learning and the developing come through the activity of being human. That activity is always placed. Place and activity depend upon each other.

Earth

There are two distinct references to the earth. The first registration is as the Earth (*Gan*) and thus as a presence that provides a site for human relations. In the second instance, the 'earth' is the location that comes into relation with the human capacity to work and to create law. Law is created with the earth; there is what could be described as a weave of concerns. Of interest is not the question of site and relation as though they were either assumed or taken to be arbitrary. Rather, what matters is that the connection between human activity and the earth has a primordial sense of relatedness. What has to be developed therefore is how this primordial relatedness is to be understood. As a beginning, however, and this attests to the actuality of the formulation, what is put to one side is a conception of earth as a radical other. Place cannot be other than a site of human activity hence the already noted reciprocity between *being-in-place* and *being-in-common*. Place – both as a concept and as an insistent reality – has then to allow for the complexity of these actions. Once the reality of a given site is of direct concern, a concern defined by the pragmatic necessities of political actions or policy decisions, then this complexity has to be registered on the site's physical geography.

The first reference to the earth needs contextualization. The stasimon begins with the general description of human being.

> *polla ta deina kouden an-*
> *thrópou deinoteron pelei.*
> (Many things are astounding/wonderful none more
> astounding/wonderful than the human.)

Of the many things that are 'wonderful' or 'astounding' (*ta deina*) the most emphatic – hence the 'most wonderful/astounding' (*deinoteron*) – is human being. Wonder has to be allowed the quality of that which amazes. The translation of *ta deina* is one of the great sites of interpretive struggle. What-ever the argument attempting to position one translation as more exact than another, what has to endure is the recognition of an already present quality within human being to limit and then to undo limits of conventions (*nomos*). Hölderlin's translation of the opening line of the Ode – *polla ta deina* – as '*Ungeheuer ist viel'*, for example, reproduces both the strangeness and the monstrous nature of things in order to allow the positioning of the human within this domain – the domain of the many (*viel, polla*) – as the most extreme instance.[7] Hence Hölderlin continues the opening lines.

> *. . . Doch nichts*
> *Ungeheuerer, als der Mensch.*

Heidegger's translation of *ta deina* as '*das Unheimliche*', if only as a beginning, notes the same intent.[8] Hugh Lloyd-Jones attempts to capture the co-presence of wonder and astonishment with the term 'formidable'.[9] Seamus Heaney in his recent translation presents the opening lines of the Ode as

> Among the many wonders of the world
> Where is the equal of this creature, man?

Of the many elements that deserve comment it is Heaney's addition of 'creature' that adds the decisive element to the translation. The word 'creature' evokes certain strangeness when it is used in this context. The presence of a comma after 'creature' inviting a pause – perhaps a pause to be prolonged in the theatrical performance – emphasizes both the creature and the connection to 'man'. The comma occasions the interplay of dis-tance and relation. The words 'creature' and 'man' give it its decisive content. In regard to all of the translations, what is being registered is the human's doubled nature. Perversity, or the capacity to undo a sense of pro-priety, is not alien to human being. It is an inherent quality. Transgression marks limit conditions; however, as will be argued at a later stage, it is not violence. Rather, it needs to be understood as an exploration of the limits of *eudaimonia* ('well-being').

   The insistent presence of *ta deina* has, of course, already appeared. In regards to its presence within and as part of the city, as formulated by Aeschylus, the central element was the necessity of the link between the

'unaccustomed' (as a translation of *ta deina* in that context, a translation that clearly also resounds within its use here) and wisdom, and thus judgment. What *ta deina* referred to was the inscription within the polis of an element that was always going to call the presence of the democracy into question. The problem of the democracy, understood as a problem inherent to the democracy itself, was the necessity for the continual negotiation with that element. The ground of negotiation, thus that which holds it apart from the merely pragmatic, is the relationship between judgment and wisdom on the one hand and *being-in-common* and *being-in-place* (and thus *nomos* as a transcendental condition) on the other.

What the term stages is a condition. This is in part reflected in Heidegger's translation of *ta deina* as *das Unheimliche*. The translation does not oppose the 'homely' (*heimliche*) to the 'unhomely' or 'uncanny' (*Unheimliche*). The point is more significant. Both are already present together. In just the same way as the city has to be understood as the locus that incorporated the 'accustomed' and the unaccustomed, where the latter exists as a continual presence that cannot straightforwardly be made subject to the rule of the Same and thus demands a form of negotiation, human being becomes the place in which the accustomed and the unaccustomed, the conventional and the astounding, co-exist. This is the original doubling of existence. Clearly, that co-existence must be articulated within a setting in which both potentiality and actuality define the modes of appearing and thus the specific modes of being present that comprise human being.

Having defined human being in this way within the Ode, evidence is then adduced. The first is that humans leave the land to cross the sea. Even though, as an example, it has historical precision, that precision opens up a series of complex determinations. To take to sea is at once a risk and a necessity. The sea being both 'grey' and stormy compounds the presence of the risk. There is, however, also a necessity. While it can have an economic account – establishing and defending trade routes for example – necessity has another determination. Risk is an indication of the human necessity to engage the limit. In other words, once this engagement is emphasized, this means that there is the immediate identification of a form of transgression as integral to the nature of human being. Transgression is not an additional extra; it is there from the start. Risk and necessity come to be linked therefore. To risk one's being – to expose human being, an exposure linked to an ineliminable fragility (the softness of skin for example) – is an essential part of the being of being human. The risk is identified contextually. The human sets sail on the sea. The adventure – human being's encounter – is with that which it is not. Exposure therefore occurs in relation to a sense of

place that is defined in terms of the always other. Consequently, place in this sense is neither benign nor simply there. (Place and human being are always more than one. Here is an original doubling.) In the first strophe, place is as much the sea as it is an immortalized sense of earth. In regard to the latter, it is not just the earth as a given but as a site of continual work and transformation. The continuity of the relation to the earth necessitates maintaining it as such. In other words, maintaining it as that which allows for the continuity of relation. Potentiality therefore does not just take precedence over the given and the already determined, even the places that appear have to be rethought in terms of an original potential.

The next element that has to be introduced is that within the strictures of the Ode the condition for a relation to the earth – a relation of work – is provided by the taming of animals. Specifically, that involves the use of mules, namely, animals bred for domestic use. The taming of the animal is, itself, already a relation of transformation. Holding the earth as a site of (and for) human activity means that the exposure of the earth has to be one of safety rather than risk. While the human may put itself at risk – an action that, as was indicated, may at times be imbued with a form of necessity – this does not mean that either the earth or the tamed animal would have the same type of exposure. As such, a strategic division can be drawn between the 'sea', now understood as the elemental and thus as that to which the human is exposed – exposure as a condition of being – and the earth and the animal whose modes of exposure are regulated by a conception of work and transformation. (Even though emphasis may differ, the 'sea' will figure in both instances.) Work and transformation necessitate a temporality of continuity in the strict sense of the continuity of continual renewal.

The introduction of the animal into the Ode is of further interest since, as was mentioned, the tamed animal (a formulation that finds more direct expression in the first antistrophe) forms the intermediate figure between the human and the earth. The earth in question is the site of continual activity. Contextually, it is the ploughing that occurs from 'year to year' (*etos eis etos*); a continuity that is as much semantic as it is metric. The relationship to the animal extends from hunting to taming. There is an important additional element in the way in which hunting is presented; one that comes to have a defining role in how the animal is to be understood. The resourcefulness of humans is identified in the way they adapt themselves to the differences between animals. Fishing differs from fowling precisely because of the ways animals differ. Hunting and taming need to be understood as internal designations of a primordial relatedness. It is in this sense

that 'hunting' can become benign when the killing of animals gives way to their care. It is still 'hunting' in the sense that it assumes a primordial relation allowing for different animals types, but then defines relationality in terms of care rather than its opposite – i.e. aggression or needless cruelty. This delimits the range of human relations to the animal. Even the development of an aesthetics of the animal in which the animal's presence is determined by its beauty or power – even a potentially sublime power – still turns the animal into that which exists in relation to the human.[10] Relatedness is essential. The question therefore cannot be whether there should be such a relation. The point is straightforward. Within the structure of the Ode, the way in which the human and the animal are connected is through a form of original relation. Moreover, it is a relation in which utility and taming are the defining terms. There is nothing outside the relation. Structurally, therefore, the animal and the earth are both other. Alterity defines relation.

If there is an ethics linked to the animal and to the earth, both as instances of alterity, then it finds its original expression within this primordial relatedness. In other words, ethics would depend upon a set-up that delimits the being of being human as opposed to a simple anthropomorphism in which human being is reduced to an abstraction. Ethics would have *being-in-common* and *being-in-place* as its ground. As a consequence, the ethical in general and in this context activity in relation to the animal, though by extension also with the earth, would be defined by the presence of an inherently dissymmetrical relation. This must allow for the fact that the animal is not a unified category. Nonetheless, even accepting the inherent complexity within the term 'animal', it remains the case that the relation has a necessary primordiality as it is part of what defines human being. And yet, at the same time, it is not a symmetrical relation. It should be added that were there to be such a relation – a relation of symmetry – it would only exist in name since the commensurability of movement between two symmetrical points means that relationality would be defined in terms of the replication of the Same. Sameness precludes actual relationality since the incorporated elements, in not differing, cannot create a set-up in which connection or interconnection emerge either as questions or as sites of negotiation. Discontinuity demands a decision in relation to that which is other. Decisions involve judgment and necessitate, thereby, the site of judgment given the reciprocity between place and commonality. *In extremis*, it would need to be argued that relationality as a site of connection and distance and thus as a site of endless negotiation only exists when the relation is originally dissymmetrical.

The presence of the dissymmetrical also informs the next relation to the earth that occurs in the Ode (line 368). Now the 'earth' (*chthonos*) in question is counter posed to the domain of the Gods. On one level, the claim is that there is a distinction between laws of the earth and the justice of the Gods. And yet, despite the separation they come to be connected by certain human actions. Once articulated together, the one who does so is described as *hupsipolis*. Prior to identifying what this term might designate, it is essential to develop this relation between 'law' (*nomos*) and 'justice' (*dikê*) as it appears in this context. (It could, of course, always be argued that the play itself is an attempt to resolve this relation.) The relationship between law and justice, however, is not simply an opposition between the activity of humans on the one hand and Gods on the other. In the second stasimon, the Chorus, clearly in an attempt to recall the strategies of both Antigone and Haemon, indicates that love (*erós*) can lead away from justice (lines 791–792). The audience, hearing this line, would still retain Haemon's words, which occur only slightly earlier (line 743) as part of his spirited exchange with Creon and in which he justified his actions by arguing that Creon is 'offending against justice'. Any simple response that takes this as the automatic identification of justice with the Gods would be undone by the Chorus' warning. Moreover, it is the Chorus's recognition that a series of apparently unproblematic oppositions taken as defining the site of human activity – in other words a site in which, for example, Gods are opposed to humans, where divine justice stands opposed to human law – will not provide an adequate account of the place in which these oppositions need to be worked through. What this opens up therefore is the necessity for a positive account of the relation. The relation is staged continually, as opposed to having been posited once with a completing finality. This occurs to the extent that human activity defines the place in which this relation is staged. Activity, as the acting out of human being – human being *is* the complex continuity of its being acted out – positions law and justice within the endlessness of negotiation (held in place by potentiality) that allows the decision, the finite moment, to arise. The decision, in this context, is the moment that can only occur once law and justice come to be contained within a structure of contestability. The insistence of the moment is the enactment of deliberation and thus of judgment.

Between the two direct references to the earth, there is another reference to place. Even though, in this instance, the reference is only ever implicit, its role is vital in the overall work of the Ode. Lines 354–356 open the connection between the human and the capacities of thought and speech. Once this occurs, consideration has to be given to the place where this

occurs. Place, it should be added, is not a simple addition. The enacting of these capacities, plus their connection to the ability to govern, are placed from the start. Moving through a consideration of speech, and all that is entailed by it, allows for greater clarity to be given to the second reference to the earth.

Speech

To speak involves both an interlocutor and the place in which it is taking place. The place in question is not an abstraction devoid of any determination. Speech is connected to what is described in the Ode as 'wind swift thought and the temper that rules cities'. Both thought and this disposition – what in the end will have to reemerge not just as the identification of *nomos* as the condition of the possibility of sociality but as the interarticulation of *nomos* with thought (*phronéma*) – define, while being located within, the placed activity of life. This location allows speaking and thinking to have been self-taught, in the sense that both speaking and thinking endure as capacities that are modified and developed through primordial relatedness. Before taking up the interplay of thought and this temperament it is essential to stay with speech. Speech, *phthegma,* needs to be understood in its link to the verb *phtheggomai,* as speech in this sense is the moment in which sound becomes word.[11] The latter term – *phtheggomai* – is as much the neigh of the horse as it is the uttered word. The move from animal noise to word is not a continuous passage. Rather, occurring within it is an interruption brought about by the intervention of thought. (The significance of this discontinuity needs to be noted and moreover understood as a recapitulation of the primacy of dissymmetry that has already been identified.) Thought is always more than simple cognitive activity. Thought – and here its connection to speech is essential – is as much linked to activity with others (the determinations of *phronésis*), thereby demanding the place of that encounter be acknowledged, as it is to the moment in which word and thought combine in, and as, *logos.*

The discontinuity between noise and word can always be given physical presence. The interruption in question can be identified, materially, with the wall. The city wall as defining a relation between an interior and an exterior establishes the setting in which the primacy of 'speech' can become possible. This primacy has to be understood as the actualization of thought. Hence the wall is the mark of a specific conception of work. The movement towards shelter, its permanency delimited by exterior walls, hides or stones

that mark a disjunction, is the potential that inheres in capacities linked to speech. The most important philosophical reference to the city wall, as has already been indicated, is found in Heraclitus. Fragment 44 states that 'the people' (*ton démon*) should fight to defend 'their law' (*tou nomou*) as they would 'their city wall' (*teicheos*). The significance of the formulation is the identification of 'law' and 'wall'. That identification means that each element needs to be understood as marking what has already been described as transcendental condition of sociality. It is not therefore simply the empirical wall that matters. What counts is the space that it discloses. The place is not an area defined in terms of abstraction. Abstraction has to be reworked in terms of potentiality and thus rethought as *being-in-place*. Sites as potentialities mean that what is opened up, an opening recalling spacing as a form of freedom, is already defined as the place disclosed for human dwelling and a place that is, *ab initio*, traversed and structured by the operation of *nomos*; hence the need for its 'defence'. While there will always be conflict and an ineliminable dissensus concerning the content of given *nomoi* such conflict and its necessity only underscores the centrality of *nomos* as a transcendental condition. (In other words, were it not for the already present condition for sociality having been enacted, the conflict concerning the precise content of given laws would not have been possible.) Moreover, once speech is taken up as connected to the necessity of the urban understood as a relationship between movement and settlement then speech already brings place into consideration. While speech is a capacity – the human speaks when noise becomes word – that act is never solitary. The possibility that a word uttered in the absence of an already identified or determined interlocutor could have been overheard, and thus understood, entails that inherent in speech is an ineliminable potential for comprehensibility. Comprehension is not just semantic. Comprehensibility means that speech brings with it the inescapability both of the other and the other's being present in addition to that which such a presentation also presents, namely, *being-in-common* and *being-in-place*; hence the net work of relations.

The space that speech demands, and therefore the presence of the other before the self who is speaking, reinforces both the necessity of the relationship between speech and place but equally positions place as the locus of the other's alterity.[12] Hence, in the evocation of speech, far more is involved than either the mere ability to speak or the presentation of speaking as reducible either to the assumption of agreement or the inevitability of consensus; nor for that matter is the opposite the case, i.e. speech as no more than the marker of dissensus and thus disagreement. Speech carries with it

the capacity for agreement as it does disagreement. Agreement needs to be understood, however, as a finite moment, part of whose condition of possibility is a potential infinite, namely, the presence of place as the locus of contestability. Speech therefore is not to be identified either with the literal speech act or speech as presence. What agreement cannot preclude is the potential for future disagreement and thus modes of dissensus. What is essential is that both – the finitude of agreement and the infinite potential for having to seek agreement as occurring within a structure of contestability – define, here, the activity of speech. However, there will always be a limit. That condition in this context, the context opened by Heraclitus and Sophocles, would be those acts leading to the wall's destruction. Acting in this way is the possibility identified as that which is there as an inescapable element in human being, i.e. *ta deina.* (This opens the link to the possibility of an identification of the *apolis* as a possible subject position; *apolis* being a term of decisive importance, as will be noted at a later stage, in the Ode.) While this latter point needs to be taken up, at this stage what is central is that speech is connected to thought and a capacity linked to the social. The formulation – *astunomous orgas* – marks a capacity for the organization of the city. Integral to that organization is sense of regulation as a necessary condition. It should not be forgotten that part of the formulation, indeed the passage from speech to the disposition that is essential to the regulation of the city is 'thought' (*phronéma*).

When these elements are taken together they provide the 'resources' that lead towards a future. Their absence – in the sense of resources not being actualized – means that there cannot be a future. The future therefore is not a projected goal. Nor is there a vision of the future; as though the future could be given in an image; as if the future involved another place. Rather what is at work is the identification of the conditions enabling there to be a future. As such, the future is a condition of the present. Avoiding that move 'towards nothing' (*ep'ouden*) that is there when resources are not deployed does not necessitate mere action but actions involving the continuity of deliberation and judgment. That continuity is not reducible to simple acts of reflection nor is it provided by the simple evocation of laws of obligation (*nomos* having become statute). The future involves the potential that is there in the present; there in the fabric of existence. A potential that has to be understood as held by the relations between speech, thought and the disposition for the social that inheres within the human. This yields a position, which, as has been intimated, can be summed up as the placedness of human being, *being-in-place,* since these relations define both the particularity of human being while bringing an original conception of place

into play. The centrality of place is already present within the way in which speech involves the ineliminable presence both of the other as well as the necessity of speech having a location. That location becomes precise once speech is interconnected with the disposition towards regulative dwelling. Note that it is not dwelling *per se* but a form of dwelling defined by its relation to *nomos* – where *nomos* will always carry with it the double register of the particularity of given *nomoi* as pertaining at a specific historical conjuncture and *nomos* as a transcendental condition for human sociality in general.

Moreover, it is unclear that within the context of the Ode that it would ever be possible to think of dwelling and thus place outside an already present interarticulation with *nomos*. This is the force of the disposition for the social and its formulation as *astunomous orgas*. Nonetheless, the deploying of these resources cannot achieve everything. Death cannot be forestalled. As the Ode makes clear, there is no escape from death. And yet, the important point is that death identifies human finitude a set-up occurring within the primordiality of relations. Death is not reducible qua event within relationality to its being the province of an abstract individual. Finitude defers to death but is positioned within the complex interplay as the placedness of human being – a complexity with an ineliminable plurality. Death in this context therefore does not define the directionality of the being of being human. There is no being towards death since such a position would have misconstrued what counted as human being. Death is already present as part of life.

The final point that would need to be made in relation to the implicit conception of place at work in the reference to speech is the possibility that in spite of speech, where speech is conceived of in terms of potential, and despite the role of *nomos,* there is the real and tangible possibility of a refusal of an original sense of place. That undoing leads human being towards the possibility of becoming *apolis.* However, in order to grasp both the importance as well as the complexity denoted by a range of possibilities at work within the term, *apolis,* and in addition to address the question of the place of this refusal, what could be described as the possible place of place's undoing, it is essential to work through the way in which law and earth are connected.

The Law of the Earth

The connection between the law and the earth is established by the activity of human being; an activity described line 368 as bringing the 'laws of the

earth' together with the conception of justice that is upheld by the Gods. The knit that yields the relationship between law and earth needs to be interpreted in terms of the earth as an identification of both an original sense of place and the primordiality of relation. It is the field of interpretation that opens up the way in which the relationship between *nomos* and *diké* can be understood. In other words, what is precluded by this set-up is the possibility of posing the question of the relation between them as though the earth did not figure. Neither 'law' nor 'justice' therefore can be thought, or at least this is the contention of the Ode, as though they existed other than as related, a relation established as much by the activity of human being as by the primordial relation to the earth. The earth in question is the site of human activity. Moreover, it is the site that has to be maintained by human being. There is therefore a form of mutuality that inheres in the connection between the earth being both maintained by and maintained for human activity. Not only does this attest to the presence of an already present relation, but it also, at the same time, indicates that there is a necessary relation between activity and being. That relation defines life. The life defined is not just activity. Activity can realize possibilities within life. Their realization involves the use of speech and wisdom. Moreover, these possibilities can be realized to a greater or lesser extent. The more they are realized the more likely that what is achieved is 'well-being' (*eudaimonia*). 'Well-being' (*eudaimonia*) is a term used by the Chorus in the closing lines of the play to identify the realization of the potentialities of human being. (Implicitly therefore the being of being human is defined in terms of potentialities.) In those lines, 'well-being' is presented as having a necessary connection with a conception of knowing/acting that is itself linked to *being-in-place*. In sum, 'well-being' involves *phronésis* (and in so doing recalls the centrality of wisdom and judgment in both Heraclitus and the passage discussed earlier from the *Gorgias*, i.e. 508A). It is relation to this conception of life which is defined as the interplay of activity and being that the possibility of the *apolis* needs to be situated.

The term *apolis* when used in the Ode has two important registers. In the first instance, it has to be understood as a mode of human being. Moreover, it is a mode that becomes explicable once *nomos* is taken as designating a transcendental condition of sociality. What is opened up therefore is a field of activity and within it the edge where *nomos* would encounter the possibility of the *apolis*. The inevitability of the negotiation that such an encounter demands can be accounted for in terms of the inherent presence of what might be described as the actualization of the unaccustomed. A capacity for a form of destruction – even self-destruction – that may work against

well-being: in other words the incorporation of destruction as nihilism, the sense of destruction that stands opposed to the caesura of allowing. Within the space disclosed by the wall, the place of human being, such a possibility is an always already present possibility. As the play, the *Antigone*, unfolds it is not just that there is a continual registration of the limits, in one instance, a limit is identified. It emerges as the place where the encounter with justice (*Dikê*) occurs. In a complex passage (lines 853–856), the Chorus says to Antigone that as she moves to the 'extreme of daring' (*ep'eschaton thrasous*) she strikes against the 'altar of Justice'. The Chorus then adds that in so doing, she is 'paying for' an unspecified crime of her father's. Fate has a register. And yet, neither the crime is specified nor the nature of fate determined. What matters therefore is that the limit is defined by an encounter with justice. In other words, even though justice is deified because the role played by fate does not exert a determining role, what is still central is the relationship between justice and the limit. This connection is also at work in line 1270 when the Chorus say of Creon that 'you seem to have seen justice (*tén dikén*) only late'.[13] Now, justice is no longer deified and therefore its relation to fate not of immediate concern; it is more directly connected to the activity stemming from human wisdom – and announced and worked through in speech – namely, the continuity of human being. What continues to be encountered at the limit therefore is justice. Justice is, however, a practice. It is the negotiation at the limit of the limit. In fact, it can be argued that the final speech of the Chorus reiterates the position first articulated by Haemon in his engagement with Creon. Within this encounter, Haemon states unequivocally that

> If you were not my father (*mé patér*), I would say that you had no wisdom (*ouk phronein*). (755)

Not only does this earlier line have its own dramatic quality, but also, it can be argued, it sets the measure for any subsequent reiteration of the relationship between law and fate. Indeed, the introduction of 'wisdom' repositions the movement of the play such that it can no longer be viewed as the presentation of a simple conflict between two different conceptions of law. Once Haemon utters the line noted above both law and the type of claims made in relation to the different senses of law – the law of the Gods and those of the polis – will have been repositioned. Despite the presence of a clear internal conflict concerning law within this line – that law defining an obligation to a father as opposed to a law demanding obedience to a ruler – law has been separated from justice.[14] Thereby opening up the

problem of how this reference to 'wisdom' and by extension to law is to be understood if not conceptualized given that this cannot occur within the structure in which it is given initially. (That neither Creon nor Antigone sees this is fundamental to the structure of the tragedy.) This reinforces the interplay between wisdom and justice and in so doing allows for the introduction another determination of the *apolis*.

A series of limit conditions are introduced. At stake within them would be the attempted elimination of the space disclosed by the city wall, the space of sociality, i.e. the public sphere. What would be undone with the actualization of this sense of destruction is, in the first instance, the place of speech and, in the second, the locus of thought's actualization. Destruction in this sense has many consequences. The most emphatic, however, is the imposition of silence. This imposition, whether its cause is the enactment of certain laws (law as statute), the restriction of access to the public realm, or the destruction of towns, undoes place. This undoing cannot be seen as accidental. It strikes at the primordiality of relation that delimits human being. The exploration of limits has been actualized beyond mere contestation. It has now become violence.[15] Violence is that move that undoes place by eliminating the possibility of speech and thought. Violence, therefore, becomes the attempted imposition of silence. The response to this sense of violence cannot be just the assertion of the right to speak but to establish – or re-establish – the place of speech.

The Chorus's response to the threat of destruction is the judgment that the one with this goal will share neither their 'hearth' nor their 'thoughts'. The terms 'hearth' and 'thoughts' need to be taken, in the first instance, as designating literal places of dwelling, and in the second, the *polis*. Both are the places where the founding relationship between speech and thought continues to be acted out. The Ode therefore is locating the distinction between the private and the public as an after effect not just of the primordiality of relations, but where those relations become the continuous enactment of potentialities. Maintaining that continuity is a position that is grounded, not in a defence of the state, but in the affirmation of what the original placedness of human being entails. In part, this is why the condemnation of the destruction of place, or the refusal to allow for place has to be judged in terms of a relationship between the ontological and the political. This, implicitly, is what the Ode can be taken as addressing.

Bringing this Chapter to an end necessitates two returns. In the first instance this means returning to the term *hupsipolis*. While, in the second, it involves returning to question of how terms designating originality are to be understood. *Hupsipolis* is not to be simply counterposed to the state of

affairs identified as *apolis*. While any evocation of *nomos* as a regulative condition introduces the constraint of custom, precisely because of the relationship between custom and justice (*dikê*), not only does the content of given customs not have an immutable quality, but also its capacity for transformation – custom's potential – is given by its relation to justice. Justice is the negotiation of custom in relation to 'well-being'. While there is a project that would be concerned to attribute a definite content to justice, a strategy starting with Plato for whom, as has already been argued, the philosophical task is defined in terms of securing the *ousia* (essential being) of justice construed as an 'idea' (*eidos/idea*), identifying such a content would have the consequences of securing norms (*nomoi*) as unable to be transformed. If, on the contrary, and consistent with the emphasis being given to potentiality, transformation is the ineliminable possibility within the normative once the line between justice and well-being defines the locus of deliberation, then a different task emerges. Henceforth, the focus of any deliberation is to give a specific content to that relation at any a given point. The point which is to be understood as finitude, and therefore as the moment, needs to be located within the endlessness of deliberation that is consequent on the placedness of human being. A commitment to that particular understanding of the nature of social being and thus the affirmation of the form of deliberation that defines finitude in relation to an infinite of potential is the meaning of *hupsipolis*.

As is evidenced by the continual reference to justice (*dikê*) within the play, a reference dramatized in the most literal sense by the Chorus's final speech, the limitation of Antigone and Creon is not to be found in a clash of two different senses of law, or even in a conflict between obligation to family as opposed to the state.[16] (This is not to deny that such conflicts are present; rather, the point is that they do not determine the work in its entirety.) Rather, their lack of vision and thus what defines their singularity is the refusal to work through the nexus of justice and law on the one hand and the failure to grasp the primordiality of relation on the other. Indeed, it is on one level inconceivable that the play can be discussed without recognition of the way this nexus operates and in operating incorporates 'well-being' as integral to the set-up that defines the being of human being. This definition is central. Moreover, it is the centrality of ontology that opens up the second return; this time to the question of originality.

Arguing for dissymmetrical relation as being original, posing the question of human being in terms of primordial relatedness, insisting on the ineliminability of potentiality – and there will have been other formulations of this nature – demands that attention be given to the way originality is

being understood. In all of these instances, what is being identified is a particular ontological configuration. It is ontological in the exact sense that what is being identified is what is there in (and as) the being of being human. Relation to place, the movement between the infinite and the finite, the continuity of potential's release or the refusal of the opening that would have been allowed (a position hat can be understood as the refusal of the caesura of allowing) all comprise part of the already existent set of relations and possibilities that mark out the field of human being. In marking it out, what is provided, in addition, is the ground as well as the possibility of judgment within that field. Originality is therefore that which is already in place and being acted out – a placing and acting out in which the specificity of human actions can be both identified and judged. The necessity for judgment resides in what the Ode formulates in terms of the reality of the *apolis.* The ground of judgment is human being's original condition: i.e. it arises from the fabric of existence.

Chapter 6

Possible Returns: Deconstruction and the Placing of Greek Philosophy

. . . nous sommes, encore des Grecs, certes, mais peut-être d'autres Grecs, nous ne sommes pas nés du sel coup d'envoi grec; nous sommes certes encore d'autres Grecs, avec la mémoire d'événements irréductibles à la généalogie grecque, mais assez autre pour n'avoir pas seulement, aussi, altéré le Grec en nous, mais pour porter en nous aussi du tout autre que le Grec.

Jacques Derrida. Nous autres Grecs

If the fabric of existence becomes the location in which law and justice understood as involving both place and process come to be acted out, could there be anything other than the permutations that such a fabric allows? Recognizing that within such a setting moments of interruption and, thus, the possibility of difference as discontinuity (a set-up already identified as a caesura of allowing) rather than difference as diversity, endures an already present potentiality. What this opening question suggests is that of a prior condition, thus, a setting in which the question of the threshold assumed a movement into a concern with law and justice, and as a movement in, it would be a form of movement that works with the assumption of there being an original position in which the possibility that what could have been designated *anomos* or *adiké* prevailed as original conditions. Such possibilities inform different aspects of Derrida's work. It is there as an implicit possibility in what has already been identified as the logic of *chora*. Equally it is there in his engagement with Sophocles' *Oedipus at Colonus*. The project of this Chapter is to take up this latter engagement and begin to question this aspect of Derrida's work. The value of pursuing Derrida's interpretation is twofold. In the first instance it allows for arguments concerning the original interrelatedness of justice, law, *being-in-common* and *being-in-place* to

be taken a stage further. The significance of such an undertaking is clear. Their original interrelatedness stands opposed to the possibility of *anomos* or *adiké* as original conditions. The second reason for giving centrality to Derrida is that despite the reservations concerning elements of his interpretation of Sophocles, his work has enabled a fundamental rethinking of Greek philosophy, indeed a rethinking of the Greekness of Greek philosophy. Part of that rethinking, and this includes the project of these essays, works with the assumption of a deconstruction of Heidegger's conception of ancient philosophy and in so doing it has opened up another way of conceiving of the project of engaging with Ancient Greek philosophy and literature. A beginning can be made therefore with the place of Greek philosophy.

Within an important attempt to situate philosophy, which is to be understood as an act, which while providing a location for the philosophical is equally and at the same time, an act of philosophy Derrida argues that

> There are other ways for philosophy than appropriation as expropriation . . . Not only are there other ways for philosophy but philosophy, if there is such a thing, is this other way. (*mais la philosophie, s'il y en a, c'est l'autre voie.*)[1]

After making this point Derrida questions any possibility of a return to Greek philosophy in a way such that the latter could be either a unique source or a singular origin. A Greek source could not be authentic nor could it authenticate. It is thus that

> . . . philosophy has never been the responsible deployment of a unique original assignation linked to unique language or to the place of a single people. Philosophy does not have a single memory. Under its Greek name and in its European memory, it has always been a bastard, hybrid, grafted, multilinear, polyglot and it is necessary for us to adjust our practice of the history of philosophy and of the history of philosophy, to this reality which was also a chance and which remains more than ever a chance. What I am saying here of philosophy can also be said, and for the same reasons of law and of democracy.[2]

What then of Greek philosophy? This is, of course, not a question of the sentimentality in which original Greek formulations are thought, somehow, to harbour original truths such that the history of philosophy then becomes the history of their undoing. The question of Greek philosophy is the

repositioning of the philosophical, perhaps starting with the Greek, such that it can be presented in ways that allow its presence as 'bastard', 'hybrid' etc., to be affirmed. Here, rather than concentrate on Derrida's readings of either Plato's Phaedrus or Timaeus or even the meticulous interpretation of Aristotle on time, no matter how central they are, emphasis will be give to his approach to Sophocles in the context of what was his developing work on hospitality.[3] What a trajectory of this nature provides is a way of noting the place of Greek thought within his writings. Equally, it provides a way of returning to those writings. A way that will have been opened up by the potentialities already inherent within the complex plurality that is constitutive of Greek philosophical and literary thought.

In the second of the two seminars that make up the volume De l'hospitalité Derrida identifies the role played in that specific work by texts by Plato and Sophocles.[4] In this regard, he argues that

> In letting ourselves be guided by sketched readings of texts by Plato (Crito, the Sophist, the Statesman, the Apology of Socrates) or Sophocles (Oedipus at Colonus we let ourselves be interrogated by certain figures of the Stranger/Foreigner).[5]

The analysis continues immediately after with a detailed nuancing of that act of interrogation concluding that prior to the different forms such questioning takes there is 'the question of the foreigner, as question, *comes from the foreign*'[6] (Derrida's emphasis). In other words, there is within the approach taken by Derrida a positioning of Greek philosophy in terms of a presence defined by the different senses in which the '*l'étranger*' figures. (Presupposing, thereby, that what counts as the 'foreign' is always more than one.) This in turn allows for the complex position in which philosophy, especially Greek philosophy, becomes a site that refuses a moment of original synthesis (even if what was held together within it is a founding discord). Two points are being made here. The first is that whatever it is that is taken to constitute Greek philosophy, not only is it a site of original hybridization but it is also the case that inscribed within it, inscription as a form of self-constitution, is a founding relation of strangeness. Strangeness has a twofold presence. It is as much a relation to the outside as it is a form of self-estrangement. A self-estrangement not thought as a founding act of betrayal but the affirmation of 'hybridity' (or 'bastardry' etc.) as an original condition. As a mode of thought, therefore, the Greek is both at home and distanced from itself. The primordiality of movement which in eschewing unity marks out a site of conflict as original. What this means is that plurality,

conflict and alterity (the latter as a form of self-defined otherness) work together. Indeed, they were only ever at work together. Such would be the nature of Greek philosophy. It would be present as a site of original conflict.

   The second point is that to the extent that Greek philosophy occupies the position of the stranger/foreigner, then what insists as the primary philosophical question is what a relation of hospitality to that domain of thought is going to be like. (Hospitality has to be positioned against the threat of an imposed sense of unity and, thus, has to allow for the presence, and it will be a presence given within the act of interpretation of the arrival of Greek thought defined as that which is *ab initio* more-than-one.) Interpretation, specifically in this context the interpretation of Greek philosophical and literary presence, would then become a mode of welcoming and, thus, needs to be thought in terms of hospitality. (The question that must endure concerns the quality of that to which hospitality is extended.) There are aspects of this approach that need to be maintained. The first concerns the question of how the relation that hospitality names is to be understood? The second involves holding to a structure of hospitality as already present, thus pertaining as a potentiality, prior to the moment of arrival and, thus, prior to the extension of hospitality. Not only will it be essential to return to this already present potentiality but it also needs to be noted that what its presence also incorporates is the need to understand hospitality in terms of a potential for self-welcoming. Overall, it is not a question of merely accounting for the possibility of an original sense of the set-up staged by the stranger/foreigner/foreign. To account for it would be to domesticate the set of relations that are implicated in that arrival. Fundamental to Derrida's argument is that what can be identified with the figure of the stranger/foreigner/foreign must be allowed to endure as a present plurality. Though it should be added that the key point here is that what is entailed by holding to, thus maintaining, the strangeness of the stranger, is always to be determined. (Allowing for the 'always to be determined' incorporates, it will be argued, the centrality of practice within the philosophical.) Domestication would involve their incorporation into a history and, thus, into a narrative in which the possibility of any yet-to-be condition of the stranger/foreigner would be effaced in the process. It is this location that will be taken up in relation to Derrida's interpretation of Sophocles' *Oedipus at Colonus*.[7] Central to that interpretation is Oedipus' opening account in which he describes his presence along with Antigone in terms of 'strangers' (*xenoi*) (13). While it is not pursued directly by Derrida, of equal importance, though that importance will only emerge at a later stage, is Oedipus' earlier

description of himself as 'the wandering Oedipus' (*ton planétén Oidipoun*) (3).
(Moreover, this position would need to be set against the complex undoing
of wandering – an undoing in which the blind Oedipus leads – that occurs
towards the end of the play: Lines 1544–1555. This repositioning of
Oedipus will be taken up at a later stage.)

Derrida's encounter with Sophocles' *Oedipus at Colonus* that forms an
integral part of the discussion of hospitality needs to be set against another
encounter in which a fundamentally different sense of the philosophical on
the one hand and Greek philosophy on the other is evoked. The second
encounter occurs in Heidegger's *Introduction to Metaphysics*.[8] The citing by
Heidegger of one line from *Oedipus at Colonus* – line 1224 – occurs not long
after he has provided his own extraordinary commentary on the first stasi-
mon in the *Antigone* – the 'Ode to Man' – and immediately after an engage-
ment with Parmenides. What provides coherence to the interpretations of
these differing texts is that what they gesture towards, for Heidegger, is the
proposition that,

> in the inception of Western philosophy (*am anfang der abendländischen
> Philosophie*) it is already clear that the question of Being necessarily
> includes the grounding of Dasein.[9]

The significance of this assertion is straightforward. To the extent that the
question of Being defines the philosophical – a definition as self-definition
and, thus, as the establishing of the essential – then this conception of
Dasein, itself understood as the being of being human, is necessitated by
such a specific conception of the philosophical. There is a necessary and,
hence, ineliminable reciprocity between these two formulations.

For Heidegger, this reciprocity – a set-up having original force – comes
undone when 'human being' is repositioned such that what dominates is
the equation of 'human being' with 'the rational living thing'. (186/184)
Part of Heidegger's project is to show what he terms the 'distance' (*Abstand*)
between this subsequent definition and what he continues to describe as
'the inceptive opening up of the essence of Being human'. An essence that
will have obtained originally. While that position will come to be undone,
an undoing of that for Heidegger can be chartered within the development
of Greek philosophy itself, within its history, thus constituting that history,
it remains the case that at the 'inception', 'Being human is grounded in the
opening up of the Being of beings'.[10] There is therefore a positioning that
is defined in terms of what can be described as an original self-inclusion.

The move from the 'essence' to other expressions of 'human being', e.g. the one already noted in which it is equated with the 'rational living thing' becomes a form of estrangement. In other words, distancing from the essence, its avowed refusal, is the moment at which, perhaps uncannily, the estranged emerges. This mode of emerging is intrinsic to Dasein. Nonetheless, it marks a fundamental form of betrayal.

In the course of developing this position Heidegger draws a distinction between two forms of interpretation. The first is based on the 'customary' (*übliche*), while the latter are often, he notes, dismissed as 'Heideggerian'. (The formulation is Heidegger's own.) Heidegger, it should be noted, is quick to acknowledge the problematic status of the claims he makes for Greek philosophy (this includes what he calls 'Greek Dasein'). After positing these two alternatives, his next comment is of central importance. He asks, 'which interpretation is the true one?' (*Welche Auslegung ist die Wahre*).[11] The evocation of truth is by no means an attempt to link interpretation to epistemology. Nor is it the case that the choice is a mere matter of relativity. The position at hand is far more dramatic. A lot more is at stake in abandoning custom and norm than the mere countering of positions. The move is 'a leap' (*ein Sprung*). Moreover, it is the result of taking up a position – starting out on a 'run' (*Anlauf*) – that has an importance beyond the realm of mere interpretation. Heidegger writes, 'Everything is decided by this run' (*An diesem Anlauf entscheidt sich alles*). The 'run' implicates the runner. In addition, it indicates a point of origination. The 'leap', however, is a severance that involves a recovery. What is recovered is the essential. Recovery and rectitude are implicated within the unity that such an approach delivers (delivers while sustaining). As Heidegger writes, 'Only one who takes the right running start can leap'.[12] There is therefore a 'we' that is both implicated and created by the propriety of the move. 'We' are involved and therefore so is a form of collectivity. 'We' form a part. Implicit in this move is not just the presence of a 'we'. More significant is that this collectivity and thus its creation are a result of the decision. This decision does, of course, mirror that which has already emerged as such.

For Heidegger that which pertains at the 'inception' (*Anfang*), namely, 'the opening up of Being human' gives to Dasein a determining quality. Dasein's emergence was itself 'decisive' (*entscheidend*). The specific determination of this opening is such that it necessitates a decision being made in relation to it. As has been intimated this departure is not a chance occurrence. In Heidegger's formulation – a formulation that ties together 'necessity' (*Notwendigkeit*) and 'urgency' (*Not*).

It happens in and from historical necessity from the urgency of historical Dasein. (*in und aus geschichtlicher Notwendigkeit, aus der Not des geschichtlichen Daseins.*)[13]

The 'we' therefore is constructed as such through a form of interpretation – a decisive act that has itself the structure of a decision – and as such is inextricably bound up with a sense of historical exigency. Overcoming both norms and relativity is the result of a decision. However, it is not a decision that has an inbuilt sense of openness, rather it is a decision that accords with what has already been decisive. What this means therefore is that it is not a decision defined by a conception of the future that is itself given within the potentiality of the 'to come'. After all, what for Heidegger has already emerged as central to Dasein is its capacity to refuse that which is decisive. (This does not affect the status of that which is decisive. Rather, it opens up what can be described as the failure to decide as a possibility for Dasein.) This forms an element of Dasein. Its enactment, however, must be understood as its own possibility while at the same time being the refusal of a sense of propriety. The possibility of inauthenticity is already present. The making of Dasein therefore acknowledges the incorporation of its own unmaking. This is, of course, why Heidegger positions human being as the 'uncanniest'. At this point in his analysis the position is formulated in terms of a stark opposition. With its formulation what needs to be noted is the necessary singularity both of Dasin as essential and that which is essential to Dasein. In this regard Heidegger writes,

for Dasein, withholding such openness towards Being means nothing other than giving up its own essence. (*Aufgebens seines Wesens.*) This demands that it either step out of being or else never step into Dasein.[14]

The choice is clear. There is a sense of propriety with its own intrinsic sense of necessity. While it is possible for Dasin to 'withhold' in regards to its relation to Being, doing so becomes a form of abandoning even if it is an act conditioned by the history of Being. Abandoning here, however, is not an opening towards – on the contrary, it is a giving up and thus a refusal of – the sense of propriety that governs and determines Dasein's relation to Being. Thus were it to have been Dasein's decision to move in this direction then this would mean, as was indicated above, its giving up that which was essential to it. The other possibility – and it is vital to note that there are only two possibilities – involves 'openness'. However, this openness is not an openness that resists any form of conditionality. Not only is it conditioned

in advance but also precisely because the 'we' is unified within it (and by it) what cannot register except in terms of a founding inauthenticity is a conception of the 'we' as having to affirm a founding sense of self-estrangement, a self-estrangement that will brook no overcoming.

Having made this point, his next move is to cite line 1224 from *Oedipus at Colonus* – *mé phunai ton hapanta nika logon* – as the line, for Heidegger, stages precisely the predicament of the withholding of an openness towards Being. He translates the line thus:

> never to have stepped into Being Dasein triumphs over the gatherdness of Beings as a whole. (*niemals ins Dasein getreten zu sein, obseigt über die Gesammeltheit des Seienden im Gazen.*)[15]

While the viability of the translation hinges on the way *phunai* (which is to be understood in this context in terms of Heidegger's own interpretation of *phusis*) and *logos* are understood, (and, it should be added, the non-registration of the opening strophe in which the tenor of the ode is set in terms of the relationship between, life, death and measure (*to metrion*)) what is of interest in this instance lies elsewhere. Indeed the argument here is not intended to call Heidegger's translations or even the interpretations of Greek philosophy into question. That would be an important though different undertaking.[16] Rather, the project is to show what conception of Greek philosophy figures within and thus grounds such interpretations and translations.

Fundamental to this undertaking is Heidegger's insistence on that which is there at the 'inception' (*Anfang*). The interpretation of the line from *Oedipus at Colonus* works within the presupposition that what is staged pertains to Dasein. (It does not pertain to human particularity – i.e. individuated humans – but to Dasein as the Being of being human and thus to being human as given within and thus only thinkable in terms of its relation to the history of Being.) As emerged from his analysis of the first stasimon of the *Antigone* what defines Dasein is its inherent and perhaps inescapable capacity for a type of undoing. Within his translation, thus interpretation, the line from *Oedipus at Colonus* acquires a specific force. For Heidegger what stands opposed to Being as a whole is 'never to have taken over Being-there',[17] and yet this state which is an act of violence within the 'overpowering' hold of Being – what has already been presented by Heidegger as 'the gatheredness of beings as a whole' – becomes what it is and is therefore a possibility for Dasein, not due to caprice, but because of what it is that Dasein is. Thus, what occurs is the moment in which what is taken on is the

'overpowering of Being' (*die Übergewalt des Seins*), a position staged by 'Dasein's highest violent act against itself' (*der höchsten Gewalt-tat gegen sich selbst*),[18] and note that it is an act – one defined in terms of violence against itself. Dasein, and it is vital to underscore that what is staged here is historical Dasein, in this instance 'Greek Dasein', defeats Being, by taking over and being taken over by Being in a way that what is undone is the propriety of each. Dasein's predicament therefore is the impossibility of an openness that is properly its own. It is not as though these decisions occur outside the history of Being. The undoing, the refusal and thus the withholding are part of the same history.

Heidegger's more general location of this position, a positioning that brings with it a type of inevitability is the following:

> The essence of being human (*das Wesen des Menschseins*) opens itself up to us (*eröffnet sich uns*) only when it is understood on the basis of this urgency that is necessitated by Being itself. Historical humanity's being there (*Da-sein des geschictlichen Menschen*) means: Being-posited (*Gesetzt-sein*) as the breach into which the overpowering of Being (*Übergewalt des Seins*) breaks in its appearing so that this breach itself shatters against Being.[19]

If a conclusion can be drawn here then it will involve the following considerations: even though the argument presented by Heidegger is grounded in the incorporation of Being into the work of Being's history, that history has a necessity such that what occurs within it as part of the 'shattering' remains nonetheless within the hold of Being's necessity. As such the possibility of an estrangement that cannot be overcome or an estrangement that must be held as distanced and in which distancing become the locus of safety emerges as an impossibility. Any sense of an outside held as such – held within the necessity of an impossible complete self-disclosure – will always be countered in the name of 'historical humanity's being-there'. While Greek Dasein encounters its limit, it does so within a purview that will have to account for its having been subdued. What arises therefore is an effacing of distance and thus the subduing of risk. The possibility of an original sense of hybridization or bastardy comprise positions that would have to be lived with rather than being positioned in terms of the necessity for the effacing of their presence, marks the fundamental difference between Derrida's and Heidegger's conception of Greek philosophy.

Derrida is, of course, not concerned with this line from the play. Though the nature of his specific project will allow a way back to Heidegger. What matters in the context of Derrida's engagement with Sophocles is that

a radically other sense of estrangement and the foreign is at work within his text. His approach to *Oedipus at Colonus*, as well as his positioning of Greek philosophy, are structured such that not only is hospitality one of the defining motifs governing the approach to the text but also the interest in *Oedipus at Colonus* is in terms of the structuring of hospitality within it. While Derrida's arguments in these lectures form part of a broader project that is concerned with the question of hospitality and its relation to 'unconditional hospitality', a project that is also at work in his investigation of the relationship between law and a conception of justice as the 'unconditional', what matters in this instance is how *Oedipus at Colonus* figures within this complex of relations.

The general proposition concerning hospitability can be delimited in terms of the relationship between hospitality as the unconditional and its being conditioned, perhaps conditioned as a necessity, by law. Derrida formulates this position in terms of an 'insoluble antinomy' between,

> on the one hand, The Law of unlimited hospitality (to give to the new arrival all of one's home and oneself, to give him or her one's own, our own, without asking a name, or compensation, or the fulfilment of even the smallest condition), and on the other hand, the law*s* (in the plural) those rights and duties that are always conditioned and conditional, as they are defined by the Greco-Roman tradition and even the Judeo-Christian one, by all law and all philosophy of law up to Kant and Hegel in particular, across the family, civil society and the State. (Emphasis in the original.)[20]

This condition and thus the antinomy are themselves constitutive, as Derrida indicates, of the philosophical tradition. As a result this gives rise to the project of thinking the possibility of unconditional justice and thus unconditional hospitability; a necessity that derives its force from the primordiality of the self/other relation that locates and defines as much the ethical as it does the location of human being, within the inevitability of its relation to the conditioned. Two points need to be made here. The first is that this relation is, in Derrida's terms, not 'symmetrical'. It involves a founding disequilibrium that structures relations of power – patriarchal power being the example that is the most relevant in the case of *Oedipus at Colonus*. Secondly, that the law as unconditioned necessitates the plurality of laws. However, to the extent that they are necessitated then, in terms of Derrida's analysis, the effect of the plurality of laws is that the unconditional is threatened, denied or perverted as a consequence.[21] For Derrida this

logic is inescapable. This is a move (and a related conception of inescapa-
bility) which is of central importance since if there is a limit to Derrida's
approach then it lies in the way perversion and denial are bound up with
what could be more generally described as *finitude*. In this context what
counts as finitude occurs in relation to the antinomy that marks the law
of hospitality. Within that setting there is a clear relation between the con-
ditioned (finitude) and the unconditioned. The unconditioned he argues,
in the setting of that relation, is such that '*La* loi' (*The* Law) as the
unconditioned

> is above the laws. It is therefore illegal, transgressive, outside the law (hors
> la loi), as an anomic law *nomos a-nomos,* law above the laws and law outside
> the law . . .) (*comme une loi anomique*), *nomos a-nomos, loi au-dessus des lois et
> loi hors la loi . . .*)[22]

While it will be essential to return to this configuration of the antinomy and
thus the positioning, first, of 'La Loi' as both transgressive as well as both
'above' (*au-dessus*) and 'outside' (*hors*) the law, since it renders problematic
any sense of place and, second, because the equation of the '*anomique*' with
a certain designation of lawlessness would seem to ground the plurality of
law in an extra legal conception of the law, what needs to be taken up at this
stage is that this configuration is what allows, in Derrida's analysis, for the
introduction of the figure of Oedipus.

Oedipus appears with Antigone. As he makes clear from the start, while
he may not be aware of the particularity of his location, he defines their
arrival and who they are in the following terms: 'we come as strangers'
(*hékomen xenoi*). And yet, that designation is located within a more complex
formulation. The full line is: 'for we have come as strangers and must learn
from the citizens (*atsón*) and do as they tell us.' (12–13) Whether what is at
stake here is the identification of the need to learn with the condition of
being a 'stranger' or that the source of the learning are the 'citizens' and
thus the obligation is defined in relation to the latter rather than the former,
what is clearly the case is that the condition of being a 'stranger' is, within
the context of Oedipus' formulation, always already conditioned. Moreo-
ver, it is a specific form of conditioning. Being present as conditioned within
an openness not simply to the other as citizen but to the recognition of
already being in a relation of instruction. This entire condition needs to be
understood as the recognition of the always already present status of rela-
tionality and thus of *being-in-common*. And yet, Derrida's interest is with the
presence of Oedipus as stranger as though occupying such a position was

not itself mediated from the start. The possibility of an original mediation and its connection both to the staging of the freedom of instruction and the question of finitude will need to be reintroduced.

Derrida positions Oedipus in terms of the latter's presence as 'the out-side-the-law (*anomon*)' (*le hors-le-loi* (*anomon*)).[23] Positioned as such Oedipus arrives. Having arrived, he is presented as preparing himself to speak. This is taken to occur in the first 30 lines of the play. Of these lines Derrida comments that:

> The first moment is the arrival of the arrival (*l'arrivée de l'arrivant*), Oedipus. A foreigner prepares himself to speak to the foreigner. Without knowledge (*sans savoir.*) Without the knowledge, the knowledge of the place, and the knowledge of the name of the place; where he is, where he is going. Between the profane and the sacred, the human and the divine. Isn't this always the situation of the absolute arrival?[24]

For Derrida therefore, what he identifies as 'the situation of the absolute arrival' is that which occurs without having been conditioned in advance. It is this formulation of the figure of Oedipus that is fundamental for Derrida. As a consequence, in terms of that analysis, Oedipus comes to fill the position of the unconditioned. The response by Thesus to the arrival of Oedipus is an exchange in which both assert the position of either having been or being foreign (thus present as the stranger or other). And yet, the very possibility of that exchange coupled to the etymological concern in which terms for foreigner and host have a potential identity and thus a necessary indeterminacy allows the question of what is the foreign to be posed by Derrida with greater acuity.[25]

If there is a way of beginning to question this formulation, i.e. the identification of Oedipus with 'the absolute arrival', then it is not just the 'without' (*sans*) governing the knowledge of place and direction that for Derrida accompanies the arrival of Oedipus that needs to be taken up. The 'without' is not an extraneous element. This 'without' exists, indeed only exists, in relation to the function of the 'absolute arrival'. The 'absolute arrival' brings the unconditioned into play. The 'without' therefore not only sustains that positioning. There is an important reciprocity. The 'without' moreover finds further expression in Derrida's description of Oedipus as 'the outside-the-law (*anomon*)' (*le hors-le-loi* [*anomon*]). While Derrida also cites the very passage in which it occurs nonetheless this positioning of Oedipus by Derrida needs to be sent against Oedipus's own description of himself as not 'the outside-the-law (*anomon*)' (142).[26]

(The entire line reads: 'Do not look on me. I beg you, as a lawless one'.) The occurrence of this line in the play, the plea not to be considered thus, occurs prior to the attribution of identity. The Chorus return with the identification of 'wanderer'. While it will be essential to take up the question of *nomos*, a term that, as been argued throughout these essays, that opens up the complex relation between norm and law, the figure of Oedipus stands in need of further development.

Central to this present concern is Derrida's interpretation of the final part of the play in which Oedipus sets the conditions not only for his own death but also for how that death is to be received. For Derrida this death is intimately bound up with a secret. Not only is there the agreement between Oedipus and Thesus that the place of Oedipus' actual death, what will become his tomb, be kept a secret, it is also the case that the retention of the secret as a secret is fundamental to the survival of the state. The crypt and thus the encrypted Oedipus bring the logic of the secret into play.[27] This aspect is unproblematic. The complication arises because the Oedipus in question, for Derrida, retains the designation of Oedipus as '*hors-le-loi* (*"anomos"*)'. Moreover, this particular designation and the secret are brought together such that the presence of one entails the presence of the other.

> Secret knowledge, secret about knowledge, secret about knowing, ultimately, where dies the great transgressor, the outside the law (*la hors la loi*), the blind anomos, who cannot even confide the secret that he enjoins upon other to keep about the place where he, the stranger/foreigner (*l'étranger*) will be able once upon a time to have died.[28]

That which will safeguard the city is the impossible secret that must be retained as secret yet shared. The future of the city becomes linked to the impossibility that the stranger allows to be staged. Within the continuity of Derrida's analysis the 'stranger' continues to be identified with the figure of the *anomos*. (While it is not the path followed by Derrida, the other possibility here is to interpret the secret in terms of the 'unaccustomed' [*ta deina*].)

There is, however, more to Oedipus. An addition that rather than necessarily denying this particular reiteration of the logic of the impossible and thus of the unconditional complicates it. (Both elements are fundamental to Derrida's approach.). What must still be kept in play is the question of the Oedipus that figures in one of the most dramatic reversals that the play stages. It occurs at line 1545. Up until that moment Oedipus had described himself as a 'wanderer', moreover he had been described as such, to which it should be added that such a position could not have been separated from his always already being in the position of the suppliant.

(As is clear from line 14 he arrives as a suppliant.) However, while remaining a suppliant, there is an important reversal. Responding to that which has a divine source (*touk theou paron* 1540) the positioning that had defined him, defines him no longer. Not only does he insist that he remain untouched (*mé psauet*) (1544), with equal force he takes over the position of one who will guide other mortals. The blind lead. He asks his children to follow him. He then goes on to say:

> This way, thus, this way! For it is this way that I am lead by the escorting Hermes and the goddess from below. (1547–1548)

Having uttered these words he leads Antigone, Ismene and Theseus from the stage. A few lines later, at 1560–1562, the Chorus evokes the need for a clear path for Oedipus. He is named as the 'stranger': 'I pray that the stranger may arrive at the plain of the dead' (*nekrón plaka*). There is therefore an acknowledgment of his ensuing death and thus a direct sense of removal; perhaps, more exactly, of his removing himself. A location, perhaps relocation in which he moves from one place to another. The question to be addressed is who moves? Is it Oedipus the 'wanderer', the 'suppliant', the Oedipus who in an act of transformation takes over the responsibility of his location, thus relocation, or, finally, is it the Oedipus who refuses the identification of *anomos*?

The question to be addressed is the following: how much does the argument advanced by Derrida depend upon the figure of Oedipus defined in terms of the 'without' and the *anomos* such that these terms would not simply limit Oedipus; they would fail to take up both the complexity as well as the consequences of his positioning and repositioning within the play? Here it is essential to begin with a more general question: What does it mean to be *anomos*? A question posed both by the play, insofar as it is a designation strenuously resisted by Oedipus, as well as by Derrida's own analysis. The designation *anomos*, regardless of its original source, needs an already present setting.

As the play opens, on first arriving, what is central to the position of Oedipus and Antigone is that they do not know exactly where they are. Oedipus' opening question concerns the particular 'region' to which they have come. And yet, the actuality of place is never doubted. They do of course know who they are. Again this act of self-identification brings more into play than mere names. The play opens:

> Child of a blind man, Antigone to what region (*tinas chórous*) or to what city of men (*tinón andrón polin*) have we come? (1–2)

Hence blindness, the father/daughter relation coupled to the recognition that they are in some place and thus in some city (note the repetition of the interrogative pronouns) open the play.[29] They arrive therefore as always already in place: a place that is both a 'region' and a 'city', a place which while yet to be named nonetheless is designated in advance as 'region' and 'city'. The play opens therefore by staging the primordiality of *being-in-place*. *Being-in-place*, as has been argued, is the identification of the always already placedness of human being. *Being-in-place* assumes therefore that the location of human being is fundamental to the life of human being.[30] Oedipus' opening words, by assuming that there is a relation to place and thus what matters is the particularity of that relation, can be read as the affirmation of that situation. There is, however, more involved than the mere affirmation of place. Place as general location is evoked initially by the term '*chóros*'. However, this is then followed by '*polis*' (city). Moreover, the term '*polis*' is qualified, though this is hardly necessary, such that the city is peopled from the start. If the evocation of place underlies *being-in-place* then the interplay of polis and community indicates that the polis is always the site of human activity. Rather than emerging as a simple tautology the 'polis' – a peopled *polis* – is presented as the site of the collectivity of human being. As such the *polis* becomes the place of *being-in-common*. By holding both to the centrality as well as the inescapability of relationality to the description of human being the opening of *Oedipus at Colonus* can be read as the literal staging of the always already present status of *being-in-place* and *being-in-common*.

The constructions, as staged above, of *being-in-place* and *being-in-common*, are therefore implicated from the start. The play's opening makes it clear that neither Oedipus nor Antigone simply arrive. The opening words turn what happens on the stage into the emphatic statement of the complex relations that define human being. It is within those relations, relations that pre-exist any form of particularity, that the presence of the stranger and the host would then need to be located. Moreover, it could be argued that being somewhere (what has already been described as *being-in-place*) necessitates a twofold positioning. In the first instance there is a type of freedom involved in *being-in-place*. That they are able to arrive – that they appear – already indicates the possibility of movement and passage. The second is that *being-in-place* cannot be thought outside a conception of relationality. It could be therefore that Oedipus' insistence that he not be thought in terms of the *anomos* is itself a plea to be thought in terms of the necessary relation between being-there and nomos itself. The *nomos* in question, however, is always regional and thus always depends upon the particularity of place. Hence the importance of the question that pertains to where they

are – an importance that is already clear when Antigone asks 'shall I go and discover what place (*topos*) it is?' (26). The response, both direct and indirect, by the Chorus to the positioning of Oedipus is to indicate that they are on sacred ground. This is a possibility that is already acknowledged at the beginning of the play when Oedipus asks that they inquire whether they are on 'profane' or 'sacred ground' (10). The distinction is already clear. Indeed, *being-in-place* is defined from the start by this already under-stood sense of place. The Chorus responds to the question of place by underlining the relationship between place and nomos.

> If you have any word to say in converse with me stand away from the forbidden ground and speak where it is lawful for all (*hina pasi nomos*). (166–169)

Here the Chorus identify a place of speaking that accords with *nomos*. (Note the centrality of place.) *Nomos*, in this context, can be taken strictly to mean lawful – as indeed would be the case in regard to being on sacred as opposed to profane ground – equally *nomos* could be taken as identifying the place where the customs of the city prevail. (Both of these possibilities echo in the formulation 'lawful for all'.) Moreover, the second sense of *nomos* is hinted at when Antigone speaking of the place at which they had arrived initially says 'the walls that surround the city look to be far off and this place is sacred'. (14–15) Within the walls, conventions pertain. (Recalling there-fore the role of the wall that is explicit in Heraclitus and implicit in Pindar.) Within the walls and only with them is *nomos* king.[31] The *anomos* is not just outside or beyond the realm of *nomos*. The *anomos* has a specific relation to place.

In the *Trachiniae* Sophocles allows Hercules to describe centaurs as 'lawless' (*anomon*). Moreover, in the *Bacchae*, Euripides has the Chorus evoke Justice in counterposition to that which is *anomos*. In the latter, the Chorus call on 'Justice to appear' (*itó dika phaneros*) and in appearing to take a sword to those who position themselves 'outside law, justice and God' (*ton atheon anomon adikon* 995). In both examples the state of being *anomos* yields a response. In the first instance Hercules can describe the subsequent destruction of the centaurs by Zeus as occurring because of that designa-tion; in the second, the state of being *anomos* demands a response by Justice. That which is 'anomos' therefore occupies a position that is defined as such by that which secures, here, *nomos*, namely, the Gods or Justice. What is secured, however, by the retention and rearticulation of *nomos* is place. *Nomos* occurs within and thus makes possible the complex of

relations that define human being. The latter necessitates the polis under-stood as the place of *being-in-common*. The positioning of that which is *anomos* therefore is only possible (a possibility that is present to be effaced) within a relation in which relationality itself is refused or threatened. The refusal cannot be incidental or inadvertent. The state of being *anomos* becomes the state in which violence refuses relationality: violence becomes the attempted undoing of the already present relation between *nomos* and place.[32]

What this amounts to is the claim, not that the *anomos* is either the 'impos-sible' or is that which is 'outside–the-law' (*hors la loi*), but that *anomos* is precisely that position which refuses the space of relationality itself. In other words, the *anomos* needs to be understood in terms of the inherent placed-ness of particularized *nomos.* (Indeed, the *anomos* would be an after effect.) If therefore the question of a form of original relationality is that which is identified by the term nomos then this will call into question the possibility of a law that is 'outside-the-law' (*hors la loi*). Precisely because what would need to be questioned is what the 'outside' means. What for Derrida is outside–the-law? In regards to what he identifies as the 'unconditional', he writes that

> This unconditional law of hospitality, if one can think that, will be there-fore a law without imperative, without order and without obligation. In sum, a law without law. (*ce serait donc une loi sans impératif, sans ordre et sans devoir. Une loi sans loi, en somme*).[33]

The connection between this law and the actuality of law is outlined in *Cosmopolites de tous les pays, encore un effort!* In terms of the opening of another conception of place,

> A historic place that occurs between The Law of unconditional hospital-ity, offered *a priori* to all others (*offerte a priori à tout autre*) all those who arrive, no matter who they are, and the conditional laws of a right to hospitality without which The Law of unconditional hospitality will risk remaining a pious desire, irresponsible, without form and without effect, indeed to pervert itself at every instant.[34]

What this identifies is both a place – a city of refuge – though equally a dif-ferent sense of relation. And yet, what does it mean to argue that laws have an outside, if what is termed 'The Law of unconditional hospitality' can be effective within the realm of the conditioned. Does that not assume that it is effective across a boundary or division? A similar form of argumentation

occurs in *Force de loi*. Here the argument concerns the relation between justice and calculation.

> There is a future for justice and there is only justice to the extent that the event is possible which, as an event exceeds calculation, rules, programmes, anticipations, etc. Justice, as the experience of absolute alterity, is unpresentable (*imprésentable*), but that is the chance of the event and the condition of history.[35]

What is significant about these two formulations is that they posit the unconditional in terms of the '*a priori*' in the first instance and the 'unpresentable' in the second. Moreover, in the second, the possibility of justice, indeed its only possibility, lies in the presence of a conception of justice defined as that which 'exceeds' all forms of calculation. The logic of the argument repeats the structure that has already emerged with the position of Oedipus as the 'absolute arrival' and thus as the *anomos*. Within this setting that which is outside of the law sets the measure for law. This occurs to the extent that what sets the measure is always held apart from law's actuality and therefore remains 'unpresentable'. Moreover, were that which refuses all forms of disclosure to be allocated a form of presence in relation to the actuality of arrival then it would be there in terms of the '*a priori*'.

The position of Oedipus rather than occupying a single or unitary designation can be used to begin to question the logic of these different forms of argumentation. (In this regard it should not be forgotten that Derrida has already argued that the presence of the plurality of laws – *nomoi* – is a denial, indeed a necessary denial, of the unconditional.) How is the arrival of Oedipus to be understood? As a beginning it should be clear that Oedipus does not arrive 'without' (the 'without' (the '*sans*'), in other words, does not govern his arrival). In the first instance, he arrives as an avowed 'stranger'. He arrives, as is clear, already knowing that there is a pre-given relationship between 'citizen', 'strangers' and forms of 'instruction'. To the extent that this set-up is acknowledged, there is an always already present form of mediation that undoes – in advance – the very possibility of an 'absolute arrival' or any entity that would have been conditioned by the 'without'. Since relationality, both in terms of its potentiality as well as its actuality, becomes the condition that occasions arrival, there cannot be arrival as such. To have arrived therefore is the staging of a relation. The arrival is of that which is already within a relation.

The stranger, and Oedipus is *ab initio* a stranger, enacts such a designation: i.e. being a stranger. There is nothing prior to that enacting. What is enacted is an already present designation. The initial enacting is an acting

out of relation. As has already been mentioned, Oedipus and Antigone are able to enter. The situation they are in is sufficiently adaptable such that both voyage and entry are possible. On stage, Oedipus is not simply present as a stranger; he announces at the same time that he is a 'suppliant' and in addition – an addition that causes consternation – that he will die in the place he has just entered. A death decreed by fate. The further addition is that Oedipus is open to instruction – an openness that presupposes a tacit but nonetheless real acknowledgment of yet another form relationality. None of these elements is contingent – as though they were incidental predicates. They define what it is to be Oedipus. Moreover, there would not have been a moment when Oedipus was not defined by this complex of relations even though the definition is far from simple. (Complexity here arises because these relations are those that Oedipus lives out. They are not simply given.) As such, and even though he is a self-acknowledged stranger, the precondition for being identified in this way already presupposes, at the very minimum, certain structures of recognition. The presence of such structures one again attests to the hold of relations within which Oedipus is the continual after effect. If this is the case then there is an important distinction between particularity – the given set of relations that are them-selves explicable in terms of *nomos* – and a more generalizable presence of *nomos* as pre-existing particularity. (This set-up which will take the form of distinction between the actual or specific on the one hand and the tran-scendental on the other is crucial to the overall argument.) A way into understanding how such a distinction works has already been provided by the Chorus.

The Chorus has already suggested that what has been described as *being-in-place* is the space disclosed by the city wall. As such it discloses place and thus the location of *being-in-common*. This is the domain in which *nomos* pertains. However, the way in which it is present involves an impor-tant doubling. The wall discloses the particularity of *nomos*; particularity entails the possibility of conflict on the level of *nomoi* (hence, for example, the fact that while Oedipus is open to being instructed by 'citizens' what cannot be excluded is that such instructions may be the source of a genuine conflict). Particularity, therefore, is finitude insofar as a given *nomos* cannot be generalized or cannot be assumed to have universal generality or applicability. This is why the position of the stranger involves continual negotiation. A negotiation in which the stranger's position – positioned as the stranger and thus not as subject to differing processes of assimilation – is that which the city has to maintain. Within the context of the play this is the challenge to the city that is the result of Oedipus' agreement with Thesus.

(This has the emphatic consequence that the future prosperity of the city necessitates allowing for the presence of the stranger as secret. That is a presence that remains unmasterable.)

The second aspect marking the doubling of *nomos* is more exacting. In sum it is the following: if the city walls always disclose the particularity of *nomos* and thus a specific form of place and commonality, then the city wall figures as integrated into that which accounts for the possibility of human sociality in general. In other words, there is more than mere finitude involved since the finitude that marks particularity presupposes another sense of *nomos*. In this instance it is a *nomos* without content and thus the *nomos* which is the transcendental condition for human sociality. It is precisely this state of affairs that is identified by the Chorus when they state that there is a place where *nomos* encompasses the totality of human being. *Nomos* is not just operative in the particular instance. The polis is itself the locus of *nomos*. This relation between *nomos* as a particular set of conventions and *nomos* as a transcendental condition provides the setting in which it is possible to return to Oedipus' plea that he not be thought of as *anomos*.

Indeed, what is entailed by the term '*anomos*' can be reinterpreted in light of the distinction between finitude as the particularity of *nomos* and *nomos* as a transcendental guarantee of human sociality. What the identification of the *anomos* holds open is not the denial of *nomoi*, where the latter is understood as the plurality of conventions/laws that hold at a particular instance. They comprise no more than what counts as finitude. Rather, to be *anomos* would involve the refusal and thus the envisaged destruction of the conditions of human sociality itself. If this position is re-expressed in terms of Derrida's initial formulations such that what is involved is the relation between the conditioned and the unconditioned, then the argument is the following: if there is the already conditioned then this means that the transcendental would have set the measure for the conditioned. In other words, the conditioned brings the transcendental into play. The transcendental has a necessarily disjunctive relation with the conditioned. The presence of a disjunctive relation, however, and this is a key point, is not the same as, nor does it give rise to, what Derrida identified, namely, a founding and 'insoluble antinomy'. This is especially the case if the conditioned were then thought such that the process afforded an interconnection in which the disjunctive relation provided the conditions in regards to which the conditioned allowed for judgment. Judging the conditioned, or the judgment in relation to finitude, are themselves only possible if what is assumed is the presence of *nomos* as the transcendental guarantee of human sociality.

Explicating what that sociality entailed and thus what would occur in regards to the judgment of particular *nomoi* would necessitate the continual movement between actuality, *being-in-common, being-in-place* and this specific conception of the transcendental.

If Oedipus had in fact staged the link between that which was taken to be outside-the-law itself (the latter always there in terms of particularity) and therefore came to embody (literally) the position of 'the outside-the-law (*anomon*)' (le hors-le-loi (*anomon*)), then not only would judgment be impossible as a pragmatic act but it would also be impossible philosophically. This is the case because judgment would have necessitated the presence of a complex of relations in which measure was itself possible. That which sets the measure would be *nomos* as a condition intrinsic to sociality and thus *being-in-common*. While Derrida's analysis holds open the necessary result that the city's future depends upon maintaining the presence of the stranger as the unmasterable secret.[36] Maintaining that presence entails holding to that which has to be lived out continually, a living out as noted above in terms of the continuity of negotiation. The identification of the stranger, and it would be the exemplary stranger as the figure of Oedipus as the 'absolute arrival', were it to be pitted against or simply to resist what could be called the primordiality of relation and thus the always already present sense of *nomos* opens up the threat of the unconditioned as an act of founding violence (violent and founding because it is by definition outside the law). To the extent that the unconditioned is maintained it continues to work against the possibility of relationality.

There is therefore an implicit threat in Derrida's analysis of Oedipus and law. While there is a sense in which he wants to hold to the real possibility that the 'unconditioned' can be effective, the necessity that there be an outside – and it should be remembered that the outside in question is not one that pertains to the particularity of *nomoi*, but to the presence of nomos as a transcendental condition and thus to the already present modes of relationality defined by *being-in-common* and *being-in-place* – cannot preclude the reciprocal necessity of the inscription of a founding act of violence as that which allows for law (where the latter will always be marked by forms of plurality and contestation).

This opens up the possibility of a return to Heidegger. Indeed, the point of separation between Derrida and Heidegger emerges at this precise point. To the extent that Heidegger's philosophical project aimed at an eventual taming of the risk and therefore of welcoming back that which had become unhomely, Derrida's entails an opening up to the stranger in which the condition of welcoming and maintaining also involved the maintenance of

a situation in which the stranger/other formed an integral part of the city. However, while that involved an opening in terms of infinite hospitality this occurred such that the unconditioned had to be allowed to set the measure for the inscription of the stranger/other. The inherent difficulty within such a positioning was that what it held open was not simply the possibility but the need for a form of originary violence which then becomes the condition for infinite hospitality (Oedipus as *anomos* setting the condition). As was argued, the counter to this move does not abandon infinite hospitality nor moreover does it refuse the inscription of the stranger/other as thought within the structure of the unmasterable secret. The contrary is the case. Avoiding what emerged as the necessity for a form of structural violence – violence as the result of an operative philosophical structure – necessitates the recognition of an original sense of relationality.

The impossibility of the outside opened up the potentiality at play within a reworking of the relationship between the transcendental and finitude. That reworking repeats the necessity to continue with the ineliminability of relationality. Moreover, once it is conceded that potentiality is operative then judgment which is itself occasioned by that reworking emerges as an activity. Judgment is staged. Justice can only become what it is, in its being acted out. Judgment therefore necessitates force precisely because justice must be enacted. What stands counter to the necessity of the interplay of justice and force is violence.[37] Violence is not the refusal of justice. More emphatically, violence is the attempted undoing of the set-up that occasions justice. As such, violence is inextricably linked to the positing of an outside that stands counter to the always already present set of relations, the relations that Oedipus acknowledges in his plea not to be thought of as *anomos*.

Chapter 7

The Inoperative Jew: Agamben's Paul

Why Paul? Why should a reflection on the relationship between place, commonality and judgment, within decisive moments in Ancient Greek philosophy and literature, be brought to a conclusion, no matter how tentative such a conclusion may be, with a discussion of St Paul. It is not as though Paul closes a circle. The contention here is that Paul, as will be argued, needs to be understood as the countermovement to Athena. There is another caesura, and thus justice and law are subject to a different, yet nonetheless, just as fundamental a reconfiguration. As a procedural move, working through both the strengths and the limitations of Giorgio Agamben's recent essay on Paul – *The Time that Remains: A Commentary on the Letter to the Romans* – will enable the detail of this positioning of Paul to be established.[1]

With Paul, there is another, though radically different, suspension of the law. Before proceeding to an engagement with that suspension, it is essential to recall fundamental elements that informed the earlier treatment of the law's suspension presented in Chapter 1. Athena suspends both the law and justice. However, there was never just the law or justice. The terms designated what has already been identified as a constellation of concerns that involved both a fundamental relation and a site of contestability.[2] The conceptions of law and justice that she suspended were the ones to which there is continual recourse in terms of a necessary relation between the Gods and justice and within which justice may also take on a divine form i.e. as *Diké*. One of the clearest formulations of that latter position occurs, as has been noted, in the *Agamemnon*. Here, the line of the chorus that was of central concern involved the location and practice of Justice: 'Justice (*Dikê*) shines (*lampei*) into smoky hovels' (774). 'Justice', as has been agued, is positioned outside. Holding to a position defined by externality enables Justice to bestow honour. Externality, in this context, locates the operative dimension of justice. In other words, justice, as external, and thus not as occupying a sense of place in which *being-in-common* and *being-in-place*

defined the propriety of justice as well as the location of human being, delimits both the scope as well as the operation of justice and law. As a consequence of this positioning, the dispensing of justice has a necessary immediacy.

The contrast, as has been developed, comes from the moment in the *Eumenides* in which Athena suspends the relationship between justice, law and the Gods, a suspension that involves their dramatic reconfiguration: the nature of the law is recast, justice emerges as a process defined by mediacy and the Gods are displaced. During the speech starting at line 681, Athena locates the permanence of the judges (*dikastón*) as occupying a place on the land. While this literalizes a specific place, in more general terms it works to overcome the identification of justice with externality and thus with immediacy. Immediacy involves either the God's decision as occurring immediately or the structure of guilt and supplication as always having immediate effect (in regards to the latter, justice, thus conceived, gives rise to an equation between punishment and retribution). In addition, there is the already noted position in which retention of 'the fearful' or 'the unaccustomed' (*to deinon*) within the city. This is accompanied by the remarkable suggestion that integral to being a 'mortal' (a mortal as opposed to being a God) is that the respect for justice is bound up with the need for a constant engagement with 'the unaccustomed'. On one level, the supposition is straightforward. The claim is respect for justice, and thus law acts to deter criminality and thus the breaking of the law. However, once *to deinon* cannot be equated directly with fear then another element is introduced. Deterrence involves a relation to that which is set in place by *to deinon* on the one hand and the relationship that such a setting has to wisdom on the other. Developing this series of relationships necessitates recognizing that, at work, within them, are intimations of the position advanced much later by Pascal, namely, that 'Justice without force is powerless'.[3] The inscription of force's necessity, which means that justice is bound up with activity arising from a deliberative decision, brings with it the further need to maintain justice as linked to mediacy. Indeed, mediacy would become, as a consequence, fundamental to any definition of justice. What such a set-up entails, one in which justice involves a necessary relation to the mediate, is that justice brings a sense of location with it, and thus it has to be in place. The place in question sustains, in the sense of locates, and allows for dispute and contestation. (The structure of allowing emerges therefore as an internal dimension of place.) Justice needs both the temporality as well as the place of the decision. Its occurrence is inextricably bound up with a decision. As has already been noted, the Erinnyes recognized that

fundamental to the relationship between the justice and the democratic, a
relationship that can be understood as the problem of mediacy's necessity,
is the possibility that dispute may become 'civil strife' (*stasis*). The internal-
ization of this possibility occurs once there is the move from justice posi-
tioned as pure externality to its location within a process. The outside and
the inside are transformed as a result. Thus Athena can say to the Erinnyes
that 'you are not dishonored' (*ouk est' atimoi*) 824, precisely because the
structure in which such a conception of honour would have pertained is
no longer operative. The place and nature of 'honour' has been relocated.
It has been suspended through the enacting of the caesura of allowing.
Fundamental to Athena's actions therefore is the co-presence of suspension
and allowing. Athena is the figure that suspends what has occurred and
would have continued to occur were it not for her actions. Justice is desacral-
ized and retained within that transformation: in that move, as a result, the
enduring presence of guilt is also suspended. What was once Justice returns,
now, as justice. As for why she acted, the response is clear. It is the only
possible way of ensuring that justice is done to Orestes. Justice is trans-
formed therefore as a response to the question of what it would mean, in a
given context, to be just. With Athena the transformation of justice occurs
when it becomes subject to the process that it is able to name.

It is essential to note that the recognition by the Erinnyes of the attendant
problem of 'civil strife' needs to be interpreted in terms of what has
already been described as the ineliminable mark that attends the democ-
racy. At work within the democracy is process; hence the reference to the
'path' (*odon*) of 'good speech' (*glóssés agathés*) (989) and the 'correct path
of justice' (*orthodikaion*) (995). Process and activity are necessary precisely
because what endures is the recall of the apparent surety of the eternal.
The suspension of the latter marks process. It continues, enduring within
relationality. As will emerge with Paul, while there is a form of suspension,
precisely because the enacted presence of a caesura has consequences
specific to a given context, those consequences mark it and in so doing
provide it with its particularity. Suspension constructs new forms of rela-
tionality as opposed to the suspension of all forms of relationality. In other
words, suspension entails neither a pure singularity nor a form of abstrac-
tion (abstraction as the non-relational). In the case of the latter, such a
conception of abstraction would be a mere putative possibility. Sovereignty
can never escape structures of relationality. Sovereignty only ever occurs
within them. Athena's suspension of the law locates her actions within law's
and justice's radical reconfiguration. Precisely because law (*nomos*) also
designates the transcendental condition of human sociality, there is not

a position outside law. This remains the case even accepting that there are those who continue to declare themselves to be 'outlaws' – a self-definition that is, of course, importantly different from having been designated an 'outlaw', even if the latter position is itself marked by its own impossibility.

In sum, therefore, Athena's suspension of both the law and justice is the transformation of law and justice in their being retained – a transformation with its own recurrent forms of specificity. What needs to be worked through is the nature of the specificity occurring with (and within) Paul's suspension of the law. The entry into that concern is given here by Agamben's study of Paul. The importance of Agamben's work on Paul is twofold. In the first instance there is the formulation he gives to the way the suspension of the law is at work in Paul's *Letters* (particular emphasis here will be given to his analysis of the verb *katargein* which is understood as bound up with processes of becoming inoperable).[4] In the second instance, it resides in his view that Paul's *Letters* comprise the 'fundamental Messianic text for the Western tradition'.[5] The point of orientation therefore, the point around which Agamben can be seen to develop the implicit politics of time in Paul, is the latter's contention that what is occurring does so in the 'time of the now'.[6] Hence, the questions to be addressed, albeit obliquely, throughout the following concern this 'now'. This questioning cannot be reduced simply to the detailed explication of the temporality of the 'now'. It must incorporate the question 'for whom is the time "now"'? The relationship between temporality and differing processes of subjectivization are integral to the structure of a politics of time. The 'now' – this 'now time' – marks the reiteration of law. Moreover, the question of the law, both its status and presence, are central to Paul's reconfiguration of the relationship between the Messianic and universality. Indeed, what is of concern here is what happens to the law, in the sense of what conception of law obtains, in the move to the complex interrelationship between the identification of the Messianic with, on the one hand, the positing of a radically new beginning thought as a form of suspension or the rendering inoperative which is the actualization of the 'now' and, on the other, the universal. Both these terms – 'law' and 'universality' – figure either as named or as unnamed within specific elements of Pauline theology. The universal arises in its opposition to the particular. This occurs due to a simultaneous repositioning of the particular such that it can only ever be subordinated to the universal. (This, as will be argued, is the consequence of the identification of universality with love.) The key terms therefore that have a determining effect within the construction of that specific theological position and which in turn have their own impact upon subsequent thinking – thinking both theological

and philosophical – are, as a beginning, 'law', 'the Messianic' and 'universality'. Returning to them identifies the locus of inquiry. Fundamental to that return is the recognition that, as has been argued throughout these essays, these terms form part of a constellation of activity. They are not to be understood as admitting of an essential determination. What matters in every instance is how they come to be positioned. Their position involves, *inter alia*, a continual reconfiguration of subjectivization. Hence the centrality of the question 'for whom is this time "now" '? Part of what will be traced here is the reworking of these terms. A reworking that is fundamental to the specific form that the suspension of the law takes in Paul.

Tracing both the modes of transformation as well as their assumptions and consequences forms a central part of the project at hand. An instance of the array of issues that are involved is clear from *Romans* VII.1–6. While the significance of this passage of text is great, of particular interest is the way it deploys an analogy in order to stage its positioning of the law (*nomos*). What emerges is not just a new relationship to the law but the law's radical reconfiguration, one occurring within while constructing the 'now'. The passage in question is the following:

> Or do you not know, brethren (*adelphoi*) (for I speak to those who know the law), that the law has dominion over a man as long as he lives? **2** For the woman who has a husband is bound by the law to *her* husband as long as he lives. But if the husband dies, she is released from the law of *her* husband. **3** So then if, while *her* husband lives, she marries another man, she will be called an adulteress; but if her husband dies, she is free from that law, so that she is no adulteress, though she has married another man. **4** Therefore, my brethren, you also have become dead to the law through the body of Christ, that you may be married to another—to Him who was raised from the dead, that we should bear fruit to God. **5** For when we were in the flesh, the sinful passions which were aroused by the law were at work in our members to bear fruit to death. **6** But now we have been delivered from the law, having died to what we were held by, so that we should serve in the newness of the Spirit and not *in* the oldness of the letter.[7] (Emphasis added)

While important equivocations are introduced as the encounter with law in *Romans* VII is developed, what is of immediate interest is the logic of this passage.

Paul begins by addressing a group whose unity is established by the mode of address. Paul both identifies and establishes the group by naming them

as *adelphoi*. This is the term that Plato uses in the *Menexenus* (239a) to denote a conception of fellow citizenship, even a 'family' connection and therefore a form of *being-in-common*. It must be remembered that consistent with the overall argument of these essays, *being-in-common*, as an original condition, does not have a unified nature with a singular determination. Were it to have such a determination, the possibility of its naming a site of negotiation and thus contestability would be excluded from the start. The original meaning of *adelphoi* while taking on a symbolic form identifies a relation that is in part naturalized: 'sons of the same mother' can become a form of commonality in which relations, so the supposition would be argued, would have been determined in advance by the 'mother' rather than by tradition. The term – *adelphoi* – in this context comes to be used to reinforce the sense of commonality within the Christian community and therefore it is a produced sense of commonality, precisely because the community is itself that which is constituted by its use. Consequently, *adelphoi* does not identify *being-in-common* as an original condition in which commonality is linked to a sense of place rather than having an essential quality. On the contrary, it identifies a construction of commonality that in virtue of having been produced incorporates structures of inclusion and exclusion that are linked to the construction of identities. (The latter is part of the already noted process of subjectivization.) Paul addresses a group thus establishing the addressees *as* a group – defining them further as those whose relationship to the law is delimited by the structure of knowledge (*ginóskó*). The law is located as an object of knowledge and thus is immediately distanced from any assumed relation that law may have had to life. (Knowledge would be distinct from worldly judgment.) The law for the group that is both identified and established by its having been addressed, the group named and established by the term *adelphoi*, is that which can be known. It is at this precise point that the explanatory analogy that structures the argumentative nature of the passage becomes central.

   The initial move necessitates noting that implicit in the passage is the identification of law as that which establishes and regulates forms of relationality. The example here is husband and wife. The woman is bound by law (*nomos*), a specific law pertaining to matrimony, to the husband. This is, however, premised upon the continued survival of the husband. Thus, as VII.2 makes clear 'if the husband dies, she is released from the law of *her* husband' (*katérgétai apo tou nomou tou andros*). The law of the husband has been suspended. It is no longer operative. As the passage continues, once her husband dies then she is 'freed from that law' (*eleuthera estin apo tou nomou*). The passage establishes a type of complementarity between '*katargein*'

(which is to be understood as the process of rendering inoperative) and '*eleutheros*' (free) that needs to be noted. (The specific law in question concerns adultery.) The death of the husband means that she is no longer bound by that law. It is suspended, and she is free. It is essential to be precise here, the law that is suspended is the one that pertains to adultery. And yet, as will become clear, that law becomes law in general. Prior to moving to what the analogy opens up, it is essential to stay with the way law (*nomos*) has been configured thus far in this passage. In the first instance, while law is that which is known, it is equally that from which a form of freedom is possible. In others words, there is a moment of release that occurs within the structure of law itself. It forms part of law. What is significant here is firstly the identification of the law with a specific law and secondly that what is left out of any consideration is what has already been identified as the presence of law as a transcendental condition. Underpinning the entire question of a release is that the content of the law is identified with the law itself – conflating, thereby, differences that should obtain between law as statute, law as a covering term (law as abstraction) and law as transcendental condition. Once the question of the law's suspension comes into consideration then the structure of law becomes more complex.

There are two elements at work within any instance of *nomos* as determinant: i.e. where law is an already known statute or an already given and determined convention or norm. The first is the possible suspension (thus discontinuity) or continuity of the content of a specific law. This needs to be understood as having been constructed by the twofold move in which, in the first instance, law is equated with a given statute and then, in the second, this equation were it to occur entails a literalization of the law. Here the law that binds a woman to her husband holds and is thus operable as long as the husband lives. The equation of law with content needs to distinguished from the presence of law (*nomos*) as a generality and also law as a transcendental condition. This is the law that cannot be suspended. What is being suggested therefore is that a fundamental condition of law as statute, the condition of its being law, is not located in its content *per se*, let alone the reduction of law to content, rather it is there in the specific law's potential for continuation or suspension. A potentiality which, were it to be accounted for, would necessitate showing that the presence of *nomos* as a transcendental condition is precisely what allows for this particular determination of potentiality. Moreover, the assumption that is being made, and this will become clear once the second part of the analogy is pursued, is that the overcoming of the repetition or suspension of law, where law is defined by content, is the refusal of the presence of law as a transcendental condition.

Their conflation is what has been called law's literalization: i.e. the identification of law as such a condition with a specific law, norm or a given statute.

The second part of the analogy opens with the repeated use of the term that both gives and maintains identity, i.e. *adelphoi.* As with all such constructions what is of central importance is its dependence on those who are neither named nor identified by the term (or terms) that position and define universality. In the tradition in which Plato plays a central role, as is indicated with great clarity in both the *Menexenus* and the *Republic,* those who only figure as a generated outside can always become the enemy. (It should always be remembered that one of the figures of alterity is the 'enemy'.)[8] The point made next within the overall structure of the analogy is that the 'body of Christ' is what causes the created community, a community which once created is then naturalized, to have 'become dead to the law' (*ethanatóthéte tó nomó*). (Note the passive construction.) There is an additional though nonetheless fundamentally important element that needs to be identified here; i.e. living on occurs even though this 'death' ought not endure within memory. Remembrance robs death of its finality. And yet, precisely because the process of having died can always endure as such, this capacity for endurance necessitates, as a consequence, a form of continual sacrifice that both announces and affirms the founding act of separation. The emergence of the 'new' community which it should be noted is one that cannot escape the question of memory, even though there is the assumption that it can, allows for a new 'marriage' and thus posited with it is the emergence of another conception of law i.e. statute as the literalization of law, a process which once completed is then effaced such that law becomes that which is by definition identical with statute. (It is important to maintain the question of memory and the related necessity of different forms of forgetting throughout the proceeding.)

With the death of Christ, as Paul argues, 'now we have been delivered from the law having died to what we were held by' (*nuni katérgéthémen apo tou nomou apothanóntes en ho kateichometha*). Perhaps in this context it should be noted that Luther's translation of this line is: *Nun aber sind wir vom Gesetz frei geworden und ihm abgestorben.* The significance of the translation is, of course, that Luther identifies the process, in this instance of the law being that from which 'we' have been delivered, it is thus that the law will have become inoperative, in terms of having 'died' to the law. After the law therefore, this law, the law equated with law's literalization, there is an after life.[9] Three elements of this formulation need to be noted. The first is the 'now'. The time of the 'now' (*nuni*) is underscored. This 'now' and thus the question – for whom is this 'now' what it is? – must continue to endure. Note in addition

that this 'now' recalls the 'now' announced by the chorus in the *Eumenides* as the time of the catastrophe. The caesura of allowing always occurs within while defining a given moment as 'now'. While in the context of the Christian bible the 'now' may mark the presence of the Messianic, the word's presence does not obviate the need to maintain the import of question noted above concerning the relationship between the 'now' and the 'those' for whom this 'now' is the now. Secondly, and clearly relatedly, the 'we' is constructed as a result of this 'delivery', constructed then naturalized such that its having been constructed is effaced (effacing is, of course, a form of forgetting); the 'we' is present as an act of production and thus the 'we' occurs as an after effect. Again this is a process where the naturalization of the 'we' depends upon the process of naturalization, thus naturalization as a process, having been forgotten. Only in its being forgotten would it be possible to identify the brethren as though 'born again' (*gennéthé anóthen*), which for Paul is occasioned by 'baptism' (*Romans* VI.3). Taken as such, this is the 'we', the constructed 'we', that will become the universal. However, in taking on this quality and thus in becoming the universal, that specific conception of universality cannot be separated from what positioned it in the first place.

Universality has a structural dependence on its having posited the presence of an other. Here the 'other' has a complex quality. Internally, that which will have been produced as other defines its own identity (and this is the case even if part of that self-definition stages a conflict concerning the nature of the identity in question). It should be noted that this is a self-given definition and not one that is imposed. Hence it is the identity that is simultaneously the life of a community. The context, in which it is given, the gift of the self-given, is twofold. In the first instance there would be the refusal of the law's literalization. Secondly, it would involve maintaining the relationship between law and life. Externally, however, the other is constructed as the one who holds to a law that is no longer deemed to apply.[10] The rendering inoperative of that law sanctions the becoming inoperative of those who hold it. Taken together all these elements comprise the universality of the universal. In other words, the universal has a more complex form than a mere singularity. Universality always assumes modes of exclusion and inclusion as well as the production of identities. In sum, what this means is that universality would have emerged, and this will be as much a historical as it will be a philosophical claim, as the after effect of a process and as such is only separable from that which allowed for its construction in the first place if its presence as an after effect and thus as necessarily marked by the process of its own emergence is either occluded or disavowed.

Universality, as with abstraction, is always marked in advance. There cannot be a pure event that exists as an absolute singularity. Universality and the abstract exist therefore as after effects. Neither is an original condition. Both entail modes of exclusion and the *post hoc* constitution of essential identities.

The evocation of a form of universality, there within the reiteration of *adelphoi*, is then linked to the presentation of law in terms of a distinction between a law that is defined in relation to 'spirit' and one that is subsequently identified with the 'letter'. The distinction is given temporalized markers such that there is a 'newness of spirit' (*kainotéti pneumatos*) as contrasted to the 'oldness of the letter' (*palaiotéti grammatos*). The 'new' will have superseded the 'old'. (What matters, of course, is the nature of this supersession and thus what 'old' and 'new' would mean in such a context.) While the distinction is well known what is of interest is the way in which it is positioned in relation to the construction of universality; a construction that always involves both universality and its necessary other insofar as the former comes into existence through its production of the latter and where the necessary other is itself held in place by the reiterated positing of universality. The most important aspect of the effect of the production of universality and its relation to a concern with law for this present undertaking involves the way law can be redescribed such that it is no longer taken to apply. The act of redescription necessitates the repositioning of law such that its literalization is a positioning that can only work because of the rearticulation of the law within the distinction between the spirit and letter and the new and the old. This is the transformation of law in which a division is enacted with the result that the law, once literalized, can then become no longer applicable as a result. Its failure to apply has a number of important consequences.

There are the consequences pertaining to those to whom such a conception of law already has applicability and may remain as such even though the attribution of applicability as opposed to the inapplicable, a distinction that will reappear in terms of operability and inoperability, becomes a *post hoc* attribution and thus transformation of the law in question and with it of law in general. What is of interest here is the way the inapplicability of law is interarticulated both within the distinction between the spirit and the letter and then in regards to the complex relation that law has to the means by which it is repeated. There is a close and important reciprocity between all these elements. It should be noted, in addition, that the interplay of the 'now' and the process of subjectivization is fundamental; the latter includes the construction of the 'we' that takes place simultaneously with

the exclusion of those who do not form part of the 'we', though, as has already been argued, their exclusion is integral to the construction of the 'we' as an identity. Allowing for law, even a law to have become inapplicable, a move in which its applicability will have been abandoned, is already to have a specific conception of law and subject position. In order to address what is at stake in the positioning of law in terms of the applicable and the inapplicable, a way in is provided by asking what may appear, if only initially, to be a different type of question: i.e. of what is the history of law written? Asked in this way, the question not only demands a response to the more general question of law but it also brings into consideration the subject of law; i.e. those to whom the law is present as law. As such, the question of the subject while remaining a philosophical concern would, at the same time, have become a historical one.

Law is both regulative and constructive. It constructs subjects who are then subject to the law. Indeed, it is impossible to have a conception of subjectivity that was not always already positioned by a relation to the law. (Again, the reciprocity here is inevitable and instructive.) Given that relation, and given the presence of subjectivity within the continuity of its own presence, is always present within a process of the subject's construction hence the insistence on subjectivization, it can also be argued that law itself has a necessary continuity. However, that continuity depends on maintaining a disjunctive relation between law as a transcendental condition and law as statute (equally *nomos* as an already determined convention). As has been suggested, this disjunction is effaced with the conflation of both conceptions of law, a process identified above as the literalization of law. If the disjunctive relation is maintained and literalization understood as a process, then not only does it indicate that law cannot 'die' but also there cannot be either a subject positioning which is defined by having died to the law or an equation of law with that which can cease being applicable (if, that is, law has extension beyond its identification with a given form of determination). At this particular point there needs to be a more sustained return to the distinction between these two different senses of law (*nomos*).

Law (*nomos*), be it civil law, a theologically orientated conception of law or even a convention or norm always has a determined content. Integral to the force of law are both the necessity of the relationship between law and subjectivity and the presence of law as given with a relation between the transcendental and the pragmatic. What this means is that while law positions subjects and indeed defines the subject as before the law, posed in this way the content of law is always determined even though any one given determination is inherently contestable. In other words, while law is

a necessity, a necessity grounded in the relationship between *nomos* and place as integral to any account of human sociality, the specific determinations of *nomos* (understood as both law and convention) are not necessary. What is necessary therefore is twofold. In the first instance it is essential that that there be determinations, where determinations are marked by an ineliminable form of contestability, and the second is that *nomos* endures as a transcendental condition. The history of law is the history of law's necessary determinations. Equally, that history inscribes within it the subject who becomes subject to law's determinations. The continuity of law is a result of law's retention of the ineliminability of contestation. Law lives on within and through contestability. (A set-up that also defines the process of justice.) However, once it can be argued that a fundamental aspect of law is the necessity that its content always be determined, what this then means is that such a positioning of law is constrained to leave open the possibility that a given determination, e.g. a given statue or even norm, as a consequence, can be literalized and thus naturalized (nature, once again, as the after effect of a process). The result of such a process is that the law in question is one in which iteration becomes the repetition of the always the Same. Law as the repetition of Sameness is produced as such. Law takes on the quality of the immutable. Integral to that production is that it occurs in order to close down the possibility of contestability; a possibility which, were it to be maintained, resists the hold of Sameness. Equally, such a production could occur in order that modes of alterity (including the possible identification of the other with the enemy) are themselves produced. The final element is of course that once law is positioned in this way it can be rendered inoperable.

Law loses its force as law – the already present interconnection of law and justice are integral to that force – once its is literalized. The literalization of law means that law becomes a question of policing. The necessity of law cannot be located in determinate content if that content is taken as an end in itself but in that content's potentiality for both modes of agreement and radical revision. Therefore, what is reiterated is that potentiality. That potentiality is the force of law. As such what needs to be argued is that law has both a pragmatic determination – that which is there as the locus and source of the legal decision – as well as a capacity to allow for its reworking and revision. Law's necessity is located, in addition, in the ineliminability of its presence as a transcendental condition.

At this point it becomes possible to introduce elements of Agamben's approach to Paul. The complexity and the scholarly detail of his interpretation mean that only certain aspects can be highlighted. Indeed as this project

involves noting the way it is possible to identify Paul's relation to law and justice as the countermovement to Athena, it is essential to concentrate on the way Paul's suspension of the law is presented by Agamben. Undertaking that project will involve concentrating on Agamben's interpretation of Paul's use of the verb *katargein*.[11] It figures in, for example, 1 *Corinthians* XV.24 in which the Messiah is presented as the one '*quando renderà inoperante (katargésé) ogni principato e ogni potestà e potenza*' (Agamben's translation of the Greek). (The English translation of Agamben's Italian translation is the following: 'who renders inoperative (*katargésê*) all rule and all authority and power'.) A position that reinforces Agamben's overall claim that the 'Messianic is not the destruction but the deactivation of the law, rendering the law inexecutable'.[12] There is an important reciprocity here between this process and other elements of Agamben's work. Writing in *Profanations*, for example, of a particular practice in which the profane comes to be distinguished from the secular, Agamben writes that 'profanation implies . . . a neutralization of that which it profanes'.[13] What is of interest in this formulation is the identification of a process of 'neutralization'. The profane – or profanation as an activity – is neither destruction nor critique. On the contrary, it is inextricably bound up with what may be described as the 'having become inoperative'. Such a description recalls Agamben's description of Paul's relation to the law, and it needs to be added the particularity of Jewish law and thus what happens to Jewish law (understood as a historical moment as well as involving law's ineliminable potentiality) within Paul's *Letters*.[14] These two elements are inseparable and thus cannot be thought other than always in a relation. In other words, and this will be the contention advanced here *pace* Agamben, there is no Jewish law that exists in a state of complete removal and which lives on after Paul. As though its continuity maintains it as one and the same. The opposite is the case. With Paul there is a transformation in the way that law comes to be understood. What is fundamental is what happens to the conception of law in its transformation by Paul. As was stated at the outset of the Chapter there is a real sense in which Paul is the countermovement to Athena.

With Athena what occurred was a transformation in the way justice, and therefore implicitly law (*nomos*), are understood as well as the enacting of the practices to which those transformations gave rise. What is allowed when Justice is identified with immediacy is disallowed once justice is defined by mediacy. The disallowing is, of course, not absolute. This is why the attendant nature of *statis* is so significant. *Stasis* endures generating the need both for vigilance and a constant openness to negotiation. Justice as immediacy remains. It is held within both a political as well as a cultural memory.

Paul's transformation of the law is such that the disjunction occurring within and as the literalization of the law sets up a non-relation to the extent that the literalization is both accepted and thus the occurrence of natural-ization is itself forgotten. Equally, it establishes a relation positioned within a structure of inclusion and exclusion to the extent that the law's literaliza-tion is refused. Paul's literalization of the law sets up a divide that brings with it the inevitability of the friend/enemy distinction on the one hand, while on the other allows for the incorporation of that literalization back into Judaism. In so doing, however, it provides the ground for a type of fundamentalism. (Fundamentalism is no more that a response to the sepa-ration of life and law on the one hand, and law's literalization on the other. A twofold movement that necessitates the mediating figure of the police.)

In order to take this opening a stage further, it is essential to stay with while developing Agamben's interpretation of the place and function of *nomos* in Paul.[15] For Agamben, as has already been suggested, that work occurs in relation to the process of law's becoming inoperative. In detailing Agamben's interpretation it will always be necessary to move between that interpretation and a more general claims about Paul's transformation of *nomos*. This is the process that needs a more detailed examination. The set-ting for this investigation is the central distinction drawn by Paul and whose importance is underscored by Agamben between *epaggelia* (promise) and *pistis* (faith) on the one hand and *nomos* on the other. Even at this stage it must be noted that what is set in play by this distinction is a domain of individual actions, beliefs, etc., – and their having been contrasted to law. That separation is decisive. It is in terms of this distinction that *nomos* loses both its link to convention though more importantly loses its place as a locus of contestability. As such *nomos* is individualized and therefore is no longer defined by a setting created by *being-in-place* and *being-in-common*. (The latter, the loss of definition, has of course already occurred through Paul's uses of the term *adelphoi*.)

Agamben cites one of the central passage from *Romans* that sets this opposition in play:

> For the promise that he should be the heir of the world was not to Abraham or his seed, through the law but through the justice of faith (*dikaiosunés pisteós*). (*Romans.* IV.13)

Faith undoes the law. It renders it inoperative. This is of course the argu-ment of the lines that follow (i.e. *Romans* IV.15). For Agamben this gives rise to an aporia marking *nomos*. The aporia is insistent firstly because of the

opposition between *epaggelia* (promise) and *pistis* (faith) on one side and *nomos* on the other and secondly that despite the presence of that opposition, one that should have led to the unequivocal overcoming of law (*nomos*), Paul still argues faith does not make the law 'inoperative', as though that is all that can be said. On the contrary, as he states in *Romans* III. 11–12, 'we hold the law firm'. The formulation here is fundamental. The law's survival depends upon its being held. As though continuity were the result of human action. Equally, it should be noted in addition that Paul could only make a point of this nature if law is given a status that is secondary in relation to the promise. The 'promise' precedes law. As such, the promise here works to undo law as a transcendental condition by defining it is a pragmatic determination preceded by the promise. Equally, however, *nomos* always precedes individuals such that the individuals' relation to *nomos* is always an after effect of its pre-existent quality. Once the promise is given priority and reciprocally law is then secondary both temporally as well as in importance then this provides further evidence of law's literalization. While Agamben does not note the way Paul's formulation of the aporia depends upon the literalization of the law, it is in fact precisely this process and its consequences that Agamben is in fact tracing.

Prior to introducing his own analysis of *katargein,* Agamben draws a number of the terms concerning the way *nomos* figures within Paul together in a decisive way. His argument involves the following elements. By utilizing a distinction already established by Paul between laws as it pertains to commandments and law as it is lived out, this allows Paul, as Agamben notes, to distinguish between *nomos pisteós* (the law of faith) and *nomos tón ergón* (law of works). This leads to the creation of a setting in which the consequence of the division is that it allows one conception of law to have been rendered inoperative. (It needs to be noted, however, that it is precisely the conception of law that is subject to such a process that is then reinscribed as the basis of legal fundamentalism.) In relation to this distinction between faith and law, Agamben writes in a long and central passage that:

> There is something in the law that constitutively exceeds the norm and is irreducible to it, and it is this excess and this inner dialectic that Paul refers to by means of the binomial *epaggelia/ nomos* (the first corresponding to faith, the second to works). This is how in 1. *Corinthians* 9:21 having stated that he made himself *hós anomos* 'as without law' along with those who are without law (meaning *goyim*) he immediately rectifies this affirmation specifying that he is not *anomos theou* 'outside God's law' but *ennomos christou* 'in the law of the Messiah'. The Messianic law is the law

of faith and not just the negation of law, this however, does not means that substituting the old *miswoth* with new precepts: rather it means setting a non-normative figure of the law and against the normative figure of the law.[16]

This passage stages a number of moves that make possible firstly for a deeper understanding of Paul's undertakings and secondly to identify in greater detail elements central to Agamben's interpretation of Pauline *nomos*. The initial interpretive question is what is meant by a 'non-normative figure of the law'. This is the question that causes Agamben to identify the presence of a process that results in what is then taken to be law's inoperability. Prior to pursuing Agamben's argument, it still needs to be noted that the 'non-normative' conception of the law, for Agamben, presupposes the introduction of the Messianic. In other words, the non-normative is that which results from the caesura of allowing that Paul stages and which is taken as contemporaneous with the arrival of the Messiah. For Agamben, in the wake of Paul, 'the Messiah has already arrived, the Messianic event has already happened'.[17] Hence Paul's questions are for Agamben 'our' questions. The questions are the following:

> What does it mean to live in the Messiah and what is the Messianic life. What is the structure of Messianic time?[18]

Establishing the frame of reference within which it is possible to answer such questions means, for Agamben, recognizing that the Messianic law is not given by an act of negation; on the contrary, it marks both a fundamental shift in the locus of law as well as law's bifurcation. (The latter is of course that which allows for the emergence of the aporia already identified by Agamben.) What is of concern here, however, are the presuppositions and consequences of that shift. The point of disagreement with Agamben therefore is not based on the centrality of the argument that, with Paul, law becomes inoperative. (While it may be an unnecessary caveat it is essential to remember that what is in fact rendered inoperative is not law *tout court* – as if there were such a thing! – but a certain configuration of Jewish law.) Rather, the point of differentiation concerns the way these presupposition and entailments are presented. This does not occur within Agamben's analysis with the acuity that their exigency demands.

Fundamental to Agamben's interpretation of the process marked by the term *katargein* is not just that it involves inoperability but that it does so by drawing on an already present distinction in Greek thought between

potentiality and impotentiality (Agamben identifies a source in Aristotle – *Metaphysics* 1019b9–10, 1046a32). The operation of this distinction here is that in the first instance, for Agamben, in relation to *nomos* it is such that,

> the power of the promise was transformed was transposed onto works and mandatory precepts, so does the messianic now render these works inoperative; it gave potentiality back to them in the form of inoperativity and ineffectivity. The messianic is not the destruction but the deactivation of the law, rendering the law inexecutable.[19]

For Agamben therefore the fulfilment of the law is its having become inoperative. What is of interest, however, is that, *pace* Agamben, the fulfilment, the *pléróma*, of the law depends upon its literalization.

This position in which suspension and fulfilment coincide is explicated by Agamben in terms of Carl Schmitt's conception of the 'state of exception'. Agamben is precise on this point. What he is concerned with is 'the state of law under the effect of the Messianic *katargésis*'. That this concern is explicable in Schmittian terms is based on Agamben's reformulation of Schmitt's own position. Agamben identifies three defining aspects of the 'state of exception' in Schmitt which are then mapped back onto Paul's positioning of the law as having become inoperative. Prior to any attempt to engage with his claims concerning *nomos,* it is essential that the repositioning of Paul in terms of the state of exception be noted. The defining characteristic of the state of exception, in Agamben's reading of Schmitt, is that because the sovereign has the capacity to suspend the law, the sovereign is, as a result, both 'inside and outside the law'.[20] Secondly, within the 'state of exception', thus construed, there is no clear distinction between the observation of the law and its transgression. What this means is that once the only force the law has is in its suspension, the distinction between the permissible and the impermissible is no longer straightforward. In sum, within the state of exception the law 'coincides with reality' and as such the law becomes unobservable and equally 'that unobservability is the originary figure of the norm'.[21] Finally, within the state of exception the law does not have a precise positive determination insofar as it only exists in its suspension. The suspension of laws blurs the distinction between the licit and the illicit, and in so doing, there are no new norms rather the law holds in its 'unformulability'. Agamben takes these elements that define the 'state of exception' and connects them to the interpretation of Paul as having rendered law inoperative. The latter occurs within what Agamben describes as 'the horizon of Messianic *katargésis.*'[22]

The relation between Schmitt and Paul, for Agamben, involves the argument that what occurs with the Messianic *katargésis* is a shift in subject position; this is a move within the process of subjectivization. What had been a straightforward distinction, as it occurs within this mode of argumentation, between Jew and non-Jew comes undone. Agamben argues in relation to 1 *Corinthians* IX.21 that what emerges is the position of the one who is 'not-not in the law'. The most germane part of that section of text for this current concern is the following:

> as without law (*anomos, senza legge*), not without the law of God, but in the law of the Messiah so that I win over the lawless (*tous anomous/i sense legge*).[23]

Such a position is the result of the posited actualization of the Messiah. Once linked to the distinction between 'spirit' and 'flesh' that divides 'Jew from non-Jew', then at the same time as there is this division a further one is introduced. It causes a division within the division such that there is, for example, both a Jew according to spirit as well as one according to the flesh. This enacts a division within the division between Jew and non-Jew. This division leaves a 'remnant'. For Agamben the significance of this position is that it cannot be defined in terms of either Jew or non-Jew. The remnant is the subject who does not 'coincide with himself'.[24] This, for Agamben, is the Messianic politics of Paul. His conclusion makes this clear.

> The people is neither the all nor the part, neither the majority nor the minority. Instead it is that which can never coincide with itself, as all or as part, that which infinitely remains or resists in each division, and, with all due respect to those who govern us, never allows us to be reduced to a majority or a minority. The remnant is the figure, or the substantiality assumed by a people in a decisive moment, and as such is the only real political subject.[25]

What this means is that the 'political' subject is the figure of pure neutrality. Not the neutrality of abstraction, rather the neutrality of the non-identical: what might be called *homo neutralis*.[26] What has to be pursued is the viability of this subject position. While pursuing such a positioning, one that conflates, without acknowledgment, the 'real political subject' with *homo neutralis*, what needs to be remembered is that Agamben's argument commits him to such a possibility.

What is important in the division within the division is that it defines two different modes of being a Jew, that are given as oppositional; one

positioned in relation to the law and then the other positioned in relation to belief and faith. This distinction opens up the possibility of a relation to being a Jew that is on the one hand not defined by law, and thus within which it is possible to argue that the law has become inoperative while, the other would be defined by the centrality of law (and within which there would be a concomitant undoing of an always already present interrelationship between law and life). However, this is to simplify the positioning and in so doing fail to understand the way in which the division within the division is in fact possible. What has actually occurred is the following. To the extent that *nomos* can be separated from structures of belief, it would therefore follow that the law had been separated from life and, in being separated, has been literalized. As such, law then emerges as having a three-fold quality. In the first instance, it has an arbitrary relation to life. Second, precisely because that relation is arbitrary, the relationship between law and life would then have to be enforced. Law, therefore, cannot be thought other than in relation to policing. (It is the link to the policing of law that provides a way into understanding the possible presence of law as immutable which, as has already been suggested, is an integral part of the basis of religious fundamentalism.) The final element is that law, and more significantly the history of law, will no longer be the history of dispute and contestation where both are understood as integral to law and, in part, constitute the force of law. Again, law would exist in its radical separation from life and thus from *being-in-common* and *being-in-place*. As a result the potential in *nomos* for a continual oscillation between law and convention would have vanished and law would be equated with an isolated statute demanding its own being policed.

Once what is involved is a conception of the law that is positioned in opposition to faith, this provides the setting in which law's inoperatibility needs to be situated. For Agamben what is at work here is that instead of viewing the law as that which does not have application, it is rather than in applying itself disapplying itself. This is the result of faith. The fusing and the refusing of law introduces 'faith' 'rendering law inoperative while carrying it to its fulfilment'.[27] It should be noted that Agamben's position that 'justice without law' (*dikaiosuné chóris nomou*) is not the negation of law, but the realization and fulfilment, the *pléróma*, of the law' cannot be right. That movement is the literalization of law. Only then is it possible to go on and argue that the law has been fulfilled and thus brought to an end.[28] There is, however, far more to the operation of fulfilment that the simple link to a relationship between law and belief. 'Fulfilment' has to be positioned in relation to 'love'. This is the decisive moment; one with its own

unrelenting necessity. Paul claims in *Romans* XIII.8 'for he that loves another has fulfilled the law' (*ho gar agapón ton heteron nomon pepléróke*). Again, at *Romans* XIII.10 where it is announced that not doing wrong to another means that 'love is the fulfilling of the law' (*pléróma oun nomou hé agapé*). It is the incorporation of love that gives force to any claim about 'the law of faith' as an end point that introduces the aporia that marks law's inoperability. Indeed, it stops the law of faith from its own impossibility; an impossibility marked by the recognition that *nomos* cannot be a matter of faith but rather a matter of life. Hence, the 'law of faith' is only possible if law has an externality that locates its relation to a subject, the subject position given in and for faith, as inherently arbitrary. Moreover, the fulfilment of the law, thus the presence of law as both arbitrary and no longer integral to contestability within and as life, reintroduces a version of the distinction between mediacy and the immediate.

The possibility of 'justice without law' (*dikaiosuné chóris nomou*) cannot be taken on face value. The question that must be adduced concerns the transformation of justice in its being able to be defined as 'without law'. Again there is an important reciprocity here. It inheres in the following question: What happens to law once it can be said to occur, thus to take place, in its separation from justice? While the passage (*Romans* III. 21 *passim*) goes on to argue that this is 'witnessed by the law and the prophets', it remains the case that here is the very separation of justice and law against which Athena worked. However, what is at stake is not justice as mediate, mediated by the process of a decision that endures as inherently contestable, but the 'justice' of 'God'. Athena's act, the caesura of allowing that she stages, has precise determinations. Within it, she takes over a form of inoperability by opening a setting in which law and justice would henceforth be defined in relation to decisions that were inherently contestable and demanded maintaining the place of the decision. Maintaining, such a place is part of the defence of democracy itself. Her act causes a relationship to be established (a relationship rather than an effective separation) between justice and law that leaves open the content of the subject matter of contestation and dispute; a relationship occurring in the name of justice and not in the name of God. Paul's act of separation of justice and law in *Romans* III.21 is an act of suspension which could equally be described as establishing the state of exception that is to be contrasted to Athena's.

The further point to be made in relation to this connection of justice and law is that, as has been noted, the separation of justice and law is an act that reintroduces the link between either law or justice on the one hand and immediacy on the other. The separation is secured by 'love'. Love operates

in a twofold way. In the first instance it secures law's inoperability, while simultaneously locating universality within the immediacy of love – an immediacy that can, of course, always be withheld and applied as needs dictate. In other words, it is a putative form of universality that insists on its being as universal (and thus as refusing particularity) while always allowing for the withdrawal of love, a withdrawal caused by the identification of a particular whose particularity – hence it is the construction of the particular – as no longer held by the structure of love. Precisely, because the interplay of justice and law is mediate and contestable, it brings into play a conception of subjectivization that allows for particularity. Love cannot. Hence love has to announce the moment where justice is no longer the province of citizens. The response to such a situation involves two elements (at the very least). The first draws on what has already been identified as the force of law, a set-up that involves the interarticulation of law's inescapability, and therefore positioned by the relationship between the transcendental and the pragmatic on the one hand, and *being-in-common* and *being-in-place* on the other. The second element involves the resistance to the posited process of subjectivization that threatens the setting of justice by the intrusion of a conception of universality to which there can be no response other than by reinforcing the given designation of 'enemy'.

Concluding involves a twofold move. They are the result of this investigation of Agamben's interpretation of Paul as well as Paul's own suspension of the law and the necessity resulting from such an undertaking, namely, to hold, both after Paul and in response to Paul, to the separation of law and love in the name of justice. In the first instance identifying the decisive elements in what has emerged thus far and in the second noting and then passing beyond an interpretive stance that Agamben takes in relation to the conception of the Messianic in the writings of Walter Benjamin.

In regards to the first, Agamben's interpretation of Paul, specifically in relation to the process of law (*nomos*) becoming inoperable fails to grasp the conditions allowing for this to be the case. As was argued, that condition is law's literalization (itself a repositioning of law that brings a number of attendant consequences with it). Literalization breaks the connection between law and life – a rupture, as has been intimated, that brings about a disjunctive relation between *nomos* and *being-in-common* and *being-in-place*. In the case of Athena and the caesura of allowing that was staged by the affirmed interconnection between justice and democratic decision making what endured was the possibility of a return to the interconnection of Justice and divine retribution. As a result, democracy had to inscribe within it what would undo it. The Errinyes recognized this as the case, hence their

identification of the continual possibility of 'civil strife'. That possibility is remembered by the democracy. Indeed, it ought not to be forgotten. In regards to Paul's rendering of the law as inoperative that process had to be forgotten. The literalization of the law stages law as natural. Naturalization as an after effect is itself repressed. The difficulty is that as the process involves modes of subjectivization what is essential is that those for whom the law was operable and for whom it had a foundational relation to life must not be able either to remember or be remembered. They must be subsumed by differing modalities of universalization. Love will efface particularity. Moreover, love demands the reintroduction of immediacy precisely because love must be unequivocal, while justice, because it is linked both to the decision and to contestability, will always demand mediacy. Mediacy allows for particularity. Again, love's effacement of particularity is immediate.

Despite the detail of Agamben's analysis of Paul the actual place of love, its relation to universality and what has been described as the literalization of the law remains unnoticed. In the end there is an overall reason why this is the case. There is an implicit agreement within his project of the production of a conception of subject that will never 'coincide with itself'. In the guise of a form of anti-essentialism what endures is the essentialism of neutrality. Agamben's writings on Paul announce the philosophical impossibility at the heart of his project of thinking what might be described as a metaphysics of particularity. That Paul was constrained to think it and then to stage the caesura that renders particularity impossible is the triumph of love: a project that is abetted by the necessity within Agamben's work for the retention of *homo neutralis*.

In regards to the location of the Messianic within the work of Walter Benjamin Agamben argues the following – note that he draws on a particular passage from Benjamin's *On the Concept of History*:

> The Messiah has already arrived, the Messianic event has already happened, but its presence contains within itself another time, which stretches its *parousia*, not in order to defer it but on the contrary to make it graspable. For this reason, each instance may be, to use Benjamin's words, 'the small door through which the Messiah enters'. The Messiah already had his own time, meaning he simultaneously makes time his and brings it to fulfilment.[29]

Benjamin's own argument concerning the 'straight gate' assumes precisely that this is not the Messianic age and that such a possibility is always

'to come'. The 'to come', however, is a condition of the present and thus not of the future. As such, the present holds open the possibility for its own fulfilment. However, the fulfilment is not an opening defined as a singular event but the continuity of an opening. It needs to be thought in terms of caesura of allowing, one that recalls Athena rather than Paul. In addition, it enjoins a complex cultural politics as opposed to an event that is both singular and transformative. For Benjamin therefore, because every moment is 'the small door through which the Messiah enters' the Messiah has not arrived, the 'day of judgment' has yet to occur. Indeed that day needs to be understood as deferred. Moreover, the postponement of the last day creates the necessity to take up the quality of the present.[30] The present is disclosed as the place in which a concern for the 'living' is evinced. Indeed the disclosure of that place, the incorporation of a spacing, a fold that interrupts chronological time and interrupts the work of fate, is the place given by the deferral of the Messianic in the name of the interplay between the possibility of radical interruption and a concern for justice – a site whose tension, the tension in which an actual 'emergency' is always possible, precisely because it is determined by justice, would be ruined by the flattening of the latter's force through fateful profferings of love. The gate's threshold has yet to be crossed. It is simply too early for love. Justice is yet to be obtained.

Notes

Introduction: Measure Places

[1] A lengthier discussion of these *kata* constructions occurs in Chapter 2. Their role in Heraclitus is to locate the sense of measure in relation to which the totality of what there is, is to be defined. Hence the project of Fragment 1 is to suggest in the first instance that everything takes place *kata ton logon* – i.e. in accordance with *logos* (where *logos* is understood as a regulative principle) and, second, that wisdom is the recognition that this is the case.

[2] It should be noted that there is one philosopher whose prolific work in the area on Ancient Greek philosophy and literature has not been taken up in any great detail, namely, Heidegger. While there is a brief discussion of Heidegger in the context of the engagement with Sophocles and Derrida in Chapter 6, his work does not figure. While it would necessitate a separate volume to indicate why this is the case, straightforwardly it involves the following: The two key terms central to the organization of this project are *being-in-place* and *being-in-common*. Both assume the presence of what will be described as a relational ontology. Relationality positions the individual human especially abstract human being as an after effect of dynamic relations. Neither this conception of the being of being human nor such a conception of relationality and thus commonality are compatible with Heidegger's overall philosophical project. Here Ancient Greek Philosophy and literature provides the focus in which a different philosophical project is being developed. I have engaged systematically, albeit critically, with Heidegger on a number of occasions, see *The Plural Event*. Routledge. London. 1993. Pages 134–165. *Present Hope. Philosophy, Architecture, Judaism.* Routledge. London. 1997. Chapter 2. Who Dwells? Heidegger and the Place of Mortal Subjects. *Pli: The Warwick Journal of Philosophy.* Vol. 10. 2001. *Of Jews and Animals.* Edinburgh University Press. Edinburgh. 2010. Chapter 4.

[3] Original publication details are as follows:

Chapter 2: Commonality and Human Being: Working through Heraclitus. *Angelaki.* Vol. 11. No. 3. 2005. Pages 5–19.

Chapter 3: Spacing as the Shared. Heraclitus, Pindar, Agamben. In Andrew Norris (editor) *Work and Death. Essays on 'Home Sacer'.* Duke University Press. Durham. 2005. Pages 145–172.

Chapter 4: Political Translations: Hölderlin's *Das Höchste.* In Alexandra Lianeri (editor) *Translation and the Classic.* Oxford University Press. Oxford. 2008. Pages 38–52.

Chapter 5: Placing Speaking: Notes on the First Stasimon of Sophocles Antigone. *Angelaki: Journal of the Theoretical Humanities.* Vol. 9. No. 2. 2004.

Chapter 6: Possible Returns. Deconstruction and the Placing of Greek Philosophy. In Miriam Leonard (editor) *Derrida and Antiquity*. Oxford University Press. Oxford. 2010.

Chapter 1

[1] While not argued for explicitly, integral to this project is an attempt to establish a critical distance from recent philosophical work that takes Paul as its point of departure. Despite protestations to the contrary, such works precisely because of their dependence on universality – a universality that is only ever there in name however – become, as a consequence, the most recent expression of Christian philosophy. See in particular A. Badiou. *Saint Paul: La Fondation de l'universalisme*. Presses Universitaires de France. Paris. 1998.

[2] G. Agamben. *The Time That Remains: A Commentary on the Letter to the Romans*. Stanford University Press. Stanford. 2005. Chapter 7 will be devoted to an engagement with Paul that works through Agamben's important book. While Agamben correctly interprets Paul's relation to Judaism in terms of the latter's having been rendered inoperative – in part this is the position arrived at though a detailed study of the meaning and use of the Greek verb *katargein* – what Agamben neglects to show is that the suspension or rendering inoperative can only occur after the law has been made literal.

[3] I offer a detailed argument for taking up the question of Jewish identity as in part involving the construction of the Jew's figured presence, hence the figure of the Jew in my *Of Jews and Animals*. Edinburgh University Press. Edinburgh. 2010.

[4] References to the *Oresteia* are to the Loeb Classical Library Edition. Aeschylus. *Oresteia*. Translated by Alan. H. Sommerstein. Harvard University Press. Cambridge. 2008. In regards to the *Eumenides*, Podlecki's edition has also been consulted. See Aeschylus. *Eumenides*. Edited with an Introduction, Translation and Commentary by Anthony J. Podlecki. Aris & Philips. Warminister. 1989.

[5] This is a term that will be clarified in the proceeding chapter. Nonetheless, what is meant by the term 'caesura of allowing' is an interruption that occasions. What is occasioned, however, is not determined by the interruption. What the caesura stages therefore is an opening and thus a place of work.

[6] Behind this argument are two texts by Walter Benjamin that play a pivotal role in how the *Oresteia* is being interpreted here. They are 'Critique of Violence' and 'The Meaning of Time in the Moral Universe'. Both appear in *Walter Benjamin Selected Writings. Volume 1*. Harvard University Press. Cambridge. 1996. Pages 236–253 and 286–288, respectively. These texts form part of a detailed study of Benjamin's politics which will appear in my *Working with Walter Benjamin*. Edinburgh University Press. Edinburgh. (Forthcoming).

[7] The position being developed here in relation to commonality and place has been stimulated by the two most significant interventions in this area, namely, Jean-Luc Nancy. *La Communauté désœuvrée*, Christian Bourgois. Paris. 1986 and Jeff Malpas. *Place and Experience: A Philosophical Topography*. Cambridge University Press. Cambridge. 1999.

8 It is interesting to note that this position recalls the original status of Athena. A. M. Bowie points out the significance of this positioning in relation to a contemporary audience's perception of Athena on stage. He argues that the 'presence of Athena on stage is a reminder to the audience that, in the foundation legend of their city, she defeated the elder Poseidon to become its patron'. (18) See A. M. Bowie. Religion and Politics in Aeschylus' Oresteia. *The Classical Quarterly. New Series.* Vol. 43. No. 1. 1993. Pages 10–31.

9 What is at stake here is not human being as an abstraction from specific human beings or even human being as a singular entity. Rather, what is involved is the being of being human – in other words, that which marks and defines that which is proper to the being of being human.

10 I have presented an argument for the centrality of the forms within Plato in my A Missed Encounter: Plato's Socrates and Geach's Euthyphro. *Grazer Philosophische Studien.* Vol. 29. 1987. Pages 145–170. Nonetheless, there are moments, such as the one that will be discussed at a later stage in this chapter, that can be read as introducing another quality into the Dialogues.

11 There are, of course, other interpretations of the role of Athena. For example, Mark Griffith Brilliant Dynasts: Power and Politics in the 'Oresteia'. *Classical Antiquity.* Vol. 14. No. 1. 1995. Pages 62–129). Griffith argues that in 'inviting Athena in particular to protect Orestes in his legal and religious entanglements, Orestes and Apollo are thus not only engaging the wisest arbiter and most enlightened democratic city of all Greece but they are also taking discreet – but in the event decisive – advantage of the privileged position within the old-boy (and old girl) network' (97). The difficulty with this interpretation is twofold. In general terms it is too contextual. In addition, it fails to register the fact of Athena's own self-undoing.

12 Support for this position can be found in the work of Nicole Loraux. See in particular Chapter 4. 'Le lien de vivison' of her *La cite divisée: L'oubli dans le mémoire d'Athènes.* Editions Payot. Pris. 1997.

13 For an examination of the question of subjectivity and its relation to tragedy and for the important argument – one that in different terms sustains this project – that 'examining the subject of antiquity represent a powerful intervention into contemporary debates about agency and the modern citizen' (141), see M. Leonard. Tragic Will and the Subject of Politics. *Phoenix.* Vol. 59. No. 2. Pages 133–141.

14 In this regard, see Pascal's Pensée 'Justice, Force'. Number 103 in Blaise Pascal. *Pensées.* Éditions de Seuil. Paris. 1962.

15 The fact that Athena participates in the voting procedure (*Eumenides*) that is the practice by which citizens decide the guilt or innocence of specific individual has to be understood, first, as the enactment of her own disempowerment and then, second, to being an affirmation of the suspension of justice as immediate and its replacement by a conception of justice as necessarily immediate.

16 See M. Gagarin. Early Greek Law. In M. Gagarin and D. Cohen (editors) *Cambridge Companion to Ancient Greek Law.* Cambridge University Press. Cambridge. 2006. Page 83.

17 David Cohen presents a position that is quite different to the one presented here. He argues the following in relation to what has been described here in terms of a suspension.

> There is a new order, that is not to be denied, but its character is the question . . . In the Oresteia the human order mirrors the divine, and every character in the trilogy, from Agamemnon, Clytemnestra, Aegisthus, and Orestes, to Apollo and Athena, justifies his or her actions by reference to the justice of Zeus the visitor and the violent transformation of the divine order that brought him to power. (139) (D. Cohen. The Theodicy of Aeschylus: Justice and Tyranny in the Oresteia. *Greece and Rome. Second Series.* Vol. 33. No. 2. 1986. Pages 129–141)

The interpretation that follows indicates that the Gods are clearly aware that there is a radically different order. Even if there were to be a subsequent attempt to ground it in a way that maintains the centrality of the Gods, not only would such an undertaking be itself the site of a contestation that is not resolvable by the simple reiteration of the position of the Gods but more importantly it is also too late. The recognition of this situation – the recognition by the Furies – will form the basis of the interpretation of lines 976–984.

[18] For a more general argument concerning the repositioning of justice in the *Oresteia*, see J. Peter Euben. Justice and the Oresteia. *The American Political Science Review.* Vol. 76. No. 1. 1982. Pages 22–33: 'Justice exists when men and women are part of a whole larger than themselves. To think and act justly requires acknowledging the need for a unity of difference' (29).

[19] This possibility emerges in the context of Sophocles' *Antigone*. It is taken up and discussed in much greater detail in Chapter 5.

[20] It is interesting to note that questions that are orientated away from examples and towards the 'essence' (*ousia*) of 'justice', 'piety' etc. are identified as fundamental to the Platonic project by Dodds in his commentary on the *Gorgias*. Dodds identifies this question as *ti*-questions and contrasts them to *poion*-questions. This distinction is discussed here in the context of the interpretation of Heraclitus developed in Chapters 2 and 3. See E. R. Dodd. *Plato Gorgias.* Oxford University Press. Oxford. 1979.

[21] The question of the stranger and the relationship between the stranger and nomos will be one of the points of focus in Chapter 6. Derrida's reading of *Oedipus at Colonus* depends upon an interpretation, one that will be contested, of the stranger as outside the law. Derrida draws on Oedipus' use of the term *anomos*. The argument advanced in Chapter 6 will be that while it may be true that the term *anomos* has the quality Derrida wants if law is equated with statutes or specific conventions, it is no longer the case once *nomos* is defined in relation to the primordiality of *being-in-place* and *being-in-common* (where the latter are taken to stage potential as well as actual relations).

[22] While the possibility of the individual or even the violent act as being outside the law is challenged in the critical engagements staged in Chapters 3 and 6 in regards to Agamben's interpretation of Pindar in the first instance and Derrida's interpretation of Sophocles in the second, it is a position with a pervasive ubiquity. For another forceful expression of this position, one that must have exerted a strong influence on Derrida, see M. Blanchot, La mesure, le suppliant. *L'entretien infini.* Gallimard. Paris. 1969. Pages 132–136. Another counter to the position that can be linked to Derrida and Blanchot – a position that has a resonance in the work of Schmitt – can be found in §50 of Kant's *The Metaphysics of Morals* in the sense that Kant attributes to the 'lord of the land' the right to exile

(*ius exilii*). The significant point is that the 'outlaw' (*vogelfrei*) that results from this act is a subject position that is produced. In other words, the outlaw is not an original produced; it is a position that occurs through a sovereign act. As such it is potentially contestable where the ground of contestation would be the already present set-up defined by *being-in-common* and *being-in-place*. See I. Kant. The Metaphysics of Morals. In Mary J. Gregor (editor) *Practical Philosophy. The Cambridge Edition of the Works of Immanuel Kant.* Cambridge University Press. Cambridge. 1999. Page 478. (German edition: *Kants Werke. Akademie Textasugabe* Band VI. Walter de Gruyter & Co. Berlin. 1968. Page 338.)

Chapter 2

[1] The following editions of the fragments have been consulted: M. Conche. *Héraclite Fragments.* PUF. Paris. 1986. C. Kahn. *The Art and Thought of Heraclitus.* Cambridge UP. Cambridge. 1987; M. Marcovich. *Heraclitus.* The Los Andes UP. Merida. 1967. The translation used is, for the most part, the one established by Charles Kahn. The numbering of the fragments follows H. Diels and W. Kranz. *Die Fragmente der Vorsokratiker.* 3 vols. Weidmann. Berlin. 1961. In addition, this chapter draws on and develops earlier work I have done on Heraclitus. See in particular Time and Interpretation in Heraclitus. In A. Benjamin (editor) *Post-Structuralist Classics.* Routledge. London. Pages 106–131; and Raving Sybils, Signifying Gods: Noise and Sense in Heraclitus Fragments 92 and 93. *Culture, Theory and Society.* Vol. 46. No. 1. 2005.

[2] While it cannot be pursued, what is at stake here is a critical engagement with the implicit conception of human being within Heidegger's treatment of death in his *Being and Time* (M. Heidegger. *Being and Time.* Translated by John Macquarie and Edward Robinson. Basil Blackwell. Oxford. 1978; M. Heidegger. *Sein und Zeit.* Max Niemyer Verlag. Tübingen. 1979.)

[3] I. Kant. *Critique of the Power of Judgment.* Translated by Paul Guyer and Eric Matthews. Cambridge University Press. Cambridge UP. 2001. Pages 173–174 (*Kritik der Utreilskraft, Werkausgabe Band X.* Frankfurt am Main. Suhrkamp. 1974. Page 225.)

[4] It should be noted that in the 'Première Partie' of his *Discours de la méthode*, Descartes begins by invoking the question of the shared. While his argument will lead to establishing the necessity of a method for establishing truth, part of the viability of such an approach is that what all humans share is '*la puissance de bien juger.*' See *Oeuvres de Descartes.* Charles Adam and Paul Tannery (editors). Librairie Philosophique J.Vrin. Paris. 1996. TomeVI, 2.

[5] The interpretation of Kant's conception of the 'sensus communis' that has exerted the greatest influence on the analysis presented here is Lyotard's. See his 'sensus communis'in Jean-François Lyotard. *Misère de la philosophie.* Galile. Paris. 2000.

[6] The clear instance of this form of argumentation is developed by Plato in the *Phaedo* 100a1-c5. The position worked out is that the *eidos* is the cause (*aitia*) of the beauty of the beautiful thing. Causation works through the process of participation. Nonetheless, an entity is beautiful if and only if the 'form' of beauty causes it to be beautiful.

7 While it may pre-empt the argument to advance in the pages that follow, this position can be summarized as follows. The *logos* named in Fragments 1 and 2 needs to be set against the conception of opinion presented, for example, in Fragment 17. Starting with 17, the argument is that the failure to recognize the nature of things is because knowledge is taken as arising from the individual, and therefore self-knowledge would be the basis of knowledge. Hence, the opinions of individuals are given primacy. Counter to opinion is not *logos* as science but the recognition that there is a regulative principle (or principles) in relation to which things occur, and therefore there are transcendental regulative principles that form the basis both of what is known and of its being known. Within the fragments, this position is articulated in terms of propositions that involve the use of the preposition *kata*. Hence, in Fragment 1, when Heraclitus claims that everything occurs *kata ton logon*, what he is arguing is that the *logos* is the regulative principle that accounts for what there is. The nature of these regulative principles (and it should be noted that Heraclitus uses the same formulation in relation to both *eris* ('conflict') and *diké* (justice) are to be understood as transcendental conditions.

8 On the substitution, see M. Conche, page 63, and Charles Kahn, page104.

9 Aristotle, *Politics* 1253a37.

10 M. Conche 57–59.

11 The term 'king' is central to Pindar Fragment 169a, which forms a focal point in both Chapters 5 and 6. It should be clear that in the case of both Heraclitus and Pindar, 'king' (*basileus*) cannot be explicated simply in terns of an autocratic rule. For Heraclitus, *logos* as well as *polemos* can be ascribed the quality of king, while for Pindar *nomos* is 'king'. What is meant by these identifications is the project that is being worked in Chapters 3, 4 and 5.

12 P. Pucci. *Hesiod and the Language of Poetry*. John Hopkins UP. Baltimore. 1977. Pages 45–60.

13 The understanding of fire as both a cosmological principle and a possible literal presence is projected back onto Heraclitus during the Renaissance. For example, in 1499, Polydore Vergil in *On Discovery* (*De Inventorbius Rerum*) suggests that while Thales thought the 'initium rerum" was indeed water, Heraclitus believed it to be 'fire'. See P. Vergil, *On Discovery*. Edited and translated by Brian P. Copenhaver. Harvard UP. Cambridge, MA. 2002. Page 39.

14 The difference between the Platonic use of *aei* and the use found in Heraclitus is fundamental here. In the *Cratylus*, the nature of the *ousia* of a name, hence the ontological quality of the form/idea, is described as 'always the same as itself', *aei estin hoion estin* (439d). In other words, the *ousia* or 'essential being', that which the name names, must be always the same as itself. The 'always' (*aei)* in question is the eternal nature of the form. It is its eternal and thus unchanging quality that defines the object of philosophical research.

Chapter 3

1 One of the key texts here is, of course, Jacques Derrida. *Khora*. Galilée. Paris. 1993.

2 This chapter was first published as Spacing as the Shared. Heraclitus, Pindar, Agamben. In A. Norris (editor). *Work and Death. Essays on 'Home Sacer'*. Duke University Press. Durham. 2005. The focus at that time was directly on the work of Agamben. The paper has been rewritten for this present project in order to establish terminological consistency with the project as a whole. While Agamben's work is still central to the project, it has become the means by which to develop the way 'law' and 'justice' are at work within aspects of Greek thought and how that work is interarticulated with what has already been identified as *being-in-common* and *being-in-place*. A similar strategy will be deployed in relation to Derrida in Chapter 6 and Agamben again in Chapter 7.

3 The question of sovereignty would become far more complex if the arguments advanced by Foucault in *Il faut defender société* (Gallimard. Paris. 1997) had been taken up. Foucault's argument is that sovereignty as a category loses its hold in the modern period. What becomes important is the move from sovereignty as a general theory of the nation or a people to a conception of power and the establishing of subject positions that works with a theory of the heterogeneous rather than in terms of unitary forms.

4 Agamben's philosophical writings have developed over a period of time. In this chapter, concentration will be focused on his 1995 work *Homo Sacer: Il potere sovrano e la nuda vita*. Giuilo Einaudi editore. All reference will be to the 1997 English translation by Daniel Heller-Roazen. *Homo Sacer. Sovereign Power and Bare Life*. Stanford University Press. Stanford. Page numbers will be included in the body of the chapter. For a sustained critical engagement with the text as a whole, see Peter Fitzpatrick. Bare Sovereignty: Home Sacer and the Insistence of Law. *Theory and Event*. Vol. 5. No. 2. 2001.

5 Once again in order to provide the easiest point of access, the Diels numbering system has been used. The translation by Kahn (*The Art and Thought of Heraclitus*. Cambridge University Press. Cambridge. 1979) remains the main point of departure. Other editions that have been consulted are the following: M. Marcovich. *Heraclitus. Greek Text with a Short Commentary*. The Los Andes University Press. Merida. Venezuela. 1967 and M. Conche. *Héraclite. Fragments*. Presses Universitaires de France. Paris. 1986. As will become clear, the analysis of Heraclitus offered here reiterates some of the position already noted in Chapter 2. As such, they are intended to reinforce and compound the initial interpretation.

6 The term 'principle' will be used throughout this section on Heraclitus. What it attempts to identify is a methodological procedure in Heraclitus. Throughout the fragments, there are differing arguments concerning how things are to be understood or perceived etc. The formulation usually used involves a construction beginning with the preposition *kata*. For example, things occur *kata ton logon*, things are to be understood *kata phusin*. Without trying to define what is meant by either *logos* or *phusis* – and there are other examples – it can still be suggested that they name regulative principles. What occurs is not the result of chance. While ordering principles cannot be identified and explicated, it remains the case that they are there. The short hand 'principle' is used in order to cover this state of affairs.

7 Even they may have a theological legacy; there is an interesting point of comparison that can be incorporated at this stage. Integral to the formulation of Jewish

identity in *Leviticus* (XIX, 33–34) is the recognition that the stranger should be treated as if he/she were already at home. While the temptation is to interpret the passage in terms of a universal humanism, the force of the position is more complex. The stranger has to be acknowledged both as a stranger and as at home. It is clearly the case that there is the possibility of positing a final home in which the condition of alterity would no longer prevail, or – as is also allowed by the passage – there is the recognition that alterity is an inevitable mark of human being.

8   C. Schmitt. *Der Nomos der Erde*. Duncker & Humbolt. Berlin. 1960. Pages 42–45.

9   References are to the Loeb Classical Library Edition. Edited and translated by William H. Race. Cambridge. 1997.

10 For the sake of convenience, the translation used by Agamben has been deployed. It is clear that once the debate concerning the meaning of the fragment is pursued with rigour then the translation will vary accordingly. This will become clear in the brief discussion of Pavese and Lloyd-Jones that follows.

11 See H. Lloyd-Jones. Pindar 169. *Harvard Studies in Classical Philology*. Vol. 76. 1972. Pages 154–165C. O. Pavese. On Pindar fr. 169. *Harvard Studies in Classical Philology*. Vol. 95. 1993. Pages 143–155.

12 Lloyd-Jones 58.

13 Reference here is made to the Loeb Classical Library edition of Herodotus (*Herodotus Books III-IV*. Translated by A. D. Godley. Harvard University Press. Cambridge. 1938). The translation of the final line has been altered for reasons of accuracy and consistency. While it cannot be pursued in this context, it is interesting to note that Herodotus defines 'madness' as the ridiculing of the *nomos*. While, on the one hand, that is to argue for a simple acceptance of norms, it allows, on the other hand, for the subtler response in which madness would be understood as the refusal of *nomos* as a universal regulative principle while leaving open the question of the acceptability of all *nomoi* at any given point in time. Madness would be as much the embrace of the demonic as it would the prescriptions of methodological individualism.

14 Another interpretation of Hölderlin's Pindar translations is presented in Chapter 4.

15 For an interesting discussion of the Protagoras, see M. Narcy. Quels modèles, quelle politique, quels Grecs? In B. Cassin (editor). *Nos Grecs et leurs modernes*. Editions de Seuil. Paris. 1992. Pages 110–113. In Narcy's summation of the position, he writes that citizenship (la citoyenneté) is defined by '*la soumission à la loi*' (111). While it is clearly a question of how this law (*loi*) is understood, the crucial question concerns what '*soumission*' entails. The problem inherent in the move from *nomos* to statute can be dramatized by that question.

16 The text by Nancy quoted by Agamben is 'L'etre abandonee' in *L'impératif catégorique*. Flammarion. Paris. 1983. Pages 139–153.

17 The formulation 'reconciliation to irreconcilability' plays a fundamental role in the project of which this work forms a part. It is intended to mark out the twofold move that accepts, on the one hand, the ineliminability of alterity while, on the other, allowing for the possibility that alterity may enjoin tolerance rather than violence. The condition for tolerance is the relinquishing of a certain conception of mastery. There is, paradoxically, enormous strength in the weakness that

accepts difference. Such an acceptance would be the reconciliation to irreconcilability.

Chapter 4

[1] The Pindar text to which reference is made is the Loeb Edition (Pindar. *Nemean Odes, Isthmian Odes, Fragments.* Edited and translated by William H. Race). Reference to *Das Höchste* is to F. Hölderlin. *Sämtliche Werke.* Edited by D. E. Sattler. Band 11. WBG. Darmstadt. 2004. Page 229. The English translation to which reference has been made is in *Friedrich Hölderlin. Poems & Fragments.* Translated by Michael Hamburger. Anvil Press. London. 1994. Page 639. References to Hölderlin's philosophical and theoretical writings will be to J. Ch. F. Hölderlin. *Theoretische Schriften.* Edited by Johann Kreuzer. Felix Meiner Verlag. Hamburg. 1998. (This edition will be referred to as TS. It should also be noted that this work also contains the Pindar Translations.) It should not be thought that content and meaning of the fragment are determined in advance. For two important discussions both of the status of the fragment and the interpretive divisions it has established, see M. Ostwald. Pindar, *nomos* and Heracles. *Harvard Studies in Classical Philology.* Vol. 69. 1965. Pages 109–138 and H. Lloyd-Jones. Pindar Fr. 169. *Harvard Studies in Classical Philology.* Vol. 76. 1972. Pages 45–56. For a detailed study of Hölderlin's translation of the fragment, see T. Schestag. The Highest. In A. Fioretos (editor). *The Solid Letter. Readings of Friedrich Hölderlin.* Stanford University Press. Stanford. 1997. Pages 375–411. On the question of translation in Hölderlin, see C. Wegener. A Music of Translation. *MLN.* Vol. 115. No. 5. 2000. Pages 1052–1084. For an important and influential work on translation that involves a sustained encounter with Hölderlin, see R. Nägele. *Echoes of Translation. Reading between Texts.* The John Hopkins University Press. Baltimore. 1997.

[2] A word here needs to be added on the status both of translations and the Greek texts. What drives the project is not a commitment to there being an original, perhaps pre-metaphysical formulation of philosophical positions within Greek philosophy. Nor equally is there the suggestion that pre-Socratic philosophical and literary texts, or their translation by Hölderlin, are inherently modern and thus unproblematically assimilable to the project of modernity. The project is both more complex and more nuanced. Philippe Lacoue-Labarthe in his discussion of the relationship between modernity and the Greeks gets the closest to the truth. In a discussion of Hölderlin's translation, he notes that the 'work of translation . . . consists of making the Greek text say that which it does not cease saying but without ever saying it.' *L'imitation des modernes.* Editions Galilée. Paris. 1986. Page 83. What is at stake in this project is that doubled saying. On the other hand, for an argument – centred on the discussion of kingship – that argues directly for the modernity of Hölderlin, see F. Fédier. Hölderlin, Révolution Modernité. In Jacques Rancière (editor). *La politique des poètes.* Albin Michel. Paris. 1992. Pages 65–85.

[3] In this regard, there is a distinction between the translations of complete Odes and the translation of the Pindar fragments. In regard to the former, Charlie Louth is clearly correct to argue that 'the translation is like a graph plotting out

the relationship between Greek and German, and though the language is, of course, German, a Greek habitus, as word for word, with very little deviation, it transcribes, transliterates almost the original' (The Question of Influence: Hölderlin's Dealings with Schiller and Pindar. *The Modern Language Review.* Vol. 95. 2000. Page 8. A similar argument concerning the relationship – a relation posed on the level of language – between German and Greek is also advanced by John T. Hamilton in his *Soliciting Darkness. Pindar Obscurity and the Classical Tradition.* Harvard Studies in Comparative Literature. Cambridge. 2003. Pages 292–296.The significant point is that the addition of the Commentary in regards to the fragments opens up a related though nonetheless importantly different set of concerns. If, for example, 'transcription' and 'translation' are evident, then why the commentary?

4 For a sustained engagement with this speech, see M. Demos. Callicles' Quotation of Pindar in the *Gorgias. Harvard Studies in Classical Philology.* Vol. 96. 1994. Pages 85–107. In addition, E. R. Dodds' commentary on *Gorgias* should be consulted. See Plato. *Gorgias.* Oxford University Press. Oxford. 1979. Pages 270–272.

5 For an important discussion on the contemporary nature of the equation, in Herodotus, of *nomos* and conventions or customs and thus activities that admit of versions of relativity, see James Redfield. Herodotus the Tourist. In T. Harrison (editor). *Greeks and Barbarians.* Edinburgh University Press. Edinburgh. 2002. Pages 24–49 and R. V. Munson. *Black Doves Speak: Herodotus and the Language of Barbarians.* The Centre for Hellenic Studies. Cambridge. 2005. For a more general estimation of the issues surrounding the question of the evaluation of persons rather than 'nomoi' in Herodotus, see J. G. Gammie. Herodotus on Kings and Tyrants: Objective Historiography or Conventional Portraiture? *Journal of Near Eastern Studies.* Vol. 45. No. 3. 1986. Pages 171–195 and S. Flory. Arion's Leap. Brave Gestures in Herodotus. *American Journal of Philology.* Vol. 99. No. 4. 1978. Pages 411–421.

6 There is no intent here to offer a detailed discussion of the translation, let alone on the commentary. There are two reasons why this is the case. In the first instance, undertaking the latter would necessitate taking up in detail Heidegger's engagement with both as well as note the points of interconnection between Hölderlin and Fichte. In addition, Maurice Blanchot's own engagement with the interplay of Heidegger and Hölderlin in relation to this particular work would itself demand attention. In regard to the latter, see the important paper by R. Savage. Between Hölderlin and Heidegger: The "Sacred" Speech of Maurice Blanchot. In L. Hill, B. Nelson and D. Vardoulakis (editors). *After Blanchot. Literature, Criticism, Philosophy.* University of Delaware Press. Carbury. 2006. Pages 149–168. (See in particular pages 151–155). The second is more Hölderlinian in orientation. In a letter to Friedrich Wilmans (28 September 1803. *Sämtliche Werke.* Band 10. Pages 92–93), Hölderlin allows the translator to reposition the original. Working through the interplay of distance and presence, part of the process of repositioning is an attempt to wrest the work from a contextual imbeddedness. The question of what would it be like to approach the text in another way is part of what prompts this project.

7 Hamburger's translation of '*gewaltig*' as 'compellingly' needs to be noted. The German word allows for a range of possibilities – moving from a sense of compulsion

or force to one of violence. The interpretative question of the relationship between '*Gesetz*' and '*Gewalt*' endures nonetheless.

8 Freidrich Schleiermacher's translation of these lines is as follows:

> *Das Gesez,*
> *der Sterblichen König und Unsterblichen,*
> . . . .
> *führt von Natur herbei rechtfertihend*
> *das gewaltsamste mit übermachtiger Hand.*

In *Platon's Werke. Erster Band*. Druck und Verlag von Georg Reimer. Berlin. 1856. Page 65. What needs to be underlined here is the interpolation, by Schleiermacher, of 'Natur' into the poem – an interpolation which links '*nomos*' and '*physis*' even though that is not, of necessity, Pindar's concern. Again, it should be noted that this intrusion is importantly absent from Hölderlin's translation.

9 See Chapter 3.

10 The reference to '*Recht*' opens up a number of different paths. One would be to work this conception of 'Justice' through Hölderlin's translation of Sophocles' *Antigone*. This is a project pursed, *inter alia*, by Schestag (op. cit.). In regards to this work, the term will be tied more closely to '*nomos*' and the conception of 'kingship' developed in the translation and elsewhere in the writings.

11 The relationship between Hölderlin's project and a thinking of the Absolute is complex and involves a careful nuancing of the argument. For example, in her study of Hölderlin, Françoise Dastur argues the following in relation to a discussion of the ways he understands 'le nationel':

> *Le national n'est donc pas ce qui en l'homme le sépare de l'universel, mais plutot ce qui lui permet d'en faire l'éxperience vivante, puisque, dans cette perspective que Hölderlin partage avec tout l'idéalisme allemand, l'infini n'est pas separé du fini. Il n'est en effect different de fini, ni identique à lui, mais 'en' lui, comme son contenu, son etre veritable et son effectivité. Il n'y donc pas non plus de finii qui ne soit que fini: toute finité est une figure et une presenbtation de l'infini.* (F. Dasture. *Hölderlin. Le retournment natal.* Encre Marine. La Versanne. 1997. Pages 16–17)

The force of this position does not reside necessarily in the way that it presents a conception of the national. The significant element is the way in which the relationship between finitude and the infinite is formulated.

12 Hölderlin. Band 6. Page 186.

13 Anmerkungen zum Oedipus. TS 94–101.

14 TS 94.

15 Hence the questioning in the *Euthyphro* is explicitly concerned with forcing Euthyphro to understand that the question – what is piety? – cannot be answered by providing instances of piety. Moreover, the ontological status of the 'idea' is given at 5d2–5d3. It is described as that which is always the same.

16 Die Bedeutung der Tragödien. TS 93.

17 F. Hölderlin. Band 11. Page 228. It should be noted that the term 'repose' (Ruhe) plays a fundamental role in Fichte's philosophy. What would need to be pursued

is the extent to which that possibility sounds in Hölderlin's translation. See, for example, J. G. Fichte. Versuch enier neuen Darstellung der Wissenschaftslehre. *Fichtes Werke.* Band 1. Walter de Gruyter & Co. Berlin. 1971. Page 533.

[18] The role of the son of Tyndareüs who as the guardian of sailors operates according to Plutarch (the source of the Pindar fragment), not with the sailors but above them, rescuing them from their predicament. (See Plutarch. *The Obsolescence of Oracles.* 426 C-D.) By standing above, they tame the already enacted violence. The conjecture has to be that what is of interest to Hölderlin is the relationship of mortals to already enacted violence. They must act as 'princes' (or Gods). The key to understanding Hölderlin's position is to recognize that what is at stake is acting out. Moreover, Fragment 32, again, in part, is a citation from Plutarch. Pindar refers to melody and thus movement. Nonetheless, he establishes a musical equivalent to 'repose' in terms of 'correct music' (*mousikan orthan*).

[19] To this end, see the treatment of mimesis in the *Cratylus*, in particular 423e1–424b1.

[20] It should not be thought that the terminology of mimesis is absent from Pindar. In Fragment 94b, for example, the terms are used in relation to the presentation of songs in which there is an acting out of the 'sirens' loud songs'.

[21] TS 7–8.

[22] Even though it cannot be argued for in detail, it is nonetheless possible to suggest in relation to the famous line from Germanien (*Sämtliche Werke.* Band 10) in which the Gods are described as having 'fled'; there is an important absence of lament. It is as though the present in no longer being defined by the Gods opens up a different relation. Of these Gods Hölderlin writes, '*ihr hattet eure Zeiten*' – their time was there and now it is over. Hence, *Wie anders ist!*'. The present becomes the site in which the 'yet to come' holds the distant as the necessarily irrecoverable. Rather than a lament, what emerges in its place is a type of affirmation. As such Hölderlin emerges as non-melancholic thinker. Again, there is no necessary suggestion that this makes Hölderlin a straightforward thinker of modernity. One of the most perspicuous attempts to identify what is valuable in Hölderlin for the project of modernity occurs as the Epilogue to Eric Santner's work on Freud and Rosenzweig. See E. Santner. *On the Psychotheology of Everyday Life. Reflections on Freud and Rosenzweig.* University of Chicago Press. Chicago. 2001. Pages 130–146.

[23] J. G. Fichte. Zweite Einleitung in die Wissentschaftslehre. *Fichtes Werke.* Band 1 (op. cit.). Page 467.

[24] See the reference to Nägle's exceptional book in Note 1 of Chapter 4.

Chapter 5

[1] P. Valéry. *Cahiers.* Tome VIII. Page 155.

[2] Part of what marks out the nature of modernity is the presence of a conflict concerning the differing ways of conceiving of the relationship between conceptions of historical time and related conceptions of action. The term 'present' is taken as designating this site. I have developed a conception of the present that takes up this particular formulation in my *Present hope.* Routledge. London. 1997.

³ W. Benjamin. *Illuminations*. Translated by Harry Zohn. Pimlico. London. 1999. Page 247.

⁴ The first stasimon comprises lines 332–375 of the play. It is spoken by the Chorus after the burial by Antigone of the body of Polynices. References to the play will be to text and the translation established by Hugh Lloyd-Jones. His text and translation comprises the Loeb Classical Library Edition of the text. See Antigone in *Sophocles II*. Harvard University Press. Cambridge. 1997.

⁵ Kierkegaard presents this position in *Either/Or. Part 1*. Edited and Translated by H. V. Hong and E. H. Hong. Princeton University Press. Princeton. 1987. See pages 139–153 for the general discussion of tragedy and pages 153–164 for the opening up of 'our Antigone' as opposed to the Antigone of Greek tragedy.

⁶ This is of course not to argue for any simple recourse to ancient Greece as a way of resolving that relationship. Rather the force of the setting is that it stages concerns that have actuality. In addition, the way the relationship between law, justice and wisdom is formulated has a contemporary register even if the details of history exert a real restriction. For a sustained investigation of these limits – limits in both a positive and negative sense – see N. Loraux. *Né de la Terre. Mythe et politique à Athènes*. Editions du Seuil. Paris. 1996. For an interpretation of the place of law in ancient Greek society that focuses on the centrality of conflict and thus the use of conflict as a way of thinking through the relationship between law and social coherence and which emphasize the place of oratory and therefore a certain rhetoric of law – Antigone and Creon could always have been positioned in these terms – see D. Cohen. *Law, violence and community in classical Athens*. Cambridge University Press. Cambridge. 1995.

⁷ F. Hölderlin. *Sämtliche Werke. 'Frankfurter Ausgae'. Band. 16. Sophokles*. Stroemfeld/Roter Stern. Basel. 1988. Page 299.

⁸ Heidegger's encounter with Sophocles's Ode occurs in two different places. The more important analysis is the one advanced in the setting of his interpretation of Hölderlin. He also comments on Hölderlin's own translation of elements of the play. See M. Heidegger. *Gesamtausgabe. Band 53. Hölderlins Hymne 'Der Ister'*. Vittiorio Klostermann. Frankfurt am Main. 1984. For the initial discussion of the translation of *to deinon* see pages 76–78. For the engagement with Hölderlin see pages 84–86.

⁹ S. Heaney. *The Burial at Thebes*. Faber and Faber. London. 2004. This is, of course, to do no more than begin an analysis of Heaney's translation of the Ode.

¹⁰ Leaving aside the obvious range of metaphors within the poem, the clear example here would be Blake's 'The Tyger'. W. Blake. *Complete writings*. G. Keynes (editor). Oxford University Press. Oxford. 1972. Page 214. The questioning of the animal's origin – 'did he who made the lamb make thee?' – coupled to the presence of the Tyger as bound up with fear, defines its presence in terms of a relatedness to human being. This presence is emphatically stated in the question that begins the poem and which is then transformed to provide the poem's ending. The questions are

What immortal hand or eye
Could frame thy fearful symmetry?
What immortal hand or eye
Dare frame thy fearful symmetry?

If there is a religious determination. it is found in the evocation of the immortality of the 'hand' or 'eye'. And yet how is the animal's 'fearful' nature to be understood? The necessity of the fear – the human's fear in the encounter with this animal – causes a questioning. Why would divine intervention be linked to the creation of fear? The mystery endures. The slide from 'Could' to 'Dare' reinforces it. Centrality has to be given to a form of sublimity that captures the presence of this animal.

[11] The verb *phtheggomai* refers both to the human voice, as well as to the sound of animals. See H. G. Liddell and R. Scott, *A Greek-English dictionary*. R. Scott (rev. editor). Clarendon. Oxford. 1958. Page 1927.

[12] This point is announced in the play itself. Towards the end of this exchange with Creon Haemon is addressed by the Chorus. They support his stance noting that he 'speaks wisely' (*legein phronountós*). In response, a response allowing the audience to draw the important connection, Haemon adds,

> For whoever think that they alone have sense, or have the power of speech or an intelligence that no other has, these people when they are laid open are found to be empty. (707–710)

[13] It is the move from the *Diké* to *diké* and thus the attempt to draw centrality to justice as connected to wisdom and 'well-being' that seems to define the position of the Chorus. As such, interpretations that see the play in terms of a strict opposition between the justice of the Gods and the laws of human beings seem to work against the overall force of the play's commitment to justice as a human possibility. Hence Charles Segal (*Interpreting Greek tragedy. Myth, poetry, text.* Cornell University Press. Ithaca. 1986) is mistaken when he argues that '[t]o live humanely, in Sophocles's terms is to know fully the conditions of man's existence: and this means to accept the Gods who, in their limitless and ageless power (604ff) are those conditions, the unbending, realities of the universe' (Page 160).

[14] Haemon makes this precise claim in line 743 of the *Antigone*.

[15] For all its strengths in alerting readers to the contested nature of violence in ancient Greece, Jacqueline de Romilly's *La Grèce antique contre la violence* (Editions de Fallois. Paris. 2000), remains limited by identifying violence with violent behaviour. Part of the contention here is that violence has to be positioned in terms of its relation to human being.

[16] I have discussed this speech in greater detail in my *Philosophy's Literature*. Clinamen Press. Manchester. 2001. Page 34–37.

Chapter 6

[1] J. Derrida. *Le droit à la philosophie du point de vue cosmopolitique*. Éditions Unesco. Verdier. Vendôme. 1997. Pages 32–33. (My translation.)

[2] Ibid. 33. (My translation.)

[3] The texts in question are Jacques Derrida's 'La pharmacie de Platon'. In *La Dissémination*. Edition de Seuil. Paris. 1972a. The analysis of Aristotle occurs in 'Ousia et grammé' in Derrida's *Marges de la philosophie* (Editions de Minuit. Paris. 1972b) and the extensive treatment of the Timaeus occurs in *Khora*. (Editions Galilée. Paris. 1993).

4 Reference will be to the English followed by the French. The translations of Jacques Derrida are from the following publications. J. Derrida. *Of Hospitality.* Translated by Rachel Bowlby. Stanford University Press. Stanford. 2000. J. Derrida. *De l'hospitalité.* Calmann-Lévy. Paris. 1997. Translations have at times been slightly modified.

5 Derrida 131/115. Derrida writes 'l'Etranger'. I have kept the capitalization in the translation.

6 Derrida's original French is 'la question *de* l'étranger en tant que question *venue de* l'étranger'. The difficulty of translating the term 'l'étranger' is that the final formulation '*venue de* l'étranger' brings a range of meanings into play. Central here is that 'l'étranger' is the stranger as foreign (though equally stranger as other): it is also a country that is external. Derrida is working with all of these semantic resonances.

7 References to *Oedipus at Colonus* will be to Hugh Lloyd-Jones' translation in *Sophocles II.* Harvard University Press. Cambridge. 1889. Reference to the play will be to the line number and will be provided in the body of the text. While not concerned with Sophocles another invaluable discussion of the position of the 'stranger' is to be found in Nicole Loraux *Né de la terre.* Editions du Seuil. Paris. 1996. Pages 175–189. For an account that also brings philosophical concerns together with the historical in regards to the city see François Hartog, *Anciens, Modernes, Sauvages* (Galaade Editions. Paris. 2005). See in particular Chapter 5 'Cité et altérité'.

8 M. Heidegger. *Einführung in die Metaphysik. Gesamtausgabe. Band 40.* Vottorio Klostermann. Frankfurt. 1983. M. Heidegger. *Introduction to Metaphysics.* Translated by Gregory Field and Richard Polt. Yale University Press. New Haven. 2000. Subsequent references will be to the English followed by the German. The translations have at times been slightly modified.

9 Heidegger 186/182.

10 Heidegger 187/185.

11 Heidegger 187/184.

12 Heidegger 188/185.

13 Heidegger 188/185.

14 Heidegger 188/185.

15 Heidegger 186/185–186.

16 In his helpful and incisive overview of Heidegger and translation, Markus Zisselsberger (The Claim and Use of Translation: Heidegger (and) Übersetzen. *Epoché.* Vol. 12. Spring. 2008. Pages 313–329) argues for the integration of Heidegger's philosophical project with the detail and content of specific translations. Zisselsberger defines Heidegger's conception of what occurred at the 'beginning' and that which takes place after in the following terms.

> It is the earliest trace of the Being of beings. Later thinking, however, has become 'alienated' from these beginnings and thereby becomes 'distant' from what is thought (318).

Heidegger's translations are inextricably connected to this conception of the history of philosophy. Calling one into question is already to mark the limit of the other. The importance of Zisselsberger's argument is to have demonstrated the necessary interconnection between the translations and a specific conception

of philosophy. The interrelation defines the positioning, by Heidegger, of Greek philosophy.

[17] Heidegger 189/186.

[18] Heidegger 189/186.

[19] Heidegger 174/171–172.

[20] Derrida 77/73.

[21] Derrida 79/73.

[22] Derrida 79/73.

[23] Derrida 35/37.

[24] Derrida 35/37.

[25] This occurs at Derrida 43/39.

[26] This position is developed in Derrida 39/36.

[27] On the question of the secret in Derrida's work, see Derrida. *Donner la mort.* Editions Galilée. Paris. 1999. The French edition also contains another indispensable text 'La litterature au secret' (163–209). While explored to different ends, Rebecca W. Bushnell (*Prophesying tragedy. Sign and voice in Sophocles' Theban plays.* Cornell University Press. Ithaca. 1988. Page 105) also notes the importance of the secret in the play.

[28] Derrida 100–101/91.

[29] The use of interrogative pronouns continues as the next line begins '*tis*' i.e. 'who' will receive Oedipus. What this reiteration suggests is an opening in which the presence of place and the other is assumed in the abstract. What remains to be given is particularity.

[30] It needs to be noted that place, understood as *being-in-place*, has specific philosophical force. What would need to be integrated into the recognition of the complexities inscribed with *being-in-place* are the specific determination that pertain to the Greek context. Fundamental here, as is clear from the play, is the relationship between 'sacred' and 'profane' places. In regard to this distinction see the important collection: S. E. Alcock and R. Osborne (editors). *Placing the Gods. Sanctuaries and sacred spaces in ancient Greece.* Oxford University Press. Oxford. 2001. Not only is there the already present sense of place that has already been identified there is also a conception of memory that underpins place. To this end see S. E. Alcock. *Archaeologies of the Greek past. Landscape, monuments and memories.* Cambridge University Press. Cambridge. 2002.

[31] For a more detailed discussion of idea of *Nomos* as king, an idea that has its origins in Pindar, see Chapter 3.

[32] Insisting on an already present sense of relationality is intended to call into question the possibility of an argument that holds to the position that 'a deconstructive approach to hospitality would look to what escapes political practices and contexts yet makes them possible'. (See M. Naas. *Taking on the tradition. Jacques Derrida and the legacies of deconstruction.* Stanford University Press. Stanford. Page 164.) While the overall thrust of this position is correct it remains the case that transcendental conditions of possibility do not 'escape'. On the contrary, they form an integral part, as will be argued, of the process of judgment itself.

[33] Derrida 81/77.

[34] J. Derrida. *Cosmopolites de tous les pays, encore un effort!* Editions Galilée. Paris. 1997. Page 57. (My translation.)

[35] J. Derrida. *Force de loi.* Editions Galilée. Paris. 1994. Page 61. (My translation.)

[36] This position has been developed by Derrida in relation to 'cities of refuge'. For an informed discussion of this aspect of Derrida's work, see S. Kelly. Derrida's Cities of Refuge: Roward a Non-Utopian Utopia. *Contemporary Justice Review.* Volume 7. Issue 4. December 2004. Pages 421–439. K. Kelly. (2004). Sean Kelly. Derrida's Cities of Refuge: Toward a Non-Utopian Utopia. *Contemporary Justice Review*, Vol. 7. No. 4. 2004. Pages 421–439. Damai Puspa. Messianic-City: Ruins, Refuge and Hospitality in Derrida. *Discourse.* Vol. 27. Part 2&3. 2005. Pages 68–94.

[37] While it cannot be pursued in detail here this position is linked to the distinction drawn by Arendt between 'violence' and 'power'. (See H. Arendt. *On violence.* Harcourt Brace & Company. New York. 1970.) She sums up the distinction in the following terms:

> Power and violence are opposites: where the one rules absolutely the other is absent. Violence appears where power is in jeopardy, but left to its own course it ends in power's disappearance. (51)

Power for Arendt provides the essence of government. Moreover power is linked to a conception of human being that is positioned within a founding sense of collectivity. (Arendt's word will be 'concert'.) That sense is already the site of a founding legitimacy. In this regard Arendt writes that:

> Power springs up whenever people get together and act in concert, but it derives legitimacy from the initial getting together rather than from any action that then may follow. (52)

What is identified by Arendt in this passage as the 'initial getting together' can be read as an argument for both a founding sense of relationality and thus what has already been identified as being-in-common.

Chapter 7

[1] G. Agamben. *The Time that Remains: A Commentary on the Letter to the Romans.* (Translated by Patricia Dailey.) Stanford University Press. Stanford. 2005. (Henceforth TR plus page number.)

[2] I have attempted to develop an account of what might be described as a theory of naming that resists both essentialism on the one hand and simple pragmatism on the other. I have identified this other sense of naming as 'conflict naming'. See my naming *The Plural Event.* Routledge. London. 1993. Pages 61–83.

[3] See B. Pascal. *Pensées.* Editions du Seuil. Paris. 1962. Fragment 103. 'Justice, force'.

[4] There are, of course, other ways into Agamben's text. See in this regard C. Frey. *klésis*/Beruf: Luther, Weber, Agamben. *New German Critique.* 105. Vol. 35. No. 3. 2008. Pages 35–56.

[5] TR 65.

[6] The term 'politics of time' was first used by Peter Osborne as the title of his *The Politics of Time.* Verso. London. 1995. While the project here differs from Osborne's

in regards to how the relationship between history and totality is understood, his book must be viewed as the foundational moment for a philosophical rethinking of radical interruption in terms of a concern with time.

7 References to the Christian Bible are to The Authorized English Version. English and Greek versions consulted include: *A Critical New Testament. Greek and English.* S. Bagster and Sons Limited. London. 1920 and *The New Testament in the Original Greek.* Compiled and arranged by Maurice A. Robinson and William G. Pierpont. Chilton Books. Southborough, Massachusetts. 2005. In addition Agamben's own renderings have at times also been used.

8 I have discussed Plato's treatment of the 'enemy' in my *Of Jews and Animals.* Edinburgh University Press. Edinburgh. 2010. Pages 6–7.

9 References to Luther's translation of the Christian Bible are to: *Die Bibel nach der Übersetzung Martin Luthers. Standardausgabe mit Apokryphen* (Gebundene Ausgabe) Deutsche Bibelgesellschaft; Auflage: Bibeltext in der revidierten Fassung von 1984. (1985)

10 It is not as though the question of who was a Jew and what being a Jew actually means was not itself a site of contestability. The introduction of an externally determined conception of identity has to efface that founding complexity. For a detailed investigation, from a historical perspective of some of the issues raised in relation to the question of Jewish identity in the historical period in which Paul was writing see, Shaye J. D. Cohen. Crossing the Boundary and Becoming a Jew. *The Harvard Theological Review.* Vol. 82. No. 1. Jan, 1989. Pages 13–33. The significant point here is that the detail that Cohen uncovers is effaced the moment being a Jew is determined and given a singular sense of position by being defined by a form of externality.

11 G. Agamben. *Il tempo che resta.* Bollati Boringhieri. Torion. 2000. Page 155. Central to the interpretation of the Messianic and its relation to law is the term '*katargein*'. According to Walter Bauer's dictionary (*A Greek-English Lexicon of the New Testament.* Translated and adapted by William F. Arndt and F. Wilbur Gingrich. University of Chicago Press. Chicago. 1979), its meaning includes: 'make ineffective', 'powerless', 'nullify'. In regards to *Ephesians* 2.15, Bauer suggests that the meaning is 'invalidate'. There is also the more destructive sense of 'abolish' or 'wipe out'. Agamben will not depart radically from some of these meanings. However, what he will introduce is an insistence on the meaning of word in terms of its producing the inoperative (as opposed to destruction) while at the same allowing for the retained suspension of that which has become inoperative.

12 TR 98.

13 G. Agamben. *Profanations.* (Translated by Jeff Fort.) Zone Books. New York. 2007. Page 18.

14 The array of material on Paul's relation to Judaism is vast. For an overview of how some of the issues are treated see: W. D. Davies Paul: From the Jewish point of view. In *Cambridge History of Judaism. Volume 3.* (edited by W. Horbury) Cambridge University Press. Cambridge. 1989. Pages 678–730. While Davies' interpretation of the role of the process of inoperability differs importantly from Agamben's and indeed from the project of this chapter there is unanimity between this project and his interpretation of the role of Christ in *Romans*: Davies argues that.

> Christ is the end of Law, by which he (Paul) means not that the Law is now abolished but that the attempt to obey the Law as a means of salvation ends in failure'. (712)

The argument of this Chapter is that such a positioning of the law is not disputed. The argument is that it occurs in, and as, the literalization of the law. For a more sympathetic account of Paul's relation to Judaism see D.R. Langton, The Myth of the 'Traditional View of Paul' and the Role of the Apostle in Modern Jewish-Christian Polemics. *Journal for the Study of the New Testament*. 28.1. 2005. Pages 69–104. For an attempt to reposition Paul's relation to Judaism from a Christian perspective see C.J. Hodge. Apostle to the Gentiles: Constructions of Paul's identity. *Biblical Interpretation*. 13.3. 2005. Hodge's development of a sense of 'fluid identity' has to be read as an attempt to steer Paul away from one who stabilizes singular identities. However, Paul's own identity as multiple may be the result of having attributed a singular identity to what was originally multiple, namely, the actuality and potentiality within Jewish identity. The latter becomes as much a historical claim as it is one about how the question of Jewish identity would be addressed today.

[15] TR 88–112.

[16] TR 95.

[17] TR 71.

[18] TR 18. It will be via a return to Agamben's fundamental misunderstanding of Benjamin's famous comment about the arrival of the Messiah that it will be possible to circle back and establish the genuine issues that are at stake here. See TR 71.

[19] TR 97–98

[20] TR 104.

[21] TR 105.

[22] TR 106.

[23] Agamben 153.

[24] TR. 53.

[25] TR 57.

[26] Another critical encounter with Agamben that is concerned with the difficulties inherent in the way subjectivization operates within his thought – though in this instance in relation to gender as well as racial issues, see E.P. Ziarek. Bare life on strike: Notes on the biopolitics of race and gender. In A. Ross (editor) *The Agamben Effect*. North Carolina. Duke University Press. 2008.

[27] TR 107.

[28] TR 107.

[29] TR 71.

[30] Were Agamben to have taken up another pivotal text by Benjamin in which he is directly concerned with the problem posed by fate and the overcoming of the work of fate in the name of the living (this is, after all, the role of Athena), the project in part of his 'Critique of Violence', he would have noted that what is essential to Benjamin's thought is the opening, the spacing, created by the deferment of the Last Judgment and thus the related impossibility of the Messiah's having arrived. The text in question is Benjamin's 'The meaning of time in the

moral universe'. In M. Bullock and M.W. Jennings (editors). *Selected Writings.* Vol. 1. Harvard University Press. Cambridge. 1996. Pages 286–287. I have taken up this text in the context created by the 'Critique of violence'. In *Working with Walter Benjamin.* Edinburgh University Press. (Forthcoming.)

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