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Judgment

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Judgment

*Philippe Nonet**

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To judge, in Latin *ju-dicare*, is to say the law, *jus dicere*, whence *juris-dictio*.

The above sentence is a possible answer to the question: what is judging? It spells out what the word “to judge” says, by recalling the history from which the word originates. Why would anyone ask this question? How helpful is such an answer?

Everyone knows what it is to judge. Only on the ground of such self-evidence could there be that unabating debate on the “justification” of particular judgments, which is the day to day business of lawyering. Only because the question can be passed over can there be controversy regarding “the forms and limits” of adjudication in general, a preoccupation without which jurisprudence would seem to lose its main occupation. Why ask the question? Precisely because the matter *is* self-evident.

As soon as we examine it a little, confusion begins to set in all over. Monsieur Jourdain likely would be flattered if he knew that logicians employ the word “judgment” in its widest sense to designate propositions of all kinds: He has been judging all along, and therefore knows already how to do it. Even Kant follows this usage when he says that “we can reduce all acts of the understanding to judgments,” and goes on to propose a “table” that classifies all possible forms of judgment into four groups of three (*Kritik der reinen Vernunft*, * A 67-70, B 92-95; normally, English translations refer to corresponding

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References in the text are not to be treated as indicating sources, evidence, authority, or support of some kind for a point made in the text of the Essay. Rather they point the reader to materials to be read along with the main text of the Essay, as though they belonged in it.

pages of the same star editions). Could it be that almost all speaking is a saying of *law*?

A little later in the same treatise, however, Kant restricts the sense of "judgment" to the act of "subsuming under rules, that is, of distinguishing whether something falls under a given rule or not (*casus datae legis*)" (id. A 132-34, B 171-74). This sense is borrowed from lawyerly usage, not from logic, for, as Kant shows, logic has nothing to say regarding this operation. There are, and there can be, no rules regarding the application of rules. If Kant is right, a sizable part of what we take to be "law," and almost all jurisprudence, are nothing but a futile striving to overcome this essential unruliness of judgment. How can it be that the saying of law is lawless?

Perhaps, however, even to lawyers, the essence of a judgment does not lie in the *application* of a rule to a particular case, but rather in the *statement*, or restatement, of the rule to be applied. If law consists of rules, and if rules themselves are general propositions stating obligations in general terms, then the properly "judicial" in a judgment would be the stating of rules. The "case" would then matter only as providing an occasion for such a ruling. If so, "judging," *jurisdictio*, would find its most manifest instantiation in what we call "legislation," *legis-latio*, from *legem tollere*, the elevation of a *lex*, or statute, to its position of authority, which is always at once also the corresponding degradation of another.

Kant too, perhaps following this unmistakable hint of language, found a kind of judgment in which the *casus* itself was manifestly decided, indeed incontrovertibly, although the rule under which the fallen case fell was still to be found, and would eventually deny itself entirely to man's power to say. To this type of judgment, he devoted the most heroic of his works, which he called a critique of the power of judgment, *Kritik der Urteilskraft*. There the will to judge seems to run up against its outer limits. In what sense indeed is there still a "judgment," that is, a saying of law, when the supposed "law" withdraws into ineffability?

Had we listened to the history of the word, briefly told at the outset, this last difficulty would not have come as a surprise. We rather should have been prompted right away to question whether the saying of law could ever consist in the statement of general propositions of the kind to which we are accustomed by both logic and common practice. The word "judge," in French *juge*, conceals its base origins in the contraction by vulgar usage of two Latin words, *ius dicare*, the special resonance of which had by then long ago ceased to be heard. Once upon a time, these Latin words would have inspired

the piety with which the Ancients honored their gods. For *ius*, like the Greek εἰς, signifies the good above all in the sense of what belongs in overabundance to the gods themselves, and so constitutes their utter greatness and blessedness. Said of what we translate as "law," it signifies that this law belongs to the domain of the holy. Of such a law, there can be no saying in the common language of day to day business, no plain *dicere*, but only a proper *dicare*, in the sense of which we still hear an echo in the word "dedication," the solemn saying by which something is devoted to the gods. Then indeed the true does withdraw into the ineffable. In forgetting this history, have we perhaps also lost knowledge of what it is properly to say the law?

Let us then pose the question anew. In our own still recent past, the last thinker who attempted to ask it in earnest was Martin Heidegger. He gave the law, *das Gesetz*, a simple, mysterious, and untranslatable name: *das Ereignis*. Suffice it to say, for now, that the word evokes a more nearly intelligible thought, namely *das Eigene*, what is one's own. "*Das Ereignis ist das Gesetz, insofern es die Sterblichen zu ihrem Wesen versammelt und darin hält, Ereignis is the law, insofar as it gathers the mortals into their essence, and holds them therein*" (*Unterwegs zur Sprache*, hereafter "UZS", 259 (Neske, 1959) hereafter "UZS", translated in Peter D. Herz, *On the Way to Language*, hereafter *Eng.*, 128-29 (Harper & Row, 1971)).[†] Accordingly, to say the law is to recall man to his own most essential possibility. Thinking may prepare us to listen for such a call: it sets us on the way, *unterwegs*, to our destiny.

The following notes seek to remember the thinker's teaching. The task is to listen to what he said, and then to draw out of our own language words that may faithfully repeat it. Modest as the effort may be, it requires such a straining of our powers that from its beginning it is destined to fail. Nevertheless, its very shortcomings may show us how to take a few steps on our own way. The texts to be studied appear at first to be few and scattered, so much so that current opinion holds Heidegger never to have paid serious attention to anything like law, or "ethics." Attentive reading, however, would soon reveal that the thinker never asks any question other than that regarding the essence and destiny, i.e., the law of mankind. This ques-

[†] Page references to the published English translations of cited works are provided in the event that the reader may find them helpful in opening access to the original German text. By themselves, with very few exceptions, extant translations are not reliable. They cannot be, if only because of Heidegger's manner of writing, which depends much upon the poetic play of the German language. The translations offered in this Essay are the Author's own, and suffer from the same incompetence.

tion is far deeper and more decisive than anything any specialized subdiscipline in philosophy could ever hope to reach, if indeed thinking is divisible at all in such "scholarly" ways. To read Heidegger is to follow him in his ever renewed attempts to ask our question, and that is: to let ourselves be struck by that of and about which it asks, *die Sache selbst*, the thing-sought itself. *Die Sache* here is: the saying of law. What is "law"? What is it to "say"? How may the law be said, if indeed there can be a saying of law?

I. NOMOS

What is law? In turning to our first question, we may find it helpful to approach Heidegger from out of a domain that may be more nearly accessible. We take our departure from an ancient, yet still audible intimation: that the essence of law may be found in the essence of friendship. Our guide on our first steps is Aristotle, whose treatise on friendship in Books VIII and IX of the *Nicomachean Ethics*, remains the single most indispensable source of insight into this matter.

There opens before us a possible way together as we wander upon this earth. We see it. We understand it. We call it our friendship. It calls us on the way to be friends. This call of friendship, that we be friends, is our "law" in the original sense of the old English word *lagu*, in German *die Lage*: what lies ahead of us, the possibility of a possible way for us to follow together.

What is the way of friendship? What first opens it to us? What moves us to take it, if and when it opens? Aristotle begins his treatise on friendship with the remark that it is of the highest necessity for the fulfillment of a human life, ἀναγκαιότατον εἰς τὸν βίον (*Nicomachean Ethics*, hereafter *NE*, VIII, i, 1, 1155 a 5). What is the source of this necessity? How does it necessitate what it makes necessary?

Aristotle returns to the question of necessity near the end of his treatise where he explains how friendship, as the sharing of words and thoughts, τὸ κοινωνεῖν λόγων καὶ διανοίας, is the mode of living together, τὸ συζῆν, *das Mit-sein*, that properly belongs to man, as distinguished from cattle, whose living together consists in grazing on the same pasture, τὸ ἐν τῷ αὐτῷ νέμεσθαι (*NE*, IX, ix, 10, 1170 b 10). Aristotle conceives life as a mode of being: to live, he says, is for the living what it is to be, τὸ δὲ ζῆν τοῖς ζῶσι τὸ εἶναι ἐστίν (*De Anima*, II, iv, 415 b 14). Man too lives, but he stands apart from all other living

beings as the only one endowed with speech, λόγον δὲ μόνον ἄνθρωπος ἔχει τῶν ζῴων (*Politics*, I, i, 10, 1253 a 10). Hence, for man to be is not merely to live, but to feel, and to think, αἰσθάνεσθαι ἢ νοεῖν (*NE*, IX, ix, 7-10, 1170 a 15-1170 b 19). Such is the way the good man *is*, and his own being is to him good in itself, καθ'αὐτὸ ἀγαθόν, that for which he reaches and cares the most, μάλιστα αἰρετόν, that without which he would fall in need, ἐνδεής ἐσται (id.). Thus, both the essence of friendship—the sharing of words and thoughts—and its necessity are determined from out of the essence and the necessity of man's being as the being who speaks and for whom to be is to feel and to think. The need that moves the reaching for friendship is the same as the need that moves a man's reaching for his own being. To friends it is necessary that they rejoice in feeling together that the friend *is*, i.e., feels and thinks, συναισθάνεσθαι ἅρα δεῖ καὶ τοῦ φίλου ὅτι ἔστιν (id.). The law of friendship requires nothing other than that the friends be who they are, feeling and thinking, in accordance with every man's own essential possibility. Hence, friendship is not only necessary, but also noble and beautiful, οὐ μόνον δ' ἀναγκαῖόν ἐστιν ἀλλὰ καὶ καλόν (*NE*, VIII, i, 5, 1155 a 29). Unlike the lower necessities that condition life, this necessity calls as the gentle invitation of a great destiny. Friends, as the word itself says in English and German alike, are those who let themselves and each other be free, *frei*, *friend*, to be who they are.

A modern reader may be tempted to read this text as though it foreshadowed a Cartesian grounding of law in the will of the I as the self-thinking subject. Indeed the passage contains words that might sound like Aristotle's *cogito me cogitare, cogito, sum*: ὁ δ' ὁρῶν ὅτι ὁρᾷ αἰσθάνεται καὶ ὁ ἀκούων ὅτι ἀκούει καὶ ὁ βαδίζων ὅτι βαδίζει, καὶ ἐπὶ τῶν ἄλλων ὁμοίως ἔστι τι τὸ αἰσθανόμενον ὅτι ἐνεργοῦμεν, ὥστε ἂν αἰσθανόμεθ', ὅτι αἰσθανόμεθα, κἂν νοῶμεν, ὅτι νοοῦμεν, τὸ δ' ὅτι αἰσθανόμεθα ἢ νοοῦμεν, ὅτι ἐσμέν (τὸ γὰρ εἶναι ἢν αἰσθάνεσθαι ἢ νοεῖν), he who sees feels that he sees, and he who hears, that he hears, and who walks, that he walks, and with all other doings there is the feeling that we are at work, so that if we feel, [we feel] that we feel, and if we think, [we feel] that we think, and the [feeling] that we feel or think is the [feeling] that we are (for to be is to feel and to think) (*NE*, IX, ix, 9, 1170 a 30-35). Of course the Greeks knew the fact of apperception. Their language excelled in the middle voice, but the thought of man as the self-grounding subject and ground of all being was utterly alien to them. In this passage of Aristotle's treatise, apperception comes into play at two levels. First, it is itself an instance of the being-at-work, ἐνεργεία, of the power, δύναμις, to feel

and to think, the being-at-work of which it apprehends; there precisely, in the being-at-work of his distinctive endowment, is man κύριως, most properly himself (*NE*, IX, ix, 7, 1170 a 15-20). Second, apperception is that through which his own being, hence also the friend's own being, his other self, show themselves in their goodness, thereby enabling him to grasp their necessity.

Who then are men, to be so destined by law to the freedom of friendship? Men are the mortals, beings to whom it has been given at birth to understand, namely to see beings in the light in which they come to shine, that is, to be. Understanding itself is that light, under which man stands. At some risk, the word "understanding" is here taken in the old and wide sense it still has in English, and shares with the Greek νοεῖν, and the German *verstehen* and *unterstehen*. By no means is it intended in the restricted senses of theoretical cognition, or conceptual apprehension, or of some psychological faculty of knowing. Nor does it refer to any actual body of knowledge or belief. Like law, and friendship, understanding always lies ahead of man as the opening of his possibility.

Man feels, thinks, speaks, and shares with man in feeling and thinking. These are not merely some activities he may or may not undertake, tasks that he can set out to perform when he chooses and as he decides. Whatever man does, he does understandingly, by way of feeling, thinking, and speaking. As man's way of being, feeling, thought, speech, and sharing with man are at bottom not of man's own doing. They do not occur at the command of his will, they never let their play be determined by the rules and programs he sets up. Man is given to understand, but understanding does not belong among his possessions. Rather, man himself belongs to, and is possessed by it. The law calls man to his own essential destiny, but the essence of man is nothing human at all.

The gift of understanding is the opening of the time-and-space within which beings come to presence before man. This openness is the world as the primordial binding of the relation of man to being. The world is "the tree of graces" (*UZS* 23; this phrase and the essay from which it is taken are omitted in the English translation; they may be found in Albert Hofstadter, transl., *Poetry, Language, Thought* 187, 201 (Harper & Row, 1971)). As the light in which all beings appear, the openness of the world encompasses them all and "is" itself, strictly speaking, no-thing. It surrounds man as that in and under which he "always already" stands and understands, and which always precedes him in every direction he turns. "*Welt ist das immer Ungegenständliche, dem wir unterstehen, solange die Bahnen von*

Geburt und Tod, Segen und Fluch uns in das Sein entrückt halten. World is what never stands against and before us, but under which we always stand, as long as the paths of birth and death, of blessing and curse hold us transported in being" (*Der Ursprung des Kunstwerkes*, in *Holzwege*, hereafter "UKW", 33 (Klostermann, 1950), translated in *Poetry, Language, Thought*, hereafter *Eng.*, 44). As this all-encompassing, always already shining illumination, as the nothing out of which man can never step, the law of understanding eludes every striving of man to grasp it, to hold it before his eyes, to measure, and to master it. We may here recall Plato's word that the law, as the *ἰδέα τοῦ ἀγαθοῦ*, reigns *ἔτι ἐπέκεινα τῆς οὐσίας πρεσβεία καὶ δυνάμει ὑπερέχων*, far above and beyond all beings in rank and power (*Republic*, VI, 509 b 9). Of course the thought of a gift of understanding invites the question of the source of this gift, but this question must not be heard as asking for some kind of *being* from or by which the gift would have been handed over to man. The essence of a gift originates in its being given. For us who are given the gift of understanding, the question of its origin is properly thought only in the thinking that thanks (*Was heißt Denken?*, hereafter "WHD", 91-95 (Niemeyer, 1954), translated in Fred D. Wieck and J. Glenn Gray, *What Is Called Thinking?*, hereafter *Eng.*, 138-47 (Harper & Row, 1968)).

In understanding, beings of all sorts appear out of hiddenness into the open, and show themselves as they are. In the openness of understanding, each being is allowed its own place, and all traits and relations that belong to it as its own, its properties. Understanding frees: it releases beings out of concealment in the truth of appearance. Understanding allows, in both original senses of *ad-locare* and *ad-laudare*: it grants all beings their place in the totality of being, and it celebrates them as they show themselves in their traits and relations. Understanding gives each being the possibility of its being. In that it allows beings to be, understanding is law in the sense of the Greek νόμος, that by virtue of which all νέμειν, all assigning, allotting, dispensing, can occur. Aristotle recalls that law when, in the treatise on friendship, he introduces the supreme principle that orders all relations among men, and indeed between men and the gods: *ἐκάστοις τὰ οἰκεία ἀπονεμητέον* (*NE*, IX, ii, 7, 1165 a 17), *suum cuique tribuere*, allow to each their own. Perhaps already then the phrase had become a cliché. More than two thousand years passed before it was at last heard to say what in truth it says, namely the principle of truth itself. In Heidegger's words: "*jegliches in seinem Eigenen anwesen, in sein Gehöriges gehören lassen*, to let every [being]

be present in [what is] its own, [to let every being] belong with what belongs to it" (UZS 259, *Eng.* 128).

In a translation of Antigone's appeal to the law of the gods, Heidegger renders ὁ νόμος as *der weisende Brauch* (UZS 219, *Eng.* 140; compare *Über den Humanismus*, hereafter "BüH", 51 (Klostermann, 1949), translated in David Farrell Krell, ed., *Martin Heidegger: Basic Writings*, hereafter *Eng.*, 238 (Harper, 1977) and *Erläuterungen zu Hölderlins Dichtung* 167 (Klostermann, 1971)). The phrase defies translation, but in view of Heidegger's explanation of the relevant sense of *brauchen* (WHD 114-15, *Eng.* 186-89), a paraphrase can perhaps be ventured. The law, as νόμος, is the need that calls man and points him the way to, and so frees him for, his own essential possibility, which is to allow all beings what is their own. The law itself calls and allows man to his place, *der Ort*, the *da* of *Da-sein* and *Mit-da-sein*, the place of the being who is given to understand. The reigning of the law of understanding is called in Greek δίκη, from the verb δεικνύμι, to show, to let see and be seen, whence also *dicere* and *dicare*, to say. This is the Greek word we commonly render in Latin as *justitia*, "justice," whereas it signifies the original showing or assignment by virtue of which every being is to be the being that it is.

The law of friendship is the law of understanding. We are friends in that we understand each other, and so free and allow each other to be who we are, namely the mortals to whom it is given to understand. Aristotle spells it out. Each of us wishes the good for himself, for his own sake, that is, for the sake of understanding, which is his way to be: καὶ βούλεται δὲ ἑαυτῷ τὰγαθὰ, καὶ ἑαυτοῦ ἕνεκα, τοῦ γὰρ διανοητικοῦ χάριν, ὅπερ ἕκαστος εἶναι δοκεῖ (*NE*, IX, iv, 3, 1166 a 15). Understanding, as the mode of being proper to man, is the good in itself that determines the τέλος, the end of man, in the sense of his completion. Now each of us wishes the same good for his friend as he wishes for himself, since a friend is another self, whose mode of being is the same as our own: πρὸς δὲ τὸν φίλον ἔχειν ὡςπερ πρὸς ἑαυτόν ἔστι γὰρ ὁ φίλος ἄλλος αὐτός (*NE*, IX, iv, 5, 1166 a 30). Accordingly we think kindly of each other, as we do of ourselves, with gentleness, γενναῖως, that is, in accordance with our noble birth. But this kindness, which Aristotle calls εὐνοια, well-mindedness, lays only the principle, ἀρχή, of our friendship. Each of us might well separately harbor kind thoughts for the other, without our ever coming to share in the sight of our possible closeness. For friendship to bloom, our well-mindedness itself must disclose itself before us, μὴ λανθάνουσα, in the truth of unconcealment (*NE*, VIII, ii, 3-4, 1155 b

30-35). It comes to appearance in the work, το ἔργον, *das Werk*, of our joining in action, συμπράττειν. Thus, in time, as we dwell together, kindness becomes friendship, χρονιζομένην δὲ καὶ εἰς συνήθειαν ἀφικνουμένην γίνεσθαι φιλίαν (*NE*, IX, v, 3, 1167 a 10-15). Time and dwelling are not here thought of as conditions external to friendship, as though the latter issued from the former like the effect of some conducive circumstances. Rather time and dwelling constitute the open in which εὐνοια first shows itself in the shining splendor of its work, ὅταν τῷ φανῆ καλὸς τις ἢ τι τοιοῦτον (*NE*, IX, v, 4, 1167 a 20), and thus rises to ἐνεργεία, the being-at-work of being proper. Only there can our friendly understanding come into the light of understanding, because time and dwelling are the time and space of the play of appearance, that is, the open of truth and understanding itself. As understanding, as the σύνειναι of the beings who feel and think, friendship is χρονιζομένη συνήθεια, temporal dwelling together, i.e., the sharing of a historical world.

With this recognition of mutual understanding, the unity of friendship is sealed. Out of the shining of their εὐνοια in χρονιζομένη συνήθεια, friends form the ὁμόνοια, the same-mindedness, in and through which they know themselves as the same in their difference, in such a way that each is to the other like another self, ἄλλος αὐτός. There is ὁμόνοια when friends know the same regarding what brings them together, and prefer the same, and act upon what they see they have in common, ὅταν περὶ τῶν συμφερόντων ὁμογνωμονωσι καὶ ταῦτὰ προαιρῶνται καὶ πράττωσι τὰ κοινῇ δόξαντα (*NE*, IX, vi, 1, 1167 a 25-30). Such harmony reigns ἐν τοῖς ἐπεικέσιν, among men who render each his own, for such men think in harmony with themselves as well as with each other, οὔτοι γὰρ καὶ ἑαυτοῖς ὁμονοοῦσι καὶ ἀλλήλοις (*NE*, IX, vi, 3, 1167 b 5). That is, each wishes his own as well as the other's good, which in every case is that he be, for his own sake, by way of feeling and thinking.

In their unity, friends constitute what Kant would call a kingdom of ends (*Grundlegung zur Metaphysik der Sitten* *433-34, hereafter "*Grundlegung*, *___"; normally, English translations indicate corresponding pages in the same star edition). As the highest good of man's own being, friendship is the good in itself, τὸ καθ' αὐτὸ ἀγαθόν, *der Zweck an sich selbst*, of man's membership in a *Reich der Zwecke*. Now what brings and holds together different friends in the unity of their sameness, τὰ συμφερόντα, is called the bond of their friendship. Friendship binds, obliges. Thus, friends are those who owe obligation; they do so to each other as well as to themselves. The obligatoriness of our obligations is what unites us in the unity of our ὁμόνοια. The

unifying power of that unity is the law of our friendship, that is, the law of understanding, as the mode of togetherness of beings to whom it is given to understand. In so binding us, it frees and allows us to be who we are, and so calls upon us to fulfill the necessity of our most essential possibility.

As the ever eluding, always already shining, and all-encompassing light of understanding, this law is the invisible and inviolable sphere of the holy, the site of man's encounter and struggle with the gods. As such a site, the law is man's ἦθος, the house in which he dwells in the συνήθεια of friendship, and where, in the words of Heraclitus, ἦθος ἀνθρώπου δαίμων, man belongs with the gods (Fragment 119, as translated by Heidegger in *BüH* 45, *Eng.* 233). Divine is the sight of the law, which mortal man is forever denied. To that sight, the gods owe their divinity, so that the law is theirs also. In the poet's words,

νόμος ὁ πάντων βασιλεὺς
 θνατῶν τε καὶ ἀθανάτων
 ἄγει δικαίων τὸ βιαιότατον
 ὑπερτάτῃ χειρὶ.

The law, king of all, mortals and immortals alike, exerts the supreme force of δίκη with the highest hand (Pindar, Fragment 169). Seeing its light, gods gather it, and strike man with those rare and sharp flashes of illumination that clear his paths on the way to answer the call of the law.

II. THEMIS

What then is the saying of law? How is law said, if indeed it can be said at all? In the first place, what is it to say?

Saying accomplishes itself in the spoken word, but it is not the same as speaking. Much, if not indeed most, speaking says nothing, and only spits words out in mere babble. Only speech proper says. Speech proper says what something is by letting the thing itself appear of itself as it is. "In speech (ἀπόφανσις), insofar as speaking is genuine, what is spoken must be drawn from that about which one speaks, so that the spoken sharing with another, in what it says, brings that about which it speaks in the open, and so makes it accessible to the other" (*Sein und Zeit*, hereafter "*SuZ*" *32, the English translation, John Macquarrie and Edward Robinson, *Being and Time* (Harper & Row, 1962), indicates corresponding pages in the

same star edition). In English too, as in German and in Greek, the word "to say," *sagen*, φημί, says the same as "to see." To say something is to see it and let it be seen, i.e., to show it, to point it up and let it show itself in the shining of its appearance to the knowing eye. The French *dire* and its Latin and Greek ancestors, *dicare*, *dicere*, δείκνυμι, in German *zeigen*, exhibit the same web of primordial relations: "*dire quelque chose*" signifies bringing something to light.

Accordingly, the saying of law, *juris dictio*, δίκη, is the showing of law. Now the question arises, grammatically speaking, whether, in this "showing of law," "law" operates as the subject or the object of its "showing." If the νόμος reigns as the all-encompassing, always already shining light within which all seeing, showing, and coming to appearance of beings take place, if the νόμος itself "is" therefore no being, it can never come into view. In letting beings be seen, the law must withdraw from sight, and hence deny itself to saying. As the *nihil originarium*, invisible and inviolable, ἀεί ζητούμενον καὶ ἀεὶ ἀπορούμενον, forever sought and forever eluding (Aristotle, *Metaphysics*, hereafter *Met.*, VII, i, 7, 1028 b 3), the law of understanding remains essentially unsayable. That which allows every seeing never allows itself to be said. Law must remain the enigma, all speaking of which is in riddle.

In no saying of law does law ever let itself be said, but in every saying the law itself says. The law shows, frees, and allows all beings to be seen. Every speaking that says, i.e., speaking proper, rests at bottom upon a saying of law. Saying indeed belongs to the essence of law. Saying is not something the law does in addition to and after its illumination of world, either supervening or serving the law as a means of fixing or communicating its revelation. Saying, as showing and letting see, is that in and through which understanding first happens, and so brings beings to light. The νόμος allows in that it says. Only because the law has first already said and let see, can the human sounding of words point up, *bedeuten*, and show what so is allowed to appear. Every speaking that says speaks what it already "has" to say. It has what it has because it has been so given to say by the saying of law. In its own pointing, the spoken word answers, *antwortet*, *ent-spricht*, a prior saying of the law. The speaking that says does so always in response to a call of the νόμος, *der weisende Brauch*, the calling of which recalls man to his essential destiny. Only as such a response is it spoken in truth.

In that it answers the law and so says, speaking is also sharing, *com-munire*, *mit-teilen*. Shared in that sharing is the presence of what is said and lets itself be seen in the light of understanding. In

this sharing, the letting see of the speaking that says fulfills itself in the hearing and looking that lets appear what has been said. The unity of this belonging together in seeing with one another is called in German *das Gespräch*, the gathering and completion of speaking, in Greek *διάλεξις*, in French and English, the conversation, that is, the turning together toward what is shared in saying. *Das Gespräch*, as the sharing of words and thoughts, *τὸ κοινωνεῖν λόγων καὶ διανοίας* (*NE*, IX, ix, 10, 1170 b 10), is the essence of friendship as the mode of togetherness, *das Mitsein*, proper to men. The essential grace that friends share in speaking, the *munus* of their *communio*, is the gift of understanding, the world as the tree of graces. Hence, the call of friendship is nothing other than the call of the law to which speaking answers insofar as it says.

Now if a speaking that says always answers a call of the law, it must have its ground in a hearing of that call. Hearing in turn occurs only out of the attunement of listening. Therefore, man is able to say only insofar as he first obeys, *ob-audit*, the law of understanding. Hence, the most essential action open to man, that in which he may rise to the necessity of his essential destiny, is the act of obedience to law.

However, no call can be heard unless of itself it first lets itself be heard. Here again we seem to run up against paradox, for the law, we have said, "is" the essential nothing that never lets itself be said, because in letting appear it effaces itself behind the beings it allows to appear; but now we say that, nonetheless, it must be able to let its call be heard. How can the invisible and unsayable law sound a call that man can hear? Or, to ask in Hegel's manner, how can there be anything like a revelation of the law, an actualization of the *παρουσία* of Spirit? For any actual word or sign to come within the reach of man's hearing, the opening of the openness of understanding must already have taken place. But the wonder of wonders that demands here to be thought is precisely the gift of that openness, within which alone any encounter between men and gods is possible at all.

Invisible and unsayable, the law is, and must be, silent. And yet it says. Indeed the law says precisely in that it keeps silent. Silence itself says. Silence does not consist in a mere absence of sounding words. The essence of silence rather shows itself in the silencing of the silence of recollection, in which the possibility of saying first opens its wonder and stuns the thinking man. The silencing of recollection itself is the disclosure of the essential nothing out of which the being of beings is given to thought. The necessity of this silencing is the call in which the law first lets itself be heard. The

necessity that calls in the silence of recollection is the call to obedience. How does it take place?

The necessity of silence is heard ever so dimly in the negative mode of the law's own denying itself to saying. Like Sisyphus, the man who tried to steal the secret of the gods, we are forever condemned to the frustration of our striving to grasp, define, and master the essence of law. Wittgenstein heard this denying call of silence:

All that we wish to say can a priori only be nonsense. Nevertheless, we run against the limits of language. . . . This running against the limits of language is *ethics*. I hold it truly important that one put an end to all the idle talk about ethics—whether there be knowledge, whether there be values, whether the good let itself be defined, etc. In ethics one is always making the attempt to say something that does not touch the essence of the matter and can never touch it (“*Zu Heidegger*” in Friedrich Waismann, ed., *Wittgenstein und der Wiener Kreis* 68-69).

All speaking that purports to say the unsayable degrades itself to irreverent chatter.

Most originally, however, the call of silence is *das Geläut der Stille*, the sounding of stillness (*UZS* 30; *Poetry, Language, Thought* 207; *UZS* 262, *Eng.* 131), which is heard ringing in the law's own affirmation of itself in the actual saying of law. Every speaking that says proceeds from within the unsayable saying of law, and is itself a work of law, in the original sense of ἔργον, *Werk*, in Latin *opus*. The work of law is not the law. What it says, and the speaking that says it are beings that shine within and from the illumination of law. But there opens for thought the possibility that the work, in its own shining appearance as a work of law, might somehow bring into presence the law that is at work in it, so that the law itself would somehow, however still disguised, come to its own place within the open of its light.

The Ancients never doubted the truth of this possibility. The radiance of law, τὸ ἀγαθόν, in the appearance of its work, τὸ ἔργον, is called in Greek τὸ καλόν, a word for which our own word “beauty,” worn and impoverished by centuries of aesthetics, no longer provides a translation. Plato explains τὸ κάλλος as that which alone has the destiny of being what shines the most and enraptures the most, νῦν δὲ κάλλος μόνον ταύτην ἔσχε μοῖραν, ὅστ' ἐκφανέστατον εἶναι καὶ ἐρασμιώτατον (*Phaedrus*, 250 d 5). It transports man into the divine madness that estranges him from what ordinarily passes for conformity to law, τὴν δὲ [μανίαν] ὑπὸ θείας ἐξαλλαγῆς τῶν εἰωθότων νομίμων γιγνομένην (*id.*, 265 a 10). The κάλλος in the work of law is what commands admiration, *quod mirandum est*, and so silences all

ordinary talk, and transports man into the reverence of recollection, where the law claims his obedience. So is it, as Aristotle explained, that the kindness of friendship does not remain ἀργός, workless, but in time, as the friends dwell together, comes into being in the shining presence of the admirable, γίνεται ὅταν τῷ φανῆ καλός τις ἢ τι τοιοῦτον (*NE*, IX, v, 3-4, 1167 a 10-20). And so is it also first and foremost that the gift of understanding comes to shine in its sensible ἔργον (*NE*, IX, ix, 9, 1170 a 30-35).

The power and mystery of the name Heidegger gave to the law lies in that it says at once what is at work in the work of law, namely the law as law, *and* the coming to work of the law in its work. By its ambiguity, *das Ereignis* points to the shining of the unsayable in the saying of law. In the work of law, the law itself as the *Ereignis* that allows every being what is its own, *das Eigene*, happens as *das Er-äugnen*, the coming to the eyes of the gift of understanding. What brings about the happening of this event? The law is

never the effect of a cause, nor the consequence of a ground. . . . The law itself brings itself to show itself—and nothing outside it. *Das Ereignende ist das Ereignis selbst—und nichts außerdem.* . . . There is nothing else to which it leads back, out of which it could be explained. It is no result, *Ergebnis*, of anything else, but the primordial gift, *die Ur-gebnis*, the giving of which first grants the like of a 'there is,' 'es gibt,' which even 'being,' 'das Sein,' needs in order to reach into its own as presence (*UZZS* 258, *Eng.* 127).

To law as law, there belongs that it be obeyed in the work of law. In so showing itself, the law happens as *this* law: the opening of *this* world, the gift of *this* friendship, the handing over of *this* legacy, the destination of *this* way of saying, which we so poorly call our "language." To *this* law, law calls man to belong in obedience, and so allows him to surrender to his own possibility.

The saying of law in which law comes to work is the speaking that says the deed of understanding. Such speaking is so spoken that out of its own piety and reserve it lets the unsayable shine through its union of the spoken to the unspoken. In the humility of its own pointing to the unspoken, the spoken word lets the deed show itself as understanding at work, that is: as the happening of the mystery of unconcealment, the striving of the strife of light and night, the springing of truth out of untruth, the opening of world on earth. Through the keenness of its union of the spoken and the unspoken, which lets the deed shine as work, the word allows the deed its poignant presence, and so commands admiration, hinting at the unsayable wonder of law at work in its work.

In such saying, the work of law rises to stand out and rest in the open of world. The stillness of its standing presence moves and arrests the run of mundane affairs, quieting the noise of common talk, and transporting man in the silence of recollection, that he may wonder in awe. The work itself strikes man with awe, and so opens the world in which it stands. This awe, in German *die Achtung*, long ago thought by Kant as “the feeling of reason, *das Gefühl der Vernunft*,” is the attunement of essential obedience, in which alone man first hears the call of the law (compare Kant, *Kritik der Praktischen Vernunft* *126-59; normally translations indicate corresponding pages in the same star edition; and Heidegger, *Die Grundprobleme der Phänomenologie* §§ 13-14 (Klostermann, 1975); the English translation, Albert Hofstadter, *The Basic Problems of Phenomenology* (Indiana U., 1975), follows the original numbering of paragraphs; and WHD 124-25, *Eng.* 203-04).

In the happening of its work, the law instates itself in a historical world, *diese geschichtliche Welt*, as the opening and the destination, *das Geschick*, of this world. The work itself is the stating that stands, but what shines through this standing is the glory of law at work in its work. In stating and so standing, the work erects the law in the world it opens. Why is the law, *das Recht*, so erected, *errichtet* and *ingerichtet*? Because its dignity, *Würde*, so demands (*Gelassenheit* 60-71 (Neske, 1959), translated in John M. Anderson and E. Hans Freund, *Discourse on Thinking* 81-90 (Harper & Row, 1966); compare Kant, *Grundlegung* *434-36). Just as the erection of the temple obeys the god in letting him approach man and stay present in his house, so the erection of the work obeys the law in letting it have the standing that accords with its standing above and over all beings as the spring of their being. So erected, the νόμος that allows is θέμις, the Stoadfast One, *das Gesetz*, in Latin *fas*, the goddess who tells men their fate and presides over all gatherings of the gods.

Because the νόμος in its work is θέμις, the saying of law is called in Greek νομοθεσία. We are misled when we hear the θέσις of the τιθέναι of θέμις, the original *Setzung* of *Gesetz*, as referring to the human act of setting, putting, placing, or indeed to the self-assertion of a will to impose. Even the Latin *ponere* has the root sense of letting something stand at rest in the open, which may explain its later blending with *pausare*, to halt and pause, in the French *poser* and thus the English “to pose.” The θέσις of θέμις is no positing of some “thesis,” but the celebration of the radiance of law in the erection of its work (UKW 32-33, 49, 67-72, *Eng.* 43-44, 61, 82-87). The Latin

word for it is *institutio*, the German *Errichtung*. Our own "statute" is originally the *statutum* of the *statuere* of such an institution. "*Errichten sagt: Öffnen das Rechte im Sinne des entlang weisenden Masses, als welches das Wesenhafte die Weisungen gibt.* Erecting says: opening the right in the sense of the directive measure as which the essential gives directions" (UKW 33, *Eng.* 44). Only because the law is and must be erected, can it also rule, i.e., direct and correct in the sense of pointing and righting, straightening the paths of man, in Greek ὀρθόειν. As this guiding of man on the way to his essential destiny, the law erected in its work, *das Gesetz*, is the founding of right, *das Recht, le droit*. (On the sense of such a founding, see UKW 62-64, *Eng.* 75-77; compare Nietzsche, *Zur Genealogie der Moral*, second essay, section 11).

III. LOGOS

In the saying of law, the law that stands fast in the inscrutable glory of its work, and so rules over man, and allows all beings what is their own, comes to spoken word. The work of law is indeed, in its most original sense, the word, in Greek λόγος, traceable to the same ancient root as the Latin *lex*, the French *loi*, the German *Lage*, and the English "law." The Greek verb λέγειν, like its relatives *legere* and *legen*, says also: to gather and lay out, and thus let lie in full sight (*SuZ* *32-34; *WHD* 120-25, *Eng.* 198-209; *Vorträge und Aufsätze* 199-221 (Neske, 1954), translated in part in David Farrell Krell and Frank A. Capuzzi, *Early Greek Thinking* 59-78 (Harper & Row, 1975)). The word says, that is, shows precisely because it poses what it says in the open. In this posing, it lets the work of law, as noble deed, stand in its splendor and receive its lauding. The λόγος is the original θέμις in which the νόμος is first erected as ruling right.

As work of law, the word itself is the *Ereignis* in which the invisible law comes to work in the visible deed. In the speaking of the word, therefore, reigns the unity of a difference, the twofold: of the said and the unsayable that shines through the union of the said with its unsaid; of the deed and the law at work in the deed; of thing and world. Properly spoken, every word harbors an essential ambiguity. It carries out the inter-section, in German *der Unter-schied*, of the difference that draws apart the unity by which a being, *das Seiende* (the said, the deed, the thing) and its being, *das Sein des Seienden* (the unsayable, the law, the world) are bound in their mutual belonging. This drawing apart, the *Austrag* of the διαφορά, is the essence of

pain, the distressing movement of which points to the word's origin in the holy, as the latter withdraws into the unknowability that protects its inviolability. In the unity of this tension lies the source of the stunning radiance, τὸ κáλον, of law at work in its work, that with which Kant struggled in his treatment of the "reflecting judgment" (*Kritik der Urteilskraft* §§ 6-18; translations of the *Critique of Judgment* normally use the same numbering of paragraphs as the original). Above all in poetry, the power of which reached still unsurpassed heights in the Ancient Greek tragedy, the singing word arrests man, wrests him from his attachments to the beings that surround him in ordinary existence, and transports him into the presence of the law out of which their being is granted.

Even at its highest, however, for the word of law to be such a work, its truth, *die Wahrheit*, must be received, and for it to remain what it is, its truth once received must be kept in trust, *die Bewahrung der Wahrheit* (UKW 54, *Eng.* 66). A work can be work only insofar and so long as the arresting power of its word is heard, that is, only insofar and as long as men listen and let the work be the work it is. What then is it to hear and keep the word of law? A work is no ordinary being the possession of which can somehow be secured, and the substance of which may then be kept in store and preserved. No keeping of the law has yet occurred when the spoken words are fixed in memory, recorded in writing, represented in beliefs, or even when their represented prescriptions are reproduced in conformable conduct. The law, whose word is to be kept, never lies in the actuality or preservation of some prescribed state of affairs. It never "is" anything other than the opening to men of their essential possibility, i.e., the gift of a possible friendship in understanding. The word of law is work only as the coming into presence in a being, namely the spoken word, of the unsayable truth of that possibility. Never can it be captured in anything like the proposition of rules, principles, theories, interpretations, etc. Any attempt to do so would produce only sterile dogma. To keep the word of law is to stay in awe within the truth of an advent, namely the advent of the gift of understanding.

However, it belongs to the law that its word is not kept. Men will not stay within the truth of the law. Men live for the most part in diversion, absorbed in the occupations and preoccupations of daily existence, turned away from their essential destiny. The thought of such a turn away from the light of truth goes back through Plato's account of the philosopher's "turn," the περιπαγωγή (*Republic*, VII, 514), to the teachings with which Parmenides returned from his encounter with the goddess of Truth (Fragment 6). Pascal called it diversion, *le*

divertissement (*Pensées*, 132-39 [Brunschwig, 170, 168, 169, 469, 139, 142, 166, 143]). Heidegger speaks of it as the fallenness of man, *die Verfallenheit* (*SuZ* 175). The fall of man is in no way to be thought as the succumbing of the *animal rationale* to the temptations of his animal "nature" out of weakness of will in breach of the rules of "reason." Fallen man has rather fallen prey to all "reasonable" expectations of ordinary common sense, even as he violates them. Fallenness reigns in conformity and transgression alike. Nor does the fall consist in or result from any wilfull self-assertion in defiance of the law. The ways of human self-assertion to which it leads proceed always from oblivion, not defiance, of the law.

The fall is no disobedience or wrongdoing at all, but rather an escape from essential obedience, which dulls the power to do wrong as much as the ability to do right. At bottom it is no doing of man's will at all, but rather a bewildering way in which the law itself is at work. The law itself grants man the sight of the beings that surround him and capture his attention. The law itself effaces itself from the sight it grants. The law itself allows beings to distract man from its veiled presence in the work of law. There happens a kind of bewitchment of man by the fascination of the beings he sees, touches, grasps, and takes in his possession. The opportunities and necessities of daily existence press their demands with such urgency that they drown the silent call of the highest necessity. Beings in the actuality of their uses and dangers overcrowd the open of thought and suppress the memory of the useless nothing out of which their being is granted. The familiar acquaintance in and with which man secures his relations to beings comes to pass for the standard measure of knowledge.

The fall also alters man's relation to the word. Language itself, which in truth "is" no being, falls in use and degenerates into thing-words, sounds of the voice, or marks of pen or print, that serve as means of processing and communicating "information," thing-thoughts, the usability of which is secured by the ordinary "meanings" of a common vocabulary. The word comes to stand for what the being it says ordinarily holds in common with others of the same kind, i.e., for the commonplace. Thus, language comes to rule as the repository of clichés, *das Man* (*SuZ* 126). There arises the illusion that the word of law is preserved when its pronouncements are spelled out in proposed rules and doctrines, available for convenient repetition and managed enforcement. "Law" turns into a public orthodoxy, whose parroting and sophistry "justifies" a noisy, quarrelsome vindication of thing-rights. No *justum facere*, no *jus*, no invocation of the gods, can ever take place in a *lex* so debased. However much conformity may be

extracted in its name, all arrangements it supports bear the mark of lawlessness (compare Pascal, *Les Provinciales*, usually translated as *The Provincial Letters, passim*). All attempts to shore up such "laws"—by grounding them in God's commands, or in "laws of nature," or in transcendental canons of "reason," or "critical morality"—must fall flat on their face, not for want of logic or cleverness of some sort, but because they themselves proceed from the oblivion of law in which the order they would ground has fallen.

Today, we suffer the nearing of such a near oblivion of law. Our age is that in which a fallen humanity claims for itself the position of the all-founding subject of philosophy, the "god" to whom even law counts as nothing other than an object of his making. The creation of the creative will of this subject is called "positive law," now understood, or rather misunderstood, in the modern sense of a product of the human act of posing and imposing. For this new formation of law, *das Ge-setz*, Heidegger coins a new name, *das Ge-stell*, a word that had never born such a signification in ordinary German (*Die Technik und die Kehre* 19 (Neske, 1962), translated in William Lovitt, *The Question Concerning Technology*, hereafter *Eng.*, 19 (Harper & Row, 1977). In claiming the power of universal legislator, fallen man fancies he has overcome his finitude, risen above all beings as their enlightened master and protector, free from the shackles of faith, tradition, and soon even death. Under the spell of this "positive law," thought decays into the *ratio* of rational calculation, which sets itself as the measure of all knowledge and wisdom. The "legal" becomes identical with the rational. Philosophy too falls in the service of the methodical rationalization of all spheres of thought, and makes language into a system of symbols fit for the smooth functioning of calculators. "Rules" and their unruly words give way to the calculable formulas of "policy." All beings, including man, are reduced to the standing of a mere asset, *der Bestand* (id. at 16, *Eng.* 17), priced quantities of disposable energy. The superstitious pursuit of the "realization of values" enthrones itself as the highest enlightenment of liberated humanity.

Yet even in this nearing of the oblivion of law lurks the presence of a sign of the law. There reigns amidst the wealth of values a strange absence of the good. Values devalue themselves in the debasement of their own appraising and pricing, so that an eerie devastation follows the progress of man's conquest of the earth. The endless restlessness of his pursuits oppresses man like an everpresent ghost of his unfulfillment. The deafening bombardment of "communication" destroys the silence of listening, and confines men to

senseless isolation. The busy, all-intrusive making and remaking of "policy" denies its own "decisions" all power of direction. The dulling glare of sensation robs the eyes of the sight in which beauty might appear.

When man revolts against his desolation, or takes it as a challenge to his creative will, he only sinks to greater depths of the same. Every posing of the "problem" of modern man as an object of reflection and purposive action further entangles man in that very mode of thinking and being out of which the "problem" first arises. No exertion of will can ever accomplish an "overcoming of nihilism," for the rationality of rational man is itself no achievement of his will, but an astounding work of the law. The law itself allows beings to approach man as possible objects of his knowing and willing. The same law saves itself from the reach of this will by denying itself to the sight of man. By this very absence it allows the nearing of its own oblivion.

*Wo aber Gefahr ist, wächst
Das Rettende auch.*

But where danger is, grows what saves also (Hölderlin, *Patmos*, quoted in *id.* at 41, *Eng.* 42). The law also may allow thinking to experience the danger of nearing oblivion. In so allowing it may save itself from the fulfillment of its oblivion, for oblivion can fulfill itself only in the forgetting of its own forgetting. If and insofar as thinking may experience the nearing oblivion, the law may return to thought in the mode of its own absence. Absence too, as the want of a presence, is a mode of coming to presence. Just as in feeling the absence of a friend, we remember the gift of this friendship, and even in pain can be thankful for it, so in the absence of law, thinking may return to the law in the way of remembrance and thank. The pain of its devastating absence may itself be the silent call in which the law lets man hear of its need of man. Then the devastation itself may turn into saving grace, provided man will for his own part accept it, and so turn and be healed:

The imposition of positive law, *das Bestellen des Gestells*, poses itself, *stellt sich*, before the thing, leaves it as thing without the protection of its trustee, truthless. Thus positive law misplaces, *verstellt*, and hides the nearness of the world nearing in the thing. Positive law misplaces even its misplacing, just as the forgetting of something forgets itself and draws itself away in the wake of forgottenness. The law, *das Ereignis*, of forgottenness not only lets fall in concealment, but this falling itself falls along in concealment, which itself also falls away with the falling.

And yet—in all misplacing of positive law there lights itself the world's glance of light, there flashes the truth of being. That is, if and when positive

“law” lights itself in its reigning essence as the danger, namely the saving one. In positive law too, as a reigning destiny of being, reigns the essence of the light of a lightning flash of being. Positive law is, albeit veiled, still a glance, not a blind destiny in the sense of a fully fatal fato (id. at 44-45, *Eng.* 46-47).

The saying of law comes to word in its own ways. No willing ever brings it about. We may prepare ourselves to hear it, if we let ourselves experience and think through the oblivion of law that threatens the essence of man in the age of positive law, *das Gestell*. To do so is not to ponder the miseries of modern man. Nor is it to deny, or refuse, or otherwise measure and control the powers of modern technique, such as they are. The task of thinking is at once far simpler and far more demanding. It is to let the reign of positive law be what it is. That is to say: thinking must learn to see the essence of positive law as a work of law. In so learning, we should already have begun to answer the call of the law.

* * *

Heidegger’s thinking settles no question. No thinking proper ever does. Thinking proper only lets essential questions pose themselves more sharply. Only so may it prepare us to experience the wonder that “*das Ereignis ereignet*” (*Zur Sache des Denkens* 24 (Max Niemeyer, 1976), translated in Joan Stambaugh, *On Time and Being*, hereafter *Eng.*, 24 (Harper & Row, 1972)). One obstacle on our way to such experience is “the saying of law in the way of articles and lectures. These can speak only in propositions” (id. at 25, *Eng.* 24).

