

Law & The Sacred: Wander into Oblivion Peregrinations and the Epiphany of Justice 1

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There is a crack in everything.
That's how the light gets in.
--Leonard Cohen, Anthem

***Kairos* and the infinity of the moment**

Law *is* not, it *be-comes*. Law is not an object but pure be-coming. It is movement. When I act in the world something happens to me. *Kairos* is Greek for the moment. The true moment. It captures at the same time a centrifugal and centripetal movement. But how does one know in a given moment that it is *kairos*? Does it only show itself when its all over, when our story is long finished? Is there ever presence in *kairos* or does every moment point towards an invisible middle, towards a waiting presence, that hides itself? Is *kairos* about having a feeling for the invisible? *Kairos* sees law as the infinity of the moment. Within this infinite moment, man is not a master in his own house. Something happens but he doesn't know what it is. He is waiting but he does not know for what. Gorgias makes *kairos* a central concept in the Rhetoric; it means persuading as an accomplishment of the moment. In his *Ethics*, Aristotle connects *kairos* to a poetics of acting -- a sense of what comes, what is made possible; and the ethics of the response to the situation. *Kairos* is everywhere connected with the opposition between contingency and necessity.

The Enigma of Law: The Dawn of Justice

To lose the sense of this infinite moment is a disenchantment. How can we re-enchant the world again? How can we bring back a secret to our lives that is so sadly missed in modernity? The secret is the unseen in the seen, the unthought in thought. It is to see the non-trivial side of life. To see it as something that blooms in unknown circles. Justice, God, the Good life and the beautiful life are something inaccessible and incomprehensible. The greatest challenge is to grasp them as ungraspable. To preserve them exactly in this inappropriable condition. To maintain the enigma of law as an enigma without reducing it to something we can know or grasp.

Justice is the most important condition of modern legal culture and yet it is its own mystery and enigma. How can the enigma remain an enigma? Justice is a *call* that can only be heard if we can receive it from its hidden depth. We cannot receive it as justice in a visible dressed form. How then can we capture justice without possessing it as a knowledge? How can we possess justice without knowing it? Maybe we can only possess it as enjoyment, as a *style* of language and as an epic form that captures the hidden corpus of justice, that makes visible the singular event where a demand and a pain is heard and rendered. The thinking of justice must guarantee the inaccessibility of its object to preserve the enigma as the enigma. Justice is the irretrievable negativity that renounces any knowledge. This means that justice never shows itself on the surface of law or in law's empty mirrors. Justice is a *trace* coming from an other voice that cannot be institutionalised. Since it is not only the other who is an enigma to me but also that I am an enigma to myself, this voice that speaks is my inner voice. A voice before conscience and without metaphoric substance. This voice is neither descriptive nor normative. It *is*. We can only begin to see law and justice as sacred when we no longer transform the magical power of a phenomenon like justice and turn it into an object. This is the only way to respect and protect the inviolability of justice.

The critical project of law and justice then has changed. To be critical is not a dialectical matter. To be critical, we must be capable of entering into a relation with unreality and with the unappropriable as such to make it possible to appropriate the real and the positive, to paraphrase Giorgio Agamben (1993: xix). Our project is no longer postmodern. In postmodern thinking, reality is only what we experience and there is nothing behind the surface or the different forms of appearance. If you look behind you will only find your own shadow. Today we have reached a period after postmodernism that leaves behind the radical critical attitude of postmodernism. It is replaced by an attitude that within our creation of a

world there is a *secret* about reality. Postmodernism, together with science, was the last de-enchantment. To re-enchant the world we can start listening for hidden reasons and strange and wonderful stories.

Within politics and law this *second-regard* of a post-postmodern world could be characterised by the old concept of destiny, *heimarmene*, that constantly oscillates between the accidental and the necessary. This seems to be the most natural way of relating to our political and legal world today. People maintain contingency in the view of their own lives and social relations and, at the same time, they seek the absolute. Our way of understanding law and justice is by telling these stories. We find connections that we were not aware of before. A new imagination for speaking about law can open to secrets and possibilities that were not there before. The epic dimension of law is part of a plan it does not know itself. When a poet writes, he writes something he didn't know beforehand. Even though there is no grand narrative that determines our way of understanding our political situation and justice, it seems that we nevertheless are writing the same story. We are not here looking for another grand narrative that has the same character as it did for science. It now seems possible for us to believe that there exists another language, a hidden language that guides us. A language that lives in-between us. It seems that many stories of the late legal and political thinking are an effort to listen to a voice in the language of language. The violence of language towards pain, understanding and human beings seems to be the reason why we have been looking for a language within language. This poetics of our social reality is not empty but rather it relates to something it doesn't know. This makes us more open towards others. To have a deep recognition and respect of each other's differences is to see a connection between law and the sacred, but this connection is not something that gives us a right to conceptualize it.

Wander into Oblivion as the Place of Justice

God did not give the Law to save the people, but to reveal to us that we need to be saved --
Romans 5: 20.

The human is a social animal, and the social is evil. We cannot do anything about it, and yet we cannot accept it if we do not want to lose our souls. Life can thus be nothing but laceration. This world is uninhabitable. And therefore we must escape to the other. But the door is closed. How long we must knock before it opens! In order truly to enter, not to remain on the threshold, one must stop being a social being. --Simone Weil

Any kind of community demands the infinite depth of strangeness. It is an art to get hypnotised by the strangeness that is our present condition. A condition, however, we cannot live. Perhaps it is here that we find a home: the abyss of the smile and in the mysterious nostalgia of naked life. To find ourselves amazed by how things appear and to be most amazed by Man who of all creatures seems to be the strangest of them all. This wonderful and wandering creature possesses an enchanting force that makes it give up familiarity and security for the benefit of the strange, the alien and the otherness, and always on its way to another kind of intimacy. The question is whether Man still wanders to the city, the *poros*, the square and civilisation, as the Greek spirit has taught us, or if there is another kind of wandering *out* of the city, on the edge of the city, on conditions Man does not yet know. Maybe wandering is about hoping for something you don't know, about throwing away the map, and eventually to experience that you are, step by step, approaching something. Little by little you vanish and disappear.

The liberating necessity of wandering belongs to a creative life whose movement encircles you and is transmitted through the body in a investigating and ecstatic voyage. This voyage can be both dramatic, insane and, in no matter, a failed attempt. It can also be an opening to something forgotten or hidden that brings back a secret to our lives. It is not only the lure of mountains, of forests and the morning haze that makes us wander but the rupture that seduces us. At some point we might arrive at the obscured light beyond light where, from the lack of sight and knowledge, we suddenly *see* something we cannot see. We see something that appears from dimness and darkness. We faintly see what cannot be our own shadow but something that belongs to the incomprehensible. In wandering, a light will appear by disappearing! I grasp the incomprehensible obscurely. An unlimited reality that appears from a glaring darkness. The Italian troubadour Italo Calvino says in his posthumous essays: *For the Next Millennia* (American lectures) that the Italian word *vago* means both 'beautiful' and 'movement'.

The word holds an idea of movement and change that attaches to the unknowing, the uncertain, the contingent, the graceful and the pleasant. The patient pilgrimage is a movement towards something inaccessible and an approach to something incomprehensible. A spiritual economy of mildness and patience. We live not for life but for something that must *be-come*. To stop being a pilgrim is the same as to give up our humanness.

In a sense we are all wanderers as it is in wandering that we dream to live, that we forget to remember, and chance upon the non-place of where we get lost to find a home. Common in our dreams is an engagement with the disappearance that escapes us, that deprives us and withdraws from us, the forgotten, and traces of something else, the visibility of which we can only glimpse. *Peregrination* is a state of contemplation and the form of thinking that is a floating attention towards what lies behind the conspicuous, a persistent lingering that is waiting to appear within the clearing of our attention. It is a certain patience towards the light that wants to be seen and a watchfulness towards the traces that slowly seep out. To wander is to let go, to let go of ourselves, throw away our weapons and wander into oblivion. In wandering we can wonder at existence and the amazement of things. To wander is about meeting the unknown. Only in such releasing wandering can we meet the event that comes with a certain respect, cautiousness, awe and veneration. The pilgrimage is a meeting with the creating and disappearing movement of things. The pilgrim comes to sense how the world fits together and realizes that the most wonderful pulse of wandering is beating within the rupture, within the flash of lightning that opens for new experiences. These singular events now and then create a certain variety and uniqueness. Reality comes about when things within their own moment break free and receive their own life. To wander is to get amazed *that* there is something and in the end we must be dependent on things themselves: "Where language stops is not where the unsayable occurs, but rather where the matter of words begins" (Agamben 1995: 37). To be freed from any representation of law and justice is not to have nothing to say about them, but rather to tell many stories and many fine tales about our life. To wander is to listen for things to come forth without controlling or manipulating them. This is the beginning and the *epiphany* of justice.

In his work *Peregrinations*, J-F. Lyotard proclaimed that as a young man he wanted to be a monk, painter or historian. It is natural to relate such dreams to his concern with ethics, politics and aesthetics. Common for these dreams is a certain preoccupation with the disappearing, the hardly visible behind the surface. This "floating attention" to political and legal discourse seemed to be an impetus for his thinking:

In order to take on this attitude you have to impoverish your mind, clean it out as much as possible, so that you make it incapable of anticipating the meaning, the 'What' of the 'It happens'... Thus to encounter an event is like bordering on nothingness (Lyotard 1988:18).

These are the clouds of political and legal thinking. Our wandering and our stories try to focus on the incompatible, earlier known as 'heterogeneity' and the 'event'. Beyond Lyotard and after postmodernism lies a radical phenomenology for legal thinking which is about making visible something that may lie behind, or that unfolds on the surface. *Peregrinations* could be about grasping the idea that we are telling a story, that we are moving in a story, and that at some point it shall reveal a secret about what is happening.

In her *magnus opus* of the metaphysics of morals, Iris Murdoch proclaimed that our sense of justice becomes a spiritual pilgrimage *from* appearance *to* reality (1992: 10): "We can think of the absolute only as a distant moral goal, like a temple at the end of a pilgrimage, a condition of perfection glimpsed but never reached" (Murdoch 1992: 304). In our story, the peregrino is a man of *patience* and a man of *passion*. He wanders to overcome law and get salvation by justice (Bunyan 1989: 39-41). He does not wander only to overcome his own sin. He feels good from the beginning and wants to see God's creative energy in motion. In peregrinations he waits for the best to happen and eventually there will be a glory. His passion is his real blessing. It is not sin but original blessing that drives him. In wandering he increases his own humility which is to befriend one's earthiness. Within the pilgrimage he is not in control but in a state of letting go. Justice is about receiving openness, an ek-stasy. Justice is the drama of openness in wandering. In walking he is always hopeful and never pessimistic. He is not struggling with his own conscience but rather struggling to make justice of injustice and to balance the cosmos. The eternal life is now. It is not after death. Peregrination is the true exile of contemplation and the goal of spirituality and contemplation is compassion, justice and celebration. In wandering, he strives for beauty. Faith is not for the intellect but pure imagination. Nothingness becomes the most important

metaphysical experience for receiving the dark light of justice (Fox 1983: 316). Nothingness and oblivion becomes the force of justice.

As peregrinos we are invited to enter the radiating darkness of law. We are invited to enter into oblivion. In forgetting and facing nothing, we shall forget law and face justice in the same manner as Hamlet would embrace justice (see Hirvonen 1994: 289). We forget because we are thrilled by a new landscape. Forgetting enters by keeping us on our pilgrimage. We feel the pain. We overcome the pain. We let the pain be pain. Letting pain be pain is a way of showing compassion. As I continue my walk, eventually my mind is empty. We shall disappear into the pilgrimage as the dancer disappears into the dance. We cannot stop. We are entering the epiphany of wandering. There is no 'why?' or 'how?'. There is only *Haecceitas*, there-ness. *That* I am here on a path surrounded by small trees and fields in movement; in between, not only to leave my home, the place I come from, but to leave a part of myself. It is in these moments that our wandering finds its home. When I no longer see anything -- such as the red poppy-flower -- I see everything. I let the flower and myself be. I have become part of the wandering. Each peregrination is about the possibility of unfolding as unique and singular. It is a longing for a non-place from where the voices of justice will be heard. The heart of compassion, friendship and love happens within our pilgrimage as we wonder this earth. Our pilgrimage leaves traces in the world, that we cannot possess. This non-possessing of justice is our world in pilgrimage. A knowledge of ignorance. An accomplished gained non-knowing. The origin of representation is disappearance and oblivion. What is unattainable in any representation of justice is ourselves. We are our own mystery. We never have ourselves. The mystery of representation is revealed to us in our pilgrimage. Within oblivion we shall lose ourselves, which seems to be the presupposition for the accomplishment of representation.

Nomadic Human Rights, or Modern Peregrinations of Law

The empirical light of law is like a Persian carpet formed of patterns and knots. To approach things is to lose ourselves in the weave. Any presence demands the Proustian *memoire involontaire*. While memory is the woof of things, forgetting is the thread that weaves the image during the night. In Walter Benjamin's memorable words: "When we awake each morning, we hold in our hands, usually weakly and loosely, but a few fringes of the tapestry of lived life, as loomed for us by forgetting" (1968: 202). Seeing law's sacredness happens for the Persian wanderer who in the obscured light -- night and day -- receives the arabesques of appearances. Half-awake and half asleep he sits in the colonnade and listens to the laws of sleeping. The Persian wanderer knows that it is not humans who create law and justice. Man is not himself a transparent figure for universal values. Law's are not the creation of a transparent reason. Instead, Man receives the light of humanity by *be-coming* human. To be human is to *be-come* human. He wanders this earth and receives the dark light. Justice is not for Man to make but something that happens as she goes along. The human of the human is the true mystery. Justice is dawn's light. It gestalts a certain meaning in the world of Man. Justice is nothing but an appearance. It is Epiphany. The presence of presence. It is not us who control justice, but rather *appearance that demands something from man*. The silent world forces us to intimacy. It draws us into openness. Justice is the drama of opening. Law and justice are about receiving this opening or ek-stasy that greets us. What determines Man is not what he does, but *how* he handles what happens to him. How do we cope with the events that we meet. Gilles Deleuze said it beautifully many years ago: "Either ethics makes no sense at all, or this is what it means and has nothing else to say: not to be unworthy of what happens to us" (1990: 149). Our *ethos* is a duty to receive our own destiny and due to necessity we shall become free.

Ethos captures the infinity of the human, or simply the human. The vagueness of the human rights project is due to the disappearance of the human. The spirit of the human is fossilized into representations of rights. To preserve human rights is about encountering the unknown. The unique and the alien element in humanity. This fundamental strangeness connects human rights to infinity. Judgement can never be met with rules, descriptions and given norms, but only with watchfulness and sobermindedness. How can we preserve the unique, the indefiniteness that can never be reduced to something already known if we are fixated on concepts of law, rules and the limits of the state itself? Rather it seems that to preserve the unique, to defend human rights, is to see this preservation as something that resembles a call beyond the image of the state, beyond the concept of a norm, beyond law's own rules and categories, and see this as a call of extra-territoriality. Is it not the possibility to guarantee this extra-territoriality that must express the invisible conditions of modern law? Beyond the

political power to codify law in regions and systems, there will always be deterritorialized streams that transgress and de-stabilize those regions (Deleuze and Guattari 1987: 207). This 'other city' of normativity is not a place but a non-place of streams. This is a city of nomads. It is a non-place of intensities and expressivity that appears *before* any articulation, *before* codification takes place, and *before* the designing is put in place. Here we can only follow the streams. Streams are simply what make the space of the nomad. There is an obscure transitoriness within normativity and the be-coming of justice. Human rights are not realized with codification. Their realization depends upon a transient, heterogeneous and temporal metamorphosis that determines each social context. Human rights are an abyss and we are never done with it.

The modern refugee marks both a sad situation but also a possible insight into the revelation of the infinity of the human in human rights. It is about making visible the naked life of the refugee and its status beyond human rights. To preserve the natural and naked life of man. Giorgio Agamben has evoked some important insight to this kind of thinking. The concept of the refugee shakes the very status of human rights. The distinction between 'man' and 'citizen' seems to rest on a very blurred relation. The idea of 'citizenship' refers to our birth and therefore our so-called naked, natural life. A biopolitical legitimisation. We have politicized naked life. But, within modern human rights, 'birth' is transformed into 'nation' and, therefore, citizenship and there seems to be no real distinction between the two (Agamben 1998: 128). One only exists as a citizen. Man has disappeared. Human rights have become the project of the vanishing human being. The spirit of be-coming and infinity of the human is no longer visible. Agamben has suggested a dissolution of the concept of human rights in relation to nationalization and thereby a dissolution of citizenship and the modern demand of assimilation. The idea of human rights should be based on the status of the refugee, on the de-territorialised element of the stateless demand to legal claims. Such claims are not being legitimized by national membership, neither to the land that is abandoned or left, or to the land in which refuge is temporarily being taken. The right of asylum will be based on a new concept of human right that is liberated from any feudalised obligation of permanent address, and any nostalgic idea of home or native soil. Reminding us of the present situation of refugees in Europe and other places, rights should only be attributed to human beings to the degree of being vanishing citizens.

If the refugee represents such a disquieting element in the order of Nation State, that is so primarily because, by breaking the identity between the human and the citizen and that nativity and nationality, it brings the originary fiction of sovereignty to crisis (Agamben 1996: 162-3).

We are also reminded that the Jews, Gypsies and other minorities were being sent to the camps only after having been "fully denationalized" (Agamben 1996: 162-3).

When the rights of the refugee are no longer based on the rights of a citizen, they are rooted in each human's sacred nakedness. The claim of rights are based on each man's inviolability. Instead of proclaimed ideals, human rights would be almost visible: they would be based on the fragile living and dying man, the material all rights are made of. Since modern industrialised countries today are facing a permanently resident mass of non-citizens who do not want to be naturalised, we are bound to take seriously the possibility of a present peregrination of justice. Agamben suggests that we should conceive Europe "as an aterritorial or extraterritorial space in which all the (citizen and non-citizen) residents of the European States would be in a position of exodus or refuge; the status of European would then mean the being-in-exodus of the citizen" (1996: 162-4). This gives us back the opportunity of the sacred dimension of law, since human rights will be about how humans find themselves together, how they create a community and a political space in the naked fragile human peregrinations of living. This peregrination is the unfolding of a community of finitude and strangeness. Community rests in a state of movement and be-coming. Their modern institutionalisation identifies human rights with "*a thing*" that humans join together *around*. This has, with several ideologies, also created the homogeneous monster called citizenship. Beyond these kinds of human rights, lies the sacred kind -- based on the encounter with the sacred nothingness. To see the sacred dignity of law is to see how nothing appears: "Scholem defines the relation to law described in Kafka's *Trial* as the 'Nothing of Revelation'" (Agamben 1998: 50). A *Geltung* based on the sacredness of life. The sacredness of law is about emptying the mirror of any representation.

The be-coming of nomadic law is about encountering the continuity and movement of reality. The law is an enigma since it only appears in the obscured middle of life. In darkness and movement itself. Human rights are not the mime-game of an original state of law. The idea of origin lies in becoming. Law *is*

because it *becomes*. This radical immanence of law is found already in the thinking of Spinoza (see Gustafsson 1998: 184). To place the optic of God in the world. This immanence is about time, rediscovering the fullness and the concreteness of time. This is not religious holiness. The dimension of the sacred in law lies rather in the infinity of reason. Origin and legitimacy happen in the stream of becoming. There is only wandering in the non-place of community between memory and longing.

To Empty the Mirror

The mirror is silent. If it is empty, then seeing oneself is about creating emptiness. It is not about closing our eyes, or leaving the image. It is about seeing oneself out of the image. It is about epiphany without a figure. About the presence of presence. About removing the *re* of re-presentation. We should once again create within repetition. In his meditations on sacred art, Derrida has made a tribute to the man of justice as the naked blind man. "The naked face cannot look itself in the face, *it cannot look at itself in a looking glass* (1993: 69). The blind man becomes a witness, he must look for the divine light. The blind man is a healer since someone who takes away sight in order finally to show or allow seeing and to bear witness to the light, can bring intimacy and destiny together:

The Gospels can be read as an anamnesis of blindness: the word that is sent, the word *judgement* or *salvation*, the good news, always happens or comes to blindness. The advent or coming takes place according to the story of the eye (Derrida 1993: 20).

The sacred of law is the light of blindness.

The reason of infinity receives the dark light of justice; justice without an image. Law *and* the sacred is about radicalising the point that we cannot make any representation of justice. Justice is a silence that speaks without a mirror. The postmodern French metaphor of the mirror is no use anymore. We must empty the mirror. This is the real challenge. When we see that any legal decision is *kairos*, the infinity of the moment, and we see that law is a mystery not for us to grasp, then we wander into oblivion. Only by getting rid of ourselves can we recall the awe and wonder of law and justice. "I pray God to rid me of God" (Eckhart). The infinite reason is the hidden voice of Man. The hidden God is dwelling in Man. Nikolas of Cusa said that "Man is another God". Man is the angel of the Earth, who now wakes up from his oblivion. Man can only grasp God -- the one and infinite -- as the other of otherness. To preserve the unique is to maintain it in its ungraspable condition. The unique difference or the difference as unique cannot be known. Cusa's faith in God was a metaphysics of non-identity. Then law *and* the sacred could be about listening or searching for another language behind language. A language within things. A presence of presence known as the infinity of reason.

By losing oneself, one is raised to a level of infinity which is a sublime negativity and yet the most positive of all. To empty the mirror of justice is to accomplish a wise ignorance. One sees without seeing. One listens, not to language but to the language of language: The Saying of justice. In the light of obscurity, one accomplishes knowledge by not-knowing. Justice is the light of darkness. Only by *becoming* myself can I create justice. To exemplify a virtue is not necessarily to know it, but nevertheless a man of virtue 'knows' what he does. The singular Being exists somewhere on this peregrination. The thinking of Wittgenstein has reminded us that the inner voice of justice shows that Man does not correspond with this side of God that is the world. When God is revealed to us as our inner voice we cannot unite it or him with the world. Instead, there is freedom. To empty the mirror of justice is to experience the true revelation of freedom, since you are only free when it does not happen by your own will. We only experience true freedom when another force keeps us in movement. The inner voice of God and justice is the infinity of the moment. This inner voice is the voice of rupture. The voice of rupture is the voice of pain. The pain of others, the pain of the traces of history, are what cannot be healed and should not be healed. To remember the rupture. To have the unhealed with you everywhere you go. We can rely on the voice of rupture since it is not something we can lie about. We cannot pretend. We cannot think away the rupture of the inner voice. We cannot pretend a consensus in the world because the voice of the dead and the voice of the living cannot be pushed into the unison of a language of consent. The infinity of the moment and consensus exclude one another.

We must wander into oblivion. It is not enough to wander *this* world. To walk into oblivion is to walk on the limit. On the limit we shall meet Spirituality and the Voice of God. The true Law. This is the inner voice before conscience. The voice of conscience is metaphoric since it duplicates social existence. In

its very fundament, the inner voice is neither descriptive or normative. It is. The moment of infinity. This and only this can save us. It can heal us. Our salvation depends on our courage to empty the mirror. This is the lesson of several great spiritual fathers and the great thinking of Spinoza. Eckhart in particular, but also Nicolas of Cues and Hildegard of Bingen, do not begin with Man as a sinful Being but Man as creation and as creator in every moment. We have to see everything as sacred. The most profane is the most sacred. John Bunyan's lovely peregrination reveals a profound insight into the mystery of law and justice; that wandering on the limit of this world we can be full of justice, full of wisdom and love. By being alone in wandering, we encounter a beautiful state of contemplation which, as for instance Thomas Merton saw, is the true condition for modern culture to survive. To withdraw from the world. To live in exile. In exile we can live with a sense of tragedy and comedy. A sense of a unique encounter. The infinity of the moment is the essence of peregrination.

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Footnotes

1 *Epiphany* (Greek): Appearance, revelation. Particularly the revelation of Christ and the holy three Kings. In this paper epiphany signifies the more direct meaning of the verb: *epi-fainomai*, "appearance" but in the strongest sense of something manifesting itself within its visibility and appearance. What comes forth is the appearance itself, the phenomena as phenomena. Epiphany is seen as the movement towards the limit, the appearance of the phenomena dissolves its phenomenality. Epiphany is the presence of presence (Von Ritter & Grunder 1971: 8bd).