MERIDIAN

CROSSING AESTHETICS

GIORGIO AGAMBEN

Translated by Adam Kotsko

Karman

A BRIEF TREATISE ON ACTION, GUILT, AND GESTURE

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A Brief Treatise on Action, Guilt, and Gesture

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How can a human being be guilty?

—Franz Kafka

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Translator's Note

Several key terms posed translation challenges in this text, due primarily to the Italian language's much greater proximity to Latin, as compared to English. For the Latin terms *causa* and *culpa*, the Italian equivalents are virtually identical (*causa* and *colpa*, respectively) and share the same overlapping meanings, which cannot be captured in a single English word in either case. I have adopted a flexible strategy, in some cases translating the terms "back" into Latin to clarify the double meanings and etymological connections, but in other cases choosing one of two English words—"cause" or "case" for *causa* and "fault" or "guilt" for *colpa*, which are used only to translate their respective terms and render no other Italian term—depending on the context. Readers who suspect I have misjudged the intended sense in any given instance can mentally substitute the alternative rendering. In the cases of the idiom *in causa* ("at issue," "in question") and the word *cosa* ("thing," "affair"), I have resorted to bracketed Italian to capture Agamben's untranslatable puns.

In Agamben's discussion of Greek drama, his use of the term *personaggio* ("character" in the sense of "fictional character") and *carattere* ("character" in a general sense, as in "moral character") also presented a difficulty. I have chosen to translate *personaggio*, somewhat artificially, as "theatrical persona" when the two Italian terms appear in close proximity; however, in Agamben's discussion of Vernant's theory of tragedy, where the broader concept of

"character" is not at issue, I chose to translate *personaggio* as "character" for the sake of a more idiomatic English text.

As in my translation of *The Mystery of Evil*, I have chosen to break with the convention of marking the difference between *legge* and *diritto* by using "law" and "juridical order," respectively. This distinction does not seem to me to be playing a significant role in Agamben's argument, and maintaining the two separate translations led to awkward and artificial constructions. The fact that Agamben frequently uses the Italian *ordine giuridico* ("juridical order") also spoke against using the conventional translation for *diritto*. Broadly speaking, in parallel with the familiar contrast between *langue* and *parole*, *diritto* refers to the legal system in general while *legge* refers to particular provisions; the respective senses of the English "law" should be clear from context in the vast majority of cases. I have also decided to retire a curious piece of translation-ese that has slipped into many English renderings of Agamben (my own included)—namely, "scission," which I have replaced with "split."

The translation of Pindar's fragment 169 follows Daniel Heller-Roazen's rendering of the same passage in *Homo Sacer: Sovereign Power and Bare Life*. For quotations from Vasugupta, I consulted a standard English edition—*The Aphorisms of Siva: The Siva Sutra with Bhaskara's Commentary, the Varttika*, ed. and trans. Mark S. G. Dyczkowski (Buffalo: SUNY Press, 1992)—but found the translation to be so different that I opted to directly translate the Italian version Agamben is citing.

I would like to thank Carlo Salzani once again for checking my manuscript against the Italian text and Craig MacFarlane, Austin Morgan, Fred Dulson, and Noah Kippley-Ogman for bibliographic assistance and to express my continued gratitude to Emily-Jane Cohen and the whole staff of Stanford University Press.

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§ 1 *Causa* and *Culpa*

1. The two concepts that serve as a threshold to the edifice of the law—*causa* and *culpa*—lack an etymology. The entry for *culpa* in Ernout and Meillet's etymological dictionary of the Latin language ends with the laconic pronouncement: "*sans etimologie, comme* causa"; as to the entry for *causa*, it concludes with the question, "*peut-être mot emprunté, comme l*īs*, au prélatin?* [could it be a word borrowed, like *līs*, from pre-Latin?]," a formula that, as anyone with any familiarity with linguistics knows, is tantamount to repudiating any firm etymology.

This does not mean that the authors refrain from defining their meaning. For *causa*, on the contrary, they distinguish two possible senses: 1. "cause" (exemplified by a passage from Cicero: *causam appello rationem efficiendi, eventum id quod est effectum*); 2. "case of a party in a trial, or a trial." "The etymology being unknown," they add, "the original sense is not determinable." Even though the large number of compounds like *causidicus*, "the one who states the case," namely, the lawyer; *accuso*, "to accuse"; *incuso*, "to put in a case, to incriminate"; *excuso*, "to put outside a case, to excuse," seems to suggest the greater antiquity of the second sense, they nevertheless incline toward the priority of the causative sense, attested by the "frequent and ancient" usage of "*causa*, because of" which "is difficult to explain if it started from the sense of 'trial.'"

As often happens in dictionaries, even when, as in this case, we are dealing with works that have acquired an unquestioned and

well-deserved prestige, the argumentation is not always convincing, above all in the distinction between the various meanings of a term. Even in the absence of an etymology, in fact, the difference between the various senses that convention distinguishes in the usage of a word is often only apparent and a more attentive consideration does not find great difficulty in tracing them back to unity. It is sufficient to reflect for a moment on the juridical meaning proposed by the dictionary to notice that not only is it not coherent ("the case of a party in a trial" is not the same thing as "a trial"), but the first member is not in any way a definition, because it contains the term to be defined. As becomes clear from the examples, *causa* does not mean "trial," but what is at issue in a trial, what gives rise to the suit (*causativum litis, propter quod res in iudicium devocatur*). The parallel, which the authors themselves introduce, with the Greek *aitia* is instructive: *aitia* means "responsibility, imputation," *aitia einai tinos* is the equivalent of "to be accused of something," and *aitios* is "the culpable person, the accused in a trial" (like the Latin *reus*). As happened for Greek, in which the juridical meaning evolved into the more general one, so also for Latin the passage from "the accusation that gives rise to a suit and is at issue in it" to "cause, motive" is perfectly explicable. In reality, it is not a question of two meanings, but of one only: that which gives rise to the suit, that which is at issue in a dispute and therefore provokes the intervention of the law, is more generally "that which causes."

The later history of a term, moreover, can be as instructive as an etymology (which in this case is lacking): from the Latin *causa* there derives, in the Romance languages, the term *cosa* ["thing" or "affair"], which is certainly not easy to define, but which designates precisely "what is in question, at issue [*in 'causa'*] among people"—in an argument, which can be over facts as much as words, but ultimately, simply in a discourse, in a conversation, in a joke. And then, more commonly, any "affair" whatsoever (for example, *mulierum causa*, women's "thing," menstruation), before meaning in the language of mathematics, precisely because of its omnivalence, the "thing" par excellence: the unknown, *x*.

When the word *causa*—starting from Aristotle's definition of the four types of cause: material, formal, efficient, and final—becomes a fundamental term of the philosophical and scientific lexicon of the West, it is necessary not to lose sight of its juridical origin: it is the "thing" [*cosa*] of the law, what gives rise to a trial and, in this way, implicates people in the sphere of the Law. The primal cause is the accusation.

2. The concept of *causa* was the subject of the doctoral thesis of one of the most acute Roman scholars of the twentieth century: Yan Thomas. In the face of the polysemy of the term in juridical language, Thomas did not hesitate to undertake a detailed analysis of the semantic history of the term, a true and proper "biography of a word" (Thomas, *Causa*, p. 258), not only in the sphere of law, but also in those of philosophy and rhetoric. The first result of this exemplary analysis is that of tracing the originary structure of the notion not, indeed, to a supposed unity, but to an irreducible bipolarity: *causa* means both the trial and its foundation, both the controversy and that which gives rise to it. "As far back as one can go in time, we find the trace of two semantic nuclei around which most of the occurrences of *causa* are distributed. Trial and foundation, quarrel and motive, form the two irreducible poles of the term's polysemy already as early as the Twelve Tables" (ibid., pp. 255–56).

The reading of the most ancient testimonies (in particular the *causae coniectio* in the Twelve Tables and two passages from Livy, *Ab urbe condita* I.32, and Festus, *De verborum significatione*, 103) thus allows us to define the meaning of *causa* in its close relationship—both of contiguity and of difference—with the terms *res* and *līs*. "*Res* is opposed to *causa* as the litigious situation in general, considered prior to any juridical formulation, is to the litigious situation defined in the sphere of a trial. *Causa* is opposed to *līs* as the substantial material of the controversy is opposed to the controversy properly so called, considered from the formal point of view of the encounter of two rival parties and interests" (Thomas, *Causa*, p. 269). Once again, the concept "*causa*" results

from the irreducible polar tension between the *res* (the thing over which there is a quarrel) and the *līs* (the controversy): it is, in this sense—according to a formula that appears in Cicero as well as Festus and Gaius—always *res de qua agitur*, the affair to the extent to which it is included and juridically defined in a trial.

Precisely insofar as the term refers constitutively both to the conflict and to what is at stake in it, it is possible to understand the plurality of otherwise inexplicable meanings and, at the same time, its transposition into the discourse of philosophy and rhetoric in the sense of "cause that explains and gives a reason." "Controversy seems to imply in a necessary way a foundation that refers to a motive and a reason. . . . *Causa* is that *propter quam iudicium constitutum est*; it is what gets the trial going. The ambiguity of a polysemy that is at first glance inexplicable results from the fact that all the diverse meanings of *causa* are successive moments of one same concept. . . . The efficient and rational dimension of the cause already finds its origin in the judicial and rhetorical meanings of the term. What is 'put in question [*in causa*]' is for that very reason called to furnish reasons. Philosophical thought in turn appropriates this meaning in order to make it the instrument of its own investigations. This displacement must have been produced in Greece where, long before any theoretical reflection, the values of motive and 'justifying reason' had probably broken away from the juridical sense of 'imputation,' 'accusation,' and 'trial'" (ibid., pp. 225–26).

Based on the constitutive bipolarity of the term that results from Yan Thomas's research, it is therefore possible to give consistency and probability to the hypothesis that we had merely suggested, namely, that the term *causa* constitutes a true and proper threshold in the edifice of the law. *Causa* is a certain situation, an "affair" [*cosa*]—in itself non-juridical—at the moment in which it is included in the sphere of the law: *res de qua agitur*, precisely. What is decisive, however, is to restore to the verb *agere* in this context the originary meaning that, as Thomas documents, is attested to us by Festus and Gaius: "*agere* means *verbis indicare*" (Festus, *De verborum significatione*, 21) and "the one who acted,

said these words" (Gaius, *Institutes*, IV.21). As Gaius also writes, the *res de qua agitur*, the thing [It. *cosa*] that is in question in the law, is above all the affair that is expressed in words and shown in the formula of the judicial *actio* (*ideo inseritur, ut demonstretur res, de qua agitur*; ibid., IV.40).

We can say then, more generally, that just as in the philosophical vocabulary being is what is "called into question [*in causa*]" in discourse, so also in the terminology of law, a *causa* is a situation insofar as it is "called into question" in a trial: in both cases, if one restores to the word its ontological rank, what is in question is the "thing [*cosa*]" of language—the threshold in which it is captured and included in the corresponding order.

That precisely such a concept-threshold, in some sense a hybrid of reality and discourse, of fact and law, furnished to Western philosophy and science one of its absolutely fundamental terms is something on which we must never stop reflecting. Only the awareness of the juridical, political—and later, theological—origin of the West's vocabulary of knowledge can permit us to liberate thought from the bonds and the signatures that oblige it to proceed almost blindly in one sole—and perhaps inauspicious—direction.

3. If we have written that *causa* and *culpa* mark out the threshold of the edifice of the law, the reason is that they are not juridical concepts in the strict sense, but instead mark—as we have seen—the point at which a certain act or fact enters into the sphere of the law. This is even more obvious in the concept of *culpa*. In the Justinianic sources, it has above all the generic meaning of imputability and indicates that a determinate fact is to be attributed to the juridical sphere of a person who must bear its consequences. In this sense, *culpa* is synonymous with *noxa*, a term whose etymology refers to the dark sphere of violent death (*nex*). Alongside this general concept, however, a technical meaning of *culpa* asserts itself, which is the only one on which jurists concentrate their attention. It designates—in distinction from malice, fraudulent intention—negligence in the exercise of an obligatory behavior,

which according to the case can be *lata* or *levis* (even today penal law distinguishes between malicious and culpable crime). That is to say, in juridical vocabulary *culpa* signifies not responsibility, but its limitation.

This confirms the liminal value of the term with respect to the juridical sphere. It is not properly a juridical concept, but instead indicates the threshold across which a certain behavior becomes imputable to the subject, who is constituted as "culpable" (*in culpa esse*; *obnoxius*, culpable, does not designate the one who has caused the crime but, according to the originarily locative meaning of the preposition *ob*, the one who stands in *culpa*). We are dealing with a fatal threshold, because it leads into a region where our actions and our gestures lose all innocence and are subjected to an alien power: punishment or pain [*pena*], which means both the price to be paid and a suffering for which we cannot give ourselves a reason. How this could happen, how a human mind could have conceived the idea that its actions could render it culpable—this self-accusation, which seems so commonplace and taken for granted, is the enigma with which humanity must still come to terms.

4. An author who never ceased reflecting on this agonizing connection, which, in the form of the law, clasps action to its consequences, *causa* to *culpa*, is Franz Kafka. In a posthumously published story, "Der Schlag ans Hoftor," a distracted knock at a courtyard gate gives rise, for no foreseeable reason, to an accusation and a trial that can never end: "Suddenly, people came out of the very first house and waved to us in a friendly but warning way, themselves terrified, cowering in terror. They pointed to the courtyard that we had passed and reminded us of the knock at the gate. The owners of the courtyard would lodge a complaint against us; the investigation would begin immediately" (Kafka, "The Knock at the Courtyard Gate," p. 124).

But it is above all in the novel *The Trial* that Kafka reflected on the mystery of imputation, from which there seems to be no way out. For imputation, there is no need of a precise accusation: every human being—at least this is what the experience of Joseph

K., the protagonist, seems to suggest—by the very fact of living is constitutively called into question [*in causa*] and accused. This is so much the case that, even if the accusation has not been formulated ("I do not know if you have been accused," the inspector tells him during his first interview; *The Trial*, p. 14), he does not hesitate to accuse himself, to slander himself so to speak—as in a certain way Joseph K. does, who stubbornly seeks out his accusers and his judges all the more to the extent that they avoid him and seem not to know who he is. In any case, the implication of the protagonist—of every human being—in the sphere of the trial—which is to say, of the law—is so unavoidable and at the same time impenetrable that when he asked, "How can a human being be guilty?," he receives the answer that in truth there is never a sentence and a declaration of guilt, but "the trial itself is transformed, little by little, into the sentence" (ibid., p. 213). As a great modern jurist has written, the principle *nulla pena sine iudicio* [no punishment without judgment] is reversed in the trial into that according to which there is no judgment without punishment, because "the whole punishment lies in the judgment" (Satta, p. 26) and the only salvation would be never to have been called in question [*in causa*], to live without ever being implicated in the sphere of the law, which does not seem possible.

5. In a midrash that bears the title "Massekhta Satan" ("Treatise on Satan"), God has Satan appear before him on the last day to judge him. The accusation that he directs at him is accusation itself: Satan is accused of having constantly accused humanity and, in this way, the works of creation. He accused Adam and Eve, so that God had to drive them out of Paradise; he accused the people of the generation of the flood, and to punish them God produced the catastrophe of the universal Deluge; he accused the people of the Tower of Babel, and for this reason God had to divide them and confound their tongues; he accused the Israelites at the time of the first and second destruction of the Temple, and God twice destroyed the sanctuary and scattered his people in exile among the nations. For this reason God condemns the

accuser to vanish from the world, which must be renewed in a new creation. Satan does not accept the sentence and objects to his judge: "You say to me: Vanish from the world! Yet I resemble you because I am associated with you: you created the heavens and the earth, and I created hell" (Mopsik, p. 31). Up to the last moment, when God expels him eternally into the depths of darkness, he continues to level his objection against God: "Lord of the world, all the power you have demonstrated by descending into the flames to condemn me really does not belong to you: above you, there is another Power."

We must reflect on the subtlety of the objections that the midrash lends more or less consciously to Satan. Satan incarnates the very powers of accusation and judgment in God, which is to say, the entire edifice of penal justice that is an integral part of the monotheistic religions and that in some way represents a power above God. The judgment against Satan must therefore imply a judgment on judgment itself, and the final elimination of Satan would have to coincide with the creation of a new world, without any more guilt or judgment. But for this reason—such is Satan's final objection—another God would be necessary, entirely stripped of the faculty of accusation and judgment.

6. It is worth the trouble to reflect on the curious semantic evolution that leads the generic term *culpa* to designate, in juridical vocabulary, negligence. In reality, in the formulation of the most ancient laws, something like a fault simply does not appear. Consider the proclamations of the Twelve Tables: *Si membrum rupsit . . . talio esto* [When anyone breaks a member of another . . . he shall be punished by the law of retaliation]; *Si pater ter venum filium duit, filius a patre liber esto* [If a father sells his son three times, the latter shall be free from paternal authority]; *Patronus si clienti fraudem fecit, sacer esto* [When a patron defrauds his client, he shall be dedicated to the infernal gods]. By all evidence, the law here limits itself to sanctioning a connection between an action and a juridical consequence. What is assigned is not a fault so much as a penalty in the broad sense.

When the technical concept of *culpa* makes its appearance, it corresponds to the elaboration, which begins already with Numa's laws, of the notion of *dolus*, which designates malicious or fraudulent intention (*si qui hominem liberum dolo sciens morti dedit, paricidas esto*, "if anyone knowingly and with malicious intent puts a free man to death, may he be a parricide"; Festus, *De verborum significatione*, 221). In contrast to *dolus*, *culpa* refers to behavior that, without intending it, has caused some injury through negligence. At issue here is, once again, the imputability of action that, lacking malice [*dolo*], gives rise to a lesser responsibility. In reality, as is already implied in a passage of the *Digest* (*magna negligentia culpa est, magna culpa dolus est*, "great negligence is a fault, malicious intent is a great fault"), we are dealing with a gradation of fault in the general sense of imputability. In the postglossators, it will reach its most sophisticated articulation (*culpa latissima, latior, lata, levis, levissima*): the action is imputed in every case, but always while distinguishing the degree of the agents' coinvolvement with their action.

We are accustomed to consider this evolution, which culminates in the modern principle according to which responsibility is founded in the last instance in the free will of the subject, as a progressive one. In reality, we are dealing with a strengthening of the bond that ties agents to their action, which is to say, an interiorization of guilt, which has not necessarily expanded the real freedom of the subject in any way. The connection between action and agent, which was originally defined in an exclusively factual way, is now founded in a principle inherent in the subject, which constitutes the subject as culpable. That means that fault has been displaced from the action to the subject who, if he or she has acted *sciente et volente*, bears the whole responsibility for it.

7. The concept of guilt is the subject of the first work of a great—and notorious—twentieth-century jurist: Carl Schmitt. It opens by criticizing the reduction of this "fundamental concept of penal law" to a psychological category, which is implicit in its identification with intention and negligence. Guilt is to be defined

independently of these two codified forms. Nevertheless, Schmitt realizes that if one seeks a purely juridical, non-psychological definition of guilt, the risk is that of finding oneself obligated to call into question the fundamental juridical precept according to which "there is no punishment without guilt": "One could in fact argue that punishment logically precedes guilt because there would be no guilt if it were not punished. The simplest way to eliminate crime from the world would be the cancellation of the penal code. The principle 'there is no punishment without guilt' would then read rather as 'there is no guilt without punishment'" (Schmitt, p. 19).

Against the paradoxical consequences of this reversal, he objects that law necessarily presupposes something, on the basis of which it threatens a punishment, and this can happen only if it considers what it punishes "as an evil, i.e., as something contrary to its goals" (ibid.). This compels him, in apparent contradiction with the anti-psychological opening of the study, to consider guilt as an essentially intrasubjective principle (*innersubjektives*; p. 28). "The law sees the essence of the crime, that from which the accusation springs in a determinate process in the soul of the delinquent, not from some psychological process as such, but only in that which is objectivized externally" (pp. 29–30). What does not reach objectification is not taken into consideration by the law and therefore remains unpunished, but "what is exteriorized is judged not for the fact of its objectification, but for the interior spiritual movement from which it has sprung" (p. 30).

Consistent with this premise, Schmitt separates guilt decisively from the causal connection that links the act to its consequences: that the firing of a gun caused the death of a human being concerns the laws of physics "and no one can be rendered responsible through the causal process as such" (p. 31). The principle of imputation lies rather in a "bad will" (*böse Wille*; p. 92), which from the point of view of the law is defined not in a merely psychological manner, but as "the concrete positing of ends contrary to those of the law, coming from a juridically competent human being who can have awareness of opposition to duty" (ibid.).

That responsibility for actions should be traced to a "bad will" should not be surprising on the part of a jurist who, like Schmitt, openly relies on Catholicism. The foundation of guilt in the subject's will and the very elaboration of the concept of will are in fact, as we will see, the work of Christian theology.

8. It is perhaps through an unconscious irony that such trivial words have been chosen to designate one of the realities that is darkest and most fraught with anxiety in our culture: sin. According to its etymology, *peccatum* (sin) actually means simply "false step." "*Pecco*," advises the Ernout-Meillet dictionary, "would be with respect to *pes* (foot), what *mancus* (one-armed person) is with respect to *manus* [hand]." *Scelus* (crime) and *sceleratus* (criminal) also have a similar etymology and refer to the Sanskrit *skhalati*, "to make a false step." But even the Hebrew verbal root *ht'*, which expresses the idea of sin in the Bible, originally means "to take a false step" or "to miss the mark." It certainly cannot be surprising, at this point, that the Greek words *hamartanō* and *harmatia*, which render *ht'* and *hatta't* in the Septuagint and the New Testament, meaning "to sin" and "sin," were originally equivalent to "missing the mark." This shows that the language did not have at its disposal a term to express the idea of sin and that this latter is therefore a subsequent construction by prophets and theologians. But the fact that the notion of sin could be elaborated from that of an involuntary error (like making a false step or missing the mark) also implies that the presupposition of a free will is not in any way necessary. As happens in the most ancient juridical sources, here also the analysis of the biblical documents shows that what is essential is only the connection between a certain act and its consequences. The idea is that of human beings erring in their relationship with God in a way that is, so to speak, necessary and not that of a sinful will. Certainly what is in question is often the transgression of a divine command, but why this happens remains in some way inexplicable and unexplained.

This is obvious in the narrative of Genesis. Here not only, as has been noted (Quell, p. 751), does the term sin not appear, but

what is decisive once again is the connection between the act committed by Adam and Eve and its consequences. These are first of all awareness of nudity ("Then the eyes of both were opened, and they knew that they were naked"; Genesis 3:7) and then the expulsion from the garden and the condemnation to suffering and labor. The idea that, as theologians suggest, what is essential here is "the fact that both are aware that they can violate the divine command provided that they want to" (Quell, p. 751) is an understandable exegetical forcing that, according to a tradition by now consolidated, aims to inscribe the biblical narrative into the sphere of guilt in the modern sense of the term.

9. It is difficult to escape the impression that the consequences of our progenitors' action are something like a punishment and the impassioned interrogation that culminates in the condemnation a sort of summary proceeding. It is instructive here that, like every summary proceeding, it aims solely at ascertaining the facts and that the motivation of the sentence is also purely factual: "Because you . . . have eaten of the tree about which I commanded you, 'You shall not eat of it'" (Genesis 3:17). As happens in archaic law, from the violation of a command there follows the pronouncement of a punishment and, granted that one can speak of a fault, this is so only in relation to an injunction that seems totally arbitrary.

This means, on closer inspection, that the idea that the principle according to which "there is no punishment without fault" should be reversed and that, in reality, if there were no punishment, there would be no fault is very likely to be true.

Let us reread the formulation of the archaic laws: *Patronus si clienti fraudem fecit, sacer esto* [When a patron defrauds his client, he shall be dedicated to the infernal gods]; *Si membrum rupsit, talio esto* [When anyone breaks a member of another . . . he shall be punished by the law of retaliation]. It is completely obvious that here what constitutes the fact as criminal or culpable is the very pronouncement of a sanction ("culpable" means sanctioned by a punishment). Even if it is necessary that the act always be

effectively perpetrated, consecration to the gods (*sacer esto* means that the person in question belongs to the infernal gods and can therefore be killed without committing homicide) and vengeance (the law of retaliation, which is to say, the lawfulness of carrying out the same act on the person of the responsible party) have always already qualified it as culpable. "There is no punishment without fault" means that punishment can be inflicted only in consequence of a certain act, but the fault exists as such only in virtue of the punishment that sanctions it: "there is no fault without punishment." The sanction, that is to say, is not subsidiary to the law: rather, the law consists, in the last analysis, essentially in the sanction.

10. That sin depends on the law, that without the law there can be no sin, and that it is for that reason above all "the law of sin" (*nomos tēs hamartias*; Romans 8:2) is the essential content of the implacable critique of the Torah that Paul develops in the Letter to the Romans. If he must at times temper its harshness with assurances—presumably ironic—of the type "the law is holy" (7:12) or "by no means!," immediately after having suggested that "the law is sin" (*ho nomos hamartia*; 7:7), this does nothing to change the stubbornness with which he never stops affirming the secret solidarity that unites the law to guilt. "The law," he writes, "came so that guilt might abound" (7:13), and the messiah came in turn so that those who believe in him "might die to the law" (*ethanatōthēte tō nomō*; 7:4) and be liberated from the command that "aroused sinful passions in them" (7:5). The causal connection between law and guilt is enunciated with technical precision: "if there is no law [*mē ontos nomou*], sin is not imputed [*hamartia ouk ellogeitai*]" (5:13).

In the celebrated passage that follows, which has been the object of innumerable commentaries, he says nothing different: "What then should we say? That the law is sin? By no means! Yet, if it had not been for the law, I would not have known sin. I would not have known what it is to desire if the law had not said, 'You shall not desire.' But sin, seizing an opportunity in the

commandment, produced in me all kinds of desire; indeed, apart from the law sin lies dead. I was once alive apart from the law, but when the commandment came, sin revived and I died, and the very commandment that promised life proved to be death to me" (7:7–10). The principle according to which "there is no fault without law" has never been stated so forcefully.

11. Sanction in the strict sense is that part of the text of the law that contains the pronouncement of the punishment that strikes the transgressor. But *sancire* properly means to render *sanctus* (holy). The law, in Ulpian's clear formulation (*Digest*, 1.8.9.3), is holy because it contains a sanction: "We properly call those things holy which are neither sacred nor profane, but which have been confirmed by some sanction [*sanctione enim quadam confirmata*], hence the laws are holy, for the reason that they are based upon a certain sanction [*sanctione quadam sunt subnixae*]; and anything that is supported by a certain sanction also is holy, even though it may not be consecrated to God; and it is even sometimes added in the sanction itself that anyone who is guilty of an offence in that place shall be punished with death." Here one must not confuse the sacred and the holy, which Ulpian resolutely distinguishes. The confusion seems all the more legitimate insofar as *sancire* derives from the same root **sak* from which the term *sacer* is formed. Thus, in a study devoted to the expression of the sacred in the Latin language, Huguette Fugier (p. 118) affirms that *sancire* means to render sacred, "to put something into the state designated by the root **sak*," namely, to cause to exist, to render real.

Against this thesis, Émile Benveniste has reminded us that "it is not sufficient to attach both *sancio* and *sanctus* to the root **sak-*, since *sacer* for its part has produced the verb *sacrare*. This is because *sancio* does not mean 'to make *sacer*.' We must define the difference between the two notions" (Benveniste, vol. 2, p. 188/453). Even if Ulpian's definition can seem circular, it is certain that he distinguishes the holy both from *sacer*, which means "consecrated to a god," and from the profane. "*Sanctum* . . . is something which, while being neither of these two things, is

affirmed by a *sanctio*, which is protected against every kind of assault, like the *leges sanctae*. . . . In the expression *legem sancire*, the *sanctio* is properly that part of the law which lays down the penalty which will be inflicted on the person who transgresses it; *sanctio* is often associated with *poena*. Consequently *sancire* is equivalent to *poena afficere*. Now in ancient Roman legislation the penalty was inflicted by the gods themselves who intervened as avengers. The principle applied in such a case may be formulated as *qui legem violavit*, *sacer esto*, 'may he who has violated the law be *sacer*.' Laws having this character were called *leges sacratae*. In this way the law became inviolable, and this 'sanction' put the law into force. Hence came the use of the verb *sancire* to indicate that clause which permitted the promulgation of the law. The expression used was not only *legem sancire*, *lex sancta* but also *lege sancire*, that is to say to make something inviolable by means of a law, by some legal disposition. In all these uses it emerges that the use of *sancire* is to delimit the field of application of a measure and to make this measure inviolable by putting it under the protection of the gods, by calling down on the violator divine punishment" (ibid., pp. 189–90/454).

The distinction between *sacer* and *sanctus*, which Benveniste at this point seeks to specify, is not so easy, however. At least at first glance, the distinction seems to be that between an intrinsic and natural condition and that which results, by contrast, from an operation: "There is not only the difference between *sacer* as a natural state and *sanctus* as the result of some operation. One said: *via sacra*, *mons sacer*, *dies sacra*, but always *murus sanctus*, *lex sancta*. What is *sanctus* is the wall and not the domain enclosed by it, which is said to be *sacer*. What is *sanctus* is what is defended by certain sanctions. But the fact of making contact with the "sacred" does not bring about the state of being *sanctus*. There is no sanction for the man who by touching the *sacer* himself becomes *sacer*. He is banished from the community, but he is not punished any more than the man who kills him is. One might say of the *sanctum* that it is what is found on the periphery of the *sacrum*, what serves to isolate it from all contact" (p. 190/454–55).

It is striking that Benveniste, who has just pronounced the principle *qui legem violavit, sacer esto* ("may he who has violated the law be *sacer*"), does not realize that what he seems to conceive as a "natural state" results instead from an operation, which once again takes the form of a sanction. Let us take the pronouncement of the law of the Twelve Tables: *patronus si clienti fraudem fecerit, sacer esto* ("when a patron defrauds his client, he shall be dedicated to the infernal gods")—by all evidence, the *sacertas* results here from the clause *sacer esto*. In conformity with the scheme that connects a sanction to a certain action, the one who has carried out that act will be considered *sacer*, which is to say, he can be killed by anyone without committing homicide.

In some way, Benveniste himself recognizes the insufficiency of the distinction, when he adds that "this difference is gradually effaced, as the old sense of the sacred is transferred to the sanction." Therefore, he feels the need to specify it further: "Thus if we attempt a definition of what distinguishes *sacer* from *sanctus*, we can say that it is the difference between implicit sacredness (*sacer*) and explicit sacredness (*sanctus*). By itself *sacer* has its own proper value, one of mystery. *Sanctus* is a state resulting from a prohibition for which men are responsible, from an injunction supported by law" (p. 191/455). In this way, the holy unexpectedly becomes a specification and explication of the category *sacer*: the distinction, which appeals solely to a human operation that the *sacer* shares with the holy (*sacer esto*), loses all clarity.

12. There is a study of the sanction by Yan Thomas. He shows that in the most ancient law the rule and the sanction are articulated in one same conditional proposition, in which the sanction is, as we have seen, a constitutive part of the norm: "When the line of the Twelve Tables pronounces, in 450 BCE: 'if the patron has cheated his client, he will be consecrated to the gods and put to death'; or: 'if the father has sold the child three times, the child will be liberated from the father' . . . these clauses have in common the fact of associating in a single articulation the two sequences of the transgressive act and of the punishment that

it merits. The possibility of the crime is somehow integrated by the law, which agrees to come to terms with it" (Thomas, "De la 'sanction,'" p. 136).

The historical evolution of Roman law shows that for this concomitance and almost intimacy between crime and sanction there is progressively substituted a clear division into two moments. "Instead of directly subordinating the punishment to the perpetration of the prohibited act in a conditional proposition, the law divides its commands into two stages. It first pronounces a prescription and then a punishment, which is presented as a consequence of the prohibition that it has pronounced" (ibid., p. 135).

To this change in the form of the pronouncement there corresponds a transformation in the status of the sanction and of the law itself. "The sanction is no longer presented as the direct consequence of an event whose possibility is legally admitted. It is presented, on the contrary, as a general and abstract prohibition of violating legal injunctions as such. It does not strike the one who, having committed an action to which the law connects a punishment as consequence, has placed himself in a situation of illegality contained in the law itself. On the contrary, it strikes the one who, having acted against the law and rebelled against it, has placed himself, so to speak, outside the law" (p. 136). It is this new relationship between the sanction and the law and between the law and the transgressor's act that a jurist of Severus's era expresses in the formula: "*Contra legem facit, qui id facit quod lex prohibet*," "He acts against the law who does what the law prohibits" (Paulus, in *Digest*, 1.3.29).

Let us reflect first of all on the new status of the criminal action that results from this transformation. "Although the content of the norm and the sanction were distinct, their symmetry inscribed into the law the act conforming to it and the one contrary to it simultaneously: illegality was formulated initially as a legal hypothesis" (Thomas, "De la 'sanction,'" p. 137). In this situation, in which the sanctioned action and the sanction stand on the same level, one cannot properly speak of a "transgression" of the law. In the new formulation, by contrast, "the law denounces

the transgression as an infraction of the imperatives that it has pronounced. . . . In this way, illegality is formally situated outside the law" (ibid.).

But there is more. By situating the transgressive action outside itself, the law can now divert the sanction from its solely punitive function and, by turning it so to speak toward itself, transform it into the guarantee of its own inviolability. The paradigm of holiness defined the juridical regime of the city wall, which, starting from the legendary murder of Remus, was called holy because its violation had death as a consequence (*Si quis violaverit muros, capite punitur . . . nam et Romuli frater Remus occisus traditur ob id, quod murum trascendere voluerit*, "Where anyone trespasses upon the walls, he is punished with death. . . . It is said that Remus, the brother of Romulus, was killed because he wished to scale the wall"; *Digest*, 1.8.11). And it is on this model that jurists begin to consider the law *sancta*, insofar as the sanction defends it from human offenses. If, as declares the passage from Marcianus that immediately precedes it in the *Digest*, *sanctum est, quod ab iniuria hominum defensum atque munitum est*, "the holy is that which is defended and protected from the injuries of men," what are holy par excellence in the above-cited passage from Ulpian are therefore the laws, which are sustained by a sanction (which, Ulpian adds, does not necessarily have the form of consecration to the gods). In the expression *lex sancta*, Yan Thomas concludes, "the adjective preserves its meaning as a past participle: the law enclosed . . . by a protective barrier. There is no need for sacrality, because it is no longer against itself that the legislator defends the law, but against third parties. The punishment is inflicted on those who, from outside, break the law, against those who *adversus legem faciunt* it delimits the sphere of legality. Precisely like Rome's walls, which are the enclosure of a legal zone, of a space within which the law fully produces its effects" (Thomas, "De la 'sanction,'" p. 147).

It is necessary to measure the extent and implications of the operation that was in this way almost tacitly brought about by jurists and legislators. It coincides with the creation of the

authority and inviolability of the law, with its acquiring an ontological consistency. The sanction, which was initially nothing other than the immediate and unmotivated consequence of a certain action, now becomes the apparatus that founds, on the one hand, the "holiness" of the law and, on the other, drives the behaviors that transgress its command outside itself as faults and crimes. In the very action in which the law is sanctioned as inviolable, it opens the space of legality, which is to say, of the juridical order in which it is in force. Thus, the process begins that, by means of a long series of infamous or glorious episodes, will lead to the sanctification of the law that will conclude in the modern age when Kant—perhaps for the last time in the history of the West—will make the legal imperative the summit of human spiritual life.

13. The law has not always been encircled by such an aura of holiness. On the contrary, the most ancient testimonies show that the legislators themselves were perfectly aware of the ambiguous character of the law, which necessarily unites justice and violence together in the sanction. Solon clearly says as much when, referring to his activity as legislator, he affirms that he "has united with the force of law violence and justice" (*kratei nomou bian te kai dikēn synarmosas*) (fr. 24 Dihle). Even if we choose, as recent scholars do, the reading *homou* instead of *nomou*, the idea remains the same, since Solon is referring, as he takes care to specify, to the laws that he has written for the Athenians. Even more clearly and as if with fierce irony, the celebrated fragment of Pindar on *nomos basileus* (sovereign law) emphasizes this dark side of the law that "sovereign of all / of mortals and immortals / leads with the strongest hand, / justifying the most violent" (*dikaiōn to biaiotaton*; fragment 169). In both cases, *nomos* (law) is defined by means of a scandalous conjunction of those two antithetical principles par excellence, for us as for the Greeks: violence and justice. And when, in *Gorgias* (484b), Callicles ironically reverses Pindar's text, writing *biaiōn to dikaiotaton* ("doing violence to what is most just") instead of *dikaiōn to biaiotaton*, it is possible that

Plato intends precisely to suggest that the justification of violence worked out by the law is, to the same degree, a doing violence to what is most just.

14. That the law is defined as an articulation of violence and justice is an obvious fact that a philologically attentive analysis of the legal texts' originary formulation makes it difficult to escape. Let us once again take up the formulation of the law of the Twelve Tables: *Si membrum rupsit . . . talio esto* [When anyone breaks a member of another . . . he shall be punished by the law of retaliation]. The term *talio* most likely derives from *talis* (the same); this means that the law does not simply show itself as the sanction of a transgressive act, but as the repetition of the same act without any sanction, i.e., as permitted. And this represents not so much the punishment of the first violent act as its inclusion in the juridical order, one time as sanctioned, the second as permitted.

Hence the proximity between sanction and vengeance, which was noted long ago. *Talio*, one reads in Isidore's *Etymologies*, *est similitudo vindictae, ut taliter quis patiatur ut fecit* ("retaliation is an imitation of vengeance, so that someone suffers in such a way as he acted"; 5.27.24). But among those who emphasize the similarity are the modern jurists and anthropologists themselves, according to whom "vengeance belongs to the same dimension of the juridical to which sanction belongs," because it is nothing other than the private execution of demands that the law sanctions in the public sphere (D'Agostino, p. 312). This does not mean, however, that we can arbitrarily project onto it the sanctity of the law and say that in vengeance there emerges the same feeling of obligation and justice that finds its completed form in the juridical order. It means rather that the law is rooted in violence, that in its primordial form it presents itself literally, according to Pindar's words, as a justification of violence or, in Solon's terms, as a connection of violence and justice.

That crime is not an infraction of the law from which the sanction follows as a defense of the legal order, but that it is rather the sanction that determines the crime is the essential nucleus of

Hans Kelsen's pure theory of law. He consistently rejects the distinction between primary norms, which establish a precept, and secondary norms, which establish a sanction. If one conceives as primary the norm that prescribes that "one should not steal" and as secondary that which imposes the sanction ("if anyone steals, he will be punished"), "the first norm is superfluous since legally the is-not-to-commit-theft consists merely in the is-to-be-punished which is attached to the condition of theft" (Kelsen, *General Theory of Norms*, p. 133).

The connection between an illicit act and the corresponding sanction does not consist, as the traditional doctrine maintains, in a quality immanent to the act, definable through extra-juridical criteria, that is for this reason sanctioned as illicit. On the contrary, "an action or an omission is defined as illicit only if the legal order makes it the condition of a coercive act as a sanction" (Kelsen, *Pure Theory of Law*, p. 111). From the point of view of positive law, according to Kelsen, no fact exists that is illicit or criminal in itself, which is to say, independently of the sanction that foresees it and punishes it. "There is no *evil in itself*, but only *prohibited evil*. This is only the consequence of the principle, generally recognized in criminal law: *nullum crimen sine lege, nulla poena sine lege*" (ibid., p. 112).

The idea, which we have seen being formed around the "holiness" of the law, according to which crime would be an "infraction" or a negation of the law, is consequently completely erroneous. In the formulation of the text of the norm ("if A, then B—the sanction—must be"), the illicit appears as a condition and not as a negation of the law: it "is not a fact standing outside, much less in opposition to, the law, but a fact inside the law and determined by it—it shows that the law, according to its nature, refers specifically to this fact" (ibid., p. 113).

If the sanction is, in this sense, the essence of the law, it follows that what is in question in the norm is neither the prohibited act nor its contrary (the act in conformity with the precept): what is obligatory is the sanction alone, which determines and produces them. "Legal obligation is not . . . obligatory behavior. Only the

coercive act, functioning as a sanction, is obligatory. If we say: 'He who is legally obligated to a certain behavior "must" behave in this way according to the law,' we only express the obligatory [and therefore positively permitted, authorized, or prescribed] character of the coercive act as a sanction to be executed if he does not behave in this way" (ibid., p. 119).

It is not sufficient to say, however, that the law, by means of the sanction, produces crime. It is necessary to add that the sanction does not create only the illicit, but at the same time, by determining its own condition, above all affirms and produces itself as what must be. And since the sanction generally has the form of a coercive act, one can say—even if Kelsen does not seem disposed to draw this conclusion—that the law consists essentially in the production of a permitted violence, which is to say, in a justification of violence.

15. After having identified the essence of the juridical norm in the sanction, at a certain point Kelsen poses the question of whether a social order can exist without a sanction. As one would expect, the response is negative. Even those who, as Jesus Christ did in the Sermon on the Mount, seem to propose a "social order in which the principle of retribution is not applied" (Kelsen, *Pure Theory of Law*, p. 27) nevertheless refer to a celestial recompense—and, sometimes, to an infernal punishment. From this point of view, the only possible difference among social orders "is not that some prescribe sanctions and the others do not, but that they prescribe different types of sanctions" (ibid., p. 28).

The idea of a law without sanctions was advanced, however, precisely where one would least expect it, namely, in Roman jurisprudence. A passage of Ulpian's Rules (1.1–2) distinguishes laws precisely with respect to the presence or absence of sanctions: "A law is perfect that forbids something to be done, and if it has been done rescinds it [*perfecta lex est, quae vetat aliquid fieri et si factum sit, rescindit*]. . . . A law is imperfect that forbids something to be done, and if it has been done does not rescind it, and imposes no penalty upon him who breaks the law [*nec rescindit nec poenam*

iniungit ei qui contra legem fecit]. . . . A law is less than perfect [*minus quam perfecta*] that forbids something to be done, and if it is done, does not rescind it, but imposes a penalty upon him who violates the law [*non rescindit, sed poenam iniungit ei qui contra legem fecit*]."

As Yan Thomas has shown, the perfect law is the one that affirms its omnipotence through the pretense of the juridical inexistence of what transgresses it. In the words of the Justinianic Code: "where anything is forbidden by law and is done, it shall not only be void, but be considered as if it had not happened [*pro infectis*]" (*Digest*, 1.14.5). The hypothesis of imperfect laws, which neither annul nor sanction, is all the more interesting insofar as their existence is not attested with certainty. But it is significant that jurists, by situating them at the opposite extreme from perfect laws, felt the demand to conceive them as a limit-zone of the juridical sphere, yet still within it. Contrary to Kelsen's opinion, a law without sanction is, for Roman jurists, perfectly conceivable.

Between these two extremes is situated the greater part of the laws that are less than perfect, because they are not in a position to annul the transgressive act and must for that reason have recourse to a sanction. This latter consists, once again, in the connection of a certain fact, qualified as *contra legem*, to a determinate consequence, qualified as a punishment (*poenam iniungit ei qui contra legem fecit*). But it is striking that the culture that transmitted to us the fundamental principles of law linked the sanction, if not to an imperfection, then at least to a lesser perfection of the law. What a law entirely without sanction could be is a problem with which jurists and philosophers should not fail to contend.

§ 2 *Crimen* and *Karman*

1. A concept that is often associated with *culpa* and *causa* is *crimen*. Like the other two, it means, according to the dictionaries, both the accusation and the crime. *Crimen maiestatis* is both the accusation and the crime of *lèse majesté*; *in crimen vocare* means "to accuse of a crime"; *aliquid crimini alicui esse* means "to be the reason for an accusation" or, more precisely, for a criminal imputation. In the numerous passages in which *crimen* is associated with *causa* and *culpa*, it is not easy to decide whether we are dealing with a simple synonymy or if we should discern a difference, however subtle. When we read in *De inventione* (1.15): *id crimen quod infertur, ab se et ab sua culpa et potestate . . . in alium reus removere conatur* ("when the defendant tries to shift to another the charge brought against himself by transferring either the act or the guilt . . ."), Cicero, though associating the two concepts, nevertheless seems to distinguish the accusation that has been put forth (*crimen quod infertur*) from the responsibility (*culpa*). In the same sense, in writing *lupus arguebat vulpem furti crimine; negabat illa se esse culpae proximam* ("a wolf charged a fox with the crime of theft; she denied herself to be nearest to the blame"), Phaedrus (1.8) separates the accusation of theft that the wolf makes against the fox (*arguebat vulpem furti crimine*) from the responsibility or imputation, which the fox denies (*culpae proximam*—note the locative sense of *proximam*: to be in *culpa*).

The subtlety of the distinction and the simultaneously formal and substantial meaning of the term *crimen* appear clearly in the *Rhetorica ad Herennium* (1.15.25): *cum a nobis non crimen, sed culpam ipsam amovemur, et vel in hominem transferimus vel in rem quampiam conferimus* ("when we repudiate not the accusation of a certain crime but the guilt, and either transfer it to another person or attribute it to some circumstance"): it is a matter of contesting not "the accusation of a certain crime" (*crimen*), but the imputation (*culpa*), which is transferred to others. That is to say, *crimen* does not mean the accusation in a formal sense (which in Latin is called *nominis delatio*, the inscription, made by the accuser, of the name of the denounced person in the list of the accused), but the accusation of a certain criminal act or, rather, what is at issue in an accusation (a sense close to what we have seen to be precisely that of the term *causa*: *causativum litis, propter quod res in iudicium devocatur*).

If the term seems to mean both the accusation and the criminal action, this is because it does not properly mean either the one or the other, but the link or tension between them. *Crimen* is "action, insofar as it is sanctioned," i.e., implicated by a *sanctio* in the order of penal law. As we read in Estienne's *Thesaurus*, *crimen* is the action carried out (*crimen proprie dicitur id quod factum est*)—on condition, however, that one adds: insofar as it is sanctioned, insofar as certain consequences have been connected to it, which render it imputable (if necessary in a trial, which will have to ascertain whether the *crimen* coincides more than merely formally with *culpa*, with effective responsibility). *Crimen* is, that is to say, the form that human action assumes when it is imputed and called into question [*in causa*] in the order of responsibility and law. We are certainly not dealing with a happy dimension: action, which has stepped over the calamitous threshold of *crimen*, loses its innocence. Hence the negative meaning of "slander" and "slanderer" assumed early on by the terms *criminatio* and *criminator* (to slander [*calunniare*] means etymologically to pronounce the magical formula of a spell). Every accusation is, in some way, a slander, and the *criminator*, the accuser, par excellence is the devil.

2. In 1859 and 1863, the linguist and Genevan patrician Adolphe Pictet published the two volumes of his masterwork, *Les origines indo-européenes*, which was to exercise a durable influence on the young Saussure. As its subtitle, *Essai de paléontologie linguistique*, suggests, he is concerned to reconstruct, through the analysis and comparison of words, "the whole life of a prehistoric people," in this case the Indo-Europeans (or Aryans, as Pictet prefers to call them). Because "words endure like bones" (Pictet, p. 6), just as paleontologists, thanks to the examination of fossilized remains, "succeed not only in reconstructing the animal, but also in instructing us about its habits, its way of moving, of eating, etc.," in the same way linguistics can reconstruct, through the examination of common linguistic data, "the material, social, and moral state of the people who produced the primitive idiom" (ibid.). Although Benveniste does not name Pictet and in fact makes a point, in the preface to his *Indo-European Language and Society*, of taking his distance from the "authors, ranging from the nineteenth century until recent times, [who] devoted themselves to compiling reports, though certainly very useful ones . . . of the common expressions for family relationships, numbers, names of animals, metals, agricultural implements, etc." (Benveniste, vol. 1, p. 9/10), a secret thread seems to connect the two works.

In any case, after minutely listing and analyzing the vocabulary of agricultural instruments and the products of human industry, Pictet moves on to the examination of juridical terminology. Here, in the section on "Crime and Guilt," which curiously is totally absent in Benveniste's *Indo-European Language and Society*, he does not omit to linger on the etymology of *crimen*: "The Latin *crimen* likely corresponds to the Sanskrit *karman*, 'work' in general, good or evil, from the root **kr*, *kar*, *facere*, in the passive *kriyate*, also preserved in *creo*. Cf. *facinus* from *facio*, and the Sanskrit *âpas*, sin and religious act = *apas*, *opus*. As *kar*, at the end of some compounds, becomes *krî*, it is not necessary to have recourse, with Pott, to *krino*, *cerno* and compare *discrimen*, seeing therefore in *crimen* that which is submitted to the *kritais*, the judges" (Pictet, vol. 2, p. 436).

3. It does not fall within the scope of this study to verify the correctness of the etymology proposed by Pictet (Ernout and Meillet seem to prefer Pott's hypothesis). It is certain, however, that the pairing *crimen/karman* corresponds to a conceptual proximity so strong and forceful that it is surprising that it has not been taken into consideration by historians of law and religion.

It is a common opinion among Indologists that the term *karman*, which literally means action, in fact implies an essential connection (*rta*) "between acts and their consequences" (Silburn, p. 192). "Every action, good or evil, when done consciously, produces an effect or fruit that will inevitably mature, when favorable conditions for it are present, in this life or in a future existence, no matter how distant in time and space. . . . The lot that has been given to me in this life, whether I am human, plant, or animal, infernal being, spirit, or divine, is thus the fruit of previous actions, which no one can escape. *Karman* belongs to the nature of things (*dharmata*), which, as the Indian doctors say, is unquestionable, is a natural law, independent in its development from our concepts of moral justice, recompense, and punishment. A good action matures into a good fruit, an evil action into an evil fruit. According to Buddhists, *karman* is not external, material action, but the intention of volition that determines the action itself. The fruit, on its part, is so to speak an automatic, involuntary consequence of conscious action, ethically indifferent (*avyakrta*), constituted necessarily by a painful or peaceful sensation (*vedana*), and implicitly by an organism or pseudo-organism, a product of the aggregate, which renders this sensation possible" (Gnoli, vol. 1, pp. xxii–xxiii).

The world held together by the law of *karman*, which is to say, constituted by the infinite connection of acts and their consequences, is for that reason a "well-arranged doing" (*saṃskāra*, *faire agencé*; Silburn, p. 190) that Buddhism defines as the wheel of "conditioned co-production" (*pratītyasamutpāda*), whose internal principle, exactly as for imputation in archaic Roman law, can be summarized in the formula "if A, then B," "if this exists, that exists" (*imasmin sati, idam hoti*) (Gnoli, vol. 1, p. xxviii; cf. Silburn, p. 169).

4. In the tradition of Indian thought, the doctrine of *karman* is linked in an essential way to that of the transmigration of living beings through successive births. "'I saw beings dying and being reborn,' teaches the Buddha, 'and I understood that they are inferior or sublime, beautiful or ugly, unfortunate or fortunate according to their actions (*kamma*). . . . What, O monk, is the result of actions? I say the result of actions is triple: in the present existence, in the future existence, and in the course of successive births'" (Gnoli, vol. 1, p. 391; cf. McDermott, p. 165). Every individual is the heir of meritorious or criminal actions, carried out in a previous existence.

It is sufficient to reflect on the internal structure of this doctrine to recognize that it is nothing but a transposition and a making clear on the cosmic level of the notion of *karman/crimen*: by all evidence, its very possibility rests on the fact that *karman* means *crimen*, which is to say that there is something like an imputable action that produces consequences. The proximity between the (so to speak) juridical conception of *crimen* and the ethico-religious conception of transmigration clearly appears in the examples that one can read in the *Anguttara Nikaya* of the two classes of culpable actions: "those which have their result in the present existence (*dittadhammika*), and those which have their result in a future state (*samparāyika*). A man who commits a theft, is captured by the authorities, and is tortured for his crime, is an example of the former class of faults. The latter class is composed of those offenses of body, word, and thought which are rewarded through appropriate rebirth" (McDermott, p. 178). The idea of transmigration only causes the consequences of the culpable act to extend to the future.

It is not surprising, therefore, to find also among Indian theorists the proviso, which is familiar to us, according to which action, in order to be imputable, must be intentional or willed. "I say, monks, that *cetanā* [intention] is *kamma* [action]: having intended [*cetayitvā*], one does a deed by body, word, or thought" (McDermott, p. 181; cf. Gnoli, vol. 1, p. 498). And as one scholar specifies, "intention" here does not mean the simple act of decision

in itself but, as for Western jurists, what puts the action in motion and joins it to the result (Guenther, p. 42).

5. If, following in the footsteps of a famous article by Antoine Meillet on "Indo-European Religion," one wanted to speak, with all due caution, of something like an Indo-European ethic, then the concept of *karman/crimen* would certainly be its fundamental category. Without this notion, in fact, both the Buddhist doctrine of a liberation of people from the karmic sphere of "enchained doing" and the connection of guilt and punishment, of virtuous action and its recompense, which stands at the foundation of Western law and morality, would simply make no sense.

The project of reconstructing something like the foundations of an Indo-European ethic obviously lies outside the possibilities of this study. Rather, following Benveniste's advice (vol. 1, p. 9/10), we have sought and will continue to seek to investigate the processes that have led to the formation of the corresponding categories in the areas of our competency. Our hypothesis, as should already be evident, is in fact that the concept of *crimen*, of action that is sanctioned, which is to say, imputable and productive of consequences, stands at the foundation not only of law, but also of the ethics and religious morality of the West. If this concept should fail for some reason, the entire edifice of morality would collapse irrevocably. It is thus all the more urgent to test its solidity.

6. An examination of the attempts carried out by Western thought to provide an ethical foundation for sanctioned action (with this term we are indicating from this point forward action imputable to a subject and productive of consequences) shows that, when they are not simply absent, as happens in classical Greek culture, they coincide with the laborious elaboration of the concept of free will in Christian theology and remain, perhaps for this reason, singularly fragile. One of the few questions on which historians of ancient thought seem to be in perfect agreement is in fact the lack of a notion corresponding to that of the will in

classical culture (Dodds, p. 6; cf. Dihle, p. 20). This affirmation should probably be tempered in the sense that the Greeks were in some way familiar with the concept, but did not attribute to it either the centrality or the function that it was to assume in Christian theology and its subsequent developments. In an exemplary study, Vernant has called attention to the fact that the modern concept of will does not presuppose only an orientation of the person toward the action, but implies a preeminence accorded to the "human subject who is assumed to be the origin and efficient cause of all the actions that stem from him" (p. 49). Precisely because the will "is not a datum of human nature," but "a complex construction whose history appears to be as difficult, multiple, and incomplete as that of the self, of which it is to a great extent an integral part" (ibid., p. 50), it is necessary to keep up our guard against anachronistically projecting onto ancient people our way of conceiving of the behaviors, free choices, and responsibilities of the subject.

It is significant from this perspective that the Greeks, to express what we designate with the single term "will," would have had recourse to a plurality of words: *boulēsis* (and the corresponding verb *boulomai*), "desire, intention"; *boulē*, "decision, project, counsel"; *thelēsis* (and *thelō*), which means being ready or disposed to do something (also in a purely objective sense: *thelei gignesthai*, "it wants to happen," as Tuscan peasants used to say: *non vuol piovere*, "it doesn't want to rain"); *orexis*, which indicates appetite in general, the faculty of desiring. None of these terms correspond to our notion of will, understood as the foundation of free and responsible action. To distinguish actions that we call voluntary from involuntary ones in the sphere of law and ethics, the Greeks made use of the terms *hekousion* (which designates an action unconstrained by exterior causes) and *akōn* (what happens against our will). That *hekousion* cannot be translated simply as "voluntary" is shown clearly in the fact that when Aristotle treats this problem in the *Eudemian Ethics*, he defines as *hekousion* the behavior of animals as well (1111a 25–27), and one must not forget that among the competencies of the Prytaneion, one of the

judicial panels in Athens, were crimes committed by animals and even by inanimate objects. The opposition does not have a moral origin and therefore does not refer to subjective conditions that make agents the ethically responsible cause of their actions. Instead we are dealing with juridical categories, by means of which the Greek city sought to regulate the exercise of private vengeance by distinguishing, according to the passionate reactions that they aroused in the citizens, diverse levels of punishability. Thus, *phonos hekousios* comprises all homicides punishable by the competency of the Areopagus, without, however, distinguishing the intentional from the premeditated; *phonos akousios*, all homicides in any way pardonable by the competency of the Palladium, without distinguishing between complete absence of guilt, simple negligence, passing impulse, and homicides committed in legitimate self-defense (Vernant, p. 61).

Once again, it is not a matter of founding responsibility in the subject's will, but of ascertaining it objectively, according to the various levels of possibility of the subject's actions. To the preeminence accorded by modern people to the will, there corresponds in the ancient world a primacy of potential: human beings are not responsible for their actions because they have *willed* them; they answer for them because they were *able* to carry them out.

7. Hence the intellectualistic character of ancient ethics, which seems so abstract to modern moralists. According to the Socratic maxim, every evil action is actually ignorance, because no one "does evil voluntarily" (*ouden hēkon hamartanei*; *Protagoras* 358b). We are so accustomed to refer the problem of action to the will that it is not easy for us to accept that the classical world thought it, by contrast, almost exclusively in terms of knowledge. As has been effectively observed, one could say that for the Greek person "as soon as the good is known, freedom of action, which is for us in the last analysis the decisive thing, is abolished" (Stenzel, p. 173). In the *Gorgias* (starting at 467c), Plato can thus write that the intention expressed by the verb *boulesthai* is not directed toward action, but toward its object, and that "a man doesn't want this

thing that he is doing, but the thing for the sake of which he's doing it" (467d–e), which as such can be nothing other than a good (*agathon*), real or supposed ("and don't we put a person to death, if we do, or banish him and confiscate his property because we suppose that doing these things is better for us than not doing them?"; 468b).

Action is always secondary with respect to its end, and the meaning of the word *boulesthai*, which is most often translated as "to desire, to will," is more similar to an intellectual judgment than to an act of free will. And it is not only for love of paradox that Gorgias's Palamedes, in the imaginary trial brought against him by Odysseus, defends himself by affirming that, if he is as wise as people claim him to be, he cannot have committed the crime of which he is accused because, if he had committed it, then he could not be considered wise (*ei mēn oun eimi sophos, oukh hēmarton; ei d' hemarton, ou sophos eimi*; *Palamedes* 26). The principle from which guilt springs—if one can speak of guilt—is not "evil will," but ignorance. People do not act because they want to act, but because they know what is good for them, and what they know, they can also do.

8. The place where we are accustomed to situate the problem of freedom and guilt in the classical world is tragedy. Thus, some scholars have maintained that Aeschylus's dramaturgy represents the first appearance within the Greek city of the individual as free agent. Against the obvious anachronism of this thesis, A. Rivier and J.-P. Vernant could easily point out its insufficiency. "In the end it is always an *anankē* [necessity] imposed by the gods that generates the decision. . . . So tragic man does not have to 'choose' between two possibilities; rather, he 'recognizes' that there is only one way open before him. This involvement reflects not the free choice of the subject but his recognition of this religious necessity that he cannot elude and that makes him someone internally 'compelled,' *biastheis*, even while he is making his 'decision.' If there is any scope for the will, it is certainly not autonomous in the Kantian, or even simply the Thomist, sense of the term. It is

a will bound by the reverential fear of the divine, if not actually coerced by the sacred powers that inform man from within" (Vernant, p. 52).

More in keeping with the tragic experience is the thesis of scholars like Albin Lesky, who see a double motivation at work in Aeschylus's drama, one exterior and divine and one interior and human, indissolubly intertwined. The hero's decision is at the same time constrained and free, and the conflict results precisely from the fact that his action presents "two contrary yet indissociable aspects" (Vernant, p. 77), because he wills what he has not chosen and answers for what he has not willed. Sophocles's Oedipus can thus affirm that his evil deeds "come from a cruel demon" (*Oedipus Rex*, 816, 828) and nonetheless declare that he has committed evil deeds *hekonta kouk akonta*, "consciously and not unconsciously" (1230). "Since the origin of action lies both in man himself and outside him, the same character appears now as an agent, the cause and source of his actions, and now as acted upon, engulfed in a force that is beyond him and sweeps him away. Yet although human and divine causality are intermingled in tragedy, they are not confused. The two levels are quite distinct, sometimes opposed to each other. But even where the contrast seems most deliberately stressed by the poet, it is not that these are two mutually exclusive categories and that, depending on the degree of initiative on the part of the subject, his actions may fall into either the one or the other; rather, depending on the point of view, these same actions present two contrary yet indissociable aspects" (Vernant, p. 77).

9. The tragic conflict is restored to its proper context if, developing Vernant's arguments, we see in it the moment in which there emerges into the light the incurable split inherent in the very idea of a sanctioned action. What is in question in tragedy is not so much the subjective dilemma between the agent's responsibility and the necessity of his destiny, between his feeling himself to be the free cause of his acts and, at the same time, a "plaything in the hands of the gods" (Vernant, p. 81); rather the tension is inherent

in the very form of action, once it has been irrevocably connected to a subject and to sanctions. If, by imputing the act to the agent and assigning a fault to him for this reason, one makes of action the ultimate criterion of ethics and of humanity, then one introduces into the latter a split that can no longer be resolved. Even when, as in the *Eumenides* and in *Antigone*, the contrast seems to be between two different laws (the law of blood and the Athenian tribunal in Aeschylus, the unwritten laws and positive law in Sophocles), what generates the conflict is in reality the very form of law, which sanctions—i.e., forbids or imposes—an action, prescribes or condemns it. Hegel intuits something of the sort when he writes, with regard to Greek tragedy, that "in the moment in which it affirms itself and advances to action (*zur Tat schreitet*), consciousness raises itself out of simple immediacy and posits itself as the split (*die Entzweiung*). . . . By the deed, therefore, it becomes guilt (*Schuld*). For the deed is its own doing, and 'doing' is its inmost nature. And the guilt also acquires the meaning of *crime*. . . . Guilt is not an indifferent, ambiguous affair, as if the act as actually seen in the light of day could, or perhaps could not, be the self acting, as if with the action there could be linked something external and accidental that did not belong to it, from which aspect, therefore, the action would be innocent. On the contrary, the action is itself this split" (Hegel, pp. 345–46/282).

If one judges them solely according to the measure of their actions, if sanctioned action becomes for them the element that is in every sense decisive, then people are always tragically split, are always at once culpable and innocent, and the dispute becomes even more incurable the more they responsibly seek to get to the bottom of their own acts.

10. It is against this tragic primacy of sanctioned action that Plato intends to take a position, if in Socrates's motto (*ouden hekōn amartanei*, "no one does evil voluntarily") one must see, as it seems difficult to deny, a reply to the *hekōn hekōn hemarten* ("voluntarily, voluntarily I have done evil") of Aeschylus's Prometheus (*Prometheus Bound*, 266). The motto is the most

implacable refutation of the tragic conflict, which can be effectively defined from this perspective as the construction in a dramaturgy of the juridical opposition *hekōn/akōn*, *aitios/anaitios*. One does not grasp the sense of the Platonic critique of tragedy if, confining it solely within the sphere of political education, one neglects to grasp this fundamental ethical implication. There belongs to the most profound intention of Platonic thought the tenacious, inflexible—and, for a Greek, almost unthinkable—attempt to identify the place of ethics and politics somewhere other than in action. For this reason he had to oppose to tragedy, founded on the hero's actions, the anti-tragedy of Socrates, who prefers to suffer evil rather than commit it (*Gorgias*, 474b) and persists, in an at least apparently inconclusive way, in seeking the truth of humanity in *logoi* and consciousness, and not in action. And it is only in this context that the otherwise completely unrealistic paradigm of the philosopher king becomes comprehensible, a paradigm that is born, as he recounts in the Seventh Letter, at the moment when he decides to abandon the juvenile "desire to take part in public and political affairs [*peri to prattein ta koina kai politika epithymia*]" (325b) in order to dedicate himself to philosophy, convinced that "the ills of the human race would never end until those who do philosophy sincerely and truly are joined to political power" (326a–b).

This is to say that in the tradition of Western ethical and political thought there are two paradigms, which intersect and incessantly keep separating from one another in the course of its history. The first situates the essence of the human and the proper place of politics and ethics in action and praxis; the second situates it instead in knowledge and contemplation (in *theōria*). The first model is tragic and predominates, at least up to a certain point, in modernity (it is significant that the "tragedy" of Faust resolutely assigns the primacy to action: *Am Anfang war der Tat*); the second, decisively anti-tragic, prevails, albeit with some ups and downs, in ancient thought. The first looks consistently at becoming; the second holds its eyes fixed on being. And if we wish, according to a gesture by now traditional in the history of

philosophy, to mark each of the two paradigms genealogically with a name, the first would be situated in the wake of Aristotle, the second in that of Plato.

11. In the *Nicomachean Ethics* (1113a 16–20, 1116b 6, 1144b 20), Aristotle critiques Socrates (and implicitly Plato) many times for having maintained that an evil action cannot be carried out voluntarily. He consequently affirms, with an already fully juridical subtlety, that it is necessary to distinguish between what is unjust (*to adikon*) and the unjust act (*adikēma*, the *crimen*). Only when an action has been effectively carried out (*otan prachthē*) can it be imputed to someone as a crime (1135a 11). For this reason it is, however, necessary that the agent carried out his or her action *hekōn*, that is, "intentionally and without ignorance," and not involuntarily, as happens—the reference to Oedipus is clear—"when a person hits one's own father, but is ignorant that he is one's father" (1135a 30).

Aristotle realizes that the term *hekōn* is too generic to guarantee the imputability of action. For this reason he has recourse to a rare word, to which he confers, perhaps for the first time in the Greek language (cf. Vernant, p. 55), a peculiar technical meaning: *proairesis*, the act of choosing. It is first of all distinguished from appetite (*epithymia*), from yearning (*thymos*), and from desire (*boulēsis*). It is neither appetite nor yearning, because while the animals know both, only the human being is capable of choice. It is not desire because one can desire, but not choose, impossible things. It is certainly something *hekousion*, but with the proviso that the voluntary act must here be preceded (as suggested in the very form of the word, which refers to a *pro*, to a "before") by a deliberation (*probebouleumenon*; 1112a 15). It is only due to *proairesis* that one can say that actions belong to the agent: "so it seems, as was said, that a human being is the source of actions [*arkhē tōn praxeōn*] and that deliberation [here Aristotle uses the political term *boulē*, which also designates the Council of Elders] is about the actions that belong to him or her [*peri tōn autō practōn*]" (1112b 32–33).

That here it is for Aristotle above all a question of the possibility of imputing actions to the agent, that *proairesis* is thus an apparatus for rendering people responsible for their actions and indissolubly joining the action to its author, is proven by the following passage, which, without naming it, takes up the critique of the Socratic paradigm. As if Aristotle recognizes the insufficiency of his apparatus (it is not clear, in fact, why a preceding decision renders the act more proper to the agent than effective, conscious perpetration), the motivation of the critique is now solely external: if one accepted the Socratic model, one would lose the principle—evidently unrenounceable—according to which people are responsible for their crimes: "If it is true that no one is happy involuntarily, evil action is by contrast voluntary; otherwise one could not affirm, as we have maintained, that a human being is the principle [*archēn*] and begetter [*gennētēn*] of actions just as much as of children." After the persuasive metaphor of paternity there follows immediately, as further proof, the reference to legislators, who "punish and take vengeance on those who commit crimes" (1113b 15–20).

12. If it is so important for Aristotle to make the human being the father of his actions, this is certainly because without responsible action it would be impossible for him to construct an ethics and a politics. Precisely at the end of his treatment of the problem of the imputability of action, Aristotle nevertheless introduces a striking digression, which seems to call into question the principle that he had so tenaciously argued. "People believe," he writes,

> that it depends on them [*eph'autois*] to act unjustly [*adikein*], and hence they believe that it is easy to be just [*to dikaion einai*, literally "to be the just one"], but it is not. It is easy and depends on us to have intercourse with one's neighbor's wife, or to hit someone or give someone money; but to do these things in a certain way [*to hōdi echontas*] neither is easy nor depends on us. And similarly, people think there is nothing wise about recognizing what is just and unjust, because the things about which the laws speak are not difficult to understand (but these are not the things that are just, except

> incidentally). But to know how just things are done and attributed through law [*pōs prattomena kai pōs nemomena*] is a more arduous task than to know what is healthy, although even there it is easy to know about honey and wine and hellebore, or about burning and cutting, but how one ought to dispense them for health, and to whom and when, is a task that is the same as being a physician. For the same reason, people believe that doing injustice belongs to a just person no less than being just does, because the just person is not less but even more capable of performing each of these actions, having relations with a married woman or hitting someone, and a courageous man is able to throw away his shield and to run away in whichever direction he turns, but to act in a cowardly manner and commit injustice is not to do these things, but to do them in a certain way, just as practicing medicine and healing is not cutting or not cutting and giving or not giving drugs, but doing so in a certain way. (1137a 5–25)

Acting unjustly or justly is not the same thing as being just or unjust. The exclusive consideration of action does not exhaust the theme of ethics. This necessarily implies not only action, but also a certain way of being—and yet it is precisely the definition of their relationship that is the problem that Western ethics does not manage to resolve.

13. It certainly cannot be surprising that Aristotle unreservedly affirms the ethical primacy of action precisely in the work that he dedicates to the examination of tragedy. After having listed the six elements of tragic poetry, he adds, in the *Poetics*, that of these the most important is the composition of the things done, "for tragedy is not an imitation of people, but of actions. So also the happiness [*eudaimonia*] and unhappiness of life consist in action [*en praxei*], and the end aimed at is not a certain character but action. People are qualified according to their characteristics [*kata ta ethē*], but are happy or the contrary according to their actions [*kata de ta praxeis*]. Thus they do not act to imitate characteristics, but assume characteristics by means of actions" (*Poetics*, 1450a 35–41).

The centrality of action for the ethical dimension—which is to say, for happiness—could not be more forcefully affirmed. Just as, on the tragic stage, the theatrical personas do not act because they are characterized in a certain way (Antigone does not defy Creon to the point of death because she is a troublemaker) but, precisely to the contrary, assume that certain character through the actions, so too are people not happy or unhappy because they have a more or less good character, but because they act justly or unjustly.

The ethical requirement of character (*ēthos*, from which, according to Aristotle, ethics after all derives its name) is not for this reason eliminated. A little later Aristotle puts character in relation with precisely the term with which he had defined responsible action in the *Nicomachean Ethics*: "character," he writes, "is what reveals choice [*dēloi tēn proairesin*]" (*Poetics*, 1450b 7). Just before he had written, with at least apparent contradiction, that character, together with reasoning, is "the cause of actions" (*aitia tōn praxeōn*). If one affirms the primacy of actions, these refer, as in the digression that we have cited above (*Nicomachean Ethics*, 1137a 5–25), to character as to their ineluctable complement. Character is the enigmatic shadow that the ethics of action projects on the subject.

14. A sphere in which character and not action is the dominant element is that of comedy. Since Aristotle left his *Poetics* incomplete, only fragments of his conception of the comic remain for us; however, we know that in it the characterization of the theatrical personas had an absolute priority. By applying *e contrario* to comedy what Aristotle writes on the tragic primacy of action, one could affirm that in comedy, the theatrical personas act to imitate characters and, in this way, cannot assume their actions, which become ethically unimputable (for this reason Aristotle can write that in comedy there is not in question, as in tragedy, a fault—*hamartia*—but, insofar as its element is the ridiculous, only a *hamartēma*, a term that designates light, unintentional fault; *Nicomachean Ethics*, 1135b 18).

Comedy defines, then, a sphere of human life in which happiness is not determined by action and from which, for that reason, all suffering is excluded (the *hamartēma* of the comic theatrical persona causes neither pain nor death—*anōdynon kai ou phthartikon*; *Poetics*, 1449a 34–35). This means that, as Benjamin suggests in "Fate and Character," it is possible to think an ethics of comedy in which the subject is removed from the hold of sanctioned action and for "the immense complexity of the guilty person" there is substituted "a vision of the natural innocence of the human being" (p. 178/206). And if it is true, as seems incontrovertible, that the detailed study of tragedy, which Aristotle develops in the *Poetics*, is a polemical repost to Plato's condemnation of tragic poetry, it is possible to imagine that the decisive gesture with which Aristotle abruptly interrupts his work precisely at the moment when he was to pass to the treatment of comedy, also corresponds to an anti-Platonic intention. We know, in fact, that Plato had a particular predilection for the mimes of Sophron (which Aristotle himself discusses in close proximity to the Socratic dialogues; 47b 10) and that according to Diogenes Laertius, Plato took as a model precisely those mimes for the representation of the characters of his theatrical personas. The ethics that refuses action as its proper element can only be, from the perspective of Aristotle, a comic ethics.

15. In comedy, that is to say, there comes to light precisely that *hōdi*, that certain way of being and behaving, the irreducible presence of which Aristotle had affirmed at the base of every action. It is this presence that Kant sought to safeguard with his doctrine of intelligible character. If one considers the behavior of a liar from the point of view of character, he is not free, but is inevitably determined by the series of circumstances in which the agent finds himself caught, starting with his very birth (poor education, the necessity of avoiding a worse evil, the desire to please someone . . .). If, despite this, we continue to blame those who lie, this means that there must be at the basis of the empirical character an intelligible one, which guarantees the freedom of action like the

thing in itself guarantees the reality of the phenomenon. As Schopenhauer understands perfectly, here it is a question of securing in some way an ontological root for the elusiveness and instability of human actions. The human being is responsible not for what he does, which can always be justified in some way, but for what he is: he did not simply want to tell this or that lie; he wanted to be a liar. "Freedom," writes Schopenhauer,

> belongs not to the empirical, but only to the intelligible character. A given person's *operari* [doing] is necessarily determined externally through motives and internally through his character. . . . But in his *Esse* [essence], there lies freedom. He could have been another, and in that which he is lies blame and merit. . . . Through Kant's theory [of intelligible character] we are actually rescued from the fundamental error that misplaced necessity in *esse* and freedom in *operari* and we are led to the recognition that it is exactly the other way around. (p. 217/186)

In displacing the principle of freedom into being, the aporias of acting are in no way overcome. On the contrary, they only become more impervious, since precisely the intention to guarantee the freedom and responsibility of actions at all costs ends up transforming them into an ineluctable destiny. Being and intelligible character are only the shadow that action projects on the subject—something like its obscure presupposition.

For this reason Schopenhauer must confess in the end that freedom remains a mystery for him as well: "Through my presentation, then, freedom is not suspended, but merely elevated, namely, from the realm of individual actions, where it is demonstrably not to be encountered, up to a higher region, one not so readily accessible to our cognition; that is, it is transcendental. And so this is also the sense in which I would prefer Malebranche's dictum to be understood, *la liberté est un mystère* [freedom is a mystery]" (ibid., p. 139/117). Just as between the comic character and the tragic hero, so also between being and acting, between action and intelligible character, it is necessary to open the space of a *tertium*, which no longer has anything mysterious about it, because it restores *mysterium* to its originary theatrical vocation.

It is not in fact sufficient, as has happened in contemporary French thought, to substitute for the concept of action that of event. Thus, in Alain Badiou, the categorical couple that stands at the foundation of ethics and politics is no longer being and action, but being and event. An attentive analysis of this latter concept shows, however, that it is nothing but another name for action. It designates, more precisely, the result of action, the *ergon* [work] of praxis as an end in itself. And just as action determines the ethical status of the agent who assumes responsibility for it, so also, in Badiou, does the event determine the ethical rank of those who remain faithful to it. The dichotomy being/event, that is to say, corresponds perfectly to being/acting, of which we have sought to show the aporias and contradictions. The ethical-political machine of the West, with the split of the subject that it entails, in this way continues to function.

§ 3 The Aporias of the Will

1. The attempt to single out in the will a solid foundation for the freedom and imputability of human actions is one of the most impassioned and, at the same time, inconsistent chapters in the history of Christian theology. The concept of will was not invented out of thin air by theologians: for the Fathers it was instead a question of extracting the notion of it from the tradition of classical philosophy that was fading away or, better, of extracting its shape in outline from the diverse melting pot of Gnostic and Hermetic speculations, Jewish theologoumena, and Stoic and Neoplatonic philosophemes in which it was dissolving in the early centuries of the Christian era. Ernst Benz has thus shown how the first theological elaboration of the concept of will was the work of Valentinian Gnosis and, in particular, of its Italic branch, which culminates in Heracleon and Ptolemy. Here will (*enthimēsis, thelēsis*) is the first hypostasis that appears in the Abyss (*Bythos*) of the still unrevealed divinity. What permits the revelation of the "invisible and incomprehensible" God is an act of will, from which the generation of the Only Begotten Son, "through whom the Father is known," takes its origin (Clement of Alexandria, p. 68; cf. Benz, pp. 320–24).

It is certainly possible to see in these Gnostic mythologemes the prefiguration of the doctrine of the will that will take up an important part in trinitarian theology, in which the Son is not only the Word, but also the will of the Father. What interests

us here is not, however, so much the meaning of the concept of will in the elaboration of the trinitarian economy as the strategy in which it was used for the construction of a Christian ethic. Within this strategy, the will acts as an apparatus whose goal is to render masterable—and therefore imputable—what the human being can do. That is to say, it is a matter of transforming a being who *can*, which the ancient human being essentially is, into a being who *wills*, which the Christian subject will be—or in other words, of displacing human acting from the sphere of "potential" (*dynamis*) into that of will.

2. To have conceived human acting—particularly in the realm of technique and knowledge—by means of the couple *dynamis*/*energeia*, potential/act, is one of the most striking achievements of Aristotle's philosophical genius. It has an ontological importance so vast that one often forgets that one of his pragmatic objectives—if not the principal one—was to secure the paternity of actions and knowledges to a subject.

To the Megarians, who affirm that the notion of a potential distinct from the act is useless because one can truly do something only in the instant when one does it (*energei monon dynasthai*), Aristotle never ceases to reply that, if this was so, it would be impossible to "possess a technique," that is, to attribute to an architect the capacity to build at the moment when he is not practicing architecture or to a flute player the capacity to play the flute when he is not doing so. This means, however—and this is the discovery of Aristotle's that particularly interests us here—that to be master of their actions human beings must be able to do them and not do them—which is to say, as we read in a theorem whose relevance cannot be overstated, if one calls "impotential" the potential not to do something, then "every potential is constitutively impotential with respect to the same thing of which it is the potential (*tou autou kai kata tō autō pasa dynamis adynamia*)" (*Metaphysics*, 1046a 31). If potential can only always already pass to the act, if the flute player can always and only play the flute and the thief always and only steal, it would be impossible to impute

merit, and fault and the antithesis *hekōn/akon*, on which law and morality are founded, would lose all sense. This is the sense of the opposition that Aristotle introduces between natural, alogical potential—which is that of the fire that can only burn—and the logical potential, proper to human techniques, which are always double, can always do a thing and its contrary.

The goal of rendering human beings masters of their actions and guaranteeing to them the paternity of their acts and their knowledges thus has the consequence of a fracture of their capacity to act, which is now constitutively split into potential and impotential, being able to do and being able not to do.

3. It is not surprising that it is precisely in the context of the Aristotelian theory of potential that we see appear for the first time in classical Greek thought something that resembles a concept of will in a modern sense. If logical or rational potential is always capable of the contrary, if it can constitutively do and not do, how is the passage to the act possible? The risk here is that potential simultaneously actualizes two things that exclude each other—that, for example, the physician heals and, at the same time, does not heal, and the flute player plays and, at the same time, does not play the flute. In the response that Aristotle gives to this aporia one can make out something like the seed—or rather, the logical locus—from which theologians will elaborate the doctrine of the freedom and responsibility of human actions.

"If alogical potentials," he writes, "can produce only one thing, while logical potentials are capable of contrary things, then the latter would at the same time produce two contrary things; but that is impossible. It is necessary, therefore, that the ruling principle [*kyrion*, the same term that indicates the master and, in politics, the sovereign authority] be something else and by this I mean desire [*orexin*] or choice [*proairesin*]. For whichever of two contraries something desires in a dominant way [*oregētai kyriōs*] is what it will do . . . and so everything that has a potential in accordance with the *logos*, when it desires [*hotan orgētai*] that of which it has the potential and in the way that it has it, necessarily does

it" (*Metaphysics*, 1048a 9–11). In the treatise *On the Soul*, Aristotle had written in the same sense, with a formula that will be extensively commented on by medieval theologians, that thought passes to the act "when it wills [*hopotan bouletai*]" (417b 24).

Aristotle could not have in mind anything like the free will of the moderns—for this the words were lacking for him—but it is significant that, to cure in some way the split that he himself had introduced into potential, he had to introduce into the latter a "sovereign principle" that decides between doing and not doing, potential and impotential (or potential not to).

4. The two passages are all the more relevant insofar as they are likely also motivated once again by a secret anti-Platonic intention. In a dialogue, the *Hippias Minor*, that as recently as a few years ago was wrongly classified among those that are playful and less rich in philosophical content, Plato had in fact been occupied with the problem of the aporias implicit in the theorem that makes the will the decisive criterion of human action. If one submits potential to will and affirms that "he is potent [*dynatos*] who always does what he wants when he wants [*hotan boulē*]" (*Hippias Minor*, 366c), which is to say, if voluntariness becomes the criterion of acting well and involuntariness that of acting badly, then one runs into the unpleasant consequence that one must define as good the archer who voluntarily misses the target (ibid., 375a–b) and consider the singer who sings out of tune voluntarily or someone who limps with the intention of limping better than the one who does it without wanting to (374c). This leads ultimately to the completely unacceptable corollary according to which "the one who does evil and commits a fault [*examartanē*] voluntarily is better than the one who does it involuntarily" (375d).

It is probable that, when investing the will with a sovereignty over potential and affirming that thought passes to the act "when it wants to," Aristotle had in view precisely the paradoxical thesis of the *Hippias Minor*. It is all the more probable insofar as, in the *Metaphysics*, he expressly cites the dialogue and critiques as fallacious the Socratic argumentation that claims to refute *ad*

absurdum the Sophistic thesis that "liars can say false things if they want to [*ean boulontai*]" by drawing out its consequences: "the one who willingly does low things is better" and "the one who limps willingly is better than the one who does so involuntarily" (*Metaphysics*, 1025a 10). For Aristotle, the argument is fallacious because the one who limps voluntarily is not in fact limping, but only imitating a limp (ibid., 1025a 11). Yet his objection is not at all convincing, because by all evidence Plato did not intend to affirm that it is possible to limp voluntarily, but only to show the unacceptable consequences of the principle that affirms mastery of the will over human actions. What is in question for him, then, was precisely the *hotan boulē*, the idea that action depends on an act of will.

5. The term "free will" (*liberum arbitrium*) is used by Christian authors to translate the Greek expressions *autexousion* (literally "what has power over itself") and *to eph'ēmin* (literally "what depends on us"), which in Neoplatonic treatises and Aristotle's commentators designate the capacity to decide on one's own actions. The modern translation of the term as "freedom," which is frequently encountered, is equivocal, because the context in which it is used is not that of political freedom (which is called *eleuthēria* in Greek) but the moral and juridical one, which is by now familiar to us, of the imputability of actions. The origin of the term is, after all, juridical: *arbitrium* is the decision or faculty of judging of the *arbiter*, of the judge in a lawsuit (*arbiter dicitur iudex, quod totius rei habet arbitrium et facultatum*) and, by extension, the subject's faculty of deciding (in this sense it is used by Gaius in the *Digest*). The fact is that already beginning in the third century, the Fathers and apologists use it as a technical term to express the mastery of the will over actions in a particularly delicate sphere: that of the origin of evil and responsibility for sin. In this sense it is found for the first time in Lactantius (*Divine Institutes* 2.9.49), referring significantly to the devil (*suo arbitrio, quod illi a Deo liberum fuerat datum*, "by his own will, which had been given to him by God as free"), in Tertullian, and in Jerome

(*Against the Pelagians* 3.7: *autexousion, nos liberum appellamus arbitrium*, "*autexousion*, which we call free will").

In the general convergence of late-ancient culture toward the same insistent problematic nuclei, the question of the autonomy of human actions was posed by philosophers in relation to fate. Exemplary from this point of view is the treatise *Peri heimarmenē* (*On Fate*) of Alexander of Aphrodisias, the "exegete" par excellence of Aristotle's thought. Against the Stoics, who seemed to accord a preponderant part to fate, for him it was a question of "preserving what depends on us [*to eph'ēmin sozesthai*]" (Alexander, p. 38/60). As already in his master, the decisive argument is, once again, the existence of laws that punish evil actions: "And if the usefulness of the laws were done away with through fate of this sort, so would the laws be. For what is the advantage of laws when we are deprived by fate of the power of obeying them? . . . For fate and law are opposed, if the law enjoins what should be done and what should not, on the assumption that those who act can obey it when it gives commands (and for this reason punishes those who do not obey for acting wrongly, rewarding those who obey for acting rightly)" (ibid., p. 70/89). The strategy within which the free will of the Fathers functions, while showing some obvious analogies with those of the philosophers, is essentially different. For Alexander, the problem is in fact still the Aristotelian one of the ambiguity of human potential, and the *eph'ēmin* consists essentially in "being able to do opposites" (*dynasthai ta antikeimena*, ibid. p. 24/58; *dynasthai hairesthai to antikeimenon*, p. 25/58); for Christian theologians it is instead a matter of singling out in the will the principle of imputability of human actions, and to this end, they must first of all translate the problem of potential into that of will (*de libera voluntate quaestio est*, "it is a question of free will"; Augustine, *On Free Will*, 2.19.51).

6. It is helpful to reflect on the nature of modal verbs and on the function that they have developed in Western philosophy. As the ancient grammarians had already observed, these verbs ("I can," "I want," "I must") have the peculiarity of being in

themselves deprived of meaning (they are *kena*, "void"; *elleiponta to pragmati*, "they are lacking the thing"; Ildefonse, p. 364) and acquire one only if they are followed by a verb in the infinitive ("I can walk," "I want to eat"). Curiously, it is precisely on these "void" verbs that philosophy has concentrated its attention, privileging now one of them, now another, in the course of its history and according to its strategies. This means that, if first philosophy is ontology, if it always has to do with the problem of being, being is nevertheless always thought according to its modalities; it is always already divided and articulated into "possibility, contingency, necessity"—it is, in its givenness, always already marked by a being able to, a wanting to, a having to.

The hypothesis that I would like to suggest here is that the passage from the ancient world to modernity coincides with the passage from potential to will, from the predominance of the modal verb "I can" to that of the modal verb "I will" (and later, "I must"). Ancient human beings were people who "can," who conceive their thought and their action in the dimension of potential; Christian human beings are beings that will.

7. For a study of the ways in which the passage from potential to will—or rather, the laborious grafting of the concept of will onto that of potential—in Christianity is achieved, the reading of the numerous treatises *De libero arbitrio*, starting from that composed by Augustine at the end of the fourth century at least up to that of Anselm, who six centuries later repeats his gesture point by point, is not very useful. If the argumentation of these treatises—which pretend to respond to the question that Evodius puts to Augustine in the dialogue: "why has God given the human being free choice of will, without which he could not sin?" (*liberum voluntatis arbitrium, quod utique si non accepisset, peccare non posset*; Augustine, *On Free Will*, 2.1.1)—is shrouded in contradictions that it does not manage to overcome, this is above all because they seek, by means of will, to eliminate the constitutive ambiguity of potential, from which, on the other hand, free choice cannot fail to draw its essential content. For this reason both Augustine and

Anselm begin by denying that free choice consists in the capacity to sin and not to sin (according to Augustine, freedom of the will consists in acting rightly and not sinning; Anselm pronounces the axiom unreservedly: *liberum arbitrium non puto esse potentiam peccandi et non peccandi*, "free will cannot be the power to sin or not to sin"; Anselm, p. 208/176), except that later, with a rash contradiction, they found responsibility for sin in it: "If the free will were given not only for living justly, but also for sinning, there would be an injustice: how would it in fact be possible to punish with justice the one who used the will for that for which he received it? When God punishes the sinner, he seems to say: 'why have you not used the free will for that for which I gave it to you, which is to do the good?'" (Augustine, *On Free Will*, 2.1.3).

That the will is here an apparatus directed pitilessly at securing responsibility for human actions, that it should, as if it went without saying, have the form of a command and a law, is obvious from the fact that it is determined solely with respect to good or bad, just or unjust actions. Any nod to any other movement of the soul whatsoever that we are accustomed to associate with it is lacking: desire, inclination, fervor, taste, caprice. . . . On the other hand, in the attempt to avoid the glaring contradiction, one sees consistently rising to the surface in both authors the seed of what will be the inevitable way out for every theory of the will, namely, that it is essentially a will of will, that in every act of will it above all wills itself: "What is more present to the will than the will itself?" Augustine asks at a certain point (1.12.26), before founding responsibility for sin precisely in the fact that we use free will for itself (*etiam ipsa libera voluntate per eam ipsa uti nos posse, ut quodam modo se ipsa utatur voluntas*; 2.51.194; and Anselm, with his usual hyperbole: *omne volens ipsum suum velle vult*, "every willing person wills his own willing," p. 222/181).

Only if the will wills itself, only if its command is directed first of all at itself, can the action that results from it then be truly imputed to it. The Christian conception of the will, which modern ethics will inherit, frequently without benefit of an inventory, is a peremptory absolutization of the modal verb "I will," which,

separated from every possible content and all possible meaning, is used in vain: "I will to will."

8. That the decisive problem for the Fathers is that of securing the sovereignty of will over potential is obvious in Augustine's punctilious polemic against Pelagius, one of the most morally upright figures of the early Church, whom his own adversary judges to be "ardent with zeal" (*zelo ardentissimo accensum*) and of "very acute intelligence" (*fortissimum et celeberrimum ingenium*; Augustine, *Treatise on Nature and Grace*, 6.6–7.7). What is essential for Augustine is clearly to deny that human nature after the fall is capable of not sinning without the intervention of grace, and for this reason he seems to be driven to the grim proclamation of the necessity of sin, which descends from "that condemnation that runs throughout the whole mass" of humanity (*ea damnatione, quae per universam massam currit*; 8.9); yet we cannot understand the peremptoriness of his theses if we do not note that it was no less decisive for him to deny the primacy that Pelagius attributes to potential. According to Pelagius, in fact, there inheres in human nature in an "inseparable" and "inadmissible" way the possibility or potential not to sin, and this cannot be impaired by any debility of the will (51.59). That is to say, Pelagius thinks a human capacity to act rightly is founded solely on potential and not on will and free choice, and it is precisely this autonomy of potential with respect to will that Augustine cannot in any way accept. If the human being possessed the potential not to sin, he argues, why did Paul write, "Willing is within my reach, but not putting the good into action" (Romans 7:18)? Sin and justice depend on will (combined with grace, for the good), and an action that did not spring from it would not be a human action, whether good or evil. Even in Eden, before the fall, Adam moved his members—in particular his sexual organs—through an act of will, and if the will had not sinned, "The man, then, would have sown the seed, and the woman received it, as need required, the generative organs being moved by will, not excited by the libido" (Augustine, *City of God*, XIV.23–24).

9. The primacy of will over potential is brought about in Christian theology through a threefold strategy. It is a question, first of all, of separating potential from what it can do, of isolating it from the act; in the second place, of denaturalizing potential, of separating it from the necessity of its own nature and linking it to contingency and free choice; and finally, of limiting its unconditioned and totipotent nature in order to render it governable through an act of will.

In his polemic against Pelagius, Augustine had cited the passage from the Letter to the Romans in which Paul describes the agonizing experience of the split that is produced in him between potential and its realization, between what he thinks he is able to do and to will and its effectuation in the act. Augustine makes the Pauline description his own personal myth, so to speak, the paradigm through which he lives and interprets the experience of his own most intimate divisions. One can say, as a matter of fact, that Augustine can elaborate the doctrine of the will that has been recognized as perhaps his most decisive theological achievement, only because he had lived in the very depths of his flesh the experience of the split of potential for which Paul had offered him the model.

Let us turn to the passage from the letter that we have already cited above. A little after having affirmed, in his impassioned critique of the law, that the commandment that was supposed to give him life has instead produced death in him, he describes the state of confusion and internal discord that results from it: "I do not know what I do [*katergazomai*, put into act]. For I do not do what I will [*thelō*], but what I hate. If I do what I do not will, I recognize that the law is good; so I do not do it, but sin that dwells in me. . . . Willing is at my fingertips [*to gar thelein parakeitai moi*], but not putting the good into action [*katergazesthai*]. For I do not do the good I will, but the evil I do not will is what I achieve. And if I do what I do not will, it is no longer I that do it, but sin that dwells in me" (Romans 7:15–20).

We have seen that the verb *thelō*, which we have translated as "I will," properly means "I am ready, disposed to do something."

It expresses a capacity and a potential more than a will and a decision. What Paul means by the phrase that Augustine takes up ("willing is at my fingertips, but not putting the good into action") has to do with the impossibility of putting into action what he believed himself to be able to do—in Aristotelian terms, with a separation of potential (*dynamis*) from act (*energeia*: the word *katergazesthai* also contains the term *ergon*). The vocabulary of willing and the very concept of a will in the new sense of the term are grafted precisely onto this split of potential and are elaborated starting from it. This is at least what Augustine will do when, in a decisive moment of his *Confessions*, he models the experience of the "internal tumult" and "storm in his breast" that precede his conversion on Paul's letter.

In the celebrated scene in the garden with Alypius, Augustine describes his perturbation—the convulsive gestures with which he tears his hair, slaps his forehead, and squeezes his knees between his crossed fingers—by translating Paul's "I do not do what I will" into the terms of a conflict between potential and will: "I could have willed and yet not done it [*potui autem velle et non facere*], if my limbs had not had the pliability to do what I willed. Thus I did so many things where the will to do them was not the same thing as the ability to do them: and I could not do what would have pleased me incomparably more to do—a thing too which I could have done as soon as I willed to, because willing was immediately willing [*mox ut vellem possem, quia mox ut vellem utique vellem*]. For in that matter, the ability was the same thing as the will, and the willing itself was already the doing" (*Confessions*, 8.8).

In the passage that follows, the separation of potential from what he can do is interpreted by Augustine as a "sickness" (*aegritudo*) and a defect of the will, which divides it from itself: "Where does this monstrousness come from [*Unde hoc monstrum*]? And why? The soul gives the body an order and it obeys at once; the soul gives itself an order and finds resistance. The soul commands the hand to move and there is such readiness that you can hardly distinguish the command from its execution. Yet the soul is soul, whereas the hand is body. The soul commands itself to

will [*imperat animus ut velit animus*], the soul is itself, but it does not do it. Where does this monstrousness come from? And why? The soul commands itself to will, it would not give the command unless it willed, yet it does not do what it commands. The trouble is that it does not will totally [*ex toto*], and therefore it does not totally command. It commands insofar as it wills, and it disobeys the command insofar as it does not will, although the will is commanding itself to be a will, not some other. But it does not command fully, so that what it commands is not done. For if the will were so in its fullness, it would not command itself to be so, for it would already be it. It is therefore no monstrousness, partly to will, partly not to will, but a sickness of the soul to be so weighted down by habit that it cannot wholly rise even with the support of truth. Thus there are two wills in us, because neither of them is entire, and what is lacking to the one is present in the other" (ibid., 8.9).

Immediately afterward, the passage from Romans is evoked to explain the conflict as a split of the will provoked by sin: "I did not will fully nor was I wholly unwilling [*nec plene volebam, nec plene nolebam*]. Therefore I strove with myself and was divided from myself, and if this division happened to me against my will, it did not show me the existence of some other mind, but the punishment of my own. Thus it was not I who caused it, but the sin that dwells in me" (ibid., 8.10).

Here it is possible to measure to its fullest extent the transformation that defines the Christian experience of the subject and of its action. What the Greeks—and also Paul, in some way—conceived as a division internal to potential or as a separation of potential from act is now thought solely in terms of will and command. When one says that the Christian subject is divided, it is necessary to specify the nature and modality of this split. It does not concern so much the conscience—as happens for the moderns—as action, what the human being could or should do and does not manage to do any longer. The problem, then, is: "how to answer for something that I cannot do?" The will intervenes at this point to sanction and govern this crisis of potential,

transforming the unimputable "I cannot" into a sinful "I will not."

10. The second problematic context in which the will is grafted onto potential in order to transform and master it is the Christian idea of the divine creation of the world. The strategy here is that of a denaturalization of potential: that is to say, it is a question of removing potential and action from every natural necessity in order to turn them toward arbitrarity and gratuity.

The heterogeneity of the Christian paradigm of creation with respect to classical philosophy does not actually consist in the idea in itself of a creative action of the divinity (in the *Timaeus*, Plato had conceived and described in detail the creation of the cosmos as the work of a demiurge), but in the separation of nature and will in God. Creation does not derive in a necessary way—as a Greek had no difficulty understanding—from the nature or essence of God: it results rather, according to theologians, from an act of will that is at once free and gratuitous. Indeed, creation is so foreign to the essence of God that, measured against the latter, what is created in some way does not exist. "Everything that exists on the earth and in the heavens," writes Origen (*Homily on 1 Kings 28*, 1.11), "insofar as it is referred to the nature of God, is not, but insofar as it refers to the will of the creator, it is what he willed it to be when he created it." And Pseudo-Justin says, "Being and willing must remain distinct in God. If being and willing in God were the same thing, since God wills many things, he would be now one thing, now another, which is impossible. And if God created by means of his being, then because his being is necessary, he would be obligated to do what he wills and his creation would not be free" (*Exhortation to the Greeks*, 2). And the annoyance of Augustine is well known when he disposed of the question of the pagans: "why did God make heaven and earth?" by brusquely responding, "*quia voluit*, because he willed it" (*Against the Manicheans* 1.2.4).

The theorem according to which God does not act *per necessitatem naturae, sed per arbitrium voluntatis* (by the necessity of

nature, but by choice of the will) is so much more necessary for the theologians insofar as it defines the Judeo-Christian concept of the divine action in opposition to the Greek model. Ancient records inform us, in fact, that when Greeks found out about the Christian idea of creation, what remained incomprehensible in it for them was precisely the idea that it did not result from a necessity or a nature, but from a gratuitous act of will. "Moses believed that for God all things were possible," writes Galen (*On the Usefulness of the Parts of the Body*, 11), "even willing that a horse should be generated from the dust. We Greeks do not say that God willed [*boulēthenai*] and the eyes were created, because this would never have happened if he had willed it a thousand times." And Alexander of Lycopolis, writing on the Manicheans, says: "What sense does it have to attribute to God something—the will—that could not be reasonably assigned to human beings? The verb 'to will' [*boulesthai*] in this context actually entails an impossibility and it should not be used" (p. 39). The theological apparatus of creation *per arbitrium voluntatis* and of the denaturalization of divine action could not fail to have immediate consequences for anthropology. Human beings have also been furnished with a free will by God, and their praxis is defined not by what they *can* do according to their nature but by what they *will* according to their free choice, which renders them responsible for their acts. This means, however, that freedom and contingency are inseparable and that human potential, subjected to the will, departs from the sphere of nature and is bound to that of history and contingency.

This is evident in the theologian who, by pushing the doctrine of free will to its extreme consequences, formulated his theorem *experitur qui vult se posse non velle*, "the one who wills has the experience of being able not to will," and suggested with fierce irony, against those who denied contingency, that they should be tortured until they admitted that they also could not be tortured. There are, according to Scotus, two principles of action: one natural (*per modum naturae*) and one voluntary (*per modum voluntatis*): "For either the potential of itself is determined to act, so that so far as itself is concerned, it cannot fail to act when not impeded

from without; or it is not of itself so determined, but can perform either this act or its opposite, or can either act or not act at all. A potential of the first sort is commonly called 'nature,' whereas one of the second sort is called 'will'" (Scotus, q. 15, §22). Scotus calls "will" what Aristotle called "logical potential," but he radicalizes the aporia in it to the point of making it the principle of the absolute contingency and absolute freedom of every human action. The will is a potential that has been denaturalized and placed at the foundation of freedom.

11. The third move in the strategy by means of which the will secures its primacy concerns, so to speak, the limit-case of potential: God's omnipotence. This essential divine attribute received the consistency of a dogma in the Nicene Creed: *pisteuomen eis hena theon patera pantocratora*, "we believe in one God, the omnipotent father." But precisely this indisputable theorem entailed some scandalous consequences, which threw into bewilderment the very theologians who had so unanimously formulated it. If God could truly do—according to the pronouncement of dogma—absolutely and unconditionally everything, this means that he could achieve any act whatsoever that was not logically contradictory, for example, choosing to incarnate himself not in Jesus but in a woman or deciding to save Judas and condemn Peter or completely destroy his creation or even—something that seemed to be particularly unacceptable for the theologians—restore the virginity of a deflowered woman (to this problem Peter Damien devotes almost the entirety of his long treatise *On Divine Omnipotence*).

Divine omnipotence contains a shadow or obscure aspect, by virtue of which God becomes capable of the evil, the irrational, and even the ridiculous, and it is this unsettling shadow that theologians between the eleventh and fourteenth centuries never stopped discussing and arguing over. The apparatus by which they sought to curb or check the irrefutable but scandalous divine omnipotence is the distinction between a *potentia absoluta* and a *potentia ordinata*. According to the former, that is, insofar as it

concerns potential considered unconditionally in itself, God can do anything whatsoever; but *de potentia ordinata*, that is, according to the order or the command that he imposed on himself with an act of will, God can do only what he has decided to do. In the words of Gregory of Rimini: "God, with his ordained potential, can only do what he can do in conformity with the order [*ordinatio*] that he established by himself with his eternal law, which is nothing other than the will through which he willed from all eternity to do this or that thing, in this or that way. . . . Thus, if it is certain that, in absolute terms, Christ could have not been incarnated and not died, nevertheless once the order is posited according to which the human race must be saved, he could not fail to do it" (*Lectura super primum et secundum Sententiarum*, I, dd. 42–44, q. 1, a. 2, *Respondeo*; qtd. in Boulnois, pp. 365–66).

The sense and strategic function of the apparatus are clear: It is a question of limiting the divine potential and anarchy by establishing a boundary without which the world would plunge into chaos and could no longer be governed. The instrument that renders this limitation possible is the will. Potential can will, and a will that has willed must act according to its will. And like God, human beings also can and must will, can and must responsibly check the unfathomable depths of their potential. According to the paradoxical formulation of Kantian ethics: "you must will to be able (*man muss wollen können*)."

12. The problem of the will is declined in a completely different way in the book—most likely composed in the context of Rhineland mysticism and published by Luther in 1516—that goes under the title *Theologia deutsch*. The will does not constitute the principle of individual freedom that manifests itself in responsible action—or it is this only to the extent that the subject presumes to make it its own, to transform it into *eigen will*. Sin consists solely in this appropriation, which renders action culpable and imputable. The will that is in human beings does not in fact belong to them, but is entirely and eternally God's; yet in God, it is never in act, it wills nothing and can be exercised concretely only through

the creature: "The eternal will, which is original to God and belongs to his very being, exists apart from any work and act; that same will is real and active in a person or creature, for it is the function and property of the will to will. . . . And so the will in the creature, which is called a created will, is now God's, like the eternal will and not the creature's. Because God cannot now translate his will into action or intention without the creature, he wants to do it in and with the creature. This means that the creature must not want with that same will, but God could and would actually will with the will that is in the person and is yet God's. Wherever that will was pure and entire and in whatever person there was a will, coming not from the person but from God, there the will would not be one's own will, and there would be no willing other than what God wills" (Blamires, ch. 51, pp. 89–90).

Here the theological apparatus of the will is reversed: The will, which constituted God's essential attribute, is reduced to a pure ineffectual potential, which is realized in action only in the human being, to whom it nevertheless does not belong in any way. That is to say that the will is always improper and its appropriation on the part of the human being coincides with the fall and with sin: "It is then that the devil and Adam, that is, false nature, come on the scene and lay claim to this will, make it their own and use it for themselves, for their very own. This is the harm and the injustice, and the bite with which Adam bit the apple, something that is forbidden and opposed to God" (ch. 51, p. 91). And the proper will coincides with the creation of hell; it is hell: "in hell there is nothing so much as a person's own will [*eygener wille*] . . . there is nothing there except own will. If there were no own will, there would be no hell and no devil" (ch. 49, p. 88).

It is to a tradition of this type that Francis is referring in some way in writing in the *Second Admonition to the Brothers*: "that person eats from the tree of the knowledge of good and evil who appropriates to himself his own will" (*ille enim comedit de ligno scientiae boni, qui sibi suam voluntatem appropriat*; p. 27).

§ 4 Beyond Action

1. The politics and ethics of the West will not be liberated from the aporias that have ended up rendering them impracticable if the primacy of the concept of action—and of will, which is inseparably jointed to it—is not radically called into question. This is all the more urgent since in one of the studies that has exercised the most influence on twentieth-century political philosophy, Hannah Arendt's *The Human Condition*, the rank of action in the public sphere is still forcefully affirmed. And yet an attentive reading of the chapter of the book dedicated to this concept shows precisely that the author does not succeed in furnishing a coherent definition for it, as if—as one could in any case infer from its absence from the most authoritative philosophical lexicons—it were not properly a philosophical term. The Latin term *actio*, which translates the Greek praxis, originally belongs, after all, to the juridical and religious sphere, not the philosophical. In Rome, *actio* designates the trial and *actionem constituere* means, like *agere litem* or *causam*, "to institute proceedings." On the other hand, the verb *agere* originally means "to celebrate a sacrifice," and in the most ancient sacramentaries, the mass is also called *actio* and the Eucharist *actio sacrificii*.

In the entire history of Greek philosophy, Arendt can thus cite only the Aristotelian opposition between *poiēsis*, which has its work (*ergon*) and end outside itself, and praxis—action—which has its end in itself ("*praxis* and *poiēsis* are different in kind. . . .

For the end of *poiēsis* is different from itself, but the end of *praxis* could not be, since acting well [*eupraxia*] is its own end"; *Nicomachean Ethics*, 1140b). And it is precisely by means of the Aristotelian opposition between making and acting that Arendt seeks to define action (which in her exposition is inseparable from speech and discourse). In this connection, she evokes, while interpreting it as "end in itself," the concept of *energeia*, "actuality," in the sense of being in act, with which Aristotle designated all those activities that do not pursue an external end and do not leave behind any works: "It is from the experience of this full actuality that the paradoxical 'end in itself' derives its original meaning; for in these instances of action and speech the end (*telos*) is not pursued but lies in the activity itself which therefore becomes an *entelecheia*, and the work is not what follows and extinguishes the process but is imbedded in it; the performance is the work, is *energeia*. Aristotle, in his political philosophy, is still well aware of what is at stake in politics, namely, no less than the *ergon tou anthrōpou* (the "work of man" *qua* man), and if he defined this 'work' as 'to live well' (*eu zēn*), he clearly meant that 'work' here is no work product but exists only in sheer actuality" (Arendt, pp. 206–7).

That in the passages to which Arendt refers Aristotle did not have in view a definition of action but rather a characterization of human activities according to whether or not they had in themselves their end and their *energeia* results clearly from the fact that, as an example of "praxis," he mentions vision, which certainly cannot constitute an action in Arendt's sense. What was essential for him was not the absence or presence of an *ergon*, so much as the fact that the latter was more or less immanent. That is to say, it was a question of opposing *technai* and production, which are directed toward an *ergon* and external end, to all the activities to which an end is immanent—and among these there necessarily figured, besides politics, also the functions of bodily life.

2. An understanding—and perhaps a critique—of the Aristotelian concept of action will be possible only if one restores it

to its proper context. In the *Nicomachean Ethics*, Aristotle seeks to define the good of the human being as the object of politics, namely, "the highest good that action can reach [*to pantōn acrotaton tōn praktōn agathōn*, "the highest of practicable goods"; 1095a 16). This good—happiness (*eudaimonia*)—can be defined as "that for the sake of which everything else is done" (*hou charin ta loipa prattetai*; 1097a 19). Naturally we will always be dealing with something different according to the various spheres: "In the medical art this is health, in the general's art it is victory, in the house builder's art it is a house, and in every action and choice it is the end [*to telos*], since everyone does everything else for the sake of this. And so, if there is some end for all actions [*tōn praktōn hapantōn esti telos*] that people carry out, this would be the good action [*to prakton agathon*]" (1097a 20–24). This good, Aristotle immediately adds, cannot be, like the flute, riches, or other instruments (*organa*), a means for something other than itself: "the supreme good must be a final end [*to d'ariston teleion ti phainetai*; here Aristotle is playing on the proximity between *telos* and *teleios*, "complete, perfect"]. So if there is some one thing alone that is the final end, this would be what is being sought, but if there are more than one of them, it would be the most complete of them. And we say that a thing that is pursued for the sake of itself is more complete [*teleioteron*] than a thing pursued for the sake of something else, and hence that, in an unqualified sense, the complete is what is chosen always for itself and never for the sake of something else. And happiness seems to be of this sort most of all, since we choose this always for the sake of itself and never for the sake of anything else" (1097a 35–1097b 2). "So happiness," Aristotle concludes, "appears to be something complete [*teleion*] and self-sufficient [*autarches*] and is therefore the end of all actions [*tōn praktōn ousa telos*]" (1097b 20).

As has been suggested (Coccia, p. 43), Aristotle's strategy here consists in inscribing the doctrine of the good into a theory of purposiveness. Yet it is necessary to specify that the end that is here in question is a final, "complete," and "self-sufficient" (*teleion* and *autarches*) one that can never become a means for the sake of

something else and with respect to which everything else is configured as a means. That is to say, we are dealing with an apparatus that founds and simultaneously constitutes as absolute the opposition between ends and means. If there is the good as final end, then all human actions appear as means and never as ends with respect to it; if the good is not, then all actions lose their end and therefore their sense. From the perspective that interests us here, what is decisive is thus that praxis, human action, appears as the dimension that is opened up for the sake of the good, as what must actualize the final end toward which human beings cannot but aim. This means that between human beings and their good there is not a coincidence, but a fracture and a gap, which action—which has its privileged place in politics—seeks incessantly to fill. For this reason, according to a paradigm that will durably influence Western culture, the place of ethics is not being, but acting. As we have already observed, the primacy accorded to action divides human beings and constitutes them as *schuldig*, in debt with respect to their own end. Praxis is the place where this debt is settled and incessantly rekindled. A critique of the Aristotelian concept of action thus necessarily entails a preliminary critique of the concept of purposiveness.

3. It is in the context of the problem of the end that Aristotle examines the possibility of defining "the work of the human being," *to ergon tou anthrōpou*—an expression that Arendt evokes without specifying its context. Before reading the passage in question, it is necessary to observe that the translation of *ergon* as "work," which in modern languages refers above all to a manufactured article and an object, is inadequate. The term *ergon* is etymologically connected with the verb *erdō*, which means "to act, to do," originally in the sense of "to offer a sacrifice." Like the Latin *opera* with respect to *opus*, it indicates first of all the operation and only secondarily its result. And it is from *ergon* that Aristotle forges one of his fundamental technical terms, *energeia*, which designates being-in-act, the operativity and effectiveness of an action. By asking what the *ergon* of the human being is,

Aristotle is therefore seeking to define the specific activity of the human being, the operation that properly belongs to him. But let us read the passage in question:

> To say that the highest good is happiness seems to be a truism, and it is still necessary to define it in a more clear way. Now this might come about readily if one were to consider the work of the human being [*to ergon tou anthrōpou*]. For just as with a flute player or sculptor or any artisan [*technitē*], and generally with those for whom there is an operation [*ergon*, here also in the sense of "work"] and a praxis, the good and doing well seem to consist in this operation, so too it seems to be also for the human being [as such], if indeed there is some operation that belongs to one. But is there some sort of work for a carpenter or a leather worker, while for the human being there is none, because the human being is born without work [*argos*]? (*Nicomachean Ethics*, 1097b 22ff.)

The question, which is far from irrelevant, on the absence of a work for the human being as such—to which we will be returning—is immediately left aside. By opposing to the human being as such four types of artisans, Aristotle intentionally makes use of figures for whom the identification of the *ergon* does not pose a difficulty, which allows him to play on the double sense of the term (both "operation" and "work [*opera*]") and to leave initially indeterminate the distinction between the *poiēsis* of the artisan and the praxis of the man of action. However, just as he is about to define the *ergon* of the human being, he once again has recourse to the concept of praxis: we are in fact dealing, he writes, not with nutritive or sensible life, but with "the life of action [*praktikē*] of a being endowed with *logos*" (1098a 4), and a little later, more precisely, with the "being-in-act [*energeian*] of the soul and actions [*praxeis*] accompanied by *logos*" (1098a 14). The human being as such is devoted to praxis, is a man of action.

4. The distinction between the two forms of human activity was so important for Aristotle that he returned to it in a passage in Book Theta of the *Metaphysics*. He writes:

> For the operation [*ergon*] is the end and the being-in-act [*energeia*] is an operation, and the term being-in-act, which means also possessing-itself-in-its-end [*pros tēn entelecheia*] derives from this. In certain cases, the ultimate end is use [*chrēsis*], as happens in seeing [*opseōs*] and in vision [*horasis*], in which nothing other than a vision is produced; but in others, something else is produced, for example the art of building produces, along with the action of building [*oikodomēsin*], the house as well. . . . So in all those cases in which there is a production of something alongside the use, the being-in-act is in the thing produced, as the action of building is in the thing built and the action of weaving is in the thing woven. . . . On the contrary, in those [operations] in which there is no other work alongside the being-in-act, the being-in-act resides in themselves, in the sense in which vision is in the one seeing and contemplation [*theōria*] in the one who contemplates and life in the soul. (*Metaphysics*, 1050a 21–1050b)

At this point we can better understand why Aristotle does not seem to have much consideration for the *technitēs* and why *poiēsis*, production, seems to him to be inferior to praxis, action. As strange as it may seem to us, for the Greeks the operation did not reside in the artist, but in the work that he produces: the operation of building is not in the architect, but in the house; the operation of weaving is not in the weaver, but in the thing woven. What for Aristotle defines action is rather that the being-in-act here consists fully in the agent and not in an exterior thing.

The idea of an end in itself, which Aristotle evokes in the *Nicomachean Ethics* and which the moderns and Arendt take up again, is in this sense misleading. For him, the problem is instead that of where the *energeia* is situated: in the agent himself or in an external work. While both the artisan and the artist are condemned to have their *energeia*, their being-in-act, outside themselves, the man of action is ontologically master of his acts; but for this reason, while the artisan remains such if he does not exercise his activity, the man of action cannot be *argos*; he constitutively has to act. On the other hand, if the end is that "for the sake of which" other things are constituted as means, to speak of an end

in itself has no other sense than (tautologically) excluding it resolutely from the sphere of means.

5. The Aristotelian theory of action that we have sought to reconstruct is far from coherent. The very distinction between *poiēsis* and praxis (which Aristotle at a certain point claims to have derived from "exoteric discourses [*exōterikois logois*]"; *Nicomachean Ethics*, 1140a, 3) is not as obvious as it seems at first glance. If the good toward which praxis is oriented is "that for the sake of which everything else is done," then action also would in some way share with *poiēsis* the fact of having an end. Aristotle himself suggests as much when he writes, in a famous passage of *De coelo* (*On the Heavens*), that "the being that is found in the most perfect condition has no need of action [*tō arista echonti outhen dei praxeōs*], because it is itself the 'for the sake of which'; by contrast, action always takes place in a duality [*hē dē praxis aei estin en dysin*], since there is a 'for the sake of which' and what is done for the sake of it" (292b 5–6). Insofar as the human being—which, Aristotle writes immediately before, with respect to the other living beings is "the one who carries out the greatest number of actions" (ibid., 292b 2)—acts, he or she is necessarily taken into a split (*en dysin*), which seems to render difficult, if not impossible, the identity between end and action that is supposed to define praxis. Precisely the irreducible tension toward what can never be a means condemns the one who acts to the split between means and ends—to the eternal, unresolved, and irresolvable dialectic between means that, however adequate and legitimate, can only pursue a goal and an end that, though constituting them as such in relation to itself, can never be identified with them. And according to the theorem that Wolffian philosophy was to inscribe peremptorily on the threshold of modernity: *qui vult finem, velle debet media*, "who wills the end must will the means."

6. It is significant that Plato, at least in his last works, does not conceive the good as an end, but as an *archē anhypothetos*, a non-presupposed or non-hypothetical principle (*Republic*, 6, 511bff.),

at which one arrives not by action, but by dialectical knowledge, with a regressive movement (*katabainō*). And it is precisely the intention to eliminate action from the sphere of the political that Arendt reproaches in Plato, accusing him of wanting to substitute for it a governance that is in the last analysis tyrannical, and for the model of the *polis*, where people act freely, that of the *oikos*, where people command and are commanded.

If it is true that a radical limitation of the primacy of praxis in the political clearly corresponded to his intentions, nevertheless Plato did not have in mind a simple substitution of governance for action. In a passage of the *Laws* whose importance Arendt emphasizes, he compares human actions to the gestures of a marionette moved by the hands of a God. What is decisive here, however, is that God does not seem to pursue any purposiveness but limits himself to playing with human beings and that this "play" is presented, so to speak, as the paradigm of a happier politics: "The human being is a type of toy [*ti paignion*; previously he had defined it as a 'divine puppet,' *thauma theion*, 644d] built by God, and this is the great point in his favor. So every man and every woman should spend their life [*diabiōnai*] in this way, playing the most beautiful games [*paizontas hoti kallistas paidias*], having in mind the contrary of what they do now" (803c). That the game is here evoked as the sphere par excellence in which the means/end relation is neutralized is clearly stated immediately afterward: "Now people think that serious things must have games as their end [*heneka tōn paidiōn gignesthai*], and maintain that the things of war that are serious must be done efficiently for the sake of peace. But in war there are never by nature games or education [Plato is here playing on the etymological assonance between *paidia* and *paideia*] that are worthy of the name and neither now nor in the future will there be what we affirm to be the most serious thing" (803d).

The idea that the game "peace" can be thought as end of the serious means "war" is unreservedly denied here. And at this point it is precisely the game that can be presented as the true paradigm of a good governance, which is very different from the "rule"

evoked by Arendt: "So it is necessary that each spends his life in peace in the best and most durable way. And what is the most just way? One should live by playing some games [*paizonta estin diabiōteon tinas dē paidias*], celebrating rites, singing and dancing, in such a way as to be able to propitiate the gods and drive away [this is the sense of *amynesthai*] enemies and, if one must fight, defeat them" (803e). What Plato here seems to prefigure is not the totalitarian state, but Fourier's phalanstery, with its amorous sequences and its playful domestic revolution.

That this idea—which Plato pronounces with perfect seriousness—of "a playful politics" could appear somehow scandalous is testified by the way in which Cicero—who conceives political action as an *officium*—took care to refute it, writing that "we have not been generated by nature as if we were made to play or jest [*ad ludum et iocum*—the Latin language distinguishes between a word game, *iocus*, and a game of action, *ludus*], but rather for seriousness [*ad severitatem*] and for better and graver occupations" (Cicero, *De officiis*, 1.29.103). Yet Cicero certainly cannot be ignorant of the fact that not only could games be the most serious thing for a Greek (one thinks of the description of the funeral games for Patroclus in Book XXIII of the *Iliad*), but also that some of the most solemn Latin rituals (like the *ludi capitolini*, instituted to commemorate resistance to the Gauls, or the *ludi romani*, celebrated in honor of Jove) took the form of games.

7. The critique of purposiveness never disappeared from ancient thought. The Stoics, although they took up the Aristotelian definition of *telos* as "that for the sake of which everything is done and that is never done for the sake of anything else," nevertheless distinguished between the goal (*skopos*) of an action and its end (*telos*). On the goal we can be mistaken, because its achievement does not depend on us, but on fate; as to the end, by contrast, the wise person cannot miss it in any case. In this sense, the wise person is similar to the archer who aims skillfully at his target, which he can miss or hit: but the end, which consists in the aiming itself, cannot escape him. As has been observed, "the final cause is here

reduced to the level of *skopos*, namely to a simple 'occasional' or 'material' cause. The rational activity that is exercised on this material is the supreme end (*telos*), but it is a constantly and fully immanent end" (Goldschmidt, p. 149).

If here all moral dignity is removed from the idea of an external end, the Aristotelian idea of an end in itself is actually firmly maintained. Yet according to an image that we will be returning to, it finds its exemplary model not in the productive arts, but in those that are exhausted in their execution. Wisdom, writes Cicero, following his Stoic teachers, is similar to the recitation of an actor or to dance, in which the end is not sought outside (*non foris petatur extremum*), but consists in the very effectuation itself (*artis effectio*; Cicero, *De finibus*, 3.7.24). The end is not for that reason eliminated, and in the form of the end in itself, it continues to furnish the paradigm of action: an end that can never be a means is completely in agreement with a means that can never be an end.

The radical critique of every teleologism has its *locus classicus* in Epicureanism. In Lucretius it is driven to the point of denying that a living being can be given something like a purposiveness. No organ was created for the sake of an end, neither the eyes for vision, nor the ears for hearing, nor the tongue for speech: "Whatever thing is born generates its own use [*quod natum est id procreat usum*]. There was no seeing before eyes were born, no verbal pleading before the tongue was created. The origin of the tongue was far anterior to speech. The ears were created long before a sound was heard. All the limbs, I am well assured, existed before their use" (Lucretius, 4.835–41). The reversal of the relation between organ and function clears the ground of any preestablished purposiveness. Life is what is produced in the very act of its exercise as a delight internal to the act, as if by dint of gesticulating the hand in the end found its pleasure and its "use"; the eye by constantly looking became enamored with vision; the legs, by bending rhythmically, invented walking.

8. It is obvious that in Christian theology the Aristotelian paradigm of highest good/end reaches its most extreme formulation, to the point of presenting itself as the keystone of both the cosmic and the moral edifices. In fact, not only is the idea of the good inseparable, in Aristotelian fashion, from that of end (in Aquinas's words, *bonum rationem finis importat*), but God, as highest good (*summum bonum* or *finis ultimus*), is that toward which every creature is necessarily ordered. The necessary purposiveness of every action here actually furnishes one of the proofs of the existence of God: All creatures that do not have reason can tend toward an end only if—like the arrow by the archer (*sicut sagitta a sagittante*)—they are directed by a being that has knowledge and intelligence. "Therefore some intelligent being exists by whom all natural things are directed to their end; and this being we call God" (Thomas Aquinas, *Summa Theologica*, q.2, a.3).

In the book in which Aquinas summarized his thought, the *Summa contra Gentiles*, the theorem *omnis agens agit propter finem* (every agent acts for an end) immediately precedes *omnis agens agit propter bonum* (every agent acts for some good), from which it is inseparable. The Aristotelian distinction between action that tends toward an external end and that which has its own end in itself is nevertheless maintained: "In fact, an action may sometimes terminate in something which is made [*ad aliquod factum*], as building does in a house, and as healing does in health. Sometimes, however, it does not, as in the cases of understanding and sensing. . . . If it does not terminate in a product, then the inclination of the agent tends toward the action itself [*tendit in ipsam actionem*]" (*Summa contra Gentiles*, 3.2.2).

Right at the end of the chapter, Aquinas nevertheless comes up against a class of human actions that do not seem to refer to any end and that therefore risk calling the two theorems into question. "Of course, there are some actions," he writes, "that do not seem to be carried out for the sake of an end. Examples are playful and contemplative actions [*sicut actiones ludicrae et contemplatoriae*], and those that are done without attention [*absque attentione*], like rubbing one's beard [*confricatio barbae*] and the like.

These examples could make a person think that there are some cases of acting without an end" (ibid., 3.2.9). While contemplative actions can be easily included among those that have their end in themselves (*ipsae sunt finis*), more disturbing is the case of acts done for play and those involuntary gestures, like rubbing one's beard or scratching one's head, that seem to escape any purposiveness. Although Aquinas is aware that to reinscribe play, tics, and gestures that escape the control of consciousness into the category of the end—which is to say, the good—would be somehow unseemly, he must do it at all costs, because his theorems do not tolerate exceptions: "Acts of play are sometimes themselves ends, as in the case of a man who plays solely for the pleasure attaching to play; at other times they are for an end, for instance, when we play so that we can act better afterward. Actions that are done without attention do not stem from the intellect but from some sudden act of imagination or from a natural cause. Thus, a disorder of the humors produces an itch and is the cause of rubbing the beard, and this is done without intellectual attention. Yet these actions do tend to some end, though quite apart from the order of the intellect." The ascription of a purposiveness to involuntary gestures—a category to which we will have occasion to return—is an obvious forcing. People who have the tic of rubbing their beard or who carry out one of those unmotivated gestures that we make every day, certainly do not do it because of an itch; rather they find themselves in a relationship with their acts that is not that of a means for an end nor an end in itself.

9. One customarily attributes to Kant the attempt to allow morality to escape from the dialectic between end and means. He did this by developing up to its extreme consequences the idea of an "end in itself" (*Zweck an sich selbst*) and linking it with that of a "final end" (*Endzweck*), which is to say through a paradoxical absolutization of the idea of purposiveness. Already in the *Critique of Pure Reason* the principle of "a unity of things in conformity to an end" (*Zweckmässige Einheit der Dinge*) had been put forward as a regulative idea of reason, according to which "reason commands

us to regard all connection in the world according to principles of a systematic unity, and hence to regard all these connections as if they had arisen, one and all, from a single all-encompassing being as supreme and all-sufficient cause" (B714). Here this principle holds, however, only as a regulative ideal and cannot be the basis of any scientific knowledge of nature.

According to Kant, there is, however, a sphere in which the principle of purposiveness can be affirmed in an unconditional way, namely, that of morality. It is presented here above all in the form of an "end in itself": "A human being and generally every rational being," he writes in the *Groundwork of the Metaphysics of Morals*, "exists as an end in itself [*als Zweck an sich selbst*], not merely as a means for the discretionary use for this or that will." Just like every time what is in question is a problematic of an ethical order, in reality it is a matter of guaranteeing a directive principle for human action: without the idea of an end in itself, in fact, "nothing whatsoever of absolute worth could be found," and since everything would be by chance, there would be for reason "no supreme practical principle" (Ak 4:428).

Closely connected with the idea of an end in itself is that of a final end (*Endzweck*), to which the whole second part of the *Critique of Judgment* is dedicated. If "a final end is that end which needs no other as condition of its possibility" (§84), the only being that can be thought as "ultimate purpose of nature, in reference to which all other things constitute a system of ends" (§83) is the human being as a moral being. In the human being, the final end and end in itself coincide: "of the human being . . . as a moral being it can no longer be asked why (*quem in finem*) he exists. His existence has in itself the highest end to which, as far as is in his power, he can subject the whole of nature" (§84).

10. The two expressions "end in itself" and "highest end" presuppose one another and in reality mean the same thing. It is Kant himself who suggests as much when, in §82 of the *Critique of Judgment*, he seeks to define their concepts. He begins by opposing external purposiveness (*aussere Zweckmässigkeit*), in

which one thing serves as means to the other for the sake of an end, to internal (*innere*) purposiveness, which refers to an object "irrespective of its actuality being itself an end." To say that the end of the existence of a natural being is in itself, he adds a little later, means that it is "not merely an end [*Zweck*], but also a final end [*Endzweck*]." End in itself and ultimate end are legitimated and defined circularly in relation to each other: what has its end in itself is necessarily also a final end because, if it had a subsequent end, it would cease to be an end in itself; on the other hand, a final end, insofar as it cannot be conditioned by another end, must necessarily have its own end in itself.

It is precisely in this vicious circle that the insufficiency of Kant's argumentation consists, which Schopenhauer already mocked. "To exist as an end in itself," he observes in §8 of the *Preisschrift*, "is unthinkable, a *contradictio in adjecto*. To be an end means to be willed [*gewollt sein*]. . . . Any end is only in relationship to a will, the end of which, i.e., the direct motive of which, it is. Only in this relation does the concept of 'end' have a sense, and 'end' loses this sense as soon as it is torn out of this relationship. However, this relation essential to it necessarily excludes any 'in itself.' 'End in itself' is just like 'friend in itself,' 'enemy in itself,' 'uncle in itself,' 'north or south in itself,' 'over or under in itself'" (Schopenhauer, pp. 238–39/161).

Schopenhauer's critique, which is based on the necessary complementarity of means and end, is, in truth, less probative than it seems. Kant was certainly aware of the bond that pushes both of the two notions into a unitary apparatus, and it is possible that he was seeking precisely a strategy for neutralizing it. And perhaps he intended to do it by acting on the concept of end. The phrase "irrespective of its actuality being itself an end" in the definition of internal purposiveness could imply precisely this indetermination of end and means. That is to say that the problem is not whether the expression "end in itself"—like that of "uncle in himself"—has a sense or is contradictory, so much as gauging the effectiveness of the strategy in which they are inscribed. If the idea of an "uncle in himself" manages to break open the

relationship of kinship in which it is supposed to act, it will have attained its goal.

11. Kant was not new to strategies of this type. He had concluded the analytic of the beautiful with the celebrated—and every bit as contradictory—definition of beauty as "form of purposiveness of an object insofar as it is perceived in it without any representation of a purpose" (*Critique of Judgment*, §17). In this "purposiveness without purpose" he is certainly approaching an emancipation from the means-end relationship with respect to the aesthetic sphere much more than he manages to do in the second part of the work with respect to the moral sphere.

Against the Kantian idea of an end in itself it has been justly objected that it actually works out an "introversion of the *telos*," which permits him to resolve every relation of end into a relation with self (Spaemann, p. 53). In conformity with the Freudian interpretation of narcissism as introversion of the libido, the human being who has his end in himself finds himself, exactly like Narcissus, in the impossibility of reaching himself. In the *Metaphysics of Morals*, Kant had in fact defined the end as "an object of free will of a rational being, through the representation of which the latter is determined to an action to bring that object about" (Ak 6:381). A subject who—like Narcissus with his desire—had introjected his own end into himself, would then find himself confronted with the impossible task of having to determine himself by means of self-representation, in order to produce himself.

Hence, Kant could not fail to realize that by defining the human being as end in itself, he situated the human being in an aporia, that is, literally in an absence of way. The idea of an end in itself is actually that of a purposiveness with respect to which there are no possible means; but a purposiveness without means is just as estranging and impossible as thinking a mediality without a possible end. It is the condition of paralysis of all action that Kafka summarized in one of his octavo notebooks, in his usual drastic way, in the formula: "there is an aim, but not a way."

Whether Kant was aware of it or not, his idea of an end in itself in fact amounted to calling the very idea of purposiveness radically into question. In the face of this revocation of all purposiveness, he nevertheless retreated. And he did so by making recourse to the theological idea of a final end, that is, of an end with respect to which everything else becomes a means. By conceiving the human being, as moral being, not only as an end in itself but also as the final end of creation, he reintroduced the means-end apparatus that he had perhaps at first intended to call into question. "Without the human being," he writes, "the chain of mutually subordinated purposes would not be complete as regards its ground. Only in the human being, and only in him as subject of morality, do we meet with unconditioned legislation in respect of ends, which therefore alone renders him capable of being a final end, to which the whole of nature is teleologically subordinated" (*Critique of Judgment*, §84). That the human being as final end is the guarantor of the perfect hierarchy between means and end that defines what he calls an "ethical theology" (*Ethikotheologie*) could not be affirmed more forcefully. The determination of the human being as moral being thus coincides with the definitive triumph of purposiveness in the sphere of action. As Schopenhauer had intuited when he reproached Kantian ethics for being only a theology in disguise, the development of moral theology proves, even if only for the practical use of reason and not for determinant judgment, the reality of a supreme author and moral legislator of the universe: "according to the constitution of our rational faculty, we cannot absolutely comprehend the possibility of such a purposiveness in respect of the moral law and its object as there is in this final purpose, apart from an author and governor of the world, who is at the same time its moral lawgiver" (§88).

12. As often happens, it is in the work of a jurist that the concept of end and, in particular, that of end in itself betrays its ultimate reasons. I am thinking of a scholar who attempted to construct a theory of law entirely from the point of view of the end. In 1877, Rudolf von Jhering, who had by then achieved a

lasting fame thanks to a short work—*The Struggle for Law*, which had already declared in the title his debt to Darwin's theory—published *Law as a Means to an End* (*Der Zweck im Recht*). He opens by unreservedly pronouncing a true and proper "law of the end," which governs the entire sphere of human action. "The human being who acts," he writes, "does so not *because* of something, but *in order* to attain something. This end is as indispensable for the will as cause is for the stone. As there can be no motion of the stone without a cause, so can there be no movement of the will without an end. . . . The law of causality may now be restated: There can be no process in the external world of sense without another antecedent process which has effected it, or in the words of the well-known formula: No effect without a cause. The law of purpose is: no volition, or, what is the same thing, no action, without an end" (Jhering, vol. 1, p. 2). According to a paradigm that is by now familiar to us, action and will are identified, and precisely this identification founds the primordial rank of the end in every human action: "volition and volition with a purpose are synonymous terms, and there are no actions without a purpose" (ibid., p. 15).

In 1883, Jhering published the second volume of the work, dedicated entirely to ethics in all its aspects, including fashion, good education, and rules of courtesy. And it is in this context that he deals with the end in itself. "The concept of value," he writes, "which is to say, of the graded suitability of a thing with respect to human ends, finds application also for the human being. But while the thing—and, where slavery was in force or still is in force, the human being as well—is nothing other than a means for human ends, the human being, where he has recognized and imposed his vocation on the earth, is at the same time an end in himself [*Selbstzweck*]—in the language of law: he is a person [*er ist Person*]" (Jhering, vol. 2, p. 496).

It is certainly not an accident if Jhering here makes use of a term that originally means "mask" and that, as he knew perfectly well, designated already starting with Roman law the juridical capacity of a subject responsible for his or her actions. *Persona* names not a

physical subject, but the mask or pretense by means of which he becomes a subject of law, who can bring into being with his or her own will juridically valid actions and, consequently, be obligated to answer for them. That is to say, it is once more a question, by constituting human beings as ends in themselves and persons, of inscribing them in the will-action-imputation apparatus. As in Kant, this apparatus has obvious theological implications, which can be surprising in a jurist not averse to positivist sympathies: "The truly creative force in the world . . . is the will, of both God and the human being, created in his image and likeness. The mainspring of this force is the end. In the end is found the human being, humanity, history. In the two particles *quia* [because] and *ut* [so that] is reflected the opposition of two worlds: *quia* is nature, *ut* is the human being. . . . With the *ut*, God gave human beings the whole earth, as the Mosaic story of creation has God himself announce" (Jhering, vol. 1, p. 18).

13. At this point we can propose the following hypothesis: the apparatus—or the "law" as Jhering calls it—of the end finds its sense and its proper function precisely in the creation of a subject for human action. The archeology of subjectivity cannot be only gnoseological: it is first of all pragmatic. Before being born, already in Descartes's medieval precursors, as subject of knowledge, something like a subject was postulated and produced in the sphere of praxis as a center of imputation of voluntary action. One could say, from this perspective, both that the end is only the vanishing point that, already starting from Aristotle's *proairēsis*, the intentions and actions of a subject project before him, and that the subject of action is only the shadow that the end casts in its wake.

In every case it is a question of finding a center of imputation for the *crimen/karman*, for the mystery of human action. One can therefore understand the sense of the separation between *karman* and *Ātman*, between action and subject, that defines the most problematic nucleus of Buddhist doctrine. It is announced clearly in these terms: "O monks, I teach only one thing, namely *karman*.

The act exists, its fruit exists, but the agent, who passes from one existence to the other to enjoy the fruit of the act, does not exist" (Silburn, p. 189). Western scholars have asked how it is possible to reconcile the two, at least apparently opposed, theses: the reality and effectiveness of the act, on the one hand, and, on the other, the inexistence of a permanent subject to which to impute the action's consequences. If one translates it, not without a certain arbitrarity, into the terms of our investigation, the Buddha's strategy becomes perfectly coherent: it is a matter of breaking the connection that links the action-will-imputation apparatus to a subject. Action exists in the wheel of co-production conditioned according to the purely factual principle "if this, then that," and for this reason, it seems to implicate in transmigration those who recognize themselves in it; the subject as responsible actor is only an appearance due to ignorance or imagination (in the terms of our investigation, it is a pretense produced by the apparatuses of law and morality). Yet this means that the problem at this point becomes that of thinking in a new way the relation—or non-relation—between actions and their supposed subject.

14. An attempt to think the relationship between the subject and its actions otherwise than according to the paradigm of purposiveness was carried out in one of the exemplary texts of the Tantric tradition, Vasugupta's *Aphorisms of Shiva* (*Śivasūtra*). At the center of the "way of the Mantra"—as the corpus of scriptures to which it belongs has been defined—stands the figure of Shiva, the "benign," the elusive god of extremes and incessant movement, whose emblem is the *liṅga*, the permanently erect phallus (as with Pan and the satyrs of Greek myth). This god, reads one of the aphorisms (Vasugupta, p. 204), who is exempt from karmic impulses of rebirths, is directly present in all creatures, but, blinded by Maya, the power of obscuring, they cannot see him. Those who are imprisoned in the "bond of Maya" (p. 196) know and feel, but their discernment is limited to the vision of bonds. For this reason, "in the bond of Maya moral merit and demerit are founded" (ibid.)—namely, karmic responsibility for actions carried out.

What is decisive here is that the transformation that happens in the one who has overcome obscurity and is awakened is described with the metaphor of dance. "The Self (*Ātman*) is a dancer [*nartaka*]," an aphorism of the *Third Light* pronounces (p. 210/113). And the commentary specifies that, in dancing, subjects who are awakened "manifest with the free play of their movements a whole variety of figurations" and in this sense are compared to "performers in the theater of the world." What the text wants to suggest is that the relationship of the awakened self with its actions is no longer the karmic one of merit and demerit, of means and end, but is instead similar to that of dancers with their gestures. And for the one whose actions have become gestures, "the interior self is the stage" and "the senses are the spectators." "All division having vanished . . . they enjoy the savor of wonder in all its fullness" (p. 215).

15. We have already encountered a comparison of perfect knowledge with dance (and with the actor) in the Stoics. The distinction between the arts that have an external end and those (like dance) whose end corresponds with their effectuation (*artis effectio*) appears many times in the Western tradition. "Some arts," observes Quintilian (*Institutio oratoria*, 2.18), "consist in action [*in agendo*], because in them the end is achieved in the act itself and does not leave behind any other work [*nihilque post actum operis relinquit*]. An art of this kind, which we therefore call *praktikē*, is dance." Taking up Quintilian's passage, Ambrose distinguishes in the same sense between *artes actuosae*, "which relate to the movement of the body or to the sound of the voice, and when the operation has ceased, there is nothing that survives" and those arts, like architecture and weaving, in which "even when the operation ceases, the handiwork remains visible . . . so that testimony is presented of the craftsman's own work" (*Hexameron* 1.5.17).

The distinction interests us here in a particular way, because it calls into question the necessary connection that Aristotle instituted, in a passage of the *Nicomachean Ethics* (1140a 11–17), between the *technai* and *poiēsis*, opposing them once again to

praxis: "Every art brings something into existence [*esti dē technē pasa peri genesin*]. . . . But since *poiēsis* and *praxis* are different, art necessarily belongs to *poiēsis* and not to *praxis*." Both the Stoics and Quintilian (who nevertheless, in speaking of a "practical art," must realize he is entering into flagrant contradiction with Aristotle's thesis) continue to make use of the paradigm of the end in itself, which Ambrose, by contrast, leaves aside. In any case, the arts that we call performative constitute the example of a human action that seems to escape the category of purposiveness.

16. In his 1921 study "Critique of Violence," Benjamin sought in his own way to break the connection between means and ends. And he did it not, like Kant, by pushing the pole of the end to the extreme, but by seeking to think the concept of means otherwise, from the perspective of what he calls a "politics of pure means" (*Politik der reinen Mittel*; Benjamin, "Critique," p. 193/245). That he has in mind a confrontation with Kant is proven by the fact that in a letter to Scholem of December 1929, he communicates to his friend that one of the chapters of the book on politics that he is writing will bear the title "Teleology without Final End" (*Teleologie ohne Endzweck*, Benjamin, *Briefe*, p. 247). By taking up, with some variation that is not fortuitous, Kant's definition of the beautiful (*Zweckmässigkeit ohne Zweck*), he likely intended to play it off against the "moral teleology" that concludes the *Critique of Judgment*, in which *Endzweck* designates precisely the position of the human being as final end of creation.

At the center of the study on violence stands the concept of "pure means." After having characterized the sphere of law as that in which the relation between means and ends dominates, Benjamin begins by denouncing every theory that intends to found the legitimacy of violence as a means for just ends. It is not in fact a question of assessing violence in relation to the ends that it pursues, but of seeking its criterion in "a distinction in the sphere of means themselves, without regard for the ends they serve" (Benjamin, "Critique," p. 179/236). Both natural law, which presumes to "justify the means by the justness of the ends," and positive law,

which wants to "guarantee the justness of the ends through the legitimacy of the means," share the false presupposition that it is possible to link (legitimate) means to (just) ends (pp. 180–181/237). This critique of finalism also, as one could predict, implicates Kant's categorical imperative ("So act that you use humanity, in your own person as well as in the person of any other, always at the same time as an end, never merely as a means"; *Groundwork*, Ak 4:429), which Benjamin, from the perspective of a definition of pure means, ironically proposes to reverse ("One might, rather, doubt whether this famous demand does not contain too little—that is, where it is permissible to use, or allow to be used, oneself or another in any respect as a means"; p. 187/252).

It is as a paradigm of "pure mediality," namely, one that is removed from every immediate relation with an end, that one must understand the violence that, in opposition to the violence that founds or conserves the law, Benjamin calls "pure or divine violence," which neither founds the law nor conserves it, but "deposes" (*entsetz*) it. "What if it were possible to discover," he asks, "a different kind of violence that certainly could be neither the justified or the unjustified means to those ends but was not related to them as a means at all but in some different way [*nicht als Mittel zu ihnen, vielmeher irgendwie anders, sich verhalten würde*]?" (p. 196/247).

17. What is a pure means? Purity, Benjamin writes in a letter to Ernst Schoen in January 1919, is not something that has its criterion in itself and as such must be preserved, but is always subordinate to a condition, namely, to the relationship with something external. In his study on violence, this external element is the law, with respect to whose ends violence—as pure means—never refers as a means, but "in some different way," which ultimately corresponds with its deposition. It is significant that Benjamin here maintains the term "means" (*Mittel*): a pure means is thus a means that, while remaining such, has been emancipated from the relation with an end. It is as if Benjamin here causes a paradoxical "mediality without end" to correspond point by point to

the Kantian "purposiveness without purpose (or end)"; but while purposiveness without purpose is, so to speak, passive, because it maintains the void form of the end without being able to exhibit any determinate goal, on the contrary, mediality without end is in some way active, because in it the means shows itself as such in the very act in which it interrupts and suspends its relation to the end. Just as, in the gesticulations of a mime, the movements usually directed at a certain goal are repeated and exhibited as such—that is, as means—without there being any more connection to their presumed end and, in this way, they acquire a new and unexpected efficacy, so too does the violence that was only a means for the creation or conservation of law become capable of deposing it to the extent that it exposes and renders inoperative its relation to that purposiveness.

The pure means loses its enigmatic character if it is restored to the sphere of gesture from which it comes. In the dancer's evolutions as in the winks and movements that we make without being aware of them, gesture is never a means to an end for the one who carries it out (or rather seems to carry it out)—but much less can it be considered an end in itself. And just as, even in its absence of intention, dance is the perfect exhibition of the pure potential of the human body, so also could one say that, in gesture, each member, once liberated from its functional relation to an end—organic or social—can for the first time explore, sound out, and show forth all the possibilities of which it is capable, without ever exhausting them. For this reason, Albert the Great, when seeking to define the mode of being of a potential as such, compares it to mime and dance. "The evolutions that mimes carry out," he writes on his commentary on Aristotle's *Physics*, "are the rotating completion [*perfectio*] of their rotating being, and the dance of dancers who dance together in a scene is the completion of their ability to dance and of their potential to dance as potential [*choreizare secundum quod in potentia sunt*]" (qtd. in Maier, p. 13). In the same sense Mallarmé, watching Loïe Fuller dance, could write that she was like "the inexhaustible surging forth of herself." The idea of a capacity for acting, of a human activity that never

settles into a *crimen*, into a culpable and imputable act, is clearly expressed here. Ātman is a dancer, and its actions are only gestures. Praxis—human life—is not a trial (an *actio*), but rather a *mysterion* in the theatrical sense of the term, made of gestures and words.

To every human being a secret has been consigned, and the life of each one is the mystery that puts this arcane element—which is not undone with time, but becomes ever more dense—onstage, until it is ultimately displayed for what it is: a pure gesture, and as such—to the extent that it manages to remain a mystery and not inscribe itself in the apparatus of means and ends—unjudgable.

18. In his ingenious and dazzling reflection on the Latin language, Varro, taking up the Aristotelian distinction between *poiēsis* and praxis, doing and acting, introduces among them a third type of action (*tertium genus agendi*), which he expresses by means of the verb *gerere*. "For," he writes, "a person can make [*facere*] something and not act [*agere*] it, as a poet makes a play and does not act it [*facit fabulam et non agit*; in Latin, *agere* also means 'to recite'], and on the other hand the actor [*actor*] acts it and does not make it, and so a play is made [*fit*] by the poet, not acted [*agitur*], and is acted by the actor, not made. On the other hand, the *imperator* [the magistrate invested with *imperium*], in respect to whom one uses the expression *res gerere*, in this neither makes nor acts but *gerit*, that is, assumes and supports [*sustinet*], a meaning transferred from those who hold office [or, according to some manuscripts, 'bear a weight'], because they assume and support it" (Varro, 6.77, p. 245).

The verb *gerere*, which in modern languages has been conserved only in the term "gesture" and its derivatives, means a manner of behaving and acting that expresses a specific attitude of agents with respect to their actions. The example of the *imperator*, the magistrate provided with supreme power, should not mislead us: It interests us solely to the extent to which it entails a necessary relationship between gesture and politics. What is significant is the explanation that Varro gives for it by means of the verb

sustinere, which means not only "to support," but also "to hold back" (for example, *incitatos equos*, horses in their driving force), "to abstain from something" (*sustinere ab aliqua re*), and also "to stop" (*se sustinere*), and moreover, "to assume" (*causam publicam*, *munus*, a public cause or an office) or "to recite" (*personam*, a theater part). Those who *gerunt* are not limited to acting, but in the very act in which they carry out their action, they at the same time stop it, expose it, and hold it at a distance from themselves.

If we call this third mode of human activity "gesture," we can then say that gesture, as pure means, breaks the false alternative between making that is always a means directed toward an end—production—and action that has its end in itself—praxis—but also and above all that between an action without a work and a necessarily operative action. Gesture is not in fact simply lacking a work, but instead defines its own special activity through the neutralization of the works to which it is linked as means (the creation and conservation of law for pure violence, quotidian movements directed at an end in the case of dance and mime). That is to say, it is an activity or a potential that consists in deactivating human works and rendering them inoperative, and in this way, it opens them to a new, possible use. This holds both for the operations of the body and for those of the mind: gesture exposes and contemplates the sensation in sensation, the thought in thought, the art in art, the speech in speech, the action in action.

19. Hence the impossibility of fixing or exhausting gesture in an action that is identifiable and, as such, imputable to a subject, and at the same time—if, according to our hypothesis, the subject does not precede the *crimen*, but is only what results from the series of responsible actions—the impossibility of defining its subject.

When Vacchagotta asks him if *Ātman* exists, Gautama remains silent. The "middle way" that he professes between the eternalists, who affirm the existence and permanence of *Ātman*, and the nihilists, who deny it, consists in suggesting, by remaining silent, that those who in the cycle of births undergo the consequences

of their actions are neither the same nor other with respect to the ones who carried them out in the preceding life. It is on this peculiar ontological status that it is necessary to reflect. An example of it is *nirvāṇa*, the extinction of the aggregates and the cessation of pain. *Nirvāṇa* is not another world that is produced when the world of aggregates has been annulled, another thing that follows the end of all things. But neither is it a nothing. It is the not-born that appears in every birth, the non-act (*akṛta*) that appears in every act (*kṛta*) in the instant—because we are dealing with an instant, even if an eternal one—in which imaginations and errors conditioned by ignorance have been suspended and deactivated.

Thus, inoperativity is not another action alongside and in addition to all other actions, not another work beyond all works: It is the space—provisional and at the same time non-temporal, localized and at the same time extra-territorial—that is opened when the apparatuses that link human actions in the connection of means and ends, of imputation and fault, of merit and demerit, are rendered inoperative. It is, in this sense, a politics of pure means.

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Translator's note: All biblical quotations are based on the New Revised Standard Version. Aside from sources listed below, all citations from ancient Roman law stem from *The Civil Law: Including the Twelve Tables, The Institutes of Gaius, The Rules of Ulpian, The Opinions of Paulus, The Enactments of Justinian, and The Constitutions of Leo*, trans. S. P. Scott, 17 vols. (Cincinnati: Central Trust, 1932), which is available online: http://www.constitution.org/sps/sps.htm. Works are cited according to the page number of the original text, followed by the page number of the English translation (where applicable), or else by a standard textual division that is consistent across translations and editions; in citations from Kant, "Ak" refers to the page numbers of the German Akademie edition, which are supplied in many English translations. Quotations, particularly from ancient texts, have frequently been revised to conform to Agamben's usage. For works where no English translation is listed, translations are my own.

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