

Peace and Subjectivity

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Abstract

So long as there is law there can be no universal human right to peace. This is because legalized violence, whether in threat or in deed, constitutes the very antithesis of peaceful relations from the point of view of those whom law represses. Law cannot define peace as the absence of all violence—and still less as the absence of all legalized suffering—without gainsaying justice, for as Pascal says, “Justice without might is helpless; might without justice is tyrannical.” Although legal outcomes, like falling boulders and pouncing lions, can always be imputed to historical causes, experience teaches that legal actors generally seek to legitimate their deeds by grounding the law in some non-causal narrative of the right or the good. According to a tenet of political liberalism that can be traced to Descartes’ discovery (or invention) of the irreducible “I” that thinks, the legitimacy of law’s narrative is both given and taken by free and rational politico-legal subjects. In truth, however, the Western philosophical tradition gives us two separate grammars for discussing what it takes to be two different kinds of rational subjects: the causal subject and the grounding subject. The causal subject stands in a relation to the world. Acting strategically as the cause of effects, it uses the object world and other human beings as means to its ends. But the causal subject is also itself caused: its desires and actions are effects of history in the largest sense of the word. Such a one is fated by grammar and custom to become an object and a means in its own right: an object for scientific inquiry and knowledge, for example, and, more generally, a means to the ends of other causal subjects. From the standpoint of the causal subject, there can be no human right not to use or be used as a means.

Unlike the causal subject, the grounding subject is supposed to be a genuine origin rather than a mere link in an infinite chain of causes and effects. In Greek terms, this subject is an archē as opposed to an aitia. It also corresponds to the original Latin

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meaning of the word “sub-ject”: it is thrown (jacere) under (sub) its world as (not in) an unmediated relation to its projects. This second kind of subject has gone by many different names, including “soul” (Plato), “freedom” (Kant) and “Spirit” (Hegel). In one way or another, the idea of the grounding subject performs its primary task within the moral sphere: it is supposed to provide a secure foundation which explains how it is possible for its doppelganger, the causal subject, at once to accomplish something in the world and to refute Plautus’s notorious argument that man is wolf to man. If the causal subject reacts in the manner of an animal, then the grounding subject allegedly responds in the manner of an animal rationale. If the causal subject produces effects, then the grounding subject is supposed to create and bear responsibility for those effects.

Given the foregoing distinctions, the most pressing juridical and moral question facing twenty-first century humanity seems to be: How can law and politics become at once effective and just, coercive and compassionate, responsive and responsible? How, in short, is it possible (to borrow Kant’s somewhat quaint terminology) to use oneself and other human beings simultaneously as ends and as means? But here, as elsewhere in philosophy, appearances can be deceiving, for this question presupposes far too much. This paper investigates the strong connection between the foregoing concepts of subjectivity and the notion of a just peace. The question is not, “Are there rational subjects and can they found something new, such as a just peace?” Instead, the question at the heart of the matter is how something as flimsy and ephemeral as an “idea” could ever found anything at all. I will attempt to unmask the terrible tensions or contradictions between justice and ethics, freedom and responsibility, and reason and compassion, and trace them to their origin: the will (or desire) to deny tragedy. I claim that the concept of the grounding subject represents a desperate and ultimately futile attempt to repress awareness of (and evade personal responsibility for) the essential sadness and tragedy of the world. Reason and faith provide the human body with a thin tissue of grounding statements comprised of symbols and images. At best these symbols and images are mere stimuli: action-triggers that will never adequately span the vast existential distance separating the grounding subject from the causal subject, our ends from our means, our words from our deeds, and, more generally, human suffering from the endless secular and religious casuistries we offer to justify it.

Keywords: Peace; Universal Human Right; Law; Philosophical Tradition; Subjectivity.

1. Introduction

So long as there is law there can be no universal human right to peace. This is because legalized violence, whether in threat or in deed, constitutes the very antithesis of peaceful relations from the point of view of those whom law represses. Law cannot define peace as the absence of all violence—and still less as the absence of all legalized suffering—without gainsaying justice, for as Pascal says, “Justice without might is helpless; might without justice is tyrannical.” (Pascal, 1941: 103) Although legal outcomes, like falling boulders and pouncing lions, can always be imputed to historical causes, experience teaches that legal actors generally seek to legitimate their deeds by grounding the law in some non-causal narrative of the right or the good.

It has been said that ours is “the epoch of the subject,” in the precise sense that for us the idea of the Individual Human Being has replaced both the Nature of the ancients and the God of medieval Christianity as the “new ground of being and meaning.” (Douzinas, 2000: 84, 93) Nowhere is this shifting of the ground more visible than in the notion of a legal entitlement, including especially “human rights,” where the classical Western declarations all say that the rights they specify belong to an entity called “Man.” Conceived of secularly as a “pivot of self-consciousness”, (Kojève, 1980: 86) this human subject is supposed to employ what the Greeks called *logos*, or discourse endowed with a meaning, to give and take grounds for itself in the form of THE LAW.

Of course, the linkage between subjectivity and the concept of ground is a well known feature of Western intellectual history. Less visible, however, is the connection between the idea of subject-as-ground and the phenomenon of ethical evasion during the unpeaceful moment in which some individuals threaten or apply “legitimate” legal force against other individuals. The relationship between grounding and ethical evasion is difficult to see because ever since Kant’s day we have been taught to believe that “being principled”—i.e. acting on the basis of textual grounds as opposed to yielding to merely causal influences—constitutes the very essence of being ethical. On this view, if the law of the land happens to be just, then willing disobedience to the law is the same as willing disobedience to the moral law, and those in charge of the legal system are duty-bound to inflict pain on the transgressor regardless of any “irrational” feelings of pity or compassion they may

experience on his account.¹

Nevertheless, Walter Benjamin rightly observed that “something rotten in law” (*etwas Morsches im Recht*) (1978, 286) is revealed whenever human beings believe that they legitimately and even justly exercise the power over life and death in the law’s name, as they may do, for example, when they administer the death penalty, sentence convicted criminals to understaffed and underfunded prisons, enforce military conscription in wartime, or even evict defaulting tenants onto the mean streets of the city. It will be the task of this essay to enlarge and refocus Benjamin’s point. I will try to uncover something analogous to rottenness (a deep sadness, perhaps) in the relationship between the belief that well-grounded action is possible and the phenomenon of legal violence. In addition to whatever else the law may accomplish, I will claim that at the end of the day it represents the will to deny what Max Weber has called the “tragedy with which all action, but especially political action, is truly interwoven.” (Weber, 1958: 117)

2.

The story of how the idea of ground passed from nature to God, and thence to the modern human subject, usually begins with Aristotle. The Philosopher (as Aquinas called him) employed the Greek term *hypokeimenon* (literally, “that-which-lies-under”) to denote a given thing’s essence or substance. This he placed in opposition to the thing’s merely accidental “qualities,” such as its particular color or size. The *hypokeimenon* of any given being, X, is what provides X its unity through time, and therefore what founds and supports its ultimate purpose (*telos*), defined as that which each being inherently strives to become (i.e. its *entelecheia*) (192^a25-34). *Hypokeimenon* is what makes each and every X (including human beings) what they are “in virtue of being themselves” (1028^b33-1030^b14).

For Aristotle, as for the Greeks in general, *constancy* was the unshakeable ground for the possibility of something “accidental”.² The merely accidental qualities of X transpire in the sphere of what holds as constant or as a rule for X: namely, in the sphere of nature. Nature (*physis*) in the Greek sense was not conceived of as something that had to be created by anything outside of itself. In contemplating nature (including human nature), the Greeks discovered what they took to be an eternal “world-order” which served as their principle of comprehension and evaluation of all

1. See: Kant, 1996: 474.

2. See: Heidegger, 2008: 223.

things.¹ In a nutshell, the Greeks, and later the Romans, were inclined to look “outward”—to what they took to be nature itself—as the measure and stable ground (*hypokeimenon*) of all of nature’s beings, including even the gods themselves.

The proper home for the concept of ground in Western thought shifted place with the advent of Christianity. Plato, in the *Timaeus* (28b1-29d3), had argued that the chaotic substance of the universe was first given shape by a demiurge, or creator. But this ur-being did not make the world *ex nihilo*, for as Timaeus says in the dialogue, nothing can come from nothing. Instead, the demiurge bestowed order upon the substance of the universe by imitating that which is eternal and unchanging, namely, the self-showing appearance (*eidos*) of the everlasting world of forms (Plato’s *idéas*). Attempting to wed the authority of Holy Scripture to the philosophical authority of Plato, early and medieval Christian thinkers radically upgraded the role of the creator and downgraded the *idéas* to the status of mere creations. These thinkers interpreted nature as an *utterly* created thing (*ens creatum*), from top to bottom, and made God-the-creator into the omnipotent and ultimate ground of everything that is, including nature-as-a-whole and all of the beings, both real and ideal, that inhabit it.

In particular, the medieval schoolmen, following Aquinas (*Summa Theologica*, I q. 1 a. 7), translated the word *hypokeimenon* as *subjectum* (literally, “that-which-is-thrown-under”), which they placed in opposition to the term *objectum* (literally, “that-which-is-thrown-in-the-way-of”). For them, a *subjectum* was something that is capable of being thought about or acted upon independently of our knowledge or even our existence; whereas an *objectum* was that which is concretely experienced of something by a human agent through this or that power or faculty of perception. The medieval sense of the difference between the subjective and the objective was thus the exact opposite of modern usage. For Aquinas and the schoolmen, the objective was merely that which is thrown-in-the-way-of a human perception, whereas the subjective was what we would today call the “subject matter” itself: namely, reality, and most especially reality’s God, to whom all things refer, as Aquinas said, “as their beginning and end.”

Now a truly comprehensive explanation of the rise of the modern subject would have to take account of much of the rich intellectual, cultural and political history that transpired between the thirteenth and seventeenth centuries. In the interest of space, however, I will

1. See: Jaeger, 1939: i. 150-184.

simply observe that René Descartes is usually credited with having definitively initiated the so-called “subjective turn” in Western philosophy. His *cogito ergo sum* redirected thought’s gaze, so to speak, from “outward” to “inward,” namely, to the thinking thing that is certain of itself (*res cogitans qua certum*). The I that thinks (*ego cogito*) became for Descartes and his intellectual descendents “the first principle of philosophy,” (Descartes, 1985: i. 127) the one being that is more in being than any other being.

Kant’s subsequent “Copernican revolution” (Kant, 1998: 110) in philosophy gave the human subject a systematic form that did not need to be derived from any authority beyond its own capacity for rigorous self-awareness. Descartes’ thinking thing grew into the new *subjectum* and ground of everything that is, or rather, of everything that can be thought about or experienced by human beings. In the guise of pure reason, Kant’s transcendental subject became a fixed and abiding self hardwired with “forms of intuition,” “faculties” and “categories” that allowed it to organize and make sense of its experiences. Its unity secured, the self-certain human subject displaced God and nature as the ultimate foundation of all possible knowledge and truth, and in this sense became the creator of its own reality.

Enlightenment, defined by Kant as “man’s leaving his self-caused immaturity, [that is,] the incapacity to use one’s intelligence without the guidance of another,” (Kant, 1993: 145) became an individual moral imperative. Indeed, the very concept of enlightenment implicitly denounced the medieval notion that individuals should submit without question or hesitation (i.e. without reason) to traditional sources of authority within a hierarchical social order that pretended to be God-given and eternal. With the appearance of Kant’s finite human *subjectum*, the entity “Man” no longer needed a pastor or holy book to supply him with a conscience, as Kant himself would declare.¹ The human subject was therefore poised to step into the shoes that hitherto had been occupied by the infinite and divine Thomistic *subjectum*.

In the guise of practical reason, Kant’s newly minted transcendental subject was identified with freedom, defined as the will’s capacity to lay down the law for itself in accordance with the moral law. This moral law was the categorical imperative: “Act as if the maxim of your action were to become by your will a general law of nature.” (Kant 1993, 187) In one of the boldest finesse plays (or category mistakes) in the history of philosophy, Kant accepted the categorical imperative as a “fact” of reason, the absolute truth of which is accessible to the internal

1. See: Kant, 1993: 145.

gaze of all rational subjects. After Kant, the entity “Man” morphed into a self-enclosed rational monad: a being that could, at long last, “free himself from obligation to Christian revelational truth and Church doctrine to a legislating for himself that takes its stand upon itself.” (Heidegger, 1977: 148)

In legal positivism, which remains to this day thoroughly Kantian in spirit despite all that has happened in and to humanity during the past two hundred years, the one who posits the law can no longer be confused with nature or God. Whether in the form of a monarch, a legislator, a dictator, a ruling junta, or even the fictional “We the people” of the United States Constitution, the one who posits the law—and the one who can un-posit it—has finally come out from behind the curtain. The one who is at once “free” to posit the law and “bound” to follow it can no longer hide or deny the fact that he or she is a “human, all too human” being.

3.

The categorical imperative stipulates that moral content (“maxims of action”) should be generated, but it is itself devoid of any particular moral content. The universality of the imperative is therefore utterly procedural, the only constraint on its concrete application being the formal requirement of non-contradiction. Because of its purely abstract universality, Hegel would soon claim that Kant’s “universal moral law” can just as easily become a principle of immorality as a principle of morality. Long before postmodern thought and its so-called “indeterminacy thesis,” it was Hegel who first drew attention to the radical insecurity of the temporal passage between grounds and grounded in the Kantian system. “It is only a blunder, an incompetence of reason,” observed Hegel, “if one can show it incapable of justifying by this principle any determination and therefore any action at all.” (Hyppolite, 1996: 47)

In identifying the rational with the real, and the true with the whole of reality, Hegel dragged Kant’s abstract, transcendental subject into time and history in the form of Spirit (*Geist*), and he equated world history with the continuous Sisyphean labors of human beings to negate the given through concrete work aimed at actualizing their ideas.¹ In the assertion that “the power of Spirit is only as great as its expression, its depth only as deep as it dares to spread out and lose itself in its expression,” (Hegel, 1977: 6) the creative *logos* of John 1:1 finally lost its supernatural deistic provenance and assumed a completely human, historicized form.

1. See: Hegel, 1977: 11.

The Hegelian philosophical system remained mere speculative metaphysics, of interest primarily to philosophers and dreamers, until Marx radically transformed Hegel's critique of Kant's abstract moral casuistry into a comprehensive political critique of concrete social life. According to Marx all moral law-giving of the type that Kant and his intellectual heirs advocated was not only hopelessly abstract¹, as Hegel had said, but also an epiphenomenon, that is, causally linked to the promotion of particular social (i.e. class) interests. In the thesis that "*man is the supreme being for man*," and that the religious, moral and legal ideas of an era are but ideological reflections of the oppressive social relations prevailing during that era, the concept of the human *subjectum* reached its apogee.²

"Sociological" neo-Kantianism during the same period also subverted Kant's claim that the categorical imperative and the categories of the understanding are universal features of humanity, even amongst those thinkers who were most sympathetic to Kantianism in general.³ In neo-Kantianism, "categories" and "moral laws" became culturally determined patterns of thinking that happen to prevail at this or that particular moment in history amongst this or that group of people. As a result of this displacement of the universal by the particular, the *causes* of patterns of thinking (historical, economic, psychological, etc.) not only jugged into prominence, but also rendered implausible the claim that any *particular* cultural pattern could constitute an objective, supra-historical ground of truth and knowledge. The transcendental subject became the historical subject, and philosophical epistemology became the sociology of knowledge. Philosophy had lost its "nimbus," as Wittgenstein put it, and painstaking idiographic inquiry into the particular became more respectable (and more fashionable) than starry-eyed nomothetic inquiry into the universal.⁴

As a result of these trends, "the" human subject (which human subject?) could no longer bear the massive weight of the world in the same way that nature and God, the two previous *subjecti*, had borne it. Rather than serving as an absolute and indubitable foundation, the human being became a specimen to be studied for its various habits and tastes. Science and technology discovered sociology and psychology, but lost speculative philosophy. Economic theory discovered instrumental rationality based on the probabilistic calculation of causes and effects, but gave up all pretence of being a science of *political* economy that is explicitly and unashamedly

1. See: Marx, 1959: 243-45.

2. See: Marx, 1964: 44.

3. See: Beck, 1967: v. 473

4. See: Wittgenstein, 2003: 342.

concerned with the ultimate aims of humanity. (Habermas, 1984: i. 4) In the form of such disciplines as cost-benefit analysis and law-and-economics, social science abandoned any effort to ground the rationality of human choices in anything beyond the sheer existence of un-analyzable individual preferences.

4.

The previous discussion of the rise and decline of the human *subjectum* shows that tradition has bequeathed us two separate grammars for discussing essentially two different types of subjects. I will call these the *causal subject* and the *grounding subject*.

The causal subject (♯) stands *in* a relation to the world, conceived of as a manifold of things (□) that it keeps on encountering and that it must deal with and manage in some way or other. The concept of the causal subject thus depicts two distinct entities and their relationship (R) to one another:



This subject is a mover and a shaker. It causes effects in the world, and therefore participates fully as a co-citizen, so to speak, in a realm that Hegel calls “the causal nexus.” (Hegel: 1975, 70) What the causal subject’s everyday discourse might call “rationality” or its antithesis (e.g. “spirituality”) is always merely epiphenomenal: a product of prior experiences and historical influences of which this subject is not presently conscious. Moreover, if the causal subject does act in a way that it would call “rational,” its comportment is at best “instrumentally rational” in Max Weber’s sense of the term. That is, the causal subject calculates and uses the object world and other human beings as “conditions” or “means” for the attainment of certain ends, *whatever* they may be.¹

The various manifestations of causal subjectivity throughout history have been well-nigh infinite in number, as befits the infinite causal web in which every human being is caught. However, what makes all causal subjects into variations on the same basic theme is their utter *groundlessness*: although their behaviors have causes and produce effects, this is the most one can say about them. The causal nexus is relentlessly unsentimental and unflattering to human pride: it stipulates that today’s cause is always also yesterday’s effect. The causal subject is therefore a heteronymous being from top to bottom (i.e. *fully* an effect of history). Seen from the standpoint of the causal subject, X in any form (e.g. X *or* “X”) is simply a mute *sign*—and there is no “magic” behind a sign that determines how it is to be applied

1. See: Weber, 1978: i. 24.

when the *recognition* of X “as” X gives way to *action* in respect of X. As Wittgenstein (2005, 52e) suggests, the causal subject does not mysteriously “know” (or pre-know) X so much as simply *act* with an image or impression of X in its mind.

Phenomenally speaking, “goals” take the form of representations (words and images), and words and images can be interpreted as causes that are just as effective as sticks and stones are at breaking bones. The so-called “symbolic order” to which the bodies and minds of individuals are subjected does not primordially consist of signs-endowed-with-meanings, for the causal subject does not register “meanings” as *grounds* of action. Rather, the symbolic order shows itself first and foremost as a manifold of words and images capable of producing *effects*. As Schopenhauer (1999, 37) put it, at best the causal subject’s own mental representations cause its will to turn “like a weathervane on a well-oiled pivot in a changeable wind.” (Schopenhauer, 1999: 37) This implies that the linguistic expressions of what the *grounding* subject would call “grounds for acting” do not in fact provide the *causal* subject with anything more substantial than, say, a momentary burst of adrenaline. After all is said that must be said in any given situation, and the time has come to act, the causal subject *reacts* but does not *respond* to language: it bounces off language, so to speak, without answering it back.

Speaking more generally, one could say that the causal subject not only causes things to happen, but also is itself caused. It almost goes without saying that a creature such as this is also fated to become an object and a means in its own right: an object of scientific inquiry and knowledge, for example, and, more generally, a means to the ends of other causal subjects. Biology, neuroscience, psychology, sociology, anthropology and behavioral economics poke and prod the causal subject, trying to find out what really makes it tick beneath all of its own flimsy self-interpretations and self-justifications. Various technologies of disciplinary power (family, law, religion, medicine, advertising, etc.) also act on the causal subject to make it what it is.¹ In sum, though the causal subject may believe that it autonomously uses things and people in its world, whether rationally or otherwise, in fact it is also constantly *being used* by forces beyond its control.

In contrast to the causal subject, the concept of the grounding subject is that of an origin (*archē*, in Greek) rather than a mere cause (*aitia*). The grounding subject is thrown under its world *as* (not in) an unmediated relation to the projects of its doppelganger, the causal subject. The former attempts to authorize or legitimate the

1. See: Foucault, 1980: 98.

instrumentally rational deeds of the latter by freely positing a grounding expression (“X”):

↓ (cause) R □

↓ (ground “X”)

In one respect, at least, the way of thinking called Hegelianism has the considerable virtue of highlighting the grounding subject’s own attitude towards its grounding expressions. The grounding subject believes that the problem of its identity is inextricably linked to the coherence and vigor of its ideas.¹ The idea, or project, was discovered (or invented) by Hegel to avoid falling into what he took to be the mind-numbing, soulless abyss of immediacy. According to Hegel’s concept of determinate negation (*bestimmte Negation*), the consciousness of the human being keeps on freely expressing ideas to itself in order to become subordinate to them—that is, in order to let the historical progression of its ideas become the dialectical grounds (not the causes!) of Spirit’s own self-realization through work and knowledge.²

The grounding subject has shown itself to be a truly protean being during the long history of Western thought. It has taken numerous historical forms and gone by many different names, including “the soul,” “practical freedom,” “Spirit,” “*Dasein*,” and “existential freedom.” In one way or another, the idea of the grounding subject in any of its various forms performs its primary task within the discursive spheres of politics, law and ethics. The grounding subject is supposed to provide a foundation, beyond all merely causal relations, that can explain how it is possible for the causal subject at once to accomplish something useful in the world *and* to refute Plautus’s notoriously corrosive assertion that “man is wolf to man” (*Homo homini lupus est*).³ To switch metaphors, the grounding subject, like Dr. Jekyll, yearns to make the causal subject, Mr. Hyde, at least *potentially* more worthy and just than a fully determined (or over-determined) natural force, such as a pouncing animal or a falling boulder.

Given the foregoing antinomies, the most pressing juridical and moral question facing twenty-first century humanity seems to be: How can law and politics become at once effective *and* just, coercive *and* compassionate, responsive *and* responsible? How, in short, is it possible (to borrow Kant’s somewhat quaint terminology) “to treat

1. See: Kojève, 1969: 64, 75.

2. See: Hegel, 1977: 51.

3. See: Plautus, 1874: 226.

man, in your own person as well as in that of anyone else, always as an end, never merely as a means?" (Kant, 1993: 195)

5.

How indeed. According to Kant, causes occupy a mere "dwelling place" (*domicillium*) in nature, whereas rational grounds possess a sovereign "realm" (*ditio*).¹ The correct meaning of a grounding statement seems to put right action on a secure foundation; and the activity of grounding seems to be a laudable exercise in human reason. A historically conditioned intuitive reaction to the signs which express legal norms, on the other hand, is merely causal in nature, and causation is something that also happens to lesser beings such as rocks, icebergs and alligators. To compare language to a mechanism of signs that serves to set off certain reactions in us by virtue of previous conditioning and association seems to slander reason.² It appears to degrade autonomous human beings to the same level as rocks, icebergs and alligators (not to mention Pavlov's salivating dogs), all of which are heteronymous beings incapable of transcending their present circumstances on their own.

Unwilling to be placed on the same level as nature's other beings, conventional legal and political theory believes that its central problem is how to attribute right outcomes to grounds rather than causes, reason rather than history. John Rawls's concept of "stability for the right reasons"—which he claims to be a necessary condition for any realistic liberal conception of justice—furnishes a good illustration of this point of view. For Rawls it is not enough that social stability is "merely a *modus vivendi*" produced by contingent historical forces: "Stability for the right reasons means stability brought about by citizens acting correctly according to the appropriate principles of their sense of justice, which they have acquired by growing up under and participating in just institutions." (Rawls, 1999: 16, 13 n.2) In other words, although the specific contents of particular grounds and reasons may indeed ultimately owe their existence to history and its panoply of causal influences, the category of right action as such does not. Reason acts *on* (as opposed to *in*) history. And the category of right action is defined *a priori* as action that is based on a correct reading, by a grounding subject, of historically produced principles that satisfy certain minimal criteria of justice.

1. See: Kant, 2000: 10.

2. See: Wittgenstein and Waismann, 2003: 341

The proposition that law requires the support of rational grounds rather than mere historical causes lies at the heart of analytic philosophy's preference for "internal" over "external" explanations of the law.¹ The internal perspective describes the process of legal reasoning from the standpoint of the decider (usually a judge), whereas "external" thinkers are inclined to attribute justice in general, and judicial behaviors in particular, to factors other than the objectively correct subjective decisions of legal decision makers to accept this or that legal reason (ground) for their behaviors. Causal analysis can unmask the irrational, or at least the pre-theoretical, historical factors (revolutions, invasions, wars, imperialisms, genocides, class interests, racisms, patriarchies, etc.) that "illegally" found the various forms of domination that exist in every society, and that the operations of positive law function to "legally" preserve. The fundamental contrast between law-founding and law-preserving violence helps explain why Foucault, for example, proposed inverting Clausewitz's notorious proposition that war is the continuation of policy by other means to read, quite simply, "politics is the continuation of war by other means." (Foucault, 2003: 15) Positive law equates justice and peace with the business of preserving existing legal relations whatever they may be and regardless of any (lawful) asymmetries of power, privilege and prestige they may presuppose and perpetuate.

Methodologically speaking, those who occupy an internal point of view are trained to see words that are not calculated means to officially-certified (well-grounded) legal ends as meaningless distractions. Such individuals are always impatient to get down to what they take to be the real business of the law: *correct administration by grounding subjects*. The imperative of correct administration is subverted by the external point of view, which insists on talking about what *might have been* in addition to *what was*, and *what might be* in addition to *what is*. Historians, sociologists and psychologists (not to mention Marxists, critical race theorists and feminist legal theorists) explain legal norms, arguments and outcomes by tracing them to their proximate or ultimate causes rather than to their legal grounds, which they suspect of being ideological. Seen from the external point of view, the question of a juridical result's rationality cannot be separated from an assessment of the rationality (or irrationality) of its concrete historical origins and consequences.

In its impatience for results, traditional jurisprudence consciously

1. See: Dworkin, 1986: 13; Hart, 1961: 10.

or unconsciously subordinates the ubiquitous brutality and sadness of the underlying facts of social life to the necessity of giving them legal form. The law is designed to repress awareness of any raw, untheorized, “surplus” human suffering so that proper legal grounds can be given to manage, explain, and/or justify that suffering’s existence. Moreover, what the internal perspective reveals—the officially certified “reason” for this or that bit of legalized pain—has the effect of concealing that pain from any further scrutiny or notice.

6.

It is as if the law greatly feared the monsters that might come if it were to fall asleep and risk letting passion and instinct hold sway, as in Goya’s famous etching entitled, “The Sleep of Reason Produces Monsters” (*El sueño de la razón produce monstruos*).

But what if there was a sense in which reason is always asleep, even when it is most awake? To be more precise, what if the subject-that-reasons were not one, but two subjects, one of which must always fall sleep before the other can awaken? In that event monsters might come no matter what actions the well-grounded subject takes, and the particular human beings who enforce the law would be like Oedipus the King as he stood on the verge of discovering and punishing the murderer of Laius: damned if they do, and damned if they don’t.

Nietzsche once said that the great danger of all direct questioning of the subject *about* the subject lies in the fact “that it could be useful and important for one’s activity to interpret oneself falsely.” (Nietzsche, 1968: 272) This essay has attempted to heed his warning. The strong distinction it has drawn between the causal subject and the grounding subject is meant to suggest that the most pressing philosophical problem pertaining to subjectivity is definitely *not* how it is possible for a metaphysical entity called the subject to break free of the given world by using new ideas to overcome old habits. This way of thinking begs the question of *how* new ideas become more compelling than the immediacy they would overcome. No, the real question concerns what I will call the idea-hood of the idea in relation to those who work to implement it. Thinking in terms of passage, the problem is not how a symbol-creating entity or milieu—whether we call it soul, subject, mind, Spirit, will-to-power, *Dasein*, Unconscious, or anything else—can pass from a historically over-determined present (i.e. the given world) to a different, possibly better, future by creating or recognizing new ideas. Rather, the problem is how that-which-appears in the symbolic sphere makes the passage to its subsequent realization. To put the matter even more plainly, the

most pressing question is: how it is possible even for the idea of something new to found something new?

7. Conclusion

The discourse of grounds and grounding conceals a deep contradiction or incommensurability between the causal subject and the grounding subject, and, in concealing it, testifies to the ethically evasive tendencies displayed by all official institutions of law and morality. The grounding subject cannot get anything done in the world without the assistance of the causal subject. Moreover, it cannot communicate with the causal subject except in signs. Considered from the grounding subject's point of view, these signs seem to *speak* in the language of signified meanings (i.e. rational grounds). But the causal subject can only *hear* these very same signs in a lesser language comprised of mere phonemes that trigger historically determined reactions. The very moment the grounding subject whispers grounds into the ear of its more muscular twin, the causal subject, the former falls asleep, like a narcoleptic, so that the latter can react, like Pavlov's dogs, to the stimulus of the ordinary, the run-of-the-mill, the "obvious." The grounding subject may lay down the law as X, but the causal subject always picks up the *sign* "X" in a way that only history can explain.

The idea of the grounding subject represents a desperate and ultimately futile attempt to repress awareness of (and evade personal responsibility for) the essential sadness and tragedy of the world. But the idea of the causal subject is also a copout: it reduces ethical responsibility to a mere reaction, and thus apologizes for the sadness and tragedy of the real world that lies just beneath the abstractions of law and morals. The grounding subject hides from tragedy behind its grounding expressions; the causal subject rides away from tragedy on the back of necessity. The most that thought and reason (the grounding subject) could ever do is provide the human body (the causal subject) with a thin tissue of grounding statements made up of symbols and images. But these symbols and images will never span the vast existential distance separating the grounding subject from the causal subject, our ends from our means, our words from our deeds, and, more generally, human suffering and all of the seemingly endless casuistries we offer to justify it. Since living in constant awareness of this fact can be unpleasant, there is always the option of finding refuge in sheer stupidity, which, as Vladimir Jankélévitch (2005, 75) once said, is the only way that some people have of retaining their innocence. But then again, what if that most acerbic of all statements in the Bible—"In much wisdom is

much grief; and he that increaseth knowledge increaseth sorrow”
(Ecclesiastes 1:18)—were also the most ethically obligatory?

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