

THE FORM OF THE LAW: LACAN AND NANCY INTERPRETERS OF KANT

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Abstract: Both Lacan and Nancy saw in the conceptual structure of the Kantian ethical law a kind of anomaly in modern philosophy. For Lacan, the moral Law generates the broken structure of desire. For Nancy, in the categorical character of the imperative comes to light a structure of being-addressed which deconstructs from the inside the self-centred rational and autonomous subject. On the ground of different reason Lacan and Nancy come to the same conclusion: the Kantian form of the law deprives the (Cartesian) subject of its autoreferentiality, of its mastery of itself.

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For different reasons the two French authors I have chosen, even if they belong to different philosophical traditions (what is more, one of them, Lacan, can be hardly considered as a philosopher), do have something in common as far as they can be regarded interpreters of the Kantian thought: they both saw in the conceptual structure of the Kantian ethical law a kind of anomaly in modern philosophy. To abridge the conclusions of my paper in a very drastic way: for Lacan, the moral Law generates the broken structure of desire. For Nancy, in the categorical character of the imperative comes to light a structure of being-addressed which deconstructs from the inside the self-centred rational and autonomous subject. On the ground of different reason both of them come to the same conclusion: the Kantian form of the law deprives the (Cartesian) subject of its autoreferentiality, of its mastery of itself.

Nothing seems to be more distant from the spirit of Kantian ethics than the interest of Jacques Lacan for the thematic of desire. The difference set by Kant between *das Wohl* (well-being) and *das Gute* (what is ethically good) says apparently that the satisfaction of desire and all actions tended to fill the space of desire are doomed to imply within themselves an extra-ethical value, what actually means: to have no ethical value at all. The desire doesn't have any ethical value at all, because it represents an empirical instance, which tends to belong to the egoist part of the Self and doesn't pay attention at the claims of the law. In spite of these appearances Lacan tried to make an ally of Kant's philosophical thought, willing to develop the concept of a desire which can properly grow when it makes experience of the law and for which the Law doesn't ever mean a factor of dissolution: the desire builds itself through the experience of the Law as desire of a broken subject.

For Kant (1785, p. 418) the achievement of full happiness requires to gain possession of “*ein absolutes Ganzes*” of empirical circumstances: the possession of this totality of empirical circumstances represent the fulfilling of all needs, what Lacan called the “total object” which would expunge once and for all the urgency of desire. For Lacan the child tries to expunge the urgency of desire in two ways: with the search for the fusional object (the body of the mother) and with the identification with the idealized image of himself. Both ways have this consequence in common: the “uni-fication” of the fragmented body of the child. We could say, from a Kantian point of view: both ways are attempts to “uni-versalize”, make *one* out of the *multiplicity* of our behaviors. The life of desire is thus conceived as a unending swinging movement between loss and gain of unification, between anguish caused by the fragmented body and identification (with the idealized image of ourselves). The mature life of desire begins when the child gives up aspiring to gain possession of *ein absolutes Ganze* or the immediate identification with an image of himself and accepts the “swing-situation”, the oscillation of his identity, which cannot and *must not* achieve the goal of a definitive self-identification. In his *Ethics of psychoanalysis* Lacan (1986, chapter 6) turns his attention towards Kant and admits the fact that is moral Law which produces the partition, that is the oscillation we already told about inside the human being. Actually Lacan doesn't mention at first the ethical law, but the law of language. Nevertheless, it doesn't matter, because what he does is to bring to identity the dynamism of language and the ethical law. The way the ethical Law works is for Lacan the clearest example of how the language develops its effects on the subject.

The child doesn't decide spontaneously to represent himself through the impersonal medium of language, but only does so because he is a subject of the violence of the law. The access to speech implies the death of what Lacan calls the *imaginary subject* whose desire, like Mozart's Don Giovanni, cannot suffer any external obstacle: “The effects on a human being of the fact that he becomes a subject of law are, in short, that he is deprived of what matters him most, and in exchange for it, he is himself delivered to the texture which is woven between generations” (LACAN 1991, pp. 380-81).

The subject gives up his paranoid identification with an image of himself as he exchanges happiness for the texture of experience, that is for the odyssey of desire through the multiplicity of signifiers (the elements of any experience) which take the place of the unreachable Thing. This new *symbolic subject*, which rises up from the death of the imaginary subject, is thoroughly divided in two. Because of the fact it can speak, it is at least divided into a subject of statement and a subject of enunciation. It is able to speak through a disposable battery of signs/signifiers, but “the subject of enunciation can find itself partly in what he asserts. What it says, even what it says about itself, possesses a sense, which is beyond it”, a sense which exceeds any present meaning in the statement. “The possibility that the subject is signified by a signifier rests on the possibility that the signifier refers to other signifiers. There is no signifier which refers immediately and exclusively to the subject, thus it is impossible that subject of enunciation and subject of statement coincide.”

(BERNET, 1991, pp. 458-59). That is: it is impossible for the subject to find a definitive meaning for its exceeding signifying intentions, it is impossible to have rest in its quest for identity in a frozen image of itself. As for Lacan it doesn't exist a word able to signify its own sense, for Kant "it [is] inadmissible to fulfill, once and for all, the enigmatic *enunciation* of the categorical imperative with a *statement* [...] which reduces the law to the list of already enlisted commandments" (ZUPANČIČ, 1998, p. 51). This discrepancy between enunciation and statement provokes the unending "texture which is woven between generations" and the commitment to always new projects of identification.

This state of things reminds us, for Lacan, of the Kantian imperative so far as the latter is not grounded on any already given conception of "good": the authentic originality of Kant's formulation of categorical imperative consists in its inversion of the traditional connection between law and good. The emptiness of the law stands before the setting of the good. Good is what the law says and what rests on the law, and not the opposite. For Lacan, Kant developed in the second *Critique* something like a philosophical look which makes it possible to isolate an aprioristic faculty of desire which "is certainly motivated by the object – here to be intended as the sensible object given in an experience – but not originated by the object. [...] There should be also, before any object of desire [...] a faculty of desire: this is [...] the pure desire." (BAAS, 2003, p. 36). The form of the Law explicitly commands such pure desire: projecting maxims, building (moral) behavior, can never refer to any given archetype of action. Projecting maxims stays as an undetermined task, a task that has to be solved differently in each definite situation. The openness-character of Kantian imperative rests on its merely formal structure. This structure without any content allows the subject to escape the paranoia of a definitive self-identification or – as Kant calls it in the *Grundlegung* – pathological *Selbstsucht*. The form of universality, the rule which gives unity to our actions has to be produced over and over again:

It is therefore wrong to conceive the Kantian categorical imperative as a kind of formal mould whose application to a concrete case relieves the moral subject of the responsibility for a decision. [...] The whole point of Kantian argumentation is the exact opposite of this automatic procedure of verification: the fact that the categorical imperative is an empty form means precisely that it can deliver no guarantee against misjudging our duty. The structure of the categorical imperative is tautological in the Hegelian sense of the repetition of the same that fills up and simultaneously announces an abyss that gives rise to unbearable anxiety; "Your duty is... (to do your duty)!" (ŽIŽEK, 1996, p. 170).

The "anxiety" Žižek is talking about is the anxiety due to responsibility and openness of the experience. The law gives an open structure to the path of desire. Once we have heard the voice of the imperative, it doesn't exist a single image of ourselves able to put an end to the imbalance of our risky identification. No maxim can fulfill the emptiness of the imperative. It doesn't exist a code or a list of commandments on whose schema we could develop a behavior which is in itself ethically good, and that happens because "that which can in no way be reduced without abolishing the ethics as such, is [...] the gesture by which every subject, by means of his action posits the

universal” (ŽIŽEK, 1996, p. 170). Positing the universal and the posited universality never become the same thing. We could say, in a more Lacanian way: the persistency of desire implies the (from an Hegelian point of view) bad infinity of desire. The speech-act by which every subject projects its own image-identification follows the zigzagging sequence of the language.

From this point of view, it seems possible to “repeat” (*Wiederholen*) the very beginning of *whole* Kantian philosophy. Not only the moral subject, but also the theoretical one could find in the alienation/castration of desire its own act of birth:

The subject can never fully “become himself”, he can never fully realize himself, he only ex-sists as the void of distance from the Thing. The split thus divides the subject in his positive (that is, “pathological”, empirical-contingent) features from subject *qua* 0, the mark of the absent, “sacrificed” Thing. The Kantian overtones of this splitting are easy to recognize, since what we have here is the split between the subject *qua* the empty, substanceless “I think” of the transcendental apperception, and the subject *qua* fullness of “person”, the pile of positive features of a phenomenal entity. (ŽIŽEK, 1992, p. 90).¹

To the crack of the “*absolutes Ganze*” a parte objecti – caused by the injunction of moral Law – responds the emptiness of the transcendental apperception. The latter is the subject which the moral Law has (originally) alienated: it is the substanceless subject which is exclusively devoted to weave the texture of judgments and in doing so makes experience, first of all, of the unbalance between its emptiness and the “pile of positive features of a phenomenal entity”.

In the words of Lacan, the conceptualization of the moral Law tends to the definition of something like a principle of desire which clearly lays beyond the pleasure:

The moral law is nothing but [...] desire in its pure state, that very desire that culminates in the sacrifice, strictly speaking, of everything that is the object of love in one’s human tenderness – I would say, not only in the rejection of the pathological object, but also in its sacrifice and murder. That is why I wrote *Kant avec Sade*. (LACAN, 1973, p. 247).

What lays beyond the pleasure and is commanded by moral law is called by Lacan *jouissance*, a negative pleasure (thus, actually not a pleasure at all), a negative satisfaction due to respect toward the law, in spite of our sensible needs and drive to happiness. The *jouissance* clearly translates in “Lacanian” the Kantian concept of *Selbstzufriedenheit*². “The very renunciation to pleasures brings about a paradoxical surplus enjoyment and pleasure, an ‘enjoyment in pain’, in displeasure, baptized by Lacan *jouissance*, the ‘impossible’/ traumatic/painful enjoyment beyond the pleasure principle.” (ŽIŽEK, 1992, p. 182). Pleasure is generated by the imaginary identification of the Self, on the contrary *jouissance-Selbstzufriedenheit* takes place in the swinging movement

¹ “For Lacan, in the same way as for Kant, the subject is the *totally other* than a substance.” (BALIBAR, 1991, p. 90).

² “*Hat man aber nicht ein Wort, welches nicht einen Genuss, wie das der Glückseligkeit, bezeichnete, aber doch ein Wohlgefallen an seiner Existenz Ein Analogon der Glückseligkeit, welches das Bewusstsein der Tugend notwendig begleiten muss, anzeigete? Ja! dieses Wort ist Selbstzufriedenheit, welches in seiner eigentlichen Bedeutung jederzeit nur ein negatives Wohlgefallen an seiner Existenz andeutet, in welchem man nichts zu bedürfen sich bewusst ist*” (Kant, 1788, p. 117). What regards the concept of *Selbstzufriedenheit* see also Giordanetti (2007).

between being and nothing, meaning and sense, of the speaking subjectivity and in the full acceptance of this imbalanced situation.

We come now to Jean-Luc Nancy. Nancy also develops a kind of commentary on moral law based on the Kantian inversion of the traditional relationship of foundation between law and good. The first mark of the imperative law is, from this point of view, that it's qualitatively different from right. The right is what enunciates a rule and the occurrences which undergo the rule itself, but it can't *command*. The categorical imperative is "the transcendental of *praxis*" (NANCY, 1983, p. 19), it is genealogically more primitive than any given right. The imperative prescribes the act of lawmaking and this act compels to the universality of Law: "to act as pure reason means lawmaking." (NANCY, 1983, p. 19). Therefore "the compelling law is not a law, it is the law of the law, older than any legislation and any legislative subject. [...] The law prescribes to make laws after the form of the law, that is after the form of universality." (NANCY, 1983, p. 24). The law is not in itself a specific prescription, but a tool to produce prescriptions and Right.

For Nancy the imperative doesn't go without language and isn't different from language (similar to what Lacan asserts). *What* I have to do (the matter of the imperative) lies somehow outside the language, but *that* I have to do something (we could say: the way-to-be of the imperative) is nothing but the possibility of language in itself: "the imperative has to be told to me, it has to be *addressed* to me: 'Act...'" (NANCY, 1983, p. 24). What Nancy particularly emphasizes is the character of exteriority which the imperative possesses toward the rational subject (this is another point which brings Nancy's interpretation of the Kantian imperative closer to Lacan): the reason is practical (autonomous, able to make laws, positing models of behavior) *in itself*, but the reason is not practical *for itself*, it doesn't *reveal* itself as such. This revelation, this exposure to itself, occurs to the reason as a fact which the reason doesn't master. In the form of the imperative lays the factor of a radical and irreducible exteriority. The possibility of being autonomous is "not even prescribed – if we understand with that: set before –, but *enjoined* [enjointe]." (NANCY, 1983, p. 20).³ For Nancy is very important to analyze the shape, the physiognomy of such being-enjoined, regarded in its implications for the form of subjectivity that accepts the injunction of the imperative. The phenomenon of being-enjoined represents in some way – to repeat an expression of Heidegger – the *Vollzugsinn* of the categorical imperative, its happening-character, the way it comes to the subject as a *case* and in this manner shapes a specific subject for its own occurrence.

In this character of being-addressed is implied that injunction is at the same time more and less than an order. The injunction of the imperative is "less" than an order or a command, because the injunction "doesn't threaten, doesn't force to execution," but it is at the same time "more" than

³ The law, as Nancy stresses, it is not "set before," that means: is not to be anticipated or previewed, like an hermeneutic horizon, because it always surprises our approaches: it is rather "initiative, a never ending start." That means maybe, among other things, that the Law in its imperative character doesn't possess a proper eidetic form: it's an *initiative* which doesn't need an *end* (a horizon in the Greek meaning of the word) in order to possess consistency, it is thus un-ending, that is it lays beyond the realm of definitude and because of that it is beyond the competence of any possible phenomenology.

an order or a command, because the injunction imposes “to reason the prescription of free action, free legislation, but lets know nothing about it, nor *reveal* to reason the its necessity or its simple possibility.” (NANCY, 1983, p. 20). The injunction of the imperative is granted by nothing and is in itself risky. This is because, as Kant himself states, the imperative “establishes itself for itself to us as a priori synthetic proposition, which is not grounded on any pure, or empirical intuition.” (KANT, 1788, p. 31).

The particular quality of being-enjoined represents for Nancy the paradoxical structure of the *factum rationis* of the imperative: “the *factum* is that the imperative doesn’t depend on any fact.” (NANCY, 1983, p. 21).⁴ Then why calls Kant this state of things, the dynamism of the categorical imperative, a “*factum*”? Kant seems to allude to a kind of material stratum which belong to the aprioristic structure of the imperative. Nancy call this stratum the “factuality” of the imperative: “the factuality depends on the fact that reason doesn’t present itself as the primitive power of its praxis”. Reason is expropriated of its self-centered structure. It is not the reason in its free activity the one which guarantees the law. Kant, so to speak, takes the opposite view: rational praxis “is enjoined, that is it is *given* to it [to reason], exactly as the objects of pure intuition are given.” “Givenness”, being-given, corresponds usually to the character of representation to which are submitted the objects of intuition in the knowledge. In some way the injunction character of the imperative stays for the givenness in matter of duty. Duty has its specific givenness character, its own factuality and its name is injunction. “The *factum* is the practical way of a initial givenness; the anteriority of this givenness is irreducible and it goes far beyond each possible self-affirmation of reason. Therefore it is the practical way of being-affected of reason. Reason is affected by the imperative” (NANCY, 1983, p. 21).

We can easily see that it is not the content or a policy of behavior, which is factually given. Factuality doesn’t stand for the character of a positive truth. What Nancy develops through this concept of factual being-affected is what he already stressed as the initiative character of the law, which is strictly bound up with the character of its unsublatable persistency. Contrary to what happens to the moral law in post-Kantian moral systems, that attributes the law to an autonomous subject, for Nancy the imperative character of law denies any attempt to reduce the law to self-affirmation of the subject or self-legislation:

What really counts here is the beginning, is the *addressing-to* of the imperative. The law is not to be sublated as law, because it is not the self-legislation of a subject. In self-legislation of a substance, which makes a subject out of that – God, Nature o Human Being –, the law *sublates* itself, preserves itself *sublating* itself as law into submission [...] to its own freedom. (NANCY, 1983, p. 29).

For the post-Kantian thinkers law is grounded on freedom and it is therefore lifted up in autonomy of freedom. For Kant the law is an unsublated limit of experience because of its imperative character: “the imperative [...] imposes the law as last limit, *from* which *on* the

⁴ The factuality of law and freedom will be analyzed more in depth in Nancy (1988).

injunction is sent. The law is *addressed* to freedom and it is not *grounded* on it.” (NANCY, 1983, p. 29).

Nancy wants to explain that not only does the mind during its activity of knowledge behave passively (of course partly, what concerns its intuition skills), but also does the (free) reason confronted to the problem of duty behave passively. To be more precise Nancy asserts that the dynamism of the categorical imperative exceeds the partition (*partage*) between activity and passivity, it repeats this partition defining it for the first time: “the imperative, because it is an imperative, sets the division between passivity (which it enjoins) and activity (to which it enjoins). [...] There is something like the imperative, because this partition [...] sets itself.” (NANCY, 1983, p. 20).

To whom is also this injunction addressed? Nancy said: to a subject which is overcome by the address of this law. More precisely is to be said: the Law addresses itself to the freedom of the subject. But, what is freedom? Freedom stays for what “in the individual doesn’t belong to the individual. And what doesn’t belong to the individual [...] is the possibility to be *addressed* by the other, by the otherness of the other [...], is the possibility to be called out or, after the Greek meaning of the word, to be *categorized*” (NANCY, 1983, p. 31). This is the deconstructive core of the concept of imperative: “the reason or the rationality of reason [...] sets the place free for an injunction” and “this is maybe the way it [the reason] goes toward its deconstruction.” (NANCY, 1983, p. 20) The conceptual structure of the imperative grounds the purity of (practical) reason on the unforeseeable factuality of an address/injunction which comes from outside: the law “enjoins also to a beyond subjectivity.” (NANCY, 1983, p. 25). The clearest sign of the destitution of the subject in front of the law is to be seen in the sentiment of respect: the respect is the way the subject has to respond to the injunction of the law or, as Nancy says, to the otherness of the law. This otherness character of law doesn’t rest, as, for instance, for Deleuze (1993) on the emptiness of prescription which delays the judgment without an end, but rather on the factuality character of the law.

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