

**ART AS JUDGEMENT:
DERRIDA'S ANALYSIS OF
AESTHETIC INTERJECTION**

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The ethical claims of deconstruction are complex and, to say the least, controversial. On one side Derrida defends the irresolvability of the ethical claim. In this vein Derrida attempts to sustain the ethical claim as that which exceeds any compensatory gesture or juridical measure. Here it is a defence of the particular as a specific event, act, or work that merges the ethical task of witnessing with a resistance to the recuperative logics of philosophy of history, morals or aesthetics. These logics threaten to strip the particular of its interruptive force; deconstruction accordingly defends the particular event, act or work and defines *its* ethics as *this* witnessing².

On the other hand, the controversy that surrounds the political claims of Derrida's work lies here: the witnessing that refuses the incorporation of the particular within a logic of intelligibility also leaves the ethical claim without an adequate defence³. In his influential book *The Fate of Art* Jay Bernstein argues that it is because of its fidelity to the concrete and particular act that exhausts itself in its interruption of totality, that deconstruction offers a purist ethics. For Bernstein this ethics retains its purity in refusing the 'barbarism' of self-reflective involvement that could explain and defend the claim of the particular. In this respect deconstruction falls short of providing an adequate ground for ethical claims⁴.

In recent literature on deconstruction a slightly different problem has been posed: following Derrida's exploration of topics such as hospitality and forgiveness where he states he is a 'progressivist', the ability to sustain a normative narrative within deconstruction has been questioned⁵. In other words, leaving to one side the adequacy for an ethics of sustaining the aporetic logic that defines the ethical claim as particular, critics can now legitimately query the absence of the philosophy of history that could sustain the new claim of progressivism⁶. Here we may ask, does the status of the ethical relation in his recent works on hospitality and forgiveness alter his earlier fidelity to the particular act? If so, how is this alteration to be understood and what are its implications? I will return to these questions in more detail later. It is important, however, to note in a provisional fashion that this recent writing installs a regulative imperative, or an injunction to act at the core of the aporetic logic it describes.⁷ And, rather than an ethical fidelity to the past act that resists its assimilation within a narrative of progress, Derrida

now turns to the task of defending as ethical the non-programmed possibility of the future act that aims, despite the impossibility that frustrates this aim, to embody justice.

I will argue here that the implications of this changed emphasis, away from the immanent critique of the gesture that stifles an unjust act, toward the promise of a future justice, can best be understood from the framework developed in Derrida's writing on Kant's aesthetics. This Kantian background is instructive for explaining the force behind the aporetic logic used by Derrida to approach political topics. Equally, this framework can be profitably used to explain the consequences of Derrida's recent work on such topics as hospitality and forgiveness in which neither the earlier approach to witnessing the ethical knot, nor the conceptual resources for a normative politics are fully operative. I would like to suggest, further, that Derrida's essay 'Economimesis' is the pivotal text for the adumbration of this framework as, unlike The Truth in Painting⁸, this essay specifically addresses why the modern aesthetic category of the sublime operates as a paradigmatic gesture of aesthetic recuperation. To abbreviate a point we will examine in further detail: In 'Economimesis' the feeling of the sublime fails as an interruptive claim on aesthetic logic because it reinforces the forming power of the moral subject. Hence unlike the use of the Kantian sublime as an internal point of criticism within the Kantian system in Deleuze and Lyotard⁹, in 'Economimesis' it is the particular, irreplaceable disgusting thing rather than the sublime that is aesthetically, historically and philosophically undecidable. And it is this irreplaceable thing that Derrida 'witnesses' in its undecidability. As we will see, the way that Derrida grapples with the problem of disgust in Kantian aesthetics brings out the conceptual constraints that Derrida's ethical commitments operate within, and means that neither the controversy over his ethics nor the limitations of his recent contribution to current political topics can be adequately understood without attention to this background. In particular, analysing this background will allow us to ask whether Derrida's recent writing can sustain his defence of the inassimilable particular in his earlier work.

My paper falls into four parts: in the first two parts I argue that Kant has an abhorrence of formlessness that structures his writings on politics and organises this writing according to aesthetic rather than moral precepts. Next, I offer a brief account of the formative role that the category of form plays in the agenda of system in Kant's third

Critique. And finally, I will comment on the significance for Derrida's recent work of his earlier account in 'Economimesis' of the undecidable logic that drives Kant's conception of aesthetic taste and political acts.

1. 'Form' in Kantian Aesthetics.

In the third essay of Nietzsche's Genealogy of Morals on the ascetic ideal, the origins of the 'will to form' in philosophy are traced back to the need to conquer the body and its affects.¹⁰ Kant is the paradigm of Nietzsche's charge. The noumenal, moral capacity of the Kantian subject is, famously, a formal idea of reason. Through it the subject houses a double potential: to act against the sensuous promptings of the body, and to mould or form material circumstances against their claim to be the source for action. It is this double function that underscores Nietzsche's complaint: far from an innocuous hobby, the 'will to form' is also a forming of life according to the ascetic ideal. Nietzsche reads this ideal as a physiological symptom whose underlying condition is a decaying form of life. In the pieces of Derrida's writing devoted principally to Kant, Kant's formalism is analysed primarily in its aesthetic guise. Derrida follows Nietzsche in transposing the functioning of Kant's *philosophical* system to the *physiological* system of the body. Unlike Nietzsche, however, Derrida is less interested in diagnosing the ascetic type of life that supports Kant's thought than he is in showing the conceptual dependence within the Kantian account of aesthetic form of a particular conception of the body. To this end, Derrida shows how Kant's division of the fine arts is organised around a typology of the bodily senses.¹¹ In Nietzsche's vocabulary this typology is both spectatorial and ascetic. Through it Kant privileges those senses and the arts paired to them that are most able to regulate affect: poetry, for example, is at the apex of the fine arts on account of the pared down materiality of its literary form which extends to the subject a maximal license to manipulate aesthetic ideas.¹² The visual arts are second because their material form is addressed to the sense of sight and the eyes, as an autonomous sense, can choose to turn away from unpleasant images.¹³ Music, which addresses the heteronomous sense of hearing, is at the bottom of the fine arts on account of its intensive material form. Music is the parallel in the fine arts to the disturbance of an uncontrollable noise. In each case sound not only momentarily defeats the control of the subject over sensory stimuli but, as

in the case of a repetitive tune, can insinuate itself within the mind and become a residual material disturbance¹⁴.

The hierarchy of the senses which governs Kant's division of the fine arts according to the regulation of affect also plays a role in the core distinction in Kantian aesthetics between appetitive pleasures and pure aesthetic taste. For Kant appetitive pleasures are dictated by the sensory properties of an object where aesthetic taste, by contrast, is a pleasure in a form purified of material inducements. Using Kant's Anthropology as his cue, appetite is paired by Derrida to Kant's account of the senses involved in physiological digestion. It is these senses that introduce an immediate materiality whose intrusion is registered in the body, unlike the examples from the fine arts which are disturbances of the ascetic model registered at the level of the free reflective play of the cognitive faculties. Smell is the sense whose pathway to the digestive tract is least amenable to regulation. Smell intrudes into the absorptive vessels of mouth and gullet and defies the form required for aesthetic reception and the claim over circumstance that the moral perspective presupposes. Taking his license from Kant's own writing Derrida foregrounds the un-digestible status for Kant's philosophical system of the formless. What undercuts the opposition between the digestible 'form' and the un-digestible matter of the 'formless' is the vomit that, 'stuck in the mouth', is neither an incorporable form, nor able to be identified and ejected as formless. Derrida's strategy in 'Economimesis' could thus be described as documenting the logic of the Kantian system through the abhorrence of non-aesthetic formlessness. How this logic accounts for the categorisation of political acts, rather than aesthetic objects, is a problem to which we will now turn.

2. Formlessness in Politics.

The chief political problem of Kant's philosophy is also an historical problem: namely, how to institute a constitutionally framed republic. The historical route to the negotiation of this problem in the French Revolution leads to a paradox in Kant's thought: he affirms the progress revolutionary acts may prompt; but he unconditionally bans rebellion. This ban on rebellion is indicative of Kant's view of the formless status of a bare act. In its consequences revolution can be placed in the category of constitutional formation but in

its status as a bare act against legally constituted authority it is formless. For Kant, as we will see, the spectatorial relation itself confers form, and can bestow the status of success or failure on the act which it judges. This spectatorial relation is an integrated component of the instruments of law and art: Law is always already a judgment against its possible transgression¹⁵, just as, I will argue, art, for Kant, is always already a judgment of form. Only the spectator can confer on the act, after the event in the ‘completing’ act of criticism, the value of a historically progressive formation. History thus uses the same mechanism that in aesthetics transforms materiality into aesthetic form *in* judgment.

While Kant introduces the vocabulary of morals to condemn rebellious acts, he depends specifically on the ‘test’ in morals of the universalisability of the maxim of an action. Rebellion cannot be a universalised maxim for action. The contradiction that corrodes such universalisation is the binding force of the laws of the state: legal codes cannot be simultaneously binding and include a constitutionally-sanctioned right to rebellion. However, Kant’s use of the moral test of a universal maxim thought without contradiction here distorts the marginal position of Kant’s moral philosophy for his position on political questions.¹⁶ Indeed the privileged framework for the consideration of political rebellion is aesthetic rather than moral. Instead of adopting the perspective of the agent’s adherence to the moral maxim, Kant takes the aesthetic perspective of the spectator. It is clear that the judgment of the spectator in effect depends on the *outcome* of an event. And Kant thereby introduces what is specifically prohibited as the grounds for a moral judgment in which the conformity of the motive with the moral law alone is decisive¹⁷. Instead of deciding the morality of an action in accordance with its motive in the case of historical events, and more specifically in the case of revolt, Kant judges the act by the outcome. Thus he writes:

...it can hardly be doubted that had the uprisings by which Switzerland, the United Netherlands or even Great Britain won their much vaunted constitutions failed, the readers of their histories would regard the execution of the *now celebrated authors* of those constitutions as well-deserved punishment of persons guilty of high treason. For the outcome of an act commonly influences our judgment about its rightness, even though the former was uncertain, while the latter is certain.¹⁸

The act of rebellion is formless prior to its spectatorial framing: afterwards it may be either sanctioned – the unlawful may become lawful; or condemned, remain unintegrated within the law-governed constitution and therefore judged as a transgression. It is worth considering here how the spectatorial act which turns a formless event into either an historically comprehensible punishment or a legally sanctioned change is a judgment that is inconsistent with moral maxims in its tendency toward aestheticisation: the spectator aestheticises the event in using aesthetic characterisations like ‘sublime’ to confer form upon it. And this aestheticisation depends, like Kant’s description of aesthetic judgments, on a form defined as an organization of parts into an ordered whole. Moreover in the case of political acts such as rebellion the perspective of aesthetic reception is historical and determined by the need of the spectator for progress.

For Kant any organized form implies an end or use for its organization.¹⁹ Without such an end nature’s organized forms would be contradictory. In both his aesthetic and political writings Kant attributes to this organic model of form as an organized whole a formative function. I will return to this point in the next section. In the chain of reasoning that underpins Kant’s conception of nature’s purpose, particular organized forms in nature support in turn an organized system of forms (nature as such) whose ultimate purpose is the culture or *Bildung* of ‘man’. History is the stage on which the progressive realisation of the ends for which ‘man’ is himself organized is performed. The spectator who judges this performance judges it according to the aesthetic criteria of entertainment: if history were the unrelenting farce of rewarded vice the spectator would quickly tire of it. Against boredom Kant’s antidote is the entertainment of the story of progress.²⁰

The spectatorial relation that here organises the reception of historical events presupposes the aesthetic distance that structures Kant’s aesthetics as an aesthetics of reception. In Kantian aesthetics, like his philosophy of history, form plays the constitutive role. As in philosophy of history the spectatorial premise of art supports the classification of an elastic category of objects (events). Although there are paradigmatic cases of pure beauty – such as the flower which has a particular value on account of its contingent accord with our faculty of judgment – utensils from forgotten civilizations are still able to serve as objects for taste because their function is obscure to us and they do not address us at the level of sensation. Similarly ugly things, such as the ravages of war

are able to be dignified by the artistic representation of their materiality in form. And the category of the sublime caters for a formlessness which is here dignified by the forming power of the subject's faculty of reason. What evades this elastic aesthetic attitude is, for Kant, those objects that arouse disgust.²¹ Disgust is thus the aesthetic analogue to the judgment of condemnation levelled at unsuccessful political acts of rebellion. Just as a civil constitution, however repressive, is preferable to acts that rebel against a reformable organization, so too those objects whose dull conformity to rules numbs the free play of aesthetic reflection²² are better than the objects of disgust that force on us a pleasure we resist. Moreover in the cases of the civil constitution, philosophy of history and the art object, these are forms whose effects are formative.²³

In the famous § 59 of the Critique of Aesthetic Judgment 'on beauty as the symbol of morality' organicism is used by Kant as the model for political organization: Here Kant inaugurates a technological metaphor of the state contrasting the analogies of government as hand mill (rule by monarchical will) and animate, organic body (constitutional monarchy). The main features of this contrast follow from the distinction between an external principle of causation which is unable to confer on parts a necessary or causal relation to the whole, which Kant categorises as art, and the internal mechanisms that connect parts to one another and to the whole in a causal chain.

The organic form – which is Kant's paradigm for beauty as much as it is for politics – describes in both cases a form whose *effect* is formative. In aesthetics it is the mere form that is without a purpose that shapes the specific relation between the imagination and the understanding that is constitutive of the 'free play' of an aesthetic judgment. In politics a well-fashioned state is described by Kant in the vocabulary of an organized whole that makes of each member a means as well as a purpose. It is this form which, in his approving remarks on the 'complete transformation' wrought by the American revolution, is alone able to form a person with bad motives into a good citizen²⁴.

3. Form as Formative in the Third Critique.

In each of these cases the proposition that form is formative gives form the specific valence against which formlessness is a reviled category. This proposition concerning the effects of form is central to the Kantian resolution to the problem of the subject in the third Critique. In Kant's first Critique the subject's status is that of a synthesising principle for cognition. The subject takes its form from the imagination's unification of its experiences into cognisable presentations. It is a merely regulatory point for the unity of its representations. Its 'form' lies in the function of unity or synthesis it performs.²⁵

The transcendental imagination always constructs an object that can be grasped within the limits of an a priori intuition but is unable to be thought under the concept of an idea of reason. Although from the beginning the problem of the subject's self-presentation is linked to the regulatory position of the ideas of reason, reason's ideas may regulate but do not inform or play any constitutive role in our cognition. Cognition is always within the limits of possible *a priori* experience, but precisely because it remains within these limits such cognition is unable to produce a subject. In Kant the reduction of the subject to a function of cognition is compensated for by the promotion of the moral subject. This moral subject is, first of all, negatively defined as not being the subject of knowledge. It is positively defined in reference to freedom which is in turn the fact of 'self-consciousness.'²⁶ However, there is no cognition of freedom. Freedom is only a fact of consciousness which cannot produce cognition nor a substantial basis for self-consciousness. As the 'fact' which defines the moral subject is neither a concept nor an intuition, it cannot give the subject its substance. The subject in sum is the *condition* for cognition and morality, yet in neither case is it more than a formal unity or a potential fact. In this context the Critique of Judgment is commonly read by Kant's successors in German Idealism and Romanticism as attempting to provide the subject with a substantial form that is able to reconcile the principles that divide it between cognition (nature) and morals (freedom). Here the formal purposiveness of particular forms of sensible nature shows the compatibility between the concepts of nature and freedom. In the Critique of Aesthetic Judgment nature in its beautiful forms is cast as both a symbol for morality and a mode of presentation for the subject. In the first part of the Critique of Judgment the unity of the subject is presented by a detour through nature. The Critique of Teleological Judgment has a different perspective on this problem of a merely formal subject.

Freedom here receives a practical determinism: as a law it enjoins the subject to act but is not in any sense constitutive of the subject to which it legislates. In this latter part of the Critique the subject is constituted in the *Bildung* of humanity which itself follows from the conception of nature as a system of ends. As the final purpose of this system, ‘man’ pursues in culture and history the dictates of reason in the natural world.

The question of the subject’s self-presentation is resolved by form in the third Critique in two distinct manners. On one level the synthetic function of the subject reflects in free play and thus enacts the synthetic function in its *pure* state. In a judgment of taste the play with form provides an analogous presentation of the subject. Here the pure reflection operative in a judgment of taste produces no object and although it ‘brings about the unity of the subject’ it does this ‘only insofar as the subject sees itself in the image of something without either a concept or an end.’²⁷ The purity of the reflection has its counterpart in a purity of subjectivity which is without concept or end. Kantian aesthetic reflection does not produce a self-awareness of substance but of a pure referral which, in Lacoue-Labarthe and Nancy’s words is not only ‘obtained by a simple, optical pattern’ but presupposes ‘moreover, the mediation of an inert, dead body, of a blind tain’.²⁸ The subject is given here as the unifying principle of a reflection without object and which takes as its object the pleasure in its capacity for free play. More significant for our purposes is the manner of resolution tied to the presentation through the beautiful of the subject. The beautiful in nature, but also in art or culture, presents in an analogical form a substance of subjectivity. This minimal substantialism comes to the subject through its presentational faculty. The *Darstellung* of the subject does not in this case *restore* so much as *give* form to the subject through reflecting as its substance, those things outside of it, specifically beauty and the *Bildung*, or history and culture of humanity. In each case the subject presents structures which give it a reflected moral substance and whose mechanism of presentation is analogical. The non-final forms of natural beauty and the progress of human history and culture give the subject an analogical content for its idea of freedom. In each case form has a formative effect: for Kant, it is the forming effect of beauty on the free play of the faculties that prepares the way for the engendering of form in history and culture by the practical use of nature for our ends.

In the Critique of Judgment analogy plays a crucial role. It is the mechanism by which Kant resolves the problem of the presentation of the subject and connects, without collapsing, the divided principles of nature and freedom. From this perspective we can return to the aesthetic, spectatorial mechanism used by Kant for political judgment. Where analogy, as our discussion of the Critique of Judgment has shown, is the means by which forms of materiality are arranged in place for formative effects, rebellion is for Kant a materiality that is (temporarily) out of place. It is history that will confer on rebellion a forming function that endorses progress, whether it is judged negatively as illegal or positively as incorporable within the legal body. In this way it is possible to connect the materiality of rebellion with the mock avant-garde gesture of the vomit stuck in the mouth in Derrida's piece. Derrida's gesture mimes the undecidable point between the expulsion that identifies transgressive matter (illegality) and the incorporation that confers legality.

In Kantian philosophy the act of rebellion itself is an indeterminate one: it is history that will judge the success or failure of its outcome. Kant accordingly distinguishes between two kinds of historical fact: those acts which are not sanctified in the amended legal structure of the state; and those rebellious acts whose agents are successful. Before such judgment the rebellious act is *formless* and as such, for Kant, abhorrent. This is not, of course, an abhorrence of violence per se. War is described by Kant in aesthetic terms as sublime and in politico-historical terms as an agent for progress and civilization.²⁹ An absence of such violence (either of human or natural fabrication as in natural disasters) hampers human progress and retards the historical spectacle.³⁰

4. Derrida's analysis of aesthetic form and forgiveness.

Having argued here for the resonance of the abhorrence of aesthetic formlessness in Kant's political writing, I would now like to consider the implications of Derrida's analysis of Kantian aesthetic interjection for this political perspective. A cue from Derrida's writing on Kant's aesthetics is instructive here. In 'Economimesis' Derrida focuses on the trope of analogy to capture the operation of an orderly exchange between ugliness and beauty or, as I have described here in relation to Kant's politics, the

exchange between unlawful violence and lawful legitimacy. Derrida's analysis of Kantian aesthetics points to the undecidable term (here the vomit stuck in the mouth) that refuses the conversion strategy of analogy. Read from the perspective of politics, this strategy plays the double role in Kant of keeping the elements of violent rebellion and legality in their different places *and* establishing a locution for their exchange.

In Derrida's account of aesthetic judgment analogy traces the limits of a philosophy that orders materiality from the perspective of the subject. The organic order of form is not opposed by the sublime as the sublime meets the challenge of formlessness by the engendering of form through reason's ideas. Rather organic order is disturbed by a materiality that is out of the circuit of analogical equivalence. Considered in these terms neither is it the case, as Kant believed, that the disgusting is formless. Indeed disgust acts as the aesthetic counterpart to those acts of rebellion that are repelled by the lawful constitutional government and judged and condemned in history by the spectator. This spectator is driven by an interest in an historical narrative of progress and a preference for the minimum of rights guarded by a poor constitution to the formless, dis-organization of anarchy. The formless acts of a mob only able to dissolve order have their counterpart in Derrida's 'quasi-transcendental category' of vomit stuck in the mouth. The mob's action is pejoratively described by Kant as 'immediate'³¹: for rebellion cannot simultaneously enact the binding, formal power of a constitution.³² Similarly Derrida's use of a vomit stuck in the mouth rather than the act of refusal in vomiting depicts a refusal of the representative, forming powers of the subject even when these powers are interested in determining what is outside the category of taste as disgust. Disgust indeed is in Kant's political terminology a failed rebellion against the subject's forming powers because it can be identified as other to taste or, in the political vocabulary used here, other to civil order. Hence for Derrida disgust, like, I would add, the historically failed rebellion³³, reinforces the formal aesthetic value of taste, or the forming legality of constitutionality.

The avant-garde gesture in the arts that undoes spectatorial distance by means of disgust is, as Derrida's analysis implies, split between an identifiable transgression as such and the historical assimilability of the transgressive act into the canon of the fine arts. There is indeed a parallel to be drawn between the aporetic logic of transgression within the fine arts and political acts of revolt.³⁴ However, the significance of this

aporetic logic in Kant's philosophy does not operate at the level of a parallel between the fine arts and politics. Rather it is because Kant answers the question of how to make sense of political acts by the promotion of a specifically aesthetic and spectatorial kind of relationship to those acts that politics becomes a category within philosophy of history. Neither the cognitive posture of a scientist, nor the aesthetic posture of the historical spectator, is disturbed by disgusting objects/events.³⁵ But the spectator, whether she judges an historical event to be disgusting or not, has already enframed it by a form bestowing meaning. The category of form, according to the paradigmatic form of accounting known as deconstruction, captures disgust and failure as well as the successes of law and art. In these terms, Derrida raises the problem of how to sustain the perspective of the act against Kant's philosophy of history and its aesthetic mode of rendering events intelligible. It is in this respect that the vomit stuck in the mouth is the singular, irreplaceable thing that refuses the analogical machinery able to determine and convert binary values.

However, if Derrida takes the side of the witness to the act over the gesture that dissolves it within a spectatorial recuperation of meaning we need to ask precisely what this validation of an undecidable act means and whether it is compatible with Derrida's more recent writing on topical, political issues. According to the way I have transposed 'Economimesis' to a political arena, Derrida describes a politics that escapes both the gesture of a re-moralisation of political acts (morals sustaining the illusory orientation of a pre-given guide for the negotiation of undecidables) and the vacant, gestural politics of the spectator (in which the benefit of hindsight could justify *or* invalidate past acts, the recent war in Iraq and the current vacillation over which side of the binary division it falls on being a case in point here) in favour of the event. The force of this account is its attention to the temporal logic that transforms *in deciding* the value of an act or event. It is such a decision that enables a false resolution of the aporia that properly refuses the consecration of the binary logic of legality/illegality or taste/disgust. Moreover it is the failure of political states to retrospectively justify their founding violence, to render the illegal, legal that propels this false resolution of binary logic.³⁶ The fidelity in Derrida's writing to the particular thing, the vomit stuck in the mouth that resists either assimilation into the body or ejection out of it, is, I suggested in my opening remarks, best understood

as the witnessing of an irreducible particularity that is otherwise suppressed by the machinery of binary logic. It is this witnessing that gives the essay its 'performative' structure and renders problematic any attempt to reconstitute its 'argument'.³⁷

This strategy of cleaving to the particular thing and thus refusing the binary of taste/disgust as it operates in Kant's aesthetic system also allows us to clarify the political reference given by Derrida to undecidability in his writing on hospitality and forgiveness. 'Economimesis' is a pivotal text both for showing how and according to what stakes these latter topics are organised around the problem of undecidability. In *Of Hospitality* and *On Cosmopolitanism and Forgiveness* Derrida describes the aporetic conditions of possibility for hospitality and forgiveness as that which makes pure hospitality or pure forgiveness impossible. Describing these aporetic conditions is Derrida's way of accounting for political events. The logic he found in Kant's aesthetics whereby both taste and disgust and law and illegality adhered to one another in the undecidable term is now used to understand the particular claims of the past on current political processes. The implications of this logic as it operates in political processes, however, also alters Derrida's earlier practice of ethics.

In the case of forgiveness Derrida distinguishes between the language of forgiveness as it is used in politics to serve determined finalities and the aporia whereby 'forgiveness forgives only the unforgivable'³⁸. The consequence of this aporia is that 'One cannot, or should not, forgive; there is only forgiveness, if there is any, where there is the unforgivable'³⁹. He writes:

'Forgiveness is not, it *should not be*, normal, normative, normalising. It *should* remain exceptional and extraordinary, in the face of the impossible: as if it interrupted the ordinary course of historical temporality' (his emphasis).⁴⁰

The view that forgiveness '*should* remain exceptional and extraordinary' allows Derrida to criticise the 'abuse' of this term within calculated, political transactions.⁴¹ In extending forgiveness for past misdeeds, the leaders of nation states 'use' forgiveness to exchange trauma for mourning or illegality for legality. The example of the post-war amnesty for collaborators in France is telling for our topic: The gesture of amnesty is rationalised by invoking the aim of the reconstitution of national unity. But even this aim

serves the political calculation according to which crimes during the occupation can be forgotten in order to consolidate the forces now arrayed in combat against communism. This ‘amnesty’ is thus like the aesthetic gesture described in ‘Economimesis’, also a reclassification of past acts according to new imperatives. Further, the physiological model of the body in ‘Economimesis’ is here transposed to the ‘historical ecology’ of social and political health for which past traumas are reordered directly into mourning without conceding their prior and irresolvable ethical claim. Against the nation-state’s therapy of reconciliation and suppression of this claim, Derrida holds in abeyance the moment of final resolution that allows the past to be mourned. As in his essay on Kant’s aesthetics Derrida insists, against the political calculus of the nation-state, on the irreducibility and indissociability of pure forgiveness and reconciliation or trauma and mourning. In this case the term, or rather the position, that refuses the historical shift from trauma to mourning and sustains their double relation as irreducible and indissociable is held by the ‘absolute victim’, but also by the ‘survivor’. I will return to the significance of this double relation in a moment. In his discussion of the ‘Truth and Reconciliation Commission’ in South Africa Derrida cites the ‘absolute victim’ as this non-substitutable, non-representable witness. Describing the testimony of a black woman whose husband had been ‘assassinated by torturers who were police officers’ her testimony to the commission, which is interpreted and translated by Tutu, goes ‘something like this: “A commission or a government cannot forgive. Only I, eventually, could do it. (And I am not ready to forgive)”’.⁴² Aside from refusing the right of any anonymous, tertiary institution to grant forgiveness in her place, Derrida focuses on the fact that she herself, this survivor, is not able to substitute herself ‘abusively’ for the dead and he, her absent husband, is the one that cannot be ‘represented’ or ‘testify’ in the Commission⁴³. Just as her place is not able to be taken by either the state or the commissioner so too her ‘immense and painful experience’ as a survivor asks ‘who would have the right to forgive in the name of the disappeared victims?’⁴⁴

Derrida, accordingly distinguishes between amnesty and ‘pure forgiveness’. Pure forgiveness is that which ‘escapes the juridical process’⁴⁵ because it is ‘immediate’, a non-substitutable place occupied by the victim. The aporetic logic of forgiveness as Derrida describes it here works a framework with multiple reference points. This aporia

aims to understand concrete events (the amnesty in France, the Algerian war, the ‘Truth and Reconciliation Commission’ in South Africa) and to give an historical genealogy of the concept of forgiveness. The two poles of pragmatic political processes and pure forgiveness are at once irreducible *and* indissociable. The work of mourning that reduces forgiveness to amnesty or amnesia would have no meaning without reference ‘to a certain idea of pure and unconditional forgiveness’. These poles are also irreducible as for pure and unconditional forgiveness to have its own meaning it ‘must have no "meaning", no finality, even no intelligibility. It is a madness of the impossible’.⁴⁶ For Derrida, however, this ‘madness’ is the condition for responsible action.⁴⁷ And such action, because it is without the reassurance of a given programme, is alone that which ‘can orient a history of laws, and evaluation of the law. It alone can inspire here, now, in the urgency, without waiting, response and responsibilities’.⁴⁸ Progress in the law (the aspect of Derrida’s recent work that leads to an interest in its normative dimensions) can thus be explained from the perspective of his treatment of Kantian aesthetics. What is insoluble, the non-substitutable term of ethical witnessing, becomes in this later work a spur or ‘injunction’ to act. Further it is this insoluble term that regulates action, not according to the ‘pragmatic’ calculus of states, but by the ‘madness of the impossible’. And it is in this respect that the departure from the earlier text is clear: it is not enough, as Bernstein suggested, to bear witness to the particular to perform this untransposable fidelity. The ethical self-reflection that Bernstein sees as integral to ethical negotiation too now finds a home in deconstruction. Moreover it does so by attending to the aporia that takes the form of a double injunction: fidelity to the insoluble event (the irreducible wrong) is *also* indissociable from the need to respond to it.

Derrida tries to account for the way that this double injunction operates *by necessity* in cases of historical injustice. Just as he insists that the irreplaceable disgusting thing is the condition for both taste and disgust (and is also undecidable by either term), so too he insists on the irreplaceable absolute victim that makes pure forgiveness possible *as* the unforgivable. In each case the irreplaceable thing/event sutures together the terms (taste/disgust; forgiveness/unforgivable) that are now shown to depend on each other for their intelligibility. The irreplaceable term is not decidable by either term. In the case of forgiveness, however, the fidelity to the absolute victim (who is absent) and the survivor

(who is unable to be substituted for them) is to be distinguished from Derrida's adherence to the particular irreplaceable thing in Kantian aesthetics.

The 'absolute victim' is an undecidable that is *as such* the spur for the possibility of a justice to come.⁴⁹ The fidelity to the particular thing that was the test of ethics in Derrida's earlier works is now altered. Rather than a defence of a past wrong expressed as an adherence to that particular wrong Derrida attempts to account for the aporetic logic that welds past wrongs to the possibility of a future justice.

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² Among the works of Derrida that exemplify this theme are his essays on the topic of mourning, see his Memoirs for Paul de Man where the name survives death and refuses the assimilatory, interiorising gesture of the survivor's memory (New York: Columbia University Press, 1986).

³ This complaint was made by Lyotard in regard to the treatment of Heidegger's involvement in National Socialism in his Heidegger and 'the jews'. In an interview with Jean-Luc Nancy published as ‘Eating well or the calculation of the subject’ Derrida responds by criticising the empty gestures of condemnation that earn the speaker a good conscience. In E.Cadava, Peter Connor, Jean-Luc Nancy (eds)Who Comes After the Subject?(London & New York: Routledge, 1991). See Avital Ronnell’s account of this dispute in her Finitude’s Score: Essays for the End of the Millennium (Lincoln & London: University of Nebraska Press,1994) pp: 255 ff.

⁴ J.M.Bernstein, The Fate of Art: Aesthetic Alienation from Kant to Derrida and Adorno(Cambridge: Polity Press, 1992) pp:15-16, 139-140. Bernstein’s criticism needs to be seen in the context of his defence of Adorno’s approach to the so-called aesthetic critique of modernity. For Bernstein the account Adorno gives of art’s position of exception in modernity juggles the uniqueness of the artwork with the necessarily historical explanation of its claims and allows for self-reflection. This self-reflection is defined by Bernstein as ‘the ethical act of self-consciousness that brings the subject before and into his or her historical situation’(16). This claim is developed further in relation to Adorno in his recent Adorno: Disenchantment and Ethics(2001). I hope to show here that this position is compatible with Derrida’s later work.

⁵ In a formulation we will return to Derrida emphasises that this claim to ‘progressivism’ is not a retrospective account of history as simple progress but a strategic invocation of an undecided future. Hence Derrida emphasises that even the ‘legitimate’ revolutions that permitted the emergence of concepts such as human rights are also murderous historical episodes that inaugurate such concepts in an ‘obscure’, ‘fragile’ fashion. On Cosmopolitanism and Forgiveness, trans. M.Hughes and M. Dooley (London and New York: Routledge, 2002), pp: 29-30. On the other hand, even if 'progress' is not used as a retrospective justification

for past barbarism, Derrida's invocation of an undecidable future has become contentious for its dependence on regulative ideas.

⁶ This criticism has been made of Derrida's 'democracy-to-come'. See Matthias Fritsch, 'Derrida's Democracy to Come', Constellations, Vol.9, No.4, 2002 (574-597): 'Derrida's democracy to come...is still insufficiently theorized and balanced to take account of (the limits of) its own normativity, especially in regard to the indispensable value of democratic equality as it conditions freedom, popular sovereignty, as well as the pluralisation of creative possibilities for responsive action, as favored by Derrida', 591.

⁷ Derrida uses both phrases but qualifies them as quasi-concepts. In this way he explicitly hopes to avoid any confusion between his position and either the Kantian regulative idea or the Kantian conception of duty. See, for instance, Of Hospitality, trans. Rachel Bowlby (Stanford, California: Stanford University Press, 2000), p.149.

⁸ It is The Truth in Painting that orientates Bernstein's analysis. For a discussion of The Truth in Painting in terms of the topic of the relation between Kant and Derrida see my 'Errant Beauty: Kant and Derrida on Aesthetic Presentation' International Studies in Philosophy, 33:2, 2001, pp: 87-104.

⁹ See Deleuze's Kant's Critical Philosophy (Minneapolis: University of Minnesota Press, 1984) and Lyotard's Lessons on the Analytic of the Sublime (Stanford, Stanford University Press, 1994).

¹⁰ F.Nietzsche, On the Genealogy of Morals, Third Essay, see in particular sections 7-13.

¹¹ J.Derrida, 'Economimesis', trans. Richard Klein Diacritics, Vol.11, 1981, pp:3-25.

¹² I.Kant, Critique of Judgment, §51 Ak.321, p.190 and §53, Ak.326, p.196.

¹³ I.Kant, Critique of Judgment, Ak.330, §53, p.200.

¹⁴ Kant, Ibid: "...music has a certain lack of urbanity about it. For, depending mainly on the character of its instruments, it extends its influence (on the neighborhood) farther than people wish, and so, as it were, imposes itself on others and hence impairs the freedom of those outside of the musical party. The arts that address themselves to the eye do not do this; for if we wish to keep out their impressions, we need merely turn our eyes away. The situation here is almost the same as with the enjoyment [*Ergötzung*] produced by an odor that spreads far. Someone who pulls his perfumed handkerchief from his pocket gives all those

next to and around him a treat whether they want it or not, and compels them, if they want to breathe, to enjoy[*genießen*] at the same time, which is also why this habit has gone out of fashion.”

¹⁵ Cf: Niklas Luhmann’s ‘Ecological Communication, p.37. For Luhmann every self-reference (i.e., when an operation is applied to itself) has the problem of generating either a tautology or a paradox. This is also the case with function systems of society (e.g., law, science, politics, religion, education, etc.) that establish themselves as self-referential systems by means of the binary coding of their operations. Codes are totalizing schematizations, i.e., systems are operationally closed. The self-reference of the legal binary code, for example, leads to either ‘legal is legal’ or ‘one does not have a legal right to having legal right’. The perspective of the unity of (the self-reference of) the system thus has to be suppressed or, in Luhmann’s terminology, ‘operationalized’ or ‘interrupted.’ This is done by concealing the unity under a (guiding) difference (e.g., legal/illegal) that focuses the attention of the system on the problem of applying the correct value of the binary code (is X to be treated as legal or illegal?) The criteria for the selection of one or the other value are given in programs. The perspective of suitability of the selection of an operation (e.g., legally correct decisions) allows for cognitive considerations (i.e., thematic openness to its environment). In this way, the system acquires a learning capacity without losing its identity (i.e., functional specificity) that it has thanks to its coding.

¹⁶ Kant’s most extensive discussion of the ban on rebellion outside of his popular essays can be found in The Metaphysics of Morals. See pp:95-8.

¹⁷ This means that, for Kant, orientation to outcomes or consequences does not enter into the consideration of the morality of an action. In this respect the spectator’s regard to outcomes is irreconcilable with Kant’s moral philosophy.

¹⁸ My emphasis. I.Kant, ‘On the Proverb: that may be true in theory, but is of no practical use’, Perpetual Peace and Other Essays, p.80. The broad context of this remark is also significant for our topic. The rebellious act that is here described as *certain*, forms a parallel to the certainty provided by the moral law. The practical use of the latter is that it orientates action by prescribing for it a conformity to law. The attempt to engage in the impossible calculus of acting to secure personal happiness leads to self-disgust but also seems to represent a version of the formless against which the moral law provides an antidote. In

Derrida's writing on politics the good conscience that is attached to the Kantian moral law is dispensed with, and the injunction to act is one that follows the dictates of justice, not law.

¹⁹ I.Kant, 'Idea for a Universal History', First Thesis, Perpetual Peace, p.30.

²⁰ I.Kant, 'On the Proverb....' p.86: 'If seeing a virtuous man struggling with tribulations and temptations towards evil and yet holding his own against them is a sight fit for a divinity, so is it a most unfit sight for even the commonest but well intentioned man, not to mention a divinity, to see the human race advancing from period to period towards virtue and then soon afterwards to see it again falling as deeply back into vice and misery as it was before. Observing this tragedy for a while may perhaps be moving and instructive, but the curtain must finally fall. For in the long run it becomes a farce; and if the actors do not become weary of it, since they are fools, the spectator will when, after one or another act, he has sufficient grounds for assuming that the never ending piece will be eternally the same.' See too 'Idea for a Universal History', Ninth Thesis, p.38.

²¹ See respectively, the Critique of Judgment in reference to utensils, Ak..236, N.60 §17, p.84; ugliness, Ak. 312, §48, p.180; the sublime, Ak.274, General Comment, p.135; and disgust Ak. 312, §48, p.180.

²² Critique of Judgment, Ak.242, p.93, General Comment: '...where only a free play of our presentational powers is to be sustained (though under condition that the understanding suffers no offense), as in the case of pleasure gardens, room decoration, all sorts of tasteful utensils, and so on, any regularity that has an air of constraint is [to be] avoided as much as possible.'

²³ Just as Derrida will argue in 'Economimesis' that disgust is the formative condition of taste, so too the violence of revolt is formative of constitutionalism. Rebellion and disgust do not interrupt the functioning of the system which is able to integrate such transgressions especially when it repels them. Rebellion and disgust are the *conditions* for taste and law in so far as they are identifiable or nameable as *other* to taste and law.

²⁴ Critique of Judgment, § 65. In the case of practical reason the formality of the moral law abstracts from the claim of particular circumstances but depends nevertheless on the capacity of the subject to think maxims of reason without contradiction *for particular possible ends of action*. Hence Kant argues that where calculative ends prevail over the forming voice of duty one is led down the path to *disgust*. The

formal test of practical reason is thus formative of the self-respect that comes, in turn, from the forming capacity of action. This confirms the analysis advanced here in which form is not just an aesthetic term, but a pivotal, working term within the main branches of Kant's thought.

²⁵ Critique of Pure Reason B133, A350, A382, A346/B404 and Prologomena §39, §46 n. AA3, p.334.

²⁶ Critique of Practical Reason, Preface, p.4.

²⁷ Philippe Lacoue-Labarthe and Jean-Luc Nancy, The Literary Absolute, p.31.

²⁸ Ibid.

²⁹ See respectively the aestheticisation of war in the Critique of Judgment, §28, Ak.263, p.122; and its politico-historical role in Perpetual Peace under the category of unsociability, Fourth Thesis, pp:31-2.

³⁰ To merely identify this as a contradiction within Kantian philosophy is not strong enough. On one hand Kant is an advocate for historical progress; on this side he confirms the positive, law-bound results of unlawful rebellion; on the other he contests rebellion as the means to progress. For the reasons outlined above explaining this as a contradiction between the claims of history and the requirements of morality seems unconvincing. What is acting in the Kantian philosophy is instead an abhorrence of the category of the formless of which political rebellion is a striking instance. The abhorrence of formlessness is unable to tolerate an act which is without the formal consecration of a legal constitution. The paradox consists in this: such acts are necessary for the forming function of historical progress which Kant exhorts and for which violence is sanctioned.

³¹ I.Kant, "On the Proverb...", N. p.81.

³² This resonates well with Derrida's description of the future anterior tense that papers over the split which separates, for example, the act of signing of the American Declaration of Independence which brings into existence the people *as a people*. See Derrida's 'Declarations of Independence'.

³³ Placed in the context of political activism Derrida's avant-garde gesture in aesthetics is suggestive for our current political climate in which potential, undetermined, future acts of rebellion reinforce the legislative claim of the state.

³⁴ See Derrida, “Force of Law”, p.37, where he draws this parallel between the general strike and the ‘revolutionary situation in every reading that founds something new and that remains unreadable in regard to established canons and norms of reading...’”

³⁵ ‘Even an observer of nature finally likes objects which first offend his senses when he discovers in them the great design of their organization, so that his reason finds nourishment in observing them; Leibniz spared an insect which he had carefully examined under the microscope, and replaced it on its leaf, because he had been instructed by viewing it and, as it were, had received a benefit from it.’ Critique of Practical Reason, p.166.

³⁶ It is worth distinguishing here between Derrida’s ‘Force of Law’ where he examines the founding violence *of* law and the violent act that is not exchangeable *into* law as either its corpus or as an object for its judgment.

³⁷ As Pierre Bourdieu famously complains, see his postscript to Distinction: A Social Critique of the Judgment of Taste.

³⁸ Similarly, in the case of hospitality Derrida insists that pure hospitality is unconditional. The problem is to negotiate the actual, historical acts of hospitality that betray this purity but would themselves have no meaning without reference to an idea of unconditioned hospitality On Cosmopolitanism, 17-18.

³⁹ On Cosmopolitanism, 32-33.

⁴⁰ On Cosmopolitanism, 32.

⁴¹ On Cosmopolitanism, 39.

⁴² On Cosmopolitanism, 43.

⁴³ On Cosmopolitanism, 44. See also Agamben’s Remnants of Auschwitz: The Witness and the Archive, trans. Daniel Heller-Roazen (New York: Zone Books, 1999) and Lyotard’s Heidegger and ‘the jews’ for discussions of the ‘survivor’ and the ‘witness’.

⁴⁴ On Cosmopolitanism, 44.

⁴⁵ On Cosmopolitanism, 43.

⁴⁶ On Cosmopolitanism, 45.

⁴⁷ ‘*On the one hand*, there is, there *has* to be, it must be accepted, the ‘insoluble’. In politics and beyond. When the givens of a problem or a task do not appear as infinitely contradictory, placing me before the

aporia of a double injunction, then I *know* in advance what it is necessary to do, this knowledge commands and programmes the action: it is done, there is no more decision or responsibility to take' (On Cosmopolitanism, 53-4). It is important to emphasise here that while Derrida insists that only the undecidable allows for decisions, decisions are not free confections but made in a particular historical context.

⁴⁸ On Cosmopolitanism, 51.

⁴⁹For Geoffrey Bennington deconstruction rigorously suspends decidability and with it the teleological thrust that in 'all metaphysical ethical and political doctrines close[s] off the undecidable at some point'. Interrupting Derrida (2000: Routledge; London and New York) 16. An alternative emphasis on the implications of 'undecidability' can be found in Etienne Balibar's "'Possessive Individualism' Reversed: From Locke to Derrida", Constellations, Vol.9, No.3, 2002: where he argues that in Derrida 'a certain 'form' has been preserved, an antinomic form that has to do with the alternative of gain and loss, and which, unsurprisingly perhaps, would inscribe our ethical discourse in the eschatological horizon of justice...' 299-317.