Gabriel Rezende

THE ENIGMA OF VALIDITY: SPECULATIONS ON THE LAST PARAGRAPH OF *DONNER LE TEMPS II*

ABSTRACT
In the final paragraph of the concluding session of the seminar *Donner le temps II*, Jacques Derrida enunciates—but does not develop—what I shall term the "enigma of validity." Following a close reading of Heidegger's *On Time and Being*, the session abruptly ends with a promise to analyze a certain transition: from the *es gibt* ("there is," "il y a") to the *es gilt* ("it is valid," "il vaut," and "il doit"). This suggest that a set of questions organized thematically around the *gift*—prominent among these is the idea of a Being that *is there* and gives itself as a gift—needs a supplement. The enigma of validity pertains to the emergence of a normative vocabulary divided into value, obligation, and interest. In this paper, I will trace some of the clues Derrida leaves in *Donner le temps II* and other texts, arguing that the "mystery of normativity" is bound to the ambiguous status of legality within metaphysics. Validity, as the mystical foundation of normativity, functions simultaneously as a metaphysical shortcut to secure self-reference in philosophical thought and as the impossibility of any foundational grounding (*Grundlegung*).

Introduction

Donner le temps II holds a peculiarity in relation to the always awaited publications of Derrida's seminars and courses. As highlighted by the editors of the book, Laura Odello, Peter Szendy and Rodrigo Therezo, *Donner le temps. 1. La fausse monnaie* (*Given Time: I. Conterfeit money*) carries a numeral in its title, signaling the expectation of a follow-up—a rare occurrence in Derrida's oeuvre. Derrida himself notes that the "first" volume revisits the initial sessions of a seminar conducted in 1977-1978, naturally drawing readers to seek its remaining parts. This curiosity is further amplified by the overarching theme of the work: "the problematic of the gift," a motif that permeates much of Derrida's writings—whether overtly or implicitly—and yet persistently eludes

Gabriel Rezende: Professor, Philosophy Department, Federal University of Paraíba; gabriel.rezende@academico.ufpb.br.

interpretation, shrouded in layers of antinomies and complexity. Might we not hope, even if in vain, that the unpublished sessions of the seminar would shed light on notions such as "speculation, destination, or the promise, [the] sacrifice, the "yes," or originary affirmation, [the] event, invention, the coming or the "come" (Derrida 1992: X)?

Upon their eventual publication in 2021, sessions 7 to 15 of the seminar—which, as it turns out, were conducted between 1978-1979 rather than 1977-1978, as Derrida had previously indicated in *Given Time: I*—did not, unsurprisingly, offer their readers any salvific revelations. In Derrida's meticulous readings on the issues of "the thing" and "the gift" in Heidegger, it is not the anticipated answers that emerge, but rather a new question, one previously unarticulated in this manner. We might refer to it as "the enigma of validity:" why does the *gift* transitions into the *valid*?

The enigma of validity appears at the end of *Donner le temps II*'s session 15. In this last session of the seminar, Derrida offers an analysis of Heidegger's "Zeit und Sein" (*On Time and Being*), a conference presented in 1962 in Freiburg im Breisgau and later published in *L'endurance de la pensée*, a book written in honor of Jean Beaufret. The importance of this text goes beyond the reference to the famous division three of *Being and time*. According to Derrida, "Zeit und Sein" offered to the "thematization of the gift within the "es gibt" its most systematic, its most open space" (Derrida 2021a: 212). In other words, nowhere else does Heidegger so systematically articulate the idea that the gift precedes Being. The enigma of validity is of course tied in with this conceptual chain. Derrida only mentions it, however, in the context of an interruption. It is in the last paragraph of this last session that he introduces this "something" that would clear a passage for validity through the gift. Here is a transcription of the excerpt:

> What remains to be examined is the passage from this *Reichen*, from what comes together in the "to tend towards," < which > here will take us to the value of property, of proper, what "to propriate [*proprier*]," propriation means. And it is the word "*Ereignis*" that will support the last stage, "*Ereignis*" not in the usual sense of event but in the sense of propriation. And in the same way as manifestation, letting-be or letting-appear do not go without <appropriation>, the movement of *Ereignis* does not go without *Enteignis*, depropriation. We shall see how the meditation on *Ereignis* unfolds and how in the end we pass from or return from a certain *Es gibt* to a certain *Es gilt*. It is worthy [*il vaut*]. It is obligatory [*il faut*]. It is in one's interest to, etc. (Derrida 2021a: 228).

The rather brusque ending of the session allows us only to speculate on the fate of this *es gilt*, from which Derrida derives at least three formulae: *il vaut*, *il faut* and *il y a intérêt à*. In what follows, I do not intend to offer a conclusive interpretation of the enigma of validity, or have the ambition of exhausting the meaning of the terms used in the above quotation. The scope of my investigation is limited in that I will be content to follow some of the clues left by Derrida and, in doing so, suggest some consequences of conceiving the enigma

of validity as a "mystery of normativity"— or, conversely, of approaching the mystical foundation of normativity[1].

Ereignis and economy

From *es gibt* to *es gilt* we transition from the verb *geben* to the verb *gelten*. The enigma of validity, the enigma of *Geltung*, involves a tendency towards the "proper" and property in general. *Geltung* is, after all, an economic concept: its etymologic roots are the Gothic "*gildan*" (*fragildan*, *usgildan*), the Old High German "*keltan*, *geltan*" and the Middle High German "*gelten*," which are all organized around the idea of "paying." As we move forward, it will become clear that payment is connected to a key legal issue: debt. Payment is a way to settle a debt, which establishes the economic cycle of general equivalence. Debt presupposes a legal relationship, where an obligation aligns with a claim: credit gives the creditor a right to payment, creating a debt for the debtor. The semantic variations in this context underscore the interconnectedness of payment, compensation, and the emergence of value (*wert, valor*). Is this the problem that Derrida alludes to at the end of session 15?

To answer this question, we must consider that the 1978-1979 seminar was not the first nor the last time Derrida engaged with "Zeit und Sein," a text to which he has consistently returned throughout the years. Some of the clues that help us illuminate the enigma of validity are found in *Margins—of philosophy.* At least twice in this book, Derrida directly references "Zeit und Sein" and highlights passages studied in session 15.

The first of these moments is particularly important. Derrida is trying to distinguish his *différance* from Heidegger's *ontological difference.* The reason for that has everything to do with the notion of *Ereignis*: "If the "gift of presence is the property of Appropriating (*Die Gabe von Anwesen ist Eigentum des Ereignens*) (...) *différance* is not a process of propriation in any sense whatever" (Derrida 1982: 26). This is a quotation extracted from a footnote to the famous text *La différance*, an address given before the *Société francaise de philosophie*, in 1968, and republished in *Margins* (1972). This footnote was added in 1972 and has a more programmatic character. It sets the tone for the entire volume since it defines the task of deconstruction as the "displaced reinscription" of the conceptual chain organizing "Being," "presence" and "propriation." For, among the metaphysical remnants of the Heideggerian *destruktion* is the idea that: "then, Being belongs into Appropriating [*Dann gehort das Sein in das Ereignen*]" (Heidegger 2002: 21). According to Derrida, *Ereginis* as event and Appropriation, as something that *happens* but in the order of *property*, is the very articulation of ontology and *logos*, the onto-logic in the *fundamental ontology*.

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1   For a different perspective on the notion of property in Heidegger, see Giorgio Agamben's "The passion of facticity" (Agamben 1999). There is also a critique of Derrida's interpretation of *Donner le temps II* and his approach to the problem of normativity (cf. Liakos 2024).

Since Heidegger understands the gift of presence—conceived as *Anwesen*—as the property of Appropriating, Derrida sees in the value of "proper" an entanglement or a contamination between (a) a fundamental ontology that seeks an Appropriating beyond any mundane notion of property, and (b) the regional or particular sciences that elaborate the idea of the "proper," notably political economy, psychoanalysis, and semiolinguistics (while omitting a discipline that will be addressed shortly: Law). The "proper" exemplifies the precarious boundary between ontology and its others, raising doubts concerning the status of *Ereignis*. If Derrida is correct, it would be particularly doubtful whether the notion of "Appropriating" can fully evade commodification and the value-form. As a result, a thinking that probes Being (*Sein*) not as beings (*Seiende*) but as the truth of Being (*Seyn*)—as a gift— still has to answer to all these economic inputs.

This idea becomes even clearer in a second reference to "Zeit und Sein" in *Margins*. In a footnote to "Les fins de l'homme," Derrida discusses again the motif of the "proper." He claims that words like "*eigen*" or "*eigentlich*" set the tone for the *Ereignis* that dominates the question of the truth of Being. And this domination has permeated Heidegger's texts for a long time. Derrida mentions the "Letter on humanism" to add the following comment: "The themes of the house and of the proper are regularly brought together: as we will attempt to show later, the value of *oikos* (and of *oikēsis*) plays a decisive, if hidden, role in the semantic chain that interests us here" (Derrida 1982: 129). Quite early in his lifelong readings of Heidegger, Derrida was interested in the clandestine exchanges taking place near *Ereignis*: between event and appropriation, *Ereignis* conceals an economic-driven logic. The "proper" in general is dependent on the notion of "house," on the semantics of "dwelling," "inhabiting" and "residing," all of which are organized by the Greek word *oikos*. Derrida has famously offered an analysis of these values in *Given Time: I*, where he links *oikonomia* to circulation and return. According to Derrida, the structural constitution of the "self, of the subject that says I, *ego*" (Derrida 1992:15), is fundamentally characterized by a circular process of self-reflection and return. This is the ipseity of the Same (*même*). Ipseity is propelled by an economic principle, which underscores not only the dynamics of self-reference, but also the values of organization, nearness, return and power (*I can*).

From this first set of clues, we are prompted to believe that the enigma of validity is inseparable from the economic force that characterizes the domain of *Ereignis*. In this sense, the work of deconstruction, as the deconstruction of economics, has to do with thinking that which does not simply escape economic value (which, strictly speaking, would amount to postulating a transcendent and metaphysically charged object), but dismantles the logic of return and property. For Derrida, the gift is not a fact outside the market, but an undecidable, a principle that makes economic circulation unsaturable.

Yet, this does not fully account for the transition from *es gibt* to *es gilt*. It remains unclear why the economic discourse of value should necessitate the emergence of this alternative domain wherein language is *fraught with ought*

(Sellars 1962: 44). To address this issue, we have to introduce a legal element in validity: a force of law.

Validity and Legality

Heidegger enunciates the following problem: (a) Being (*Sein*) is not a thing (*Ding*) and, therefore, is not temporal; (b) however, Being (*Sein*) is *Anwesenheit* (a fundamental mode of presence)[2] and, therefore, is determined by time. To solve this problem, Heidegger brackets propositions like "Being is…" and "Time is…," and substitutes them for "there is Being and there is time [*es gibt Sein und es gibt Zeit*]" (Heidegger 2002: 5). In session 15 of *Donner le temps II*, Derrida investigates how the *geben* in *es gibt* is ultimately able to hold together Being and time. How can the gift bind them?

Derrida tries to answer this question by interrogating the apparent self-evidence of what "holds together" means here. To paraphrase the philosopher Roberta De Monticelli, one could say that the destiny of Heideggerian thought is a "Gift of bonds." In this sense, *there are* bonds "holding together the manifold phenomena (…) and imposing constraints on the variations of these phenomena, by violating which things cease to be what they are" (De Monticelli 2024:1). The gift not only ties, connects, links or associates "Being" and "time," it also binds them, and, in this sense, it creates a commitment, a duty, a constraint, a liability, an obligation: "This characterisation of being as *Anwesen*, as present, creates an obligation [*fait obligation*]; it binds together all our language, all our knowledge, all our technique and all our history" (Derrida 2021:219). The necessary contamination between these two meanings of the verb "to connect" anticipates the enigmatic last paragraph of the session. For, alongside its economic dimension, the gift carries with it the mysterious appearance of a normative language: a logic of values (*il vaut*), but also a logic of obligations (*il faut*). The giving of the gift (*Gabe*) conceals the validity (*Geltung*) of the *es gilt*. I will argue that the enigma of validity does not concern the emergence of an indefinable and unanalyzable value of goodness (*sensu* Moore), but rather the intrusion of an ought-form that will reveal itself multifarious. Normativity is a theme that always appears shrouded in an aura of secrecy in Derrida's text. As we shall see, this is because normativity is the institution of secrets.

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2   The Heideggerian *Anwesen* is not to be understood from the point of view of a metaphysical mode of presence that stands in opposition to "past" and "future." Heidegger deals with highly intricate semantic associations here: the *Anwesen* is a kind of presencing that manifests itself in the notion of "approaching," of "bringing about." In other words: "In future, in past, in the present, that giving brings about to each its own presencing, holds them apart thus opened and so holds them toward one another in the nearness by which the three dimensions remain near one another. For this reason we call the first, original, literally incipient extending in which the unity of true time consists in "nearing nearness," "nearhood" (*Nahheit*)" (Heidegger 2002:15).

Tending toward a task

The reader will not find in "Zeit und Sein" any explicit reference to what Derrida calls the passage "from or return from a certain *Es gibt* to a certain *Es gilt*." The syntagma "es gilt" occurs only a few times in the text, and it is used in the ordinary sense of "it applies," "it holds" or "it is valid." If we do not want to abandon ourselves to an exercise of pure imagination, we will have to reconstruct the possible articulations between the pieces of our puzzle otherwise. I will single out some of those pieces—all of which are propositions taken from the last paragraph of session 15.

   (i) "how the meditation on *Ereignis* unfolds;"
   (ii) "*Ereignis*" not in the usual sense of event but in the sense of propriation;"
   (iii) "the passage from this *Reichen*;"

   These propositions establish a dialogue with the last lines in "Zeit und Sein," where *Ereignis'* unfolding is examined. Heidegger asks what would remain to be said about time and Being, and answers categorically: only that "Appropriation appropriates [*das Ereignis ereignet*]." Understanding (ii) calls for discerning in this phrase something beyond a simple logical tautology. According to Heidegger, if this sentence is to say something other than the "*Same* affirming the *Same*," we ought to use it as a "guide for our thinking" (Heidegger 2002: 24). This is where (i) and (ii) connect: the mediation is possible if and only if *Ereignis* becomes a task.
   This idea is grasped by Joan Stambaugh's English translation of the following short paragraph: "The task or our thinking has been to trace Being to its own from Appropriation—by way of looking through true time without regard to the relation of Being to beings" (Heidegger 2002: 24). Now, let us compare it to the German original: "*Es galt, Sein im Durchblick durch die eigentliche Zeit in sein eigenes zu denken—aus dem Ereignis—ohne Rücksicht auf die Beziehung des Seins zum Seienden*." Faced with the intricate syntax of the passage, the translation strategy adopted by Stambaugh consisted of rendering "*es galt*" by "the task of our thinking has been…." "*Galt*" is the first/third-person singular preterite of the verb "*gelten*." We might also rephrase the sentence this way: it was valid for us to think of *Being* in terms of what is proper to it; therefore, the property of Being is only realized from within *Ereignis*.
   The challenge in this translation is to operate with these two markers simultaneously. Since *gelten* refers here to the notions of "task" (a goal to be achieved) and of "validity" (a deontic concept), the answer to (i) necessarily evokes some guidance or orientation that embodies normative standards. After all, the enunciation of the task implies that we ought to pursue the aimed goal. In (iii), *Reichen* is not only the "giving" (the word chosen by Stambaugh to translate it), but also the *"tendre"* as in Derrida's translation proposal: "to reach," "to extend," "to stretch," "to tend towards." It seems that a deconstruction of the semantic chain that connects, in Heidegger, "Being," "property" and

"economy" must be widened and include validity. Why we need a normative vocabulary to address the gift? For Heidegger, this is a question about adequacy, and adequacy means appropriation, appropriateness:

> If overcoming remains necessary, it concerns that thinking that explicitly enters Appropriation in order to say It in terms of It about It. Our task is unceasingly to overcome the obstacles that tend to render such saying inadequate (Heidegger 2002:25).

Originary impurity and the genesis of normativity

Following Derrida's deconstructive reading of "Zeit und Sein," I would like to suggest a further complication of this Heideggerian schematism ruled by *Ereignis*. This complication concerns the following pieces of our puzzle:

> (iv) "We pass from or return from a certain *Es gibt* to a certain *Es gilt*";
> (v) "It is worthy [*il vaut*]. It is obligatory [*il faut*]. It is in one's interest to, etc."

The two propositions are related to the appearance of a normative language that we cannot pin down precisely yet. This difficulty, we shall argue, is what makes Derrida's proposal interesting. According to him, there is a kind of constitutive uncertainty that takes over our analyses every time we try to address this moment of emergence. Since his earliest work, Derrida has investigated the following questions: "How can the originarity of a foundation be an *a priori* synthesis? How can everything start with a complication?" (Derrida 2003: xxv). The manifest contradiction in these formulae indicates "an originary complication of the origin," "an initial contamination of the simple" (Derrida 2003: xv). We cannot understand the passage—that is also a return—from *es gibt* to *es gilt* without bearing in mind this primordial impurity. Our challenge, then, lies not so much in determining the origin of normativity, but rather in grappling with the more nuanced question of why the origin itself is already complicated by normativity.

Propositions (iv) and (v) are connected with this overall regime of contaminations: (iv) enunciates that the relation between *es gibt* and *es gilt* is reversible; (v) says that validity implies value, necessity and ought, but also incentive, motivation and profit. At this point, an inescapable element emerges. While Derrida presents, as a result of the enigma of validity, a series of candidates for a fundamental deontic concept, he introduces syntagmas that, in his view, indicate an absence of foundation. In *Given Time: I*, he had already concluded that there can be no point of presence in any economic structure capable of serving as an ultimate value-conferring instance. Value is the outcome of an excess within economic circulation. The same applies to interest, which, between self-interest and the remuneration of capital, always maintains a speculative, immaterial dimension in Derrida. Finally, we come to "il faut." This is perhaps the most sybilline of notions because Derrida makes an absolutely idiomatic use of

this expression. Derrida writes: ""il faut" not only means it is necessary, but in French, etymologically, it also means "something is lacking" or "missing." Fault or failure is never far away" (Derrida 1993:96). Since it signifies both duty and lack, this undecidable "il faut" cannot be constituted as an analytical particle (immune to further analysis). Derrida responds to the problem of normativity not by offering a foundation, a reason, or a source, but by setting up a position—or even a staging—where Being is always already contaminated by ought.

Logonomocentrism

If the passage/return to/from *Geltung* is the result of the unfolding of *Ereignis*, it is natural to inquire how this property-form comes about and unfolds. In *Given Time: I*, Derrida shows that economic circularity relies not only on the notion of obligation in general but also on the specific form assumed by a legal bond. Through his analysis of Marcel Mauss' concept of the *don*, it becomes evident that complex social structures, such as credit and contracts, perform the dual function of both enabling and negating the gift. In a moment, this will lead us to the problem of *expropriation*. But first, let us emphasize the contrast with Heidegger's position on the legal form. In a text called "The way to language [*Der Weg zur Sprache*]," Heidegger makes a particularly important observation regarding *Ereignis* and law:

> Appropriation grants to mortals their abode within their nature, so that they may be capable of being those who speak. If we understand "law" as the gathering that lays down that which causes all beings to be present in their own, in what is appropriate for them, then Appropriation is the plainest and most gentle of all laws, even more gentle than what Adalbert Stifter saw as the "gentle law." Appropriation, though, is not law in the sense of a norm which hangs over our heads somewhere, it is not an ordinance which orders and regulates a course of events: Appropriation is the law because it gathers mortals into the appropriateness of their nature and there holds them (Heidegger 1982:128).

This passage plays with the reader's expectations, particularly in light of Heidegger's famous despise of Roman metaphysics and juridical concepts. How could the author who so bitterly lamented the overthrowing of *aletheia* by the *imperium*, the philosopher who penned lines such as: "the command is the essential ground of domination and of *iustum*, (…) the "to-be-in-the-right" and the "to have a right"— how could he now assert that *Ereignis* is the most gentle of all laws? How could *Ereignis* be conceived in the form of a law?

In fact, Heidegger uses the word "law" in a very non-Roman way: "the gathering that lays down." He compares the law to a tendency towards appropriateness, a force of reconciliation capable of holding beings together with their own *Wesen*, their own "essence" in the sense of "the most resonant way" (Spinosa 2005:291). Law, for Heidegger, the "real" law is an appropriation that rules over separateness. In a footnote, Heidegger writes "*Setzen* not as *Thesis*, but rather as Letting-go, Bringing." The verb "*setzen*" ("to set" and "to put")

plays an important role here. The German word for law, *Gesetz*, contains in it the *Setzen*[3]: it refers to a norm that is stated, instituted, or put down. Heidegger is thus negating the traditional legal concept of "law" in favour of a gentler law of *Ereignis*. This is why, according to him, Appropriation is not a legal norm "which orders and regulates a course of events"; it is supposed to evade the idea of "command," for, instead of binding and exercising domination, this *Gesetz* lets go and bring being towards its "own" self. It is a gathering force that appropriately reunite Being.

In the words of philosopher Daniel Loick, Heidegger has called for a "de-legalization and thus a de-subjectivization, as he rehabilitates concepts of subjective "passivity" against the will to power, which has become a planetary dispositif" (Loick 2014:497). But we can go a step further: Heidegger belongs to a long-standing tradition—within which Hegel is not merely an isolated episode—that interprets philosophy's passage through Rome as the decline of the Greek philosophical spirit into a legalistic metaphysics. In this context emerges a desire to recover an experience of being untethered from the imperial violence of the law. *Logocentrism* has always been a *logonomocentrism*: the quest for the truth of norms within an instance of pure presence, where voice, meaning, and command are aligned in an absolute, non-violent proximity. Logocentrism confines law—analogous to the confinement of writing—to a "secondary and instrumental function" (Derrida 1998: 8). Legal norms are technical apparatuses subservient to language. They are mere representatives of true a normativity—often equated with an *ethos*— that is insulated from mediation, interpretation, distance and division. Heidegger's version of logonomocentrism postulates a law beyond mere positivity, upheld by a primordial *Setzen*, and characterized as both "letting-go" and "gathering."

The doubling effect

Ereignis is inextricably bound to a certain economy, blurring the lines between fundamental ontology and all the regional ontologies grounded in the concept of property. I want to propose an analogous claim: for Derrida, the transition from *es gibt* to *es gilt* is inseparable from the juridical form, that is, from a certain normative language that is imbued with legal structures. I will argue that logonomocentrism, the desire for a law beyond every possible positive law, tries to inhibit the effects of legality, especially its casuistry, and ends up provoking

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3   *Setzen* is a very important word in the vocabulary of deconstruction. Derrida has often explored the relationship between position and positivity, especially in connection with terms like "*envoi*," "*halte*," "*thèse*" and "*carte postale*." In this passage, these connections become clearer: "It's the end of an epoch. The end of a race also or of a banquet that is dragging on until the small hours of morning (I no longer know to whom I was saying that "epoch"—and this is why I am interrogating myself on this subject—remains, because of the halt, a postal ideal, contaminated in advance by *postal différance*, and therefore by the station, the thesis, the position, finally by the *Setzen* (by the *Gesetzheit des Sichsetzens* that he talks about in *Zeit und Sein*)"(Derrida 1987: 191).

a certain return of the repressed. It is no coincidence that Kant, along with the various interpretations of his work—especially Heidegger's—has remained central to Derrida's inquiries for several decades.

The term "validity" has traditionally been connected to legality. For Neokantians like Wilhelm Windelband, *Geltung* defined the very activity of philosophy because philosophy is concerned, after Kant, with the difference between "quid facti" and "quid iuris" (Windelband [1882] 2021:30). If validity is the quality of something that is justified and legitimized, something that not only *is*, but *ought to be*, we cannot escape the metaphor of the *tribunal of reason*[4]. This motif, now almost a commonplace in philosophical critique, is examined by Derrida in the preface to *Du droit à la philosophie*. He claims that the question "quid iuris?" has an expansive potential, extending its reach to colonize other domains of Being. This is an effect of what I call logonomocentrism. Derrida refers to this rather as "juridicism," identifying the functional advantages that the courtroom metaphor bestows upon philosophy. He is interested in the relationship between the power of justification and the possibility of reason's self-foundation. In other words, the juridical metaphor enables philosophy to position itself as the custodian of reason, a sovereign and plenipotentiary authority accountable only to itself. Juridicism here entails the possibility of interpreting "justification as foundation (Derrida 2002: 55)—whereby the *ius* transforms reason into a self-authorizing supreme court, pronouncing truth as if it were declaring the law.

A hasty analysis might lead us to conclude that, in light of this facts, deconstruction must call for a radical questioning of the *ius*, followed by the negation of its predicates. Heidegger, then, would seem correct in his invective against Roman metaphysical legality. We must be careful, however, not to oversimplify Derrida's critique of juridicism. This is a central point in my argument. There is obviously an intimate connection between juridicism and the historical structure of legality. But even if we construe juridicism as the colonization of Being by legal concepts, it remains uncertain how the juridical properties can be thematically specified. Put differently, from what instance can we determine what is law's "proper"?

According to Derrida, juridicism is to be understood rather as a lining or a doubling. A similar view was adopted earlier by Jean-Luc Nancy. In this respect, Derrida and Nancy's views differ from Heidegger's. Heidegger took law as referring to *imperium*, a rule-based commandment that requires obedience from individuals and takes possession over territories. *Ius*, for him, is always the domination achieved by a superior authority over a subject. Following Nancy's trailblazing paper "Lapsus judicii," Derrida sees this description as fundamentally flawed, because it misses the ambiguous structural constitution of

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4   I do not intend to delve into the problems related to the cognitive or ontological status of legal metaphors here. It seems to me that the interpretative solution to these problems lies in understanding the porosity between the metaphorical and the structural in the construction of reason as a legal framework. For a discussion on this topic, see (Møller 2020).

the juridical field. "Law" may be used to describe commandments in the form of *imperium*, but it also refers to casuistry, that is, the science of accidents. In a very important footnote in *Du droit à la philosophie*, Derrida quotes the following passage from "Lapsus judicii" in order to clarify the deconstructive effects of a legality that erases its own property:

> Such is the *properly juridical* (neither founding, explicative, interpretive, verifying, or sublating—but doubling all these meanings, or, as is said in navigation, bringing them to the surface) meaning of the critical question: "How are synthetic a priori judgments possible?" (Nancy 1977:93).

Derrida adds the following comment to this passage: "Or again: if one absolutely wants there to be something properly juridical in these conditions, this is on the condition that it would no longer be strictly juridical" (Derrida 2002:200). Despite resembling a sort of overall colonization of the philosophical vocabulary by legal terms, we see here that juridicism is a one-sided metaphysical stance that erases law in favor of all the main logocentric values: presence, essence, nearness, property and truth. We are in the middle of a scene that has been instantiated several times in Derrida's *oeuvre*: the scene of a paradoxical foundation. Juridicism is, in fact, a *Urszene* where law is supposed to solve self-reference problems generated by philosophy's self-description. But it can only do so on the condition of overturning that which, in law, does not belong to the authority of command; that which eschews legal certainty, that is, the casuistic and fictional form of *juris-diction*.

Juridicism and normativity

According to Derrida and Nancy, the empire of the question "*quid juris?*" is not, strictly speaking, law's empire. Logonomocentrism secures logocentrism by evoking a *properly juridical form* that, in reality, erases the fundamental *property* of every legal system: the property of not having a proper. This antinomic formulation is the result of something that Nancy has captured under the notion of "*lapsus.*" For Nancy, legal normativity is inseparable from the institutional technicality of law. Law is a normative system of organized coercion based on the interaction between rules and cases. And this includes not only the judicial fact-finding process through which the underlying facts are ascertained. Legal technique is concerned with the application of legal rules and principles, i.e., the determination that the facts in question fall under the application domain (*Anwendungsbereich*) of a norm. Law's systemic nature allows two different sets of interpretations. In the first set, jurisdiction enounces the law of a case and, in this sense, "it subsumes [the case], it removes its accidentality, it raises it from its fall" (Nancy 1977:85): Law would then function as Hegel's *Aufhebung*. The other set, however, reverses this affirmation. Law is nothing but the accident since it acquires meaning only in light of contingent

facts that actualize possible legal states. Here is what Nancy writes about this second interpretation:

> [Jurisdiction] states the law in and through this particular case; law only exists, in a way, through the case, through its accidental nature; if the case, once judged and *cased* [*casé*] (*casa*, the house, has nothing to do with *casus*), is lifted up, it nonetheless remains that it has fallen into its own fall. It "is" a fall: one lifts up what has fallen, not the act of falling itself. The logic of the case is to fall or slip on itself: a logic of relapse. In canonical law, the case, even when judged, is always susceptible to "*lapsus*" and "*relapsus*." It also bears—as we will verify—this other Latin name of the fall: *lapsus*."

"*Casa*, the house has nothing to do with *casus*": because of this effect of doubling, the law cannot go back home. Its economy is of one excess, expenditure and, why not?, a certain generosity. More exactly: "an excess of the gift over the essence itself" (Derrida 1992:10). Thus, *juridicism* means Law minus accident: it is the suppression of cases and casuistry in favor of an essence, an image of law that is constructed around the authority of hierarchical norm applications. According to this view, norms are once and for all standards that can anticipate and control every possible context where they will be applied.

Therefore, *juridicism* tries to create a safe passage between truth-making, justification and jurisdiction: stating the truth is asserting authority, and that authority comes from correctly applying rules determining the extension of concepts, words, ideas, etc. In the tribunal of reason, philosophy is not merely concerned with truth, but also with formalizing this connection in terms of duties and commitments. Drawing on H.L.A. Hart's famous distinction, we might say that philosophy does not oblige—it creates obligations (Hart 2012: 5).

Although Derrida emphasizes the need to differentiate between The Law (absolute and unconditional) and particular laws—especially in relation to hospitality (Derrida 1997:43, 2021b: 146)—he is not suggesting a law beyond the law grounded in a point of presence. His notion of an unconditional law does not adhere to recollection or adequation but operates, as we will see, as a counter-law, a form of the legal system's self-immunity. The discussion surrounding juridicism is crucial, because although Heidegger appears to deconstruct its premises, he ultimately reaffirms them. His search for a law beyond the law ends up being a return to propriety and ownership. This happens because, as Derrida had already noted in *Of Grammatology* (following Heidegger himself in this), it is not possible to simply negate or move beyond metaphysics. Similarly, it is not possible to simply abandon the law and the effects of juridical normativity in juridicism. The challenge lies in thinking how this system divides and enters into conflict with itself.

The conclusions we have explored so far address the problem of normativity. Traditionally associated with Kantian philosophy, the concept of normativity has, in recent scholarship, been reappropriated to frame "one of the oldest and most foundational philosophical questions, previously articulated through concepts such as "value," "good," "ought," "justification," "rationality,"

and "obligation" (Finlay 2010:331). Authors like Christine Korsgaard seek something like a "source of normativity" because, whether in morality, politics, logic or epistemology, the normative has to do with the incessant search for justification (Korsgaard 1996). To justify means to give force to reasons; a force of law. It is only possible to be compelled to act by a reason if this reason is accompanied by an authority that impels us. It is in this sense that juridicism takes up the notion of command. To enquire about the normativity of something is the same as asking about the origin of its power to command. In this sense, normativity is inseparable from the metaphor of the source; a source that has long been *fons legum et iuris*.

Whenever we say normativity we also say origin and foundation. The young Derrida has famously studied the antinomies of origin under the heading "the problem of genesis." He explored the nuances of genesis as both a general process of becoming and as a history at the level of essence (*Wesensgeschichte*). On the one hand, the term "genesis" evokes ideas of birth, conception, initiation, and, thus, foundation. It designates something unique, something that stands apart from any series— even a temporal one— and institutes absolute and independent novelty. On the other hand, genesis means the very impossibility of a proper beginning. Derrida writes: "there is no genesis except within an ontological and temporal totality that contains it" (Derrida 2003:xxi). In other words, genesis is the becoming of something in articulation with its past (and future). A genetic product arises from a line of continuity, a chain of events that challenges the idea of an analytic beginning. What Derrida calls the "problem of genesis" is therefore not simply the direct correlate of genetic phenomenology, but rather the outline of a contradiction between creation and becoming.

In a recent book, Alexander Schnell suggested that investigating the problem of genesis is the task of 21st-century phenomenology (Schnell 2021:23). According to him, phenomenology has always been bound up with what Eugen Fink called "*die phänomenologische Grundlegungsidee*," i.e., the founding, the grounding, the groundwork, the "Laying-a-ground" (Fink 1966). Schnell believes that Derrida's hypotheses about the genesis only make sense when contrasted with this destinal aspect of the idea of foundation.

In addition to his criticisms of the eidetic of genesis, the punctuality of the present in temporality and the Husserlian teleology, I would like to suggest something about what is perhaps the most important consequence of Derrida's problem of genesis: the impossibility of drawing a stable boundary between the factual, historical and mundane on the one hand, and the transcendental on the other. The contamination between these two registers impacts the enigma of validity.

Ever since his *The problem of genesis in Husserl's philosophy* and his introduction to the translation of *The origin of geometry*, Derrida has raised suspicions about the privileging of the theoretical over the practical in phenomenology. In *Speech and phenomena*, he draws attention to the fact that Husserl "always determined the model of language in general—indicative as well as expressive—on the basis of *theorein*" and "continued to affirm the reducibility of

axiology to its logico-theoretical core"(Derrida 1973: 71). The problem, as Derrida points out, is that at key moments, Husserl inevitably turns to the practical sphere to justify or underpin the very theoretical priority he seeks to maintain. Practical language consistently intrudes into the realm of theory—whether in the explanation of transcendental inner dialogues, the framing of philosophy as an infinite task, or in the definition of phenomenology as a rigorous science.

Derrida displaces the classical form of the *Grundlegungsidee*. Instead of asking what are the theoretical foundations of normativity, he interrogates why normativity contaminates the very gesture of "Laying-a-ground." If we revisit propositions (iv) and (v), which address the shift from *es gibt* to *es gilt*, we can see that *Geltung* has functioned in metaphysics as a legal force beyond the positivity of any written law—a law beyond law that eliminates the role of contingency. The enigma of validity is an instantiation of the problem of genesis; and juridicism is a strategy to cope with it. However, this logonomocentrist solution is besieged by a return of the repressed. This is what seems to be said in proposition (vi), which is also taken from the aforementioned last paragraph of *Donner le temps II*:

(vi) the movement of *Ereignis* does not go without *Enteignis*, depropriation.

Tautologies and paradoxes: expropriation

I would be tempted to translate proposition (vi) as follows. In establishing the tribunal of reason and "quid juris?" as the main tenets of a legal metaphysics, juridicism answers to the *Grundlegunsidee*: philosophy must lay its own foundations autonomously. As we have hinted before, autonomous foundations evidently raise self-referential difficulties. Pure self-reference does not lead to a meaningful laying-of-ground, but only to tautologies and paradoxes. In those circumstances, philosophy—or phenomenology for that matter—can only state that philosophy is what it is (identity to itself, tautology) or that philosophy is not what it is (paradox). A successful *Grundlegung* must be able to de-tautologize and de-paradoxize philosophy. Juridicism—or logonomocentrism, as I prefer—is a strategy aimed at doing precisely that. But how?

Niklas Luhmann borrows from cyberneticist Lars Lofgren the idea that self-reference is addressed through the "unfoldment" of self-reference. Quite significantly for our discussion, he indicates that this procedure consists of interrupting the positive or negative circularity of self-reference. Unfoldment, however, does not happen through an ultimate resolution, but by the institution of a regime of invisibility:

> In any case, processes of "de-tautologization" and "de-paradoxization" require the "invisibility" of the underlying systemic functions and problems. That is, non-tautological and non-paradoxical societal self-descriptions are not due to individual plans or intentions but are possible only if crucial systemic processes and operations remain latent. Only an observer is able to realize what systems themselves are unable to realize. Or, alternatively, we can say that the problem

is to avoid "strange loops," "tangled hierarchies," or their effects such as "double bind" without being able to eliminate tautologies and paradoxes as identity problems of self-referential systems (Luhmann 1990: 127).

I believe that Derrida understood (vi) in analogous terms. This is why law, for him, is always connected to (in)visibility (*droit de regard*), mystery, guardianship and crypts (Derrida 1976, 1985; Derrida, Peeters, and Plissart 1985). The limitless extension of the question "quid juris?"—allowing philosophy to "pronounce the law on the subject of law"— functions as an *unfoldment* procedure. Therefore, normativity appears as the institution of the invisible. Logicians normally deal with paradoxes by distinguishing different logical levels. Unfoldment works in the same way: whenever a paradox or a tautology arises, one shifts to a different logical level to resolve it. Luhmann suggests that paradoxes and tautologies are broken down by postulating two identities, one meta-level and a lower level. The idea is that meta-levels unfold the paradoxes of the lower levels. But this procedure necessarily leads to another problem: we must avoid asking what constitutes the unity of the difference between the two levels. This question cannot be answered, it can only be hidden. Unfoldment is thus accompanied by procedures that hide this ultimate paradox; and by "hiding" we mean "prohibiting," or "forbidding" access. One cannot solve tautologies and paradoxes; one can only differ them. We are in the realm of *différance*.

Whenever we ask for foundations, we ask for the normative status of reasons; whenever we ask for the normative status of reasons, we ask for validity; whenever we ask for the ultimate source of validity, we incur in paradoxes and tautologies. This is why, *from a philosophical perspective*, the *Grundlegung* is philosophy's destiny. If juridicism is to unfold this scene, it has to accomplish two tasks. Firstly, it has to guarantee legal security in the space of validity: philosophy must be identical to itself, and this means correctly applying the rules that regulate its own essence. Identity implies rule conformity. Secondly, it has to posit the difference between philosophy and non-philosophy in order to secure the very possibility of progress. This is attained by postulating that philosophy is an infinite task: not only an ideal, but also the obligation to pursue this ideal of validity through a path of continuous approximations.

Needless to say, juridicism has had to pay a price for this unfoldment of *Grundlegung*. This price might be its own deconstruction or, in other words, the deconstruction that inhabits those legal concepts. Now I shall take it as obvious that the passage from *es gibt* to *es gilt* through *Ereignis* is also the oscillation between two slightly different concepts of property. The economic property, the one described by Derrida in texts like *Given time: I*, is concerned with circular exchange, circulation of goods, amortization, expenditures and, of course, the idea of return. It describes the possibility of value. The legal property, nevertheless, is concerned with ownership. Of course, this distinction is purely didactical, since the two properties presuppose each other. But there is one element that the passage from *Ereignis* to *Geltung* sets forth: property is "the parceling of chances for access while acknowledging the corresponding

chances of others" (Luhmann 2004:155). A stable pattern of ownership regulates access to values and, in this sense, stabilizes the self-identity of subject and object. Consequently, the "proper" is not only an "entitlement to a private sphere of discretionary decisions" (Menke 2020: 208), but also a concealed space where access is fundamentally denied to others. Property is mystery.

This is the core of my argument: understanding the dual nature of law and the expropriation inherent to its casuistry allows us to infer that juridicism cannot uphold the system's stability. Something inevitably slips through—an excess of normativity, a legal accident. If *Grundlegung* is fundamentally the keeping of a secret (the secret concerning paradoxes and tautologies), can we not expect this unsolvable and undialectisable contradiction to resurface? If it remains a secret, even for authors who, like Heidegger, have undertaken a careful *Destruktion* of the metaphysical archive, is there not a moment when the problem of genesis comes up?

In the typescript notes preceding the transcription of the oral record from session 15, Derrida makes the following observation: "Respect [*égard*], regard [*regard*]. Passage to *Es gilt*. See *Folie du jour*." This last piece of our puzzle can maybe help us understand the *différance* at work in the legal *Grundlegund* that has occupied us here. When examining *La folie du jour*, by Maurice Blanchot, in *Parages*, Derrida insists on the fact that the respect for legality is associated with a regime of visibility (*égard, regard*), i.e., the regulation of what is visible. As Derrida's reading makes clear, Blanchot's writing leads us to the mystery of juridical self-reflection, this doubling effect that forces us to think not of the law's unity, but its division. What we might call a mystical institutionalism emerges from a single question: "What if law's very condition of possibility were the a priori of a counter-law, an axiom of impossibility that would drive its meaning, order, and reason mad?" (Derrida 1986: 254). Terms like "impurity" and "contamination" reveal the extent to which this internal division within normativity cannot be thought within the metaphysical framework of juridicism.

Just as "the moment of decision is madness," so too is the genesis of law. And by "madness," in this context, we must understand the impossibility of presenting an ultimate reason or foundation. Derrida links the excessiveness of law's genesis to the double affirmation (*yes, yes*) that both repeats and inaugurates this excess. This is an exposure to the other which is, indeed, a call or an alliance. It is now clear that the ontological and normative registers endlessly contaminate one another. Legality, as writing, crosses over into the general domain of appearance: "There is no affirmation, especially not a double affirmation, without a law coming into being and daylight becoming right. Such is the madness of the day, such is a narrative in its "remarkable" truth, in its truth without truth"(Derrida 1986:282).

Thus, proposition (vi) challenges the authority of Heidegger's reading of *Ereignis and Enteignis*. Heidegger suggests that it belongs to the gift a "keeping back (*Ansichhalten*)." This means that *Ereignis* keeps something to itself in a regime of non-visibility: it is a denial, a withholding or, more exactly, a self-withdrawing. We are not very far from the idea of "unfolding" when we

consider that *Ereignis*' fundamental property is withdrawing "what is most fully its own from unconcealment" (Heidegger 2002: 22). This is the moment, in "Zeit und Sein," that Heidegger introduces the idea of *Enteignis*, i.e., an appropriation that exproprates. But this following comment seals the difference with respect to Derrida's position: "Expropriation [*Enteignung*] belongs to Appropriation [*Ereignis*] as such. By this expropriation, appropriation does not abandon itself—rather, it preserves what is its own" (Heidegger 2002: 23). The basic idea underlying Heidegger's *Enteignis* consists of reaffirming the proper despite self-withdrawing. Appropriation is the law of property and expropriation only serves to confirm it. To go back to Luhmann's unfoldment, in Heidegger we do not interrupt any positive or negative circularity of self-reference: on the contrary, the *oikos* obeys a law of reappropriation.

The destinal aspect of session 15 lies in the fact that, halfway between the theoretical and the practical, the enigma of validity is constituted as a mystery. Encrypted as a double effect of the law, there seems to be no escape except to stand before the law. But was this not already the primal scene of *différance*? Was it not a scene of expropriation without reappropriation?

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Gabrijel Reženđe

Enigma validnosti: spekulacije o poslednjem paragrafu *Donner Le Temps II*

Apstrakt

U poslednjem paragrafu zaključnog predavanja seminara *Donner le temps II*, Jacques Derrida iznosi—ali ne razrađuje—ono što ću nazvati „enigmom validnosti." Nakon detaljnog čitanja Heideggerovog *O vremenu i biću*, predavanje se naglo završava obećanjem da će se analizirati određeni prelaz: od *es gibt* („ima", „il y a") do *es gilt* („važi", „il vaut", i „il doit"). Ovo sugeriše da je skupu pitanja tematski organizovanih oko dara—među kojima se ističe ideja Bića koje postoji i koje se daje kao dar—potrebno dopunsko razmatranje. Enigma validnosti odnosi se na pojavu normativnog vokabulara podeljenog na vrednost, obavezu i interes. U ovom radu pratim neke od tragova koje Derrida ostavlja u *Donner le temps II* i drugim tekstovima, tvrdeći da je „misterija normativnosti" povezana s dvosmislenim statusom zakonitosti unutar metafizike. Validnost, kao mistička osnova normativnosti, funkcioniše istovremeno kao metafizički prečac za obezbeđivanje samoreferentnosti u filozofskom mišljenju i kao nemogućnost bilo kakvog temeljnog utemeljenja (*Grundlegung*).

Ključne reči: dar, normativnost, zakon, validnost, dekonstrukcija