

## DERRIDA'S CONCEPTION OF JUSTICE AS AN "ABSOLUTE SECRET" AND THE CONTAMINATION OF KANTIAN RESPECT

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Jacques Derrida's reading of Kant's ethics is intriguingly ambivalent. He appropriates Kant's distinction between "respect for the law" (*Achtung fürs Gesetz*) and "mere conformity to duty" (*pflichtmässig*), and re-iterates it in his conceptualization of the difference between "justice" and legality (what he calls *droit*):<sup>1</sup> a difference thought in terms of the "hyperbolic" excess and singularity of the ethical, always irreducible to the normalizing generality of the legal. One thus encounters passages like the following, from *Force of law*, where an explicit reference to this pivotal distinction of Kant's moral philosophy, is employed to underscore the distinction between Justice and legality (*droit*) that Derrida is developing there:

If I were to conform myself to apply a just rule, without a spirit of justice and without somehow inventing each time the rule and the example, I would perhaps be sheltered from criticism, under the protection of legality (*droit*); I would act in conformity to objective legality (*droit*), but I would not be just. I would act, Kant would say, *in conformity to duty* but not *out of duty* or *out of respect* for the law.<sup>2</sup>

But, on the other hand, Derrida also wants to mark a critical distance with respect to Kantian ethics, arguing that this pivotal distinction (between respect for the law, and mere conformity to duty) must not be thought as an opposition, but rather as having a structure of what he calls "contamination." In this essay I want to reflect on a problematic oscillation in this latter notion, which, I believe, might lead one in the direction of two clearly distinct functions that the thought of the "impossible" can have in thinking the ethico-political. At times Derrida conceives this "contamination" as a necessary contaminating passage between the ethical and the legal, and hence an impossibility to maintain the otherwise necessary distinction between these two registers. In other instances, the notion of contamina-

tion seems to convey, rather, a modification in the configuration of affectivity, the thought of "another passion." An affective modification or "inflexion" associated to the thought of an "absolute secret" that indicates the self's exposure to an un-presentable alterity. The "impossible" has to do in this case with this un-presentability, with the dislocation in the horizon of "presence" which it effects, and with the affective inflexion provoked by it. By following Derrida's attempt to rethink and displace the Kantian concept of "respect," I want to argue that these two possible connotations of the structure of "contamination," and the functions of the "impossible" associated to each of them, might need to be differentiated more unequivocally than Derrida himself, perhaps, was willing to accept.

In the 1993 text entitled *Passions*, the critical distance that Derrida wants to mark with respect to Kant's ethics is performed in two gestures: First, the claim that ethical responsibility not only needs to be thought beyond "mere conformity to duty" as Kant would have said, but even beyond the notion of "duty" altogether, including the pure "out of duty" that is an index of what Kant called respect for the moral law. Thus, in *Passions* one reads:

One should not be friendly or polite out of duty. We risk such a proposition, without a doubt, against Kant. Would there be then here a duty of not acting according to duty: neither in conformity to duty (*pflichtmässig*), as Kant would say, nor out of duty (*aus Pflicht*)?<sup>3</sup>

And the Second gesture, is Derrida's insistence that this Kantian distinction between "mere conformity to duty" and "pure respect for the law" needs, in the last instance, to be put into question, de-stabilized, to the extent that there is what he calls, as we just mentioned, an ineradicable contamination between the register of the legal and the register of the ethical.

These two gestures, one, the need to overcome the language of "duty" altogether, and two, the

need of conceiving the central Kantian distinction between the purely ethical and the merely legal, as precisely not being a "pure" distinction, but a contaminated one, these two gestures are performed in a text, *Passions*, in which the motif of the "secret" comes to appear at the center of the stage. An initial question for us would be, then: why does the Kantian distinction between the ethical and the legal, whose conceptual structure seems to be replicated in Derrida's own distinction between justice and legality (*droit*), become at a certain point inadequate in his attempt to rethink the ethico-political? What does this overcoming of the "language of duty" imply? These questions become more pressing because in several places Derrida characterizes the displacement in the thought of the ethico-political that he wants to provoke in terms that clearly evoke the very vocabulary of the Kantian distinction (and we know precisely how unusually attentive Derrida was to the texture of vocabulary and terminology). Thus, in an interview with Maurizio Ferraris to which I will come back again, at a moment in which he is explaining why a certain thought of "justice" is for him inseparable from a certain thought of the future, and also from the irreducible insistence of a certain "secret," Derrida affirms: "there can be no future unless there is radical otherness, and *respect* for this radical otherness."<sup>4</sup>

The second proposition advanced in the First Section of the *Groundwork* in order to define more precisely the notion of "good will," which is posited at the outset of that text as the only thing that deserves to be called good in a moral sense, reads precisely: "duty is the necessity of an action from respect for the law."<sup>5</sup> Hence, if the Kantian concept of "duty" is defined precisely by a certain respect, an attitude that Kant differentiates radically from the mere conformity of behavior to the rule or norm of general validity, how does Derrida want to go beyond the Kantian conception of "duty" appealing at times, precisely, to this notion of "respect"? The answer to this question seems to be that what Derrida attempts to displace is, precisely, the Kantian notion of "respect." The point would be to think this concept otherwise, and this implies, in Derrida's view, to

remove the affective force or tonality expressed in the configuration of moral subjectivity that Kant named respect for the law from the system of conceptual oppositions within which Kant would have struggled to account for this *sui generis* "non-pathological" and *a priori* feeling. In *Passions*, Derrida identifies this displacement with the task of re-thinking what a "passion" means, what the dimension of "affectivity" could mean, beyond the conceptual schema that opposes the sensible to the intelligible, the passive to the active, the pathological to the rational, a conceptual schema that is inseparable from what Derrida thinks as the structure of "sacrifice":

we know that the sacrifice and the sacrificial offer are at the heart of Kantian morality. . . . The sacrificeable is there always of the order of the sensible motivation, of the secretly pathological interest that it is necessary, Kant says, to "humiliate" in front of the moral law . . . this concept of sacrifice in general . . . presupposes all the apparatus of "critical" distinctions of Kantianism: sensible / intelligible, passivity / spontaneity . . . etc.; the same goes for the concept of the "passion"; *that which is being sought here, the passion according to myself, this would be a non-pathological, in the Kantian sense, concept of the passion.*<sup>6</sup>

How to understand, then, this displacement in the concept of "respect" that Derrida wants to perform? Let us bring these questions back to the "secret," which is the "name," so to speak, the impossible name of that which exceeds and resists the unity of the name, of that instance of "radical otherness" to which Derrida refers in the passage of the interview just quoted. Let us retrace some of the most intriguing structural characteristics of this "secret" that Derrida meditates on. First, this "secret" is associated with the concept of "the unconditional" (what seems to bring it again into the fold of Kant's thought of "the moral law"); and in virtue of its absolute or unconditional character this "secret" removes itself from a series of conceptual oppositions in the framework of which the theme of secrecy is usually thought, like those between the private vs. the public, the concealed vs. the manifest, the hidden vs. the visible. Second, Derrida argues that by removing itself from this schema of con-

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ceptual oppositions, this "secret" does not belong to the registers of knowledge or truth, which are governed by it. Its function is not to reveal itself to, or conceal itself from, knowledge; hence, what is at stake in this "secret" is not the question of truth:

There is a "secret" [*il y a du secret*]. Heterogenous to the hidden, to the obscure, to the nocturnal, to the invisible . . . to what is non-manifest in general, *it cannot be unveiled*. . . Not that it hides itself for ever in an indecipherable crypt or behind an absolute veil. It simply exceeds the play of veiling/unveiling, dissimulation/revelation. . . It does not belong therefore to the truth.<sup>7</sup>

And, finally, Derrida advances the thought that what is at stake in this "secret" is, rather than the questions of "truth" or "knowledge," the question of justice and the (im)possibility of justice. How so?

In his interview with Ferraris, Derrida affirms that the instance of an unconditional or absolute "secret" performs itself as a resistance against a movement that he calls here "totalitarianization"; at some point there he affirms that "if a right to the secret is not maintained, we are in a totalitarian space."<sup>8</sup> In *Passions*, this movement, called in the interview totalitarianization, is characterized as the "demand" of thematization, the requirement to give an account of everything, to always respond about oneself, to be always accountable. Derrida even refers to this demand of self-transparency and self-accountability, the demand to be always capable of responding thematically to the question about one's own self, which is traditionally associated with the notion of "responsibility," as the "worst violence":

The being-there of the secret belongs no more to the private than to the public. It is not a deprived inferiority that one would have to reveal, confess, announce, that is, to which one would have to respond by accounting for it and thematizing it in broad daylight. Who would ever determine the proper extent of a thematization so as to judge it finally adequate? *And is there any worse violence than that which consists in calling for the response, demanding that one give an account of everything and preferably thematically?* Because this secret is not phenomenalizable. Neither phenomenal nor

noumenal.<sup>9</sup>

Hence, if the "secret" is thought as a condition of the possibility of justice, this is because it, in virtue of its very structure, resists the operation of this violence exercised in the demand of transparency and thematization. And it can only resist it in virtue of its unconditional character. Derrida, thus, speaks of "justice" as "a relation to the unconditional that, once all the conditional givens have been taken into account, bears witness to that which will not allow itself to be enclosed within a context."<sup>10</sup> The structure of "justice" as a relation to the unconditional is, thus, the same structure of the "absolute secret." It is the structure of an instance of resistance against the closure of a "totality of conditions," a dislocation or an excess with respect to the present, to all that is. It is in this sense that Derrida says with respect to this excess or dislocation of "presence" and the "present," interchangeably called by the names of the "secret," "justice," or the "future": "there can be no future unless there is radical otherness, and respect for this radical otherness."

What is this that ties "justice," the "future," and the "secret"? It is, as we have just read it, a certain "respect": "respect for a radical otherness." Being a structure of "excess" or dislocation of presence and being-ness, this concept of "justice" is also in a relation of excess or dislocation with respect to any positive and determinate set of norms. As Derrida succinctly puts it: "Justice has to be thought of as what overflows legality (*droit*), which is always an ensemble of determinable norms, positively incarnated."<sup>11</sup> And it is precisely an excess and dislocation of this kind in relation to the sphere of any positive and determinate normativity, what Kant provoked with the most fundamental distinction of his moral philosophy introduced as early as the *Groundwork* in his explication of the concept of a "good will" through the concept of "duty": the distinction between "conformity to duty" and "respect for the law." If "duty" is defined as "the necessity of an action from respect for the law," the moral worth of a course of conduct becomes something that cannot be seen, that cannot appear or make itself present in an action's conformity to this or that set of positive norms. A legal action can be ethical or not, it would all depend on the disposition

or attitude out of which this action has been performed. Only if this attitude is "respect for the law" and nothing else, only then can an action be called "good" in a moral sense.

We know all these propositions quite well, but their radicality is rarely meditated on. I would now like to emphasize two implications of these propositions, implications which, as I will try to show, make the Kantian concept of "respect for the law" as the index of the ethical operate according to the same structural traits that we have retraced in Derrida's meditation on the "secret."

First implication: for Kant, the issue whether a certain behavior is ethical or not, even one's own, becomes an "absolute secret." In Kant's words: "it is absolutely impossible to [ever] settle [this] with complete certainty."<sup>12</sup> This absolute impossibility of probing or disclosing this "secrecy" constitutive of moral worth defined as "respect for the law" makes this secret function in a way that, in Derrida's terms, exceeds "the play of veiling/unveiling, dissimulation/revelation," and it does so in virtue of its unconditional character: this "secret" cannot be unveiled, never, under any condition. This is a conception of the ethical that, hence, like Derrida's idea of "justice," overflows any set of positive and determinate norms, and this excess comes about here, also, through the intervention of an "absolute secret." One that is not a yet an inaccessible, veiled or postponed "object" of knowledge, but rather the *pivot* that provokes the shift from the register of knowing to the register of a doing without knowing.

Because, as Derrida makes clear throughout *Passions*, the "absolute secret" he is attempting to meditate on destabilizes the conceptual schema that opposes the hidden to the visible, the private to the public, to the extent that it removes itself from the registers of knowledge and of truth which are structured within the framework of this schema. This destabilization, hence, is effected inasmuch as the "secret" is an instance in which the priority of the register of the constative over the register of the performative is reversed. And this is the second implication of Kant's ethics which I wanted to emphasize: that it effects precisely a reversal of this kind between the registers of the performative and the constative, insisting

on a certain effectivity, or even facticity, that of what Kant calls the "moral law," which overflows the order of knowledge. Thus, it is worth noting that Kant considers that his distinctive approach to the moral question introduces a revolution never seen before in the history of philosophy, precisely because it overturns the traditional relation of subordination between the theoretical definition of the concept of the "good" and the *practical* specification of the moral "law." In the *Second Critique* Kant refers to this revolutionary reversal by describing it as "the paradox of method in a Critique of Practical Reason." The paradox that, in the reversal of this hierarchy of the what over the how, the "law" of the how of doing must be specified in the absence or suspension of a positive and determinate answer to the question what is good, i.e., in the absence of a definition of the good. Kant writes:

the paradox of method in a Critique of Practical Reason, namely, that the concept of the good and evil must not be determined before the moral law (for which, as it would seem this concept would have to be made the basis) but only after it and by means of it.<sup>13</sup>

The "law" of the how of doing must be specified without knowing what is good. This specification cannot be achieved, then, by means of a constative determination of the form "the law is ... x, y, z." The "law" is, rather, specified by its own performativity, its own enactment. A performativity that Kant at times calls the force of the "law," and at times the doing of the "law." Kant thus writes, for example, in the *Second Critique*: "[the law] forces itself upon us of itself as a synthetic a priori proposition that is not based on any intuition" (CPrR 5:31; my emphasis); or, "The moral law proves its reality and that of its concepts by what it does [*durch die Tat*]" (CPrR 5:3).

Hence, it seems as if Kant's concepts of "the moral law" and of "respect for the moral law" effected a reversal of the registers of the constative and the performative, just as radical as the one which Derrida thinks he is indicating through the conceptualization of the structure of this unconditional "secret" in his text *Passions*. A structure that is, arguably, a reformulation of what in ear-

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lier texts he has called *differance* or “the law of laws.”

However, Derrida considers it necessary to mark a critical distance with respect to Kantian ethics. In *Passions* he does so by posing to Kant’s text the following question: does not the impossibility of determining in experience whether any action is ever truly moral or not affect the stability of the conceptual opposition between “pure respect for the law” and “mere conformity to duty”? The absolute secrecy constitutive of the moral disposition that is stressed by Kant, claims Derrida, contaminates the purity of this conceptual opposition:

the secret does no longer offer itself to any kind of deciphering, not even an infinite one, at the same time that one is no longer allowed to expect a rigorous decontamination between “conformity to duty” and the “out of pure duty.”<sup>14</sup>

So, for Derrida, the impossibility of knowing whether any conduct is ultimately ethical or not, an impossibility that arises from the “absolute secret” which is, in Kant’s text, the modality of the will’s relation to the moral law, is taken here by Derrida to be an indication that it is impossible to even draw an “uncontaminated” conceptual distinction between the merely legal and the purely ethical. But it functions precisely the other way around in the text of Kant: only because the distinction is marked conceptually in an unequivocal and radical way, an abyss opens, the abyss of the absolute secrecy of the ethical disposition at the basis of a certain course of conduct, an abyss that no knowledge is able to cross. Only insofar as the distinction between “respect for the law” and “mere conformity to duty” is drawn, at a conceptual level, in a way that is rigorous and unequivocal, only then can the insistence of the ethical open an *excess* that resists the closure of the regime of legality, an excess performed by an “absolute secret” that inflects a certain doing in the impossibility of knowing.

Summing up: Derrida’s critical gesture vis-à-vis Kantian ethics, as we noted, is articulated mainly around two charges: first, that Kant’s moral philosophy remains caught up in the scheme of conceptual oppositions (between the sensible and the intelligible, the pathological and the rational, etc.) that govern the orders of knowl-

edge or truth; and second, that the distinction between the regime of the ethical and the regime of the legal cannot be thought as an opposition, but rather as having a structure of contamination. We have attempted to interrogate the first claim and render it a bit problematical, by stressing how Kant’s own conceptualization of the *sui generis* feeling of “respect” tends to perform at least three movements or operations that Derrida considers to be part of the de-stabilization, and the overflowing, of this regime of knowledge/truth, provoked by the insistence of what he meditates upon under the name of the “secret”: first, because it complicates (rather than reinforces, as Derrida argues) the oppositions between the hidden and the revealed, or the concealed and the unconcealed; second, because it complicates these oppositions by introducing the insistence of an “absolute secret” that exceeds the regimes of knowledge or truth, and in this excess provokes a shift from the thematization constitutive of the regime of knowledge to the performance of a doing inflected by an instance, or an insistence, that resists all thematization; and third, because Kant’s concept of “respect” is framed within a general orientation that explicitly guides Kant’s entire approach to the moral problem, the attempt, precisely, of overturning the privilege of the theoretical over the practical (the privilege, in the terms that Derrida himself has often employed, of the constative over the performative).

Kant’s ethics, then, seems to perform these three movements that are so close to those that characterize the operation of the “secret” as Derrida meditates upon it. It complicates and destabilizes the schema of oppositions between the hidden and the revealed, the concealed and the unconcealed, the private and the public, and it does so through the insistence of an instance that exceeds the regimes of knowledge or truth, and in this excess provokes a shift from the thematization constitutive of these regimes to the performance of a doing without knowing. It thus overturns the privilege of the theoretical over the practical. How to understand, then, Derrida’s claim that he is radicalizing certain conceptual resources found in Kant’s moral thought to the

point in which this radicalization needs to mark a sharp critical distance in relation to it, a distance encapsulated in the notion of “contamination” with which Derrida wants to displace and modify the Kantian notion of “respect”? In order to address this question, and for the reasons expressed above, it seems necessary to differentiate in a more clear and unequivocal way the two possible connotations of the notion of “contamination” that remain inextricably entangled, and almost undifferentiated, in Derrida’s analysis. Contamination thought as the ultimate instability and untenability of the distinction between the register of the ethical and the register of the legal (or the normative). Impossibility of drawing and maintaining a conceptual distinction between these two registers. Or, contamination thought as a pe-

culiar inflexion and tonality of affectivity, a certain “passion”. The impossibility here, then, in this latter case, as the exposure to an un-presentable alterity, an “absolute secret,” that inflects the self’s conduct in the abyss of a not-knowing. In order to explore the promising path opened by Derrida in terms of thinking this exposure as a certain “contaminated respect,” and of thinking the ethical and political implications of this contaminated affection, or “passion,” it seems still necessary to maintain an uncontaminated distinction between the ethical and the legal; a distinction effected precisely by the performative insistence of a “secret” in virtue of which the excess of the ethical can resist the violent closure of the regime(s) of the legal.

#### NOTES

1. In Derrida’s *Force de loi* the distinction is formulated between the French terms *droit* and *justice*. The translation of this term, *droit*, into English is complicated. The term “right” might be misleading because it tends to refer to a specific kind of juridical laws related to the concept of “subjective rights” and the normative field it entails. But Derrida’s use of the term *droit* refers more generally to the establishment of a system of normativity constituted by positive and determinate norms. As we intend to use it in the translation of *droit*, the concept of *legality* cannot be circumscribed to the normativity of the juridical law. The latter is not the only manifestation of positive and determinate norms: the spheres of institutions (educational or medical, for example) or the economy are equally fields of enforcement of positive and determinate regulations of conduct. In order to mark this semantic elasticity of the French *droit*, we will write it in parenthesis after the term *legality* whenever it functions as its translation, even if by this we have to sacrifice a certain degree of stylistic fluency.
2. Jacques Derrida, *Force de loi* (Paris: Galilée, year), 39; “Force of Law,” trans. Marie Quaintance, in *Jacques Derrida: Acts of Religion*, ed. Gil Anidjar (New York: Routledge, 2002), 245.
3. Jacques Derrida, *Passions* (Paris: Galilée, 1993); David Wood “Passions—An Oblique Offering,” trans. David Wood, in *Derrida: A Critical Reader*, ed. David Wood. (Oxford: Publisher, 1992), 22.
4. Jacques Derrida and Maurizio Ferraris, *A Taste for the Secret*, trans. and ed. Giacomo Donis (Cambridge: Blackwell, 2001), 21.
5. Immanuel Kant, *Groundwork for the Metaphysics of Morals*, trans. Mary J. Gregor (Cambridge University Press, 1996), 40.
6. Derrida. *Passions*, 40; my emphasis.
7. *Ibid.*, 60; my emphasis.
8. *A Taste for the Secret*, 40.
9. Derrida, *Passions*, 58; my emphasis.
10. *A Taste for the Secret*, 17.
11. *Ibid.*, 21.
12. “It is absolutely impossible to settle with complete certainty through experience whether there is even a single case in which the maxim of an otherwise dutiful action has rested solely on moral grounds” (Kant, *Groundwork*, 23).
13. Immanuel Kant. “Critique of Practical Reason (1788),” translated Mary J. Gregor, in *The Cambridge Edition of the Works of Immanuel Kant: Practical Philosophy*, 63.
14. Derrida. *Passions*, 89.

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