
H-France Review Vol. 19 (September 2019), No. 186

Gerhard Poppenberg, *The Antinomy of the Law: The Myth of Orestes in Antiquity and Modernity*, trans. Mark Hewson. Heidelberg: Universitätsverlag Winter, 2018. 109 pp. Bibliography. €28.00 (cl). ISBN 978-3-8253-6911-8; (eb). ISBN 978-3-8253-7819-6.

Review by Jonathan Strauss, Miami University.

There are, perhaps, more beguiling titles than *The Antinomy of the Law*, any one of which might have more quickly attracted the broad audience that Gerhard Poppenberg's slim but searching volume richly deserves. Still, this one tersely encapsulates the core of his argument, which is that all law entails, by its very essence, a contradiction between two opposing and equally legitimate conceptions of what is right, or, in other words, two conflicting definitions of *nomos* or the law. Poppenberg builds his argument around a reading of two novels, Maurice Blanchot's 1948 *Le Très Haut* and Jonathan Littell's 2006 *Les Bienveillantes*, which he views as reworkings of the Orestes myth and consequently reflections on the paradoxical nature of justice itself. In this respect, Poppenberg approaches tragedy, or at least the *Oresteia*, from what John Lyons has called the idealist, rather than nominalist, version of the genre, which is to say he understands it as the conflict between two equally valid ethical systems.[1] Lyons himself traces this version through Camus back to Hegel, and, indeed, these are two of Poppenberg's principal reference points. In his readings, the antinomic structure of the law itself takes on a practical and historical force, appearing as a core conceptual issue driving the rise of fascism in France and Germany during the nineteen thirties and forties. The book, consequently, goes far beyond literary readings and theoretical interpretations to throw a new and revealing light on intellectual life in France before and during the Second World War.

Poppenberg begins by articulating the antinomial structure of the law through a reading of Aeschylus's *Oresteia*, the earliest of the ancient Greek tragedy cycles to have come down to us more or less intact. The cycle closes with the *Eumenides*, which depicts Orestes's trial for the murder of his mother. In this play, the Erinyes, or Furies, demand punishment for the matricide, while Orestes and Apollo, his advocate, argue that it was justified. The form of the trial itself is perhaps the most significant aspect of the play, since Aeschylus presents it as a new way to adjudicate crimes within the city and, consequently, as a replacement for an older order of familial justice embodied in the female figures of the Erinyes. Depending on one's point of view, Poppenberg argues, the two opposing claims are equally valid and just. This, then, would be the initial, the originary antinomy of the law, the primal scene, as it were, of justice, and Poppenberg underlines its violent nature, arguing that force replaces justice, or rather *becomes* justice in it, thereby laying the ground for what he calls a "political unconscious" (p. 22), the otherwise inaccessible memory of a moment that structures all later judicial developments as doomed

attempts to reconcile the original contradiction of the law—doomed because they are always a displacement of the true and unconscious problem at their source. In this way, Poppenberg argues, the pain inherent in the principle of justice reveals itself to be the sign of an underlying pathology or, as he puts it, “[n]omological knowledge is grounded in a nosological knowledge” (p. 22), an insight that prepares for a psychoanalytic reading of justice while helping explain the recurrent motif of pestilence and plague within the *Oresteia* and later works that rewrite or echo it, such as Sartre’s *Les Mouches*, Camus’s *La Peste*, and Blanchot’s *Le Très Haut*.

The latter novel, Poppenberg shows, examines the legitimacy of the law in the context of a totalizing or totalitarian state, in which the other of the law is always a crime that only serves to reaffirm the law. As a consequence, the law and its opposite are essentially equivalent, resulting in an “irreconcilable tension between the law and the resistance; the tension of the continual state of exception engenders madness” (p. 33). Poppenberg does a beautiful job of drawing out the intellectual and political anxieties encoded in Blanchot’s novel and he sheds light on the ways these anxieties engage with other leading thinkers of his period, notably Camus, Sartre, and Kojève.

Poppenberg’s provocative analysis invites further mediation. He insists, for instance, on the way that Blanchot and others around him pathologized the reaction to the unassimilable political unconscious that is the antinomy of justice, and he understands this underlying pathology to be an expression of what Freud termed the family romance (e.g. p. 36). We might, however, recall that this interminable pain was originally formulated in and as tragedy. From this perspective, we could infer that disease is a metaphor for the tragic structure of justice itself rather than the other way around, so that the origins of that endemic, guilty pain might lie elsewhere than the Oedipus complex. I would argue, for example, that there is a structural contradiction in the very desire for justice that neither Poppenberg nor Blanchot fully appreciates, but that could help explain the situation they describe: it is not so much that there are two countervailing ideas of justice, or that justice expresses the endlessly frustrating desires encoded in family structures, but that any specific articulation of justice cannot justify itself, since inevitably it must either appeal to another, more basic foundation for its legitimacy or legitimize itself on its own terms, thereby making its justification a *petitio principii*. The guilt that attaches to justice itself would derive from this original paradox. [2]

The following chapter, on “Nomos,” transposes the question about alternative forms of law and justice within a totalitarian legal regime onto the antinomy between individual and universal wills as conceived by Rousseau in his theorization of the social contract and by Hegel in his critique of the latter. While Rousseau saw the general will as the subordination of individual wills to a greater good, Hegel moved in the opposite direction, understanding the individual to be a particularization of an abstract principle of will itself. Poppenberg argues that since the relation between the two arguments is aporetic, it can best be understood in deconstructive terms. What is most remarkable in this dense analysis, however, is the way that he uses these categories—the individual and the whole—to frame the problem of how one moves from an abstract or general theory of justice to actual, i.e. individual acts.

Poppenberg uses this theoretical setup to explain Blanchot’s analysis of the double bind created by intellectuals’ responsibility to the law and the state. As Poppenberg puts it: “[t]he pacifist intellectuals make themselves guilty by their non-engagement; the engaged intellectuals who join the resistance become guilty by the evil means that they deploy in order to struggle for the

good” (p. 53). The problem of the relation between individual and universal, between essence and accident, comes to a head in the idea of the decision, which forces an articulation between them (pp. 57-58). This is now the aporia of justice: the insuperable contradiction between the law in theory and in practice. Poppenberg draws on Derrida’s reading of a passage from Pascal’s *Pensées* to argue that this aporia takes the form of violence, or a *coup de force* that is in itself neither just nor unjust—the decision and determination of what is just. [3] To the extent, however, that justice derives from a will to be just, I would argue that this original violence violates the principle of justice itself and frustrates the will to be just, thereby creating an inherent and permanent guilt. Tragedy, I would further argue, is the endless and displaced attempt to expiate this guilt through the sacrifice of its heroes.

For all its extraordinary insight, this chapter fits uncomfortably in the book as a whole, since it does not satisfactorily link the issues of justice back to the *Oresteia* or the tragic. Indeed, the figure of Orestes disappears almost entirely from its pages. And, more problematically, it presents the paradox of the law as a historical rather than structural problem, for one can imagine situations in which the passage from the law in theory to the law in act does *not* lead to the aporias created within a state of exception or a totalitarian regime. For that reason, while the analysis here goes far in explaining Blanchot’s position and the attitudes among his contemporaries, it does not really describe an antinomy in the principle of law itself.

The following chapter, on “anomy,” offers a double reading of Jonathan Littell’s *Les Bienveillantes*. On the one hand, it details the allegorical figures in the novel, showing how they recast the Orestes story under the Third Reich. On the other hand, it focuses in on a single passage, in which the protagonist, Max Aue, argues for the legitimacy and justice of the final solution in a way that—as Poppenberg compellingly demonstrates—engages and perversely resolves aporias in Kant’s theories of ethics and the law (pp. 81-84). Aue understands the universal in Kant’s categorical imperative not as humanity itself, but as the German *Volk*, an interpretation facilitated by the fact that Kant already identified humanity with reason, thereby creating an original exclusion within humanity itself. The articulation between the two halves of this reading, between myth and philosophy in *Les Bienveillantes*, remains, however, somewhat opaque. Poppenberg quotes Littell on the specificity of “novelist truth” (p. 70), but doesn’t explain the idea or integrate it into his analysis. Poppenberg seems to understand it as “family romance” (pp. 68, 74-76) or a mythical interpretation of the political, but it’s hard to see how that mythical romance meshes with Kant’s theories. This is a little surprising, since the description of the criminal state—of the state *as* criminal—in the Third Reich (p. 85) could easily have led back to the problematic origins of justice in the *Eumenides*, which, in turn, could have linked to Kant’s description of the law as *petitio principii* (pp. 82-84).

The final chapter draws on the concept of psychosis to explain the delusional world of justice under the Third Reich while bringing us back to the *Oresteia*. Poppenberg now identifies psychosis as the pathology that best expresses the antinomy of the law and describes it as a breakdown in Lacan’s symbolic order. In the absence of a transcendental signified to steady and limit it, the inherent fluidity of the symbolic order devolves into delusion. That being the case, Poppenberg asks, why should the *garde fou* constraining the symbolic order be the figure of Oedipus, and the originary family romance that of the Labdacids? Since the identity of the governing name within the symbolic is arbitrary, he argues, it could just as effectively have been Orestes. From the latter perspective, the trial scene in the *Eumenides* can be interpreted as the “primal scene” of the polis as “legal institution” (p. 103). This is a daring proposition, with deep-

reaching implications, but it leaves open some provocative questions. It depends, for instance, on Poppenberg's assertion that the new law of the city fails to incorporate the maternal, as represented by the Erinyes, into the symbolic order of the father, such that the father figure merely replaces the maternal image rather than stabilizing it (p. 100), which produces a psychotic structure at the heart of the law. But this neglects one of the most remarkable aspects of the resolution to the opposing claims in the *Eumenides*, an aspect that is recalled in the very titles of Littell's novel and the original tragedy itself: the Furies accept the judgment of the court in return for a new *name*, viz. the Eumenides. In other words, they willingly surrender maternal violence in exchange for a place within the paternal symbolic order. It would consequently be difficult to argue that it is the lack of a stabilizing paternal order that leads to the antinomy that Poppenberg describes. Rather than displacing the source of that antinomy onto family romances and the pathologies inherent to them, it would seem more productive to seek the contradiction of the law in the aporetic nature of justice itself.

This book's exceptional force comes, perhaps, from something like a novelist truth—not from being always right in every detail and point, but in the way it opens up deep questions on the nature of justice and its tragic history, in its probing analyses of key texts across many centuries, in the unexpected and illuminating connections it draws among them, and in the deep insight it offers into one of the darkest moments of the twentieth century.

NOTES

[1] John D. Lyons, *The Tragedy of Origins: Pierre Corneille and Historical Perspective* (Stanford, Calif.: Stanford University Press, 1996).

[2] Jonathan Strauss, "Philosophy and Social Theory: From Political Tragedies to Tragic Politics," in Mitchell Greenberg, ed., *A Cultural History of Tragedy in the Age of Enlightenment* (Oxford: Bloomsbury, 2019), pp. 88-89 (forthcoming).

[3] Jacques Derrida, "Force of Law: The 'Mystical Foundation of Authority,'" trans. Mary Quaintance, in Drucilla Cornell et al., eds., *Deconstructing the Possibility of Justice* (New York: Routledge, 1992), p. 13.

Jonathan Strauss
Miami University
strausja@miamioh.edu

Copyright © 2019 by the Society for French Historical Studies, all rights reserved. The Society for French Historical Studies permits the electronic distribution of individual reviews for nonprofit educational purposes, provided that full and accurate credit is given to the author, the date of publication, and the location of the review on the H-France website. The Society for French Historical Studies reserves the right to withdraw the license for redistribution/republication of individual reviews at any time and for any specific case. Neither bulk redistribution/republication in electronic form of more than five percent of the contents of H-France Review nor re-publication of any amount in print form will be permitted without permission. For any other proposed uses, contact the Editor-in-Chief of H-France. The views posted on H-France Review are not necessarily the views of the Society for French Historical Studies.

ISSN 1553-9172