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Illusion and betrayal The city, the poets, or an ethics of truths?

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*L'éthique des vérités ne se propose, ni de soumettre le monde au règne abstrait d'un Droit, ni de lutter contre un Mal extérieur et radical. Elle tente au contraire, par sa fidélité propre aux vérités, de parer au Mal – dont elle a reconnu qu'il est l'envers, ou la face d'ombre, de ces vérités.*¹

1. Introduction: the city and the poets

A nagging feeling of great expectations turned sour is in the air, at least at this end of the globe. The illusion appears to have been twofold. Those liberals who after the Cold War had wished finally to see the Western city win over competing forms of self-regulation, self-reproduction, and homeostasis can no longer fail to see how, by the time the twenty-first century has commenced, democracy and the rule of law, the West's own blueprint for living together, have lost some of their lustre, when they have not been bluntly rejected.² Those amongst the poets who, by contrast, had argued all along that another world was possible or, alternatively, that democracy and the rule of law could at most be promised or tendered rather than fully achieved or imposed, sometimes today worry whether in the process they may not have become somewhat problemati-

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1 A. Badiou, *L'Éthique. Essai sur la conscience du mal*, 2003, p. 126.

2 This is not to say that studies about democracy and the rule of law – from cosmopolitan or transnational democracy to institutional cosmopolitanism and back – have waned. If anything, they have intensified: see for example D. Held, *Cosmopolitanism: Ideas and Realities*, 2010; G. Nootens, *Souveraineté démocratique, justice et mondialisation. Essai sur la démocratie libérale et le cosmopolitisme*, 2010; P. Selznick 'Legal Cultures and the Rule of Law', in M. Krygier & A. Czarnota (eds.), *The Rule of Law after Communism: Problems and Prospects in East-Central Europe*, 1999, pp. 21-28. But see also S. Cassese, 'The Globalization of Law', 2006 *International Law & Politics*, pp. 973-993, p. 992.

cally if unwittingly fixated with what in the age of mass culture and of information technology some argue might be a potentially self-defeating aesthetics of the Other.³

Those liberals who feel disappointed that the whole world is not readily embracing democracy and the rule of law seem surprised that the Western city no longer necessarily appears to be that bright place that it had seemed to be, albeit in profoundly different ways, from Plato to Marcus Aurelius for example, or from Augustine to Aquinas, or from Bacon or Descartes to Kant, and so on.⁴ Pascal Bruckner for instance registers in a 'Postscript' added at the end of the English translation of his recent book on Western guilt what is for him the clear demise of the latest illusion of the West:

'Our civilizations thought they were global, and they were merely provincial. The long Western domination that began with the Renaissance in Europe and was prolonged in the New World is coming to a close. A history is now beginning in which we will no longer be the sole actors, and that escapes our control. The earlier vanquished peoples, the ex-colonised, are conquering their former masters and aspire to play by new rules. This is not necessarily a bad thing.'⁵

Bruckner's book is, in parts, bold and provocative. Firmly in favour of the Western city, it argues, however, that philosophers and sociologists are in the grip of a deep-seated sense of guilt dictating a 'spiritual routine' of self-flagellation imposing a 'duty to repent' which works as a 'multifunction fighting machine' that simultaneously 'censures, reassures, and distinguishes', in particular, Old Europe from America.⁶ Well crafted though it generally is, this somewhat implausible argument exemplifies well the malaise that appears to be increasingly common within certain liberal circles as well as some of the deeply problematic values of which it may be a symptom. And it is interesting that the tone of the 'Postscript' should be considerably more sedate vis-à-vis the rather energetic or more bellicose thesis espoused in the main part of the book. Outright disappointment, it would seem, has by now come out of the woods. By now, both democracy and human rights are felt to have fared much below the level one might have expected of those great ideas. Not so interested in Bosnia and Rwanda, Bruckner argues, the West, by contrast, was far too interested in Somalia (1993) and in Iraq (2003), while claiming to save the first from famine and the latter from dictatorship in spite of themselves. Meanwhile, the attempt to impose democracy and human rights has frequently encountered much unexpected resistance.

3 Thus the argument in this essay does not refer to liberals and to poets in general but merely to a specific sub-set or cross-section of post-Cold War liberals and poets who for different reasons now feel dazed and confused with regard to what is for them the seemingly disappointing outcome of their initial desiderata. Disappointment is, in theory, a conservative mood: see T. Honderich, *Conservatism*, 1991. However it is hardly a novelty on the Left: see for example T. Adorno *Minima Moralia: Reflections from a Damaged Life*, 1951; G. Debord, *Panegyric*, vol. 1, 1991; J. Baudrillard, *Simulacra and Simulation*, 1994; P. Anderson, 'Renewals', in *The New Left Review*, no. 1, 2000. For some instructive reviews of the broader gamut of liberal and poetic positions as they play out in relation to law see variously C. Douzinas & S. McVeigh, *The Law of Text in the Text of Law*, 1993; D. Luban, *Legal Modernism*, 1995; G. Minda, *Postmodern Legal Movements: Law and Jurisprudence at a Century's End*, 1995; N. Duxbury, *Patterns of American Jurisprudence*, 1997; P. Fitzpatrick *Modernism and the Grounds of Law*, 2001; D. Held, 'Law of States, Law of People', 2002 *Legal Theory*, pp. 1-44; J.M. Balkin, 'Critical Legal Theory Today', in F.J. Mootz III (ed.), *On Philosophy in American Law*, 2009, pp. 64-72; P. Schlag, 'Critical Legal Studies', in *Oxford International Encyclopaedia of Legal History*, 2009, p. 295.

4 The fault line in this rich and long-standing tradition lies between conceptions of the city and of its law as imagined by the Greco-Roman world and those characteristic of the Judaic-Christian tradition. The latter eventually prevailed over the former and, starting arguably with Aquinas, set itself to 'baptise' both the Greek city and the Roman law thus taking them forward into the Renaissance and beyond. However the decision in *Bush v. Gore* 531 U.S. 98 (2000) may well be, as suggested in some disappointed circles, one of the lowest points in the recent history of that tradition: cf. Balkin, *supra* note 3.

5 P. Bruckner. *The Tyranny of Guilt. An Essay on Western Masochism*, 2010, pp. 223-224. Bruckner's overall position is not new: cf. P. Bruckner, *The Tears of the White Man*, 1987.

6 Bruckner 2010, *supra* note 5, pp. 2-3.

The overall result for Bruckner is that other countries now seem again to be just that – *other* countries, neither like us nor unlike us, neither friends nor foes – leaving *us* with the uncanny task of having to recognize ‘both the unity of humankind and the non concordance of the different parts of humanity’.⁷ Accordingly Bruckner’s counsel is to stay put – to avoid both proselytizing and surrender – trusting that in the long war of ideas that is everywhere being fought reason and eloquence are the weapons to be used. Only thus may we hope to achieve the ultimate goal of combining ‘our impatience for freedom with the wisdom of wait’.⁸

The open disappointment and discomfort voiced by liberals like Bruckner appear to be matched, however improbably (at first), by that of some amongst the poets, albeit for opposite reasons.⁹ Poets are not as surprised as Bruckner seems to be by the obstacles encountered by democracy and the rule of law whenever they sought to establish themselves, not least within Europe or America themselves. All to the contrary, poets are conscious of having highlighted long ago the indeterminacies and so the sheer might that must be at the origins of the city – here, the Western city – and of having recommended instead a politics of withdrawal that is epitomised perhaps by Emmanuel Levinas’ radical ethics of the Other or even, to an extent, by Niklas Luhmann’s rather laconic conclusion that everything in modernity boils down to functional differentiation.¹⁰ In so doing poets more or less ironically claimed their immemorial hold of the city, much against one of the key foundational myths of the West according to which poets are better banished from the city unless they are prepared to sing its praise or, alternatively, to offer concrete evidence of their innocence.¹¹ But if poets thus thought to master what at first they appeared to have properly renounced, some amongst them wonder today whether they may not have to think again, in so far as a politics of withdrawal may have yet to demonstrate itself to be a politics at all and, increasingly, to be capable of withstanding successfully the quite specific and on occasion rather forceful politics of some Others.¹²

7 Ibid., p. 226.

8 Ibid., p. 226. On the French Left (and in no particular order), Julia Kristeva, Philippe Sollers, André Glucksmann, Alain Finkielkraut, Bernard Henry-Lévi, and Pascal Bruckner are, arguably, some of the most prominent amongst the so-called ‘new philosophers’ (*nouveaux philosophes*) who deeply divided the Parisian political and philosophical scene as they returned to liberal politics and the ideals of Enlightenment and Reason after years of radical engagement. It goes without saying that they were not the first to do so in France nor has the phenomenon of the new philosophers been exclusive to France or the return to the centre a characteristic of the Left. One of the earliest and most explicit *exposé* denouncing such a move remains perhaps that of Guy Hocquenghem, *Lettre ouverte à ceux qui sont passés du col Mao au Rotary*, 1986. For a recent and instructive testimony of the events at the heart of those different political and intellectual biographies see Bruno Tressaerch, *Vincennes*, 2011.

9 A family tree of today’s poets (if one has to look for one) would probably include Machiavelli, Hobbes, Vico, Marx, Nietzsche, Heidegger, Sartre, Althusser, Benjamin, Arendt, Foucault, Levinas, Said, and Derrida, for example (but the list could go on and on). These hugely influential thinkers inspired subsequent generations of scholars in vastly different and often opposite ways and inspired many contemporary movements such as, for example, law and economics, feminist studies, critical legal studies, law and literature, and critical race theory. At a minimum those highly diverse movements raised a range of deep, probing questions about the legitimacy and coherence of mainstream liberal views of the city and of the rule of law which justify my grouping them here together – only for argument’s sake – under the same broad hat. However, it is once again the disappointed amongst the poets who are of concern here.

10 Levinas’ politics of withdrawal are well known. Not so obvious by contrast is Luhmann’s own brand of quasi-postmodern distrust of the city and of its law which however emerges for example in his important distinction between change in the form of differentiation and change within function systems: see N Luhmann, ‘Answering the Question: What is Modernity? An Interview with Niklas Luhmann’, in W. Rash, *Niklas Luhmann’s Modernity. The Paradoxes of Differentiation*, 2000, pp. 195-221. But Luhmann’s withdrawal can also be detected, for example vis-à-vis the admittedly provocative question whether ‘a highly complex, functionally differentiated society needs stratification, needs center-periphery differences, or needs segmentary differences’ (p. 198). Here as elsewhere Luhmann’s answer may seem to be somewhat off-handish. For him, inequalities are a fact of life and what matters is rather how to exploit them, not how to lower or raise them to the same level.

11 In modern times such claims go back at least to M. Heidegger, *The Question concerning Technology*, 1953. However, some critics deny that such a hold should be the ultimate if discrete purpose of their critique: see P. Schlag, ‘Values’, 1994 *Yale J.L. & Human* 6, pp. 219; Minda, *supra* note 3.

12 I have in mind here fundamentalisms of all stripes and the delicate issues which they inevitably raise for a politics of withdrawal. See variously J. Derrida, *Politiques de l’amitié*, 1994; J Baudrillard, *The Spirit of Terrorism and Requiem for the Twin Towers*, 2002; P Virilio, *Ground Zero*, 2002; G. Borradori, *Philosophy in a Time of Terror: Dialogues with Jürgen Habermas and Jacques Derrida*, 2003.

2. Saturation, disrelation, and closure

Thus both the city and the poets appear to be impossibly torn by antithetical, but equally undecidable, propositions. On the one hand, the determination to see democracy and the rule of law accepted as the global political template of modernity unsuccessfully glosses over, it is now at long last increasingly realised, the primordial need we *and* Others have materially to be there, and to do so in one's own often vastly different ways.¹³ On the other hand, an alternative or poetic dream of more or less radical openness to such Others seems to be clashing today with a certain acquired taste for human rights which few amongst the poets dare call into question.¹⁴ Thus neither the liberals' recently heightened self-confidence nor the poets' more original self-effacement seem any longer to be always very convincing in the face of today's great transformations and of the limitations they highlight of both boisterous self-confidence and of any apparently quieter self-effacement. In their stead, a pervasive feeling of saturation, disrelation, and closure appears to have taken root (what Frédéric Worms might call *confusion*),¹⁵ and with it the associated fear that our great expectations, whether liberal or poetic, may have been at best a well-meaning but singular set of ill-founded illusions in need of a good trim. Hence, too, the perhaps insufficiently understood fragility inbuilt into the 44th President of the United States' otherwise somewhat surprisingly popular, rallying cry: 'Yes, we can'.

And it is precisely in the context of the disappointment felt by many amongst post-Cold War liberals and poets, and the associated sense of closure or blockage, that Alain Badiou's Platonism of the multiple and, specifically, his 'ethics of truths' must be examined.¹⁶ Before moving to Badiou's ethical proposition, however, it might be useful to flag up how the situation rapidly and no doubt imperfectly sketched out here may be not so dissimilar to what seems to have been the case throughout most of the twentieth century, despite the obvious necessity of keeping firmly in mind the different historical circumstances, specific modalities, and final outcomes of whatever singular history to which one might each time wish to turn one's attention. What was so crucially at stake then and what in a different way seems to be still at stake today is principally perhaps the mighty struggle and relevant perceived failures of humanism (as *civilisation* and *droit*), on the one hand, and of *Kultur*, on the other.¹⁷ Humanism spoke of the

13 In a postnational and postcolonial age it has become very hard to hold on to liberal or modernist positions unless one recognizes that their core defence of law's autonomy remains largely indebted to a specific view of the world and of its resources and the way these are supposed to be ordered and distributed.

14 For an overview of current debates on human rights see H. Steiner et al., *Human Rights in Context*, 2007. Amongst the early critics of human rights in philosophy was of course Hannah Arendt who thought them to be an ideology necessarily if dangerously linked to state power capturing humanity better to organize it while leaving it, paradoxically, all the more powerless for that: H. Arendt, *The Origins of Totalitarianism*, 1951. Today the ambiguous interplay of power and human life identified by Arendt is further elaborated by Giorgio Agamben in a series of interventions which, via Foucault and Schmitt and starting from G. Agamben, *Homo Sacer: Sovereign Power and Bare Life*, 1998, seek to show how political power irrupts into, or makes a spectacle of, bare life in ways that Arendt had not perhaps envisaged. In jurisprudence critiques of the ideology of human rights range from C. Douzinas, *The End of Human Rights: Critical Thought at the End of the Century*, 2000; C. Douzinas, *Human Rights and Empire: The Political Philosophy of Cosmopolitanism*, 2007; to C. Gearty, *Can Human Rights Survive?*, 2006.

15 F. Worms, *La philosophie en France au XXe siècle*, 2009.

16 On Badiou's Platonism of the multiple see A. Badiou *L'être et l'événement*, 1988; A. Badiou, *Logiques des Mondes*, 2006; A. Badiou, 'The Question of Being Today', in A. Badiou, *Theoretical Writings*, 2004, pp. 41-50; P. Hallward, *Badiou: A Subject to Truth*, 2003; P. Hallward (ed.), *Think Again*, 2004; G. Riera (ed.), *Alain Badiou. Philosophy and its Conditions*, 2005; O. Feltham, *Alain Badiou. Live in Theory*, 2008; C. Norris, *Badiou's Being and Event*, 2009; A. Badiou & F. Tarby, *La philosophie et l'événement*, 2010. On the implications of Badiou's work for contemporary legal thought see I. Stramignoni, 'Badiou's Nocturnal Jurisprudence', 2008 *Cardozo L. Rev.* 23, pp. 2361-2393; I. Stramignoni, 'Seizing Truths: Art, Politics, Law', in O. Ben-Dor (ed.), *Law and Art: Ethics, Aesthetics, Justice*, 2011 (forthcoming).

17 See generally E. Hobsbawm, *The Age of Extremes: the Short Twentieth Century 1914-1991*, 1994, for the periodization implicit in this view. The crisis in question need not be understood as a crisis of the creative element in culture (*cultura in costruzione*): F. Erspamer, *Paura di cambiare*, 2010, pp. 25-36.

One, *Kultur* spoke of the Other. Humanism hoped to avoid struggle, *Kultur* thought struggle to be necessary for *Bildung*. One sought to express universal values, the other cherished traditional and national ones. One looked for similarities, the other celebrated difference.¹⁸

It is instructive to recall for example the rather heated exchange between Romain Rolland (1866-1944) and Thomas Mann (1875-1955) at the dawn of WWI, involving a heady mix of art, politics, and law. When in the aftermath of the bombing of the Cathedral of Reims Rolland writes aghast of the German intelligentsia's apparent indifference or outright satisfaction that even landmark architecture such as the Cathedral (France's *Pantheon*; France's *Notre-Dame*) should be sacrificed in order to save German lives from ruin, Rolland does so in the name of a human spirit (*esprit humain*) and of a law (*droit*) which he undoubtedly understands to be both universal and French.¹⁹ Somewhat undeterred, Mann retorts from the pages of the *Neue Rundschau* two months later that there is in fact no doubt that there was a *German* war and that there was indeed a 'new explosion, the grandest perhaps and some say the last one, of the very ancient struggle of the Germans against the spirit of the West and the struggle too of the Roman world against an obstinate Germany'.²⁰ The situation at the time of this exchange was needless to say dramatic (the first *bataille de la Marne* was being fought then, between 6 and 12 September 1914) and emotions ran high.²¹ But the values felt to be at stake were clear. Truth and the rule of law were being confronted head on by the necessity of war and the openly nationalistic ambition to be the master of one's own destiny.²² While Rolland was careful to distinguish the German people at large from those who held positions of power, he was unequivocal that the latter were prone to mix up idealism and brute force with disastrous results. For his part, Mann was just as scathing in his response: Rolland suffered from a very French lack of cosmopolitan talent, and from a delusory belief that one could really place oneself, as Rolland was indeed suggesting, *au-dessus de la mêlée*. Worse, on closer inspection Rolland's work demonstrated for Mann deeper or darker traits that were for him very un-French in character (they were antidemocratic, anti-rationalistic, and anti-intellectualistic), at least if by that one meant those traits that in France apparently marked out the provinces vis-à-vis the centre. Thus if Rolland evidently accuses intellectuals like Mann of being part of the ruling group of people that does not represent the 'true' Germany, Mann, on the other hand, accuses Rolland of speaking an official 'truth' that hides the real one, and of invoking a *droit* that, however general, is the law of a particular group of people rather than an authentically universal law of all.²³

It should not be difficult to recognize lurking behind the Rolland-Mann exchange the same cultural context of the final charges that both Wittgenstein and Heidegger were to bring in their own different and rather idiosyncratic ways against Western metaphysics and so, therefore, to recognize the grammar of so many of the intellectual debates that took place across Europe and beyond after the two World Wars. Here, however, the main point is rather that those wars had brought about not only appalling material damage and unparalleled physical and psychological harm but also the double symbolic breakdown of both humanism (as *civilization* and *droit*)

18 The deeper implications for the history of Western law of such opposed world views which lie at its heart remain largely unaccounted for in current debates about the possibilities of a comparative study of the different legal traditions of the world. For a recent review of the state of play in the discipline of comparative law, see R. Cotterrell, 'Comparative Law and Legal Culture', in M. Reimann & R. Zimmermann, *The Oxford Handbook of Comparative Law*, 2006, pp. 709-737.

19 R. Rolland, *Au-dessus de la mêlée*, 1915. Cf. T. Mann, *Betrachtungen eines Unpolitischen*, 1918.

20 Mann, *supra* note 19, Chapter 1.

21 Rolland would later describe Mann's response as 'monstrueux': See Rolland, *supra* note 19.

22 The German word for 'necessity' employed here is '*Not*' which is interesting for all sorts of reasons.

23 For an instructive study of the exchange between Rolland and Mann see C. Edet-Ghomari, 'La polémique Roman Rolland – Thomas Mann', in A. Laserra et al. (eds.), *Mémoires et antimémoires littéraires au XXe siècle: La Première Guerre mondiale*, 2008, pp. 33-50.

– which had so obviously failed to prevent the deadliest of wars – and *Kultur* – whose earlier praise of struggle could never in future be entirely uncoupled from the subsequent and ferocious excesses of the Third Reich. With those two Wars the two opposing truths of humanism and *Kultur* that had been fiercely and very physically confronting one another in Europe during the nineteenth century and the first half of the twentieth, appeared to be two sets of deeply destructive illusions or, alternatively, two related sets of discursive strategies or «styles» to be deployed against or in favour of the Other ‘without’ – communism and then state socialism above all, perhaps, but also women, blacks, prisoners, the mad, the colonized, sexual minorities, the disabled, the aged, and generally those that the Western city and its law rejected, had made to feel unwelcome, or had simply blotted-out – leading, later on, Claude Lévi-Strauss to speak of the humanist as a *bricoleur*, Jacques Derrida to argue that *all* discourse is *bricoleur*, Jean-Francois Lyotard to register the widespread decline of or incredulity towards certain long-standing but now obsolescent meta-narratives (total knowledge, unstoppable progress, absolute freedom etc.), Jürgen Habermas to retort that such narratives are merely incomplete, or Fredric Jameson to conclude that one cannot help but to historicise and that «grand narratives» remain, therefore, both necessary and utterly desirable.²⁴

3. The ethical space of illusion

But how to grasp the disappointment which circulates today amongst liberals and poets alike? And what can be done?

Illusions, Freud argued in his writings on religion, are born out of desires which, however, do not have to be unrealisable or in conflict with reality. Thus an illusion is not the same as an error for Freud, nor is it necessarily an error. Put differently, illusions are generally independent of any measurable reality and must be therefore treated as such.²⁵

So for Freud there is reality and there is illusion.²⁶ Freud’s own desire was probably to ensure that psychoanalysis had a more positivistic or scientific basis than feared by the sceptic, but for present purposes we can leave Freud’s problem aside and turn instead to the circumstance that illusions will have normally resulted in *oversight* or, alternatively, in *mirage*.²⁷ In oversight illusions arise from not seeing what is *also* there. In mirage illusions arise from seeing what is *not* there. Oversight keeps reality out, mirage imagines reality to be otherwise. Either way, illusions have an obvious regulatory function which helps us deal with what, deep down, we fear we do not or we cannot control. Thus illusions may be detrimental, they may be oculocentric or logocentric, and they may lay bare a certain will to mastery. They may, in other words, amount

24 C. Lévi-Strauss, *La pensée sauvage*, 1962; J. Derrida, *Écriture et différence*, 1962; J.F. Lyotard, *La condition postmoderne: Rapport sur le savoir*, 1979; J. Habermas, ‘Modernity Versus Postmodernity’, in 22 *New German Critique*, (1981); F. Jameson, *Postmodernism or, The Cultural Logic of Late Capitalism*, 1991. In a similar vein, see R. Rorty, *Philosophy and the Mirror of Nature*, 1979; A. Gargani (ed.), *La crisi della ragione*, 1979; and in law see for example J. Boyle, ‘Is Subjectivity Possible? The Postmodern Subject in Legal Theory’, 1991 *U. Colo. L. R.* 62, p. 489; I. Stramignoni, ‘At the margins of the history of English law: the institutional, the socio-political, and the ‘blotted-out’’, 2002 *Legal Studies* 420. For Luhmann Lyotard’s position negating meta-narratives may be right but it does not provide us with much information, while for others Lyotard’s position amounted to wishful thinking, particularly as regards the natural sciences (Erspamer, *supra* note 17, p. 73). Western law continues to be central to civilization for Balkin, see *supra* note 3.

25 See generally S. Freud, *Complete Psychological Works of Sigmund Freud*, 2001, vol. 21.

26 Freud also distinguishes illusion from psychiatric delusion: S. Freud ‘The Future of an Illusion’, in Freud, *supra* note 25.

27 I am adopting and adapting Freud’s distinction between the result of the delusional reshaping of reality and illusion proper: S. Freud, ‘Civilization and its Discontents’, in Freud, *supra* note 25.

to a veritable and very modern form of cultural blindness marking, in Lacan's own parlance, an impossible transition from the imaginary to the unrepresentable.²⁸ And yet they are there.

Both the disheartened liberal and the retreating poet seem to have shared (until now) what, adopting and adapting Freud's elegant and eloquent isolation of illusion and reality, we could then characterise as an ethical space or 'field' of illusion – a representation or set of representations that, whatever the actual reality behind it, will have been marked, on the one side, by a fundamental oversight for what *else* was there and, on the other side, by some mirage about what was in fact *not* there – a representation or set of representations which, moreover, will have emerged from the perceived final breakdown of both a stronger humanism and a healthy *Kultur* of the Other.²⁹ To the extent that liberals and poets came to inhabit such a space or to hold such a view, both democracy and the rule of law *and* many countervailing poetics of the Other became the vastly different symbolic responses to what was however felt to be a shared predicament of unprecedented gravity and complexity.³⁰ Or, to put it otherwise, the One of humanism and the Others of *Kultur* came under the spell or the cipher of an apparently unthinkable crisis. But today the ethical space of illusion that may have been somewhat paradoxically an effect as well as a cause of such symbolic responses has turned out to be a strangely closed place – disappointment has set in, horizons have blurred, economic forces seem everywhere to rule largely unbridled – even though until recently, and just as paradoxically, the contours of such a place may have seemed to have been more open-ended than they had ever been before.³¹ Crisis, one might say, has come to seem a rather real or dense phenomenon again, an uncanny but quite material or tight combination of illusion and imagined reality, and so much more of a threatening phenomenon for that. By contrast – and this seems to be a major difference between the position of someone like Badiou or Jacques Rancière³² or Slavoj Žižek,³³ and other analysts such as Emmanuel Lévinas, Michel Foucault, Jacques Derrida, Fredric Jameson, Giorgio Agamben, Bruno Latour, or Roberto Esposito, for example – Badiou's 'philosophical' project and specifically his 'ethical' proposition (what in a more precise fashion we might call his *philosophy of ethics*, with the proviso that for Badiou what is at stake in the perceived aftermath of both humanism and *Kultur* is neither philosophy 'proper' nor ethics in any recognizable sense of this word) seek to present us with a decidedly affirmative or forward-looking response to today's recurrent sense of saturation, disrelation, and closure as he attempts first to contextualise and so separate or

28 See J. Lacan, *The Four Fundamental Concepts of Psycho-Analysis*, 1994; J.-A. Miller (ed.), *The Seminar of Jacques Lacan: Book I*, 1988. On the poetic or enigmatic link between vision and Justice see P. Goodrich, 'Justice and the Trauma of Law', in P. Ewick & A. Sarat (eds.), *Studies in Law, Politics, and Society*, 1998, pp. 271-279. On comparison understood as the silent beginning of all vision including visions of law and of justice see I. Stramignoni, 'The King's One Too Many Eyes: Language, Thought, and Comparative Law', 2002 *Utah Law Review*, pp. 740-773; Stramignoni 2008, supra note 16; I. Stramignoni, 'Le regard de la comparaison', in P. Legrand (ed.), *Comparer les droits, résolulement*, 2009, pp. 147-178.

29 For the notion of field see M. Foucault, *La volonté de savoir*, 1976, Chapter 4.

30 The disappointment shown by many post-Cold War liberals and poets presupposes such a space which worked as the common place of two opposite but ultimately mutually sustaining sets of ethical positions. Detailed reviews of such ethical positions can be found in T.L. Beauchamp *Philosophical Ethics: An introduction to Moral Philosophy*, 2001; P. Singer *A Companion to Ethics*, 1991; and H. Lafolette, *The Blackwell Guide to Ethical Theory*, 1999.

31 For a useful concept that could be employed to describe such a situation see S. Marks, 'False Contingency', 2009 *Current Legal Problems* 62, pp. 1-21.

32 Both Badiou and Jacques Rancière explicitly advocate an affirmative form of political agency that does not require subordination to a universal principle or membership of an existing community nor understands human life to be abandoned to (or in the permanent ban of) a perverse mechanism of bio-power: see A. Badiou, 'Eight Theses on the Universal', in A. Badiou, *Theoretical Writings*, 2004, pp. 145-154; J. Rancière, 'Who is the Subject of the Rights of Man?', 2004 *South Atlantic Quarterly* 103, no. 2-3, pp. 277-296. On the differences between Badiou and Rancière with regard to human rights, see E. van den Hemel, 'Included but not belonging. Badiou and Rancière on Human Rights', 2008 *Krisis*, pp. 16-30.

33 Žižek's bibliography is large but see, for example, S. Žižek, *The Ticklish Subject: The Absent Centre of Political Ontology*, 1999; *Organs without Bodies: On Deleuze and Consequences*, 2003; *In Defence of Lost Causes*, 2007; and *The Essential Žižek*, 2009.

distinguish its liberal and its poetic aspects, and then to have us think again, to start elsewhere, or to take ‘one more step’.³⁴

While the ruins of *Kultur* were, according to W. G. Sebald, rapidly disposed of, especially in the German cities of Europe, in the hurried and somewhat misplaced attempt to destroy destruction through reconstruction, their ghostly presence certainly survived and haunted an already wounded humanism in innumerable and often quite effective guises. Above all, perhaps, their presence survived in the shape of what is today often if sometimes confusingly known as the ‘anti-humanism’ of the likes of Louis Althusser, Jacques Lacan, Michel Foucault, and Jacques Derrida. While by the sixties and seventies anti-humanism in its various declinations appeared to have established a new poetic hold of the city, today Badiou is concerned that the disappearance of revolutionary Marxism, on the one hand, and the subsequent revival of the ideology of human rights, on the other, might be dragging us back toward ethico-political positions that would be unpalatable for those who are still pre-eminently concerned with equality and even justice over what Badiou famously calls *capitalo-parliamentarisme*.³⁵ Especially troubling for Badiou is the fact that today’s prevailing ethics with their central concern for the rights of Man and now increasingly for the rights of the living must presuppose a living or human Subject of the sort endowed with certain natural rights that are somewhat presumptuously deemed to be both self-evident and accepted by the majority. This, Badiou argues, signals a worrying return to that old ‘humanitarian individualism and the liberal defence of rights against any form of constraint required by organized engagement’ which anti-humanism had sought so resolutely to overcome.³⁶

Badiou’s denunciation of the seamless spreading of a culturally determined notion of human rights in the void left open by the disappearance of a more robust Marxist alternative arguably fails to acknowledge the great many obstacles encountered by those involved in the project of human rights to pursue their agenda.³⁷ But the interesting point here is another one. What is interesting is that, on the one hand, Badiou’s ethical proposition in the face of today’s increasingly felt sense of saturation, disrelation, and closure, remains faithfully this side of the anti-humanist camp – and so, in that sense, it seems to remain closely linked to the *Kultur* of Others – and yet, on the other hand, Badiou proposes to start by circumventing, as it were, both liberal illusion and poetic reality, both humanism and *Kultur*, both the One and the Others. Once again, Badiou’s position in what is sometimes held to be nothing less than the age of human rights might be felt to be somewhat hyperbolic, or nostalgic, or perhaps both hyperbolic and nostalgic. And indeed on the one hand it is quite obvious that Badiou exaggerates for effect. In the Preface to the 1993 Greek edition of his book on ethics, Badiou admits quite candidly how,

34 A. Badiou *Manifeste pour la philosophie*, 1989, p. 12. Today this book must be read in conjunction with A. Badiou, *Second manifeste pour la philosophie*, 2009. I should add that Badiou’s philosophical project and ethical proposition span several decades so it is beyond the scope of this paper to provide a full account of either. However on ethics more can be found in A. Badiou, *Théorie du sujet*, 1982, especially pp. 293-346; S. Critchley, ‘On the Ethics of Alain Badiou’, in Riera, supra note 16, pp. 215-235.

35 Hemel, supra note 32. ‘We shall call ‘justice’ that through which a philosophy designates the possible truth of a politics’: A. Badiou, *Metapolitics*, 2005, p. 97.

36 A. Badiou, *L’Éthique. Essai sur la conscience du mal*, 2003. Readers unaccustomed to the fact that French philosophical discourse still employs the noun ‘Man’ (*l’Homme*) for ‘humanity’ might find Badiou’s usage irritating (see J. Scott, *Only Paradoxes to Offer. French Feminists and the Rights of Men*, 1997, for a powerful critique of the male *cogito* implicit in such usage). However, Badiou makes very clear throughout his many writings how central the idea of equality is for him, including equality between men and women, for example. Moreover, Badiou’s usage can be understood as a strategic provocation aiming to highlight the ‘in-human’ part of men and women as against both sentimental humanism’s focus on suffering *and* poetic hostility to reason, truth, and abstraction (and in favour of difference, the sexed body, etc.). For the remainder of this paper and to avoid unnecessary confusion I should therefore stay with Badiou’s usage employing ‘Man’ for ‘humanity’ or ‘human beings’.

37 For an overview of such problems see Cassese, supra note 2.

in fact, that book was spurred primarily by what he called a ‘theoretical fury’ (*colère théorique*) against those engaged in carrying out a *tabula rasa* of the thought of the sixties.

‘I could not see in such an operation, communicated by the television, by the press, and finally by all the politicians, anything else than a return to certain entirely obvious reactionary antics [*vieilleries réactionnaires*]: the priority of morality over politics; the conviction of the superiority of the bourgeois West over all the rest; the existence of an alleged «human nature», and of the «rights» [*droits*] which are associated with it; a vulgar anticommunism; the evidence, truly totalitarian, of the excellence of capitalism and its common political form, parliamentarism [*parlementarisme*]. And finally the subjection of philosophy, abdicating any critical function, to the established world-order’.

On the other hand, nostalgia has probably little to do with Badiou’s proposition. One could certainly doubt the potential of Badiou’s take on ethics today, if one could believe that the post-Cold War alternative put forward by certain liberals to the sort of emancipatory projects which Badiou recommends has been taking the form of a less boisterous proposition requiring sympathisers to accept no more and no less than the parallel principles of democracy and human rights.³⁸ On the other hand, while some of the poets closer to home have certainly retreated, as poets, from the places of power (so much of Badiou’s argument is directed against ‘*nouveaux philosophes*’ like Bruckner) – many more are assembling, as poets, elsewhere in the city and even elsewhere on the globe like in India and even in China, for example, and in Central and South America, and now on the southern shores of the Mediterranean sea.³⁹ Thus Badiou’s language is hyperbolic and certain things have been moving on – the Western city has considerably changed, and so has the enthusiasm of some of the poets for certain more or less radical alternatives to democracy and the rule of law – but language and intervening changes notwithstanding Badiou’s philosophical and ethical proposition remains attractive for those who find themselves to be in the heartland of the Western city and of its law as well as for those who operate elsewhere and yet find themselves increasingly caught in the web of a changing and more interconnected world where similar dynamics might be, to some extent, at play.⁴⁰

4. Evil and the Other

So then what is for Badiou problematic about today’s seemingly resurgent liberal ethics (one of two phenomena leading, for him, to the sense of closure mentioned above)? Badiou identifies three problems. To begin with, it is its circularity, in so far at least as such ethics, Badiou argues, seems to posit Evil *a priori* while at the same time setting itself up as the ultimate (political) judge of that Evil. Taking exception against what he acknowledges to be a widespread return to Kant, Badiou rejects the notion that:

‘there exist imperative demands that are formally representable and that are to be subjected neither to empirical considerations nor to the examination of the situation; that these

38 Cf., for example, the ‘Preamble’ to the *Declaration of Laeken* of 2001 which famously if somewhat unpersuasively announced that ‘*the only boundary that the European Union draws is defined by democracy and human rights*’.

39 A recent discussion of Badiou’s own positions vis-à-vis those of the *nouveaux philosophes* and, on the other hand, those poets who abandoned emancipatory politics altogether, is in Hemel, *supra* note 32.

40 Badiou’s ethics of truths is a philosophy of ethics in so far as his meditation on key concepts, premises, and methods of mainstream ethics is understood to come after the event. There is not, then, a meta-ethics in the normal sense.

imperatives apply to cases of offence, of crime, of Evil, and must be punished by national and international law; that consequently governments are required to include them in their legislation and to lend them all the reality they need; and that when that does not happen governments can impose them (the right to humanitarian interference, or to legal interference)'.⁴¹

Thus a liberal ethics as presented by Badiou somewhat dangerously presumes to discern what Evil might be even before encountering it and, moreover, it presumes to be invested of the job of issuing a verdict about it whereby the Good by contrast 'is what intervenes visibly against an Evil which is identifiable a priori.'⁴² Ethics that is (a particular ethics, however general it might in fact be argued to be) presumes to be *the* law. 'Law [*droit*] itself is to begin with a law [*droit*] «against» Evil. If «the rule of law» [*l'État de droit*] is required it is because it alone authorises a space for the identification of Evil (...) and provides the means of arbitration when the issue is unclear.'⁴³ However, not only is liberal ethics circular, but it is also a deceptively self-evident operation, in so far at least as suffering in and of itself supplies an immediate platform for ethical consensus. Thus to redress suffering must be the right thing to do because suffering is self-evidently Evil. Or, Evil is always (presumed to be) self-evidently such. And yet, on the contrary, such ethics is quite literally 'inconsistent' (*inconsistante*), and all around us points instead to an endless multiplication of egoisms, to the disappearance or extreme fragility of any politics of emancipation, to the increase of conflicts in the name of race, and to the universality of fundamentally unrestrained competition.⁴⁴ By starting from Evil liberal ethics is, in sum, set to enter into a self-legitimising circle which is dubious to start with and which, at any rate, cannot but fail in its self-appointed task of capturing true Evil in the first place.

The illusionary structure of today's prevailing liberal ethics, Badiou goes on, ends up constituting the Subject as a victim. This is also deeply questionable for Badiou and it is the second account on which, for him, a liberal ethics fails to convince. In some of his potentially most controversial pages Badiou argues how the self-constitution of the liberal Subject as a victim – far from being honourable as it might seem at first – intolerably levels it down to its animal structure; it returns it to a pure and simple living entity, quite literally a beast amongst others.⁴⁵ And yet, Badiou argues, the astonishing fact is that Man sometimes resists so that it is in this resistance that Man's genuine distinctive quality must be found. When dealing with Man, Badiou explains, 'we are dealing with an animal whose resistance, unlike that of a horse, lies not in his fragile body but in his stubborn determination to remain what he is – that is to say, precisely something other than a victim, other than a being-for-death, and thus: *something other than a mortal being*.'⁴⁶ Or, if there is something that truly singles Man out from other beings it is precisely its *capacity for immortality*.

'An immortal: that is what the worst situations that can be inflicted upon Man show him to be, in so far as he singularises himself within the diverse and rapacious flux of life. In order to think whatever aspect of Man, we must start from there'.⁴⁷

41 Badiou, *supra* note 36, p. 28.

42 *Ibid.*, p. 28.

43 *Ibid.*, p. 28.

44 *Ibid.*, p. 30.

45 *Ibid.*, p. 31-37.

46 *Ibid.*, p. 32.

47 *Ibid.*, p. 32.

This is a key insight which is useful to understand Badiou's take on human rights. That is to say, for him if there are «human rights» at all, these must be 'the rights of the Immortal, that affirm themselves by themselves, or the rights of the Infinite which exert their sovereignty over the contingent circumstances of suffering and death'.⁴⁸ And for Badiou *all* human beings are, however surprisingly, capable of being immortal, whatever their circumstances and whatever the truth they believe in. Put otherwise, Badiou goes on, Man is immortal because and to the extent that 'Man thinks, and Man is made of certain truths'.⁴⁹

Turning the Subject into a victim not only levels Man down to an organic or animal self but it also and just as problematically blocks the possibility of *thinking the Good* and so gathering people around such Good. This is for the simple reason that by starting off from the identification of Evil everyone's attention will be inevitably concentrated on, or distracted by, that particular if highly problematic exercise. Or, an excessive concern for Evil will inevitably fail to think what is Good in an affirmative or forward-looking way. But then, Badiou asks, how could anything ever be truly free to change? Whence might people derive the strength to be the immortal beings that they are capable of being? And what would be the destiny of thought, of affirmative invention, of creative thinking?

Finally, the third problem with a liberal ethics is that insofar as it starts from Evil in general, it will be likely to prevent us from thinking again the singularity of situations.

But then if that is the case – if a liberal ethics tends to be circular, deceptively self-evident, and essentially indifferent to the specific circumstances of the situation – what might take its place? In lieu of a resurgent but ultimately unpromising liberal ethics Badiou proposes to think ethics from an altogether different angle. To anticipate, Man would be first of all defined *positively* in relation, that is, to what Man can think, for the singular truths Man can strive towards (which for Badiou are the matheme, politics, the poem, and the amorous), in short for Man's capacity to be Immortal.⁵⁰ Secondly and related to that, a Badiouian ethics would start from positing the Good, not Evil. And thirdly, any humanity would accordingly establish itself upon the identification in thinking of singular situations.⁵¹ In other words (and this is key here), there can be no ethics in general for Badiou. Instead there can only be, if at all, an 'ethics' of the processes through which one deals with what is possible in a situation.⁵²

But if for Badiou one must be careful to avoid the illusion of Evil set up by a (resurgent) liberal ethics which grossly underestimates Man's capacity to be Immortal, so equally for him one must be wary of turning to an ethics of the Other like so many poets have done until now. Or, an ethics of the Other is, it too, responsible for bringing forth today's sense of closure – in so far at least as such ethics often leads to the obverse illusion of believing oneself to be welcoming such Other, of believing to be responding to its demands, when in truth such a supposed Other cannot be but a mirage masking a concern for ourselves, a concern for our own identity which is ultimately both narcissistic and aggressive. That is the other main position which is so common today and with which Badiou finds himself to be just as deeply at odds as with a liberal ethics of Evil.

48 Ibid, p. 33. Badiou explains that after Cantor 'infinite' no longer simply means that it is always possible to find a finite number which is larger than another finite number ('virtual infinite') but also that there are, in fact, infinite numbers which contain all infinite numbers ('actual' or 'real' 'infinite'). The latter are like the boundaries of the former: A. Badiou, *Le fini et l'infini*, 2010, pp. 21-24. While virtual infinite signals our finitude, actual or real infinite signals our ability to conceive and so master infinity (ibid., pp. 26-28).

49 Badiou, supra note 36, p. 33.

50 See Badiou 1989, supra note 34, pp. 13-20. Cf. Stramignoni 2011, supra note 16.

51 '*Toute humanité s'enracine dans l'identification en pensée de situations singulières*'; Badiou, supra note 36, p. 38.

52 Ibid., p. 38: '*Il n'y a – éventuellement – qu'éthique de processus par lesquels on traite les possibles d'une situation*'. We will return to all this infra, Sections 5 and 6.

Badiou's immediate preoccupation now is with Levinas's ethics of the Other, although his critique is admittedly neither exhaustive nor exclusive in this book.⁵³ In Badiou's Lévinas, the problem with the Same-as-I, characteristic though it is of Greek thought, is that it absents the Other, it prevents any encounter with the Other, and it consequently prevents any serious ethical aperture to the Other. By contrast, the anteriority of the Law of the Other that is characteristic of the Jewish tradition to which Levinas returns ironically enables such encounters and ethical gestures by signalling not what the Other is but, rather, what the Other demands. Here, then, the supposedly all-encompassing or universal city and its law are best replaced by the Law of the Other, by the Law of the stranger that knocks on our doors, in short, by poiesis. Thus Levinas' messianic ethics of the Other turns out to be '*the novel name of thought*, of that which has reversed its «logical» capture (the principle of identity) towards its prophetic submission to the Law of the founding alterity'.⁵⁴

So in Badiou's reading of Levinas' ethics, for justice to be done the city and its law must be replaced by the law of the Other. However in that case an ethics of difference, in so far as it is inspired by Levinas's work, is neither efficacious nor veritable for Badiou. There are many reasons for that. For one, such ethics cannot hope genuinely to win over the conflicting registers it evokes. And indeed how, Badiou rhetorically asks, could tolerance win over fanaticism, an ethics of difference win over racism, or an ethics of recognition win over an ethics of identity? On the other hand, such ethics of difference is generally unable to avoid the charge of both narcissism and aggressiveness. For who might this supposed Other be if not myself-at-a-distance both stabilised in its own identity and released from its own death-drive which, from now on, will pass on to the Other?

And yet, Badiou continues, taking, as one should, Levinas seriously presents us with an equally insurmountable problem. What would guarantee the overcoming of our (finite) distance from the Other would be the overcoming of a transcendent and properly infinite distance which sustains the Other and which Levinas calls the Totally-Other but whose ethical name is of course God. But if for Levinas no authentic ethics would be therefore intelligible in the absence of an unsayable God (*indicible Dieu*), then it is clear for Badiou that Levinas' ethics must be a philosophy annulled by theology (*annulée par la théologie*), and hence no longer something that is approached through philosophy, nor even something that is approached through a philosophy in the service of theology, nor even finally a theology in the common understanding of it as a discourse about the gods (theo-logy). Instead, such ethics becomes a pure ethics which is ultimately for Badiou the name of the religious.⁵⁵

Thus today's ethics of difference oscillates for Badiou between a pure ethics that is unutterable and a series of other ethical propositions that are either ineffectual or narcissistic and aggressive (or all of these together). Badiou, by contrast, proposes something radically different. More precisely, Badiou advocates an immanent ethics of the Same whose 'axioms' would be the following: first, from a strictly intra-philosophical point of view there is no One; second, the

53 Ibid., pp. 41-55. Hallward describes this end of the prevailing ethical ideology according to Badiou as 'vaguely Lévinasian' in contrast to the other end, described as 'vaguely Kantian': A. Badiou, *Ethics*, 2002, p. xiii (Translator's Introduction).

54 '*Le nouveau nom de la pensée, celle qui bascule sa capture «logique» (le principe d'identité) vers sa soumission prophétique à la Loi de l'altérité fondatrice*'; See Badiou 1989, supra note 34, p. 43.

55 Badiou's broad characterisation of the dominant ethics of difference and more specifically his argument around the (im)possibility of God dangerously reclassifies a long-standing and secular tradition of materialist critique by effectively identifying it with its supposed opponents. See V. Bell, 'On the Critique of Secular Ethics – An Essay with Flannery O'Connor and Hannah Arendt', 2005 *Theory, Culture & Society* 22, no. 2, pp. 1-27.

‘multiple without One’ is the law of being; third, only the void puts an end to the multiple; fourth, infinite alterity is simply what there is:⁵⁶

‘Veritable thought must maintain this: differences being what there are, and all truth being the coming-to-being of that which is not yet, differences are precisely what each truth sets aside [*depose*], or what makes them appear to be insignificant’.⁵⁷

Truths set aside differences, or at least they make differences appear insignificant. One must be careful, however. The Same is not what there is, for Badiou, but what comes about (*ce qui advient*). And that in relation to which there is but the coming of the Same is what Badiou calls a truth. Thus truths are indifferent to differences. And at the same time our capacity for immortality becomes a capacity for truth, that is to say, for Badiou, a capacity for being that which a truth requires us to be (*capacité au vrai, soit à être ce meme qu’une vérité convoque à sa propre «mêmeté»*):

‘There is no ethics other than an ethics of *truths*. Or more precisely: there is only an ethics of truth-procedures, of the labour that lets *certain* truths come into this world (...) There is no ethics. There is only an ethics-of [politics, love, science, art] (...) A philosophy seeks to build a *place of thought* where the different subjective types, as they are given in the singular truths of its times, coexist. But such coexistence is no unification, and it is therefore impossible to speak of *one* Ethics’.⁵⁸

5. An ethics of truths?

Badiou’s philosophy of ethics allows us to consider whether the disappointment following the strange discovery that both the regard of the city and that of the poets have limits, that they are both in some deep sense illusions – an undoubtedly disquieting discovery uniting many amongst the liberals and the poets in so far at least as today their multiple and very different responses to the perceived crisis of both humanism and *Kultur* may seem to have descended into closure – must not be critiqued as a figure of nihilism, specifically (in Badiou’s parlance) as a figure of *betrayal*, before it can be grasped in a more affirmative or positive way as that which might allow us to take, with the required discernment, caution, and courage, ‘one more step’. We will return to Badiou’s notion of betrayal in Section 6 below but for the moment suffice to say that the answer to that question seems for him to be yes. To dwell in despair because of the illusionary nature of the world or of reality amounts to, for Badiou, an indefensible form of nihilism.⁵⁹ And indeed just as so many liberals for Badiou need the illusionary presence of Evil to be able to become its victims and to judge it, so too many amongst the poets need the illusionary reality of Others to feel reassured as well as unburdened vis-à-vis their own increasing anxieties. By contrast for Badiou the problem today lies neither with a world which is disappointing nor with a reality that, it turns out, is equally disheartening but rather with something else altogether. Or, the problem for him consists today in the fact that if the poets were certainly right to denounce liberal illusions such as the illusion of Evil as untenable, on the other hand they seemed unable

56 Badiou 1989, supra note 34, pp. 49-50.

57 Ibid., p. 52.

58 Ibid., p. 53.

59 Ibid., p. 55-66.

to recognize the broader or, as Badiou might put it, *really infinite* possibilities of their own regard and of the Law of the Other as they themselves may have evoked it at any point in time.⁶⁰ That is, they seemed unable to recognize that ‘the age of the poets is now completed’ and that this, far from being a cause of despair, should be regarded as a true and potentially liberating opportunity.⁶¹ For Badiou it is this double-sided failure which generates disorientation and blockage but then again – and that is the good news, that is the difference between Badiou’s position and that of the disappointed liberal or the disappointed poet alike – saturation, disrelation, and closure can and should be carefully examined and indeed actively dealt with rather than accepted and even perhaps internalised as utterly unthinkable.⁶²

But Badiou’s critique does not stop there. Either way, the name of what he takes to be the blind necessity (*nécessité aveugle*) presiding over both disappointment and withdrawal must be first of all the economy. Again, one needs to be careful. For by economy Badiou means something which is both more dense and more pervasive than what is commonly understood by that expression (in short, it is for him a question of mathematical ontology, on the one hand, and of subjectivity, on the other), *and* less dense and less pervasive than what is perceived to be by disappointed liberals and disappointed poets alike (that is, the economy for Badiou circulates within a structured but always open situation). Specifically, to bring about the economy is for Badiou to flag up how the legal-political subjectivises the otherwise neutral or colourless flows of an expanding economic and financial market and how a liberal ethics then goes on to secure that subjectivity onto apparently incontrovertible moral grounds.⁶³ And, on the other hand, it is to highlight how an ethics of difference, for its part, withdraws from the city to the apparent (economic or financial) advantage of the Other and yet in so doing it quietly, if unwittingly, reaffirms the ultimate Law governing the city today: in Badiou’s now familiar parlance, the Law of *capitalo-parliamentarisme*.⁶⁴

Contemporary ethics thus appears to be marked for Badiou by a veritable fascination with Evil and with the Other which, in turn, is externally driven by the economy but deep down or psychoanalytically conceals a passion for death, for its ineluctability or certainty.⁶⁵ Such ethics moreover dangerously oscillates between a conservative wish (*désir conservateur*) that the order specific to our Western site be recognized all over the globe, in its mad mixture of unfettered objective economy and law (*droit*), and an ultimately deadly wish (*désir mortifère*) seeking just as nihilistically to achieve an individual yet entirely impossible total control over life (*une intégrale maîtrise de la vie*).⁶⁶ At one end of the spectrum lies the (intolerable) drive to launch so-called ‘humanitarian wars’ or even ‘preventive wars’. At the other end of the spectrum lies instead the equally intolerable drive to turn what might be an understandable concern for difference into the horrors of the ethnic state.

The situation is therefore serious but not at all without hope. And indeed and somewhat refreshingly Badiou refuses to accept such a seemingly impossible predicament and argues instead that one must discard the ubiquitous notion that Man-is-for-happiness or alternatively that

60 Cf. Badiou 2010, *supra* note 48.

61 Badiou 1989, *supra* note 34, pp. 49-58.

62 *Ibid.*, p. 74.

63 For an interesting explication of what Badiou means by subjectivity see A. Badiou, *The Century*, 2007.

64 Badiou, *supra* note 36, p. 58.

65 However, the connection here between money and the ethics of difference is left for the reader to work out, on account of what must be for Badiou its self-evident character. Moreover, to castigate any morbid ‘fascination’ for evil on the grounds that it is somewhat ‘life-denying’ may seem to be an ill-judged rhetorical move for a thinker as hostile to vitalism as Badiou.

66 Badiou, *supra* note 36, p. 65.

Man-is-for-death – such positions are illusory *and* nihilistic – in favour of the more forward-looking and, why not, optimistic notion that Man is the possible support of the *alea* of truths.⁶⁷

Badiou's analysis remains to be fully articulated but a few passages in his proposal can be highlighted here. On the one hand, it is important to rehearse how what is on offer is less an alternative ethics than a *non-metaphysical philosophy of ethics*, which must then be located within the more general terms of Badiou's broader discourse of the truth-event.⁶⁸ On the other hand, such a philosophy of ethics would be premised on the following starting points:

First, Man is a being like others which however can be summoned unexpectedly and by the circumstances to become a *subject*, to become immortal;

Secondly, an *event* is the supplement that calls upon Man to act in that way (for example, the 1792 Revolution; Abelard's and Heloise's encounter; Galileo's physics; Haydn's invention of the classic musical style; the Chinese Cultural Revolution of 1965-1967; a personal amorous passion; Gröthendieck's creation of Topos Theory; Schönberg's invention of dodecaphony; etc.);

Thirdly, a *fidelity* to an event is what triggers a *truth-procedure* off; thus, for example, Berg and Webern can no longer, after Schönberg, keep to the neo-romanticism that marked the turn of the century; physics can no longer, after Einstein's texts, go on like before; and so on and so forth. As a consequence 'fidelity to an event is the real rupture (thought out and practised) within the order where the event took place (political order, amorous order, artistic order, scientific order)';

Fourthly, a *truth* is what a fidelity produces in a situation; it is a material trace within the situation of the supplemental event; it is, in short, an immanent rupture;

Fifthly, a *subject* is neither a psychological subject, nor Descartes' reflective subject, nor even Kant's transcendental subject, but rather the backbone of a fidelity, the backbone of a truth procedure; in fact, it is what such a procedure induces, not what pre-exists to it.

Thus for Badiou the disappointed poet and the disappointed liberal alike are best reminded how Man, far from being hopelessly caught up in an ever more threatening mix of illusion and poetic reality (however closed that illusionary space may now appear to be), is a being which can always become a subject upon the occurrence of an unexpected event which will have triggered a fidelity to a resulting truth. Again, Badiou's five starting points need to be carefully woven together into his broader and long-standing analysis of the relationship of being and event and, even then, everything is not necessarily all clear and interesting questions are bound to arise which require a persuasive answer.⁶⁹ Quite what 'immortal' means here, for example, remains to be properly articulated as, on the one hand, transcendence has no place in Badiou's work and, on the other, after Heidegger mortality is precisely not the same as what is perishable (i.e. neither rocks nor animals are mortal).⁷⁰ Nevertheless, what is clear is that an ethics of a truth (*éthique*

67 'Entre l'Homme comme support possible de l'aléa des vérités, ou l'Homme comme être-pour-la-mort (ou pour-le-bonheur: c'est la même chose), il faut choisir' (*Éthique* 61).

68 To put it simply, an event for Badiou is 'something which lets a possibility appear that was invisible or even unthinkable': Badiou & Tarby, supra note 16, p. 19. Beside those mentioned in the text, crucial political events are, for example, the 1968 student movements, the Iranian Revolution, and the national movement in Poland ('Solidarity'), but St Paul's conversion within the Judeo-Christian world, Cantor's revolution in mathematics, the poems of Fernando Pessoa, Ossip Mandelstam, and Paul Celan, and Lacan's theory of love are all key events in Badiou's sense. For a brilliant example of the significance of Badiou's notion of the event in relation to Pessoa's poetry, see J. Balso, *Pessoa, le passeur métaphysique*, 2006.

69 Two key knots in Badiou's work – concerning the despecification of situations in general and concerning deliberation – are reviewed in Badiou, supra note 53, p. xxx-xxxvi (Translator's Introduction).

70 J.L. Nancy, for example, has variously clarified how finitude need not be understood nihilistically but, rather, as active and ongoing or even infinite deconstruction: cf. J.L. Nancy, *The Inoperative Community*, 1996; J.L. Nancy, 'Philosophie sans conditions', in A. Badiou (ed.), *Penser le multiple*, 2002; J.L. Nancy, *A Finite Thinking*, 2003. On this see K. Jenckes, 'Thinking the Multiple: Alain Badiou and Jean-Luc Nancy',

d'une vérité) must be 'what substantiates someone's presence in the composition of the subject induced by a truth procedure'.⁷¹ Badiou explains what he means by that in some detail.⁷² For current purposes, however, it suffices to say that an ethics of a truth lies in the knotting together of what Spinoza called 'perseverance in being' – an interested interest, or principle of interest (*principe d'intérêt*) – with what following Lacan Badiou describes as perseverance in that which ruptures or contrasts with such a perseverance – i.e. a disinterested interest, or subjective principle (*principe subjectif*). Thus for Badiou ethics becomes for an engaging of our singularity in the continuation of a subject of truth, or else a putting of the perseverance of that which is known at the service of a duration specific to that which is unknown.⁷³ In short, 'ethics' for Badiou is to keep on thinking. Or, in an alternative formula, ethics is not to forget what we have encountered.⁷⁴

Thus following Badiou's argument the ethical space which emerges from the apparent breakdown in modernity of both a stronger humanism and a healthy *Kultur* of the Other would be more productively or less nihilistically grasped as an *ethical space of truths* – an affirmative space where existing truths can be properly thought through – rather than a place or a field of (dis)illusion and despair.⁷⁵ And indeed truths are at stake for Badiou, not illusions, in the aftermath of a certain humanism and of the 'age of poets'. And so then their different structure is what is at stake too. A key difference between those structures perhaps would be that while truth procedures depend not only on the unexpected occurrence of a fleeting event exposing the void of a situation but also on a sustained fidelity to such an event, or 'uninterrupted investigation of the situation' (*investigation suivie de la situation*), such a procedure or fidelity is on the other hand neither necessary nor certain.⁷⁶ And so an ethical space of truths, as opposed to one of illusion, can only be *brought about*, if at all, and not judged or measured as an object existing 'out there'.⁷⁷ On the other hand, an ethical space of truths would be marked by a critical event appearing in the midst of a situation and so it would make no sense, in such a case, to speak of a mirage either. Instead, an ethics of truths in Badiou's sense *substantiates* one's presence in the composition of a subject induced by a truth procedure, i.e. by that which is not yet there (and may never be there), following on a signal event. Or, a truth is not brought forth by a poetic language that can only manifest itself from above or at a different point in time from us but, again, it is brought about through active involvement in a truth procedure. And so a mirage, if such a word could still be employed in such a context at all, would be something of a 'deliberate' mirage and so not an 'involuntary' phenomenon (as the etymology of that word might otherwise suggest) nor even a prophetic apparition, for example. Rather, it would be, as Badiou might say, the result of 'militant thinking'.⁷⁸

What is at stake today, for Badiou, is neither one universal Truth (democracy and the rule of law) nor a plural reality which must regulate thought poetically (the Law of the Other) but, rather, *the simple and obvious existence of certain generic truths*. Thus Badiou's ethics no doubt

2004 *theory@buffalo* 9, pp. 61-73.

71 'Ce qui donne consistance à la présence de quelqu'un dans la composition du sujet qu'induit le processus de cette vérité'. Badiou 2002, *supra* note 53, p. 72 (italics are the author's).

72 Badiou, *supra* note 36, Chapter IV.

73 *Ibid.*, p. 75: 'Mettre la persévérance de ce qui est su au service d'une durée propre de l'insu'.

74 Here Badiou resolutely contrasts the prevailing ethics of communication in so far as it amounts to pure communication, unconcerned by what is thus communicated, with an ethics of truths, whose engagement is to love that which 'one would never believe twice'; Badiou, *supra* note 36, pp. 81-82.

75 Badiou 1989, *supra* note 34, pp. 37, 96.

76 Badiou, *supra* note 36, p. 99.

77 In that sense at the heart of such a 'complex space of thinking' is the concept of the 'objectless subject': Badiou 1989, *supra* note 34, pp. 96.

78 *Ibid.*, p. 81.

aspires to highlight some sort of universality. However, 'its universality is a rigorously situated *project* in something like a Sartrean sense: it persists as an unending compilation of what, in the situation, is addressed 'for all', regardless of interest or privilege, regardless of state-sanctioned distinctions'.⁷⁹ But then what about Evil? Here Badiou's position is perhaps clearer than elsewhere, yet no less potentially contentious for that. What we must simply recognize at this time is the animal-like status of Man while at the same time excluding however that such an obvious and utterly odious quality of Man should hold any heuristic value at all. In that sense, Nietzsche was right when he declared the fundamental innocence of Man, its being quite literally beyond Good and Evil. And on the other hand Man for Nietzsche might well start off on its way to Immortality but then he can always be drawn back to serving his own brute interests instead. However, Nietzsche remains for Badiou in the grip of mirage whenever he goes on to imagine that some *über*-humanity could return Man to its pure or primordial innocence. In fact, there is no such *über*-humanity for Badiou, so much so that for him the human animal is best understood to be, in an especially felicitous turn of phrase, '*this side of Good and Evil*' (*en deçà du Bien et du Mal*).⁸⁰

So then what might such a complex analysis mean, more precisely? In the end, Badiou's ethical position is astonishingly, perhaps exceedingly simple. For him, Man's real situation 'this side of Good and Evil' simply means that the Good is the result of the rare existence of truth procedures, and that Evil is merely a consequence of such Good. However, the Good, for Badiou, is never one Good nor the Good of the Other, but what can be constructed as such in the midst of an otherwise open-ended situation:

'Paralysed by an immanent rupture, the human animal sees its principle of survival – its own interest – disorganized. Let us then say that the Good, if with that one understands how someone could enter the composition of a subject of truth, is properly the internal norm of a lasting disorganization of one's life'.⁸¹

Contra Plato, Badiou's Evil is therefore an aspect of the Good, and not the absence of truth, nor the ignorance of the Good. Or, the Good is not the consequence of Evil, nor are truths the consequence of untruths. Instead, 'it is because there are truths, and in so far that there exist subjects of those truths, that there is Evil'.⁸² Or, 'Evil, if it exists, is the unfettered (*déréglé*) effect of the power (*puissance*) of the true'.⁸³

6. Betrayal, or the arrest of thought

Badiou's final move, if we go along with it, allows to do away with the language of illusion and disappointment that is omnipresent today, and to start elsewhere instead. The point is not, for him, that democracy and the rule of law may be under attack (for they are not) nor that there may be in fact insurmountable limits to the Law of the Other but, rather, that there are certain truths 'out there' and that we might want to start from them until such time as a new signal event allows for change and for the formation of a new truth open to all. Thus the heartland of things for

79 Badiou, *supra* note 53, p. xiv (Translator's Introduction).

80 Badiou, *supra* note 36, p. 89.

81 *Ibid.*, p. 89.

82 *Ibid.*, p. 91.

83 *Ibid.*

Badiou lies neither in oversight nor in mirage but in the simple existence of certain truths which are there for all to see. And in the necessity to embrace at least one such truth or true Idea and never give up on its consequences.⁸⁴

But then what precisely is Evil for Badiou? As a truth procedure is marked by the three key aspects mentioned above (an event summons the void of the situation; a fidelity to an event helps bring about a truth but is never certain; and the resulting truth is always, always powerful) and as Evil is always the shadowy aspect (*face d'ombre*) of a truth, Evil for him is something that may have three names: simulacrum (or terror), betrayal, and disaster. There is simulacrum when what is evoked by an event is the fullness of an existing situation rather than its void. There is betrayal when a fidelity capitulates. And there is disaster when a truth is identified as *the* truth. Simulacrum, betrayal, and disaster are that which an ethics of truths attempts to stand up to. While Badiou's notion of simulacrum concerns, above all, the delicate task of telling one event from another, and that of disaster is designed mainly to prevent us from getting on our high horses, the notion of betrayal must be Badiou's strictly intraphilosophical response to the contemporary situation, specifically the widespread sense of great expectations gone sour that seems to unite disheartened liberals and withdrawing poets alike when they reflect about the limits of democracy and the rule of law *and* of its imagined alternatives.

Betrayal is born out of a crisis for Badiou, and it amounts to what Hallward describes as a 'fairly straightforward matter of temptation and fatigue'.⁸⁵ Thus betrayal for Badiou is quite simply the result of giving up on thinking or, which is the same for him, giving up on our being loyal to a new event or else to an existing truth. However, it should be clear by now that the sort of crisis implied by Badiou's notion of betrayal is of a very different structure from the sort of crisis that seems to be in the air today, affecting disheartened liberals and withdrawing poets alike. In Badiou's sense, there is here no sudden realization that one might have hopelessly misjudged or disregarded reality for what it actually was nor, alternatively, the suspicion that one might have been fantasising about it too much. Crisis is not for Badiou a question of oversight or, alternatively, of mirage. *That* crisis is not something which would be worth troubling ourselves about, for Badiou. Or, put it in a different way, the situation is never as confined or closed as some like to depict it and others might fear it to be. And so therefore no such crisis could affect any of the truths to which we are already committed (the matheme, politics, the poem, an amorous relationship etc.). Instead, a veritable crisis – to the extent that there is one – can only lie for Badiou in the risk of jeopardising the never-ending struggle between the principle of interest and the subjective principle taking place within the human animal touched by a signal event, existing or new. Or, a crisis arises whenever *we* fail in our never-ending attempt to stick to certain truths in spite of our own personal interest.

'There is, in itself, no "crisis" of a truth procedure. Triggered by an event, this goes on in principle ad infinitum. That which can undergo a crisis is one or more "someone" joining in the subjective composition induced by such a procedure.'⁸⁶

If, on the other hand, one is traversed by a crisis, then, in such a case, the ethical injunction for Badiou must be 'Carry on!', 'Hang in there!', 'Continue!'. Indeed for him one must carry on 'even when one has lost track of the procedure, when one no longer feels 'cut across' (*traversé*)

84 A. Badiou, *Petit panthéon portatif*, 2008, p. 10.

85 Badiou, supra note 53, p. xii (Translator's Introduction).

86 Badiou, supra note 36, p. 112.

by it, when the event itself has dimmed away, when its name is lost, or when one asks oneself whether such an event might not have named an error, that is to say a simulacrum'.⁸⁷

And so finally it is precisely at this critical or, indeed, ethico-political point that we are exposed for Badiou to the obscure risk of betraying a truth. Here there can be no mere abandonment of a 'past' truth, no mere turning one's back on it. One must instead and rather more problematically, even perhaps impossibly for Badiou, be clear that 'the Immortal in question never existed' (*l'Immortel en question n'a jamais existé*) and so therefore that one's subjective principle must be overcome, indeed that one must become a veritable enemy of that truth.

'As a truth procedure is an immanent rupture, you cannot "leave" it (...) other than by rupturing this rupture that had seized you. And the rupture of a rupture has continuity as a motif. Continuity of the situation and of certain opinions: nothing happened, under the name of "politics" or of "love", only an illusion at best, a simulacrum at worst'.⁸⁸

Seen from the viewpoint of Badiou's ethics of truths, then, the ethical space of illusion shared by disheartened liberals and withdrawing poets alike would be much more productively or affirmatively or less nihilistically grasped as a space of 'betrayal'. Or, the problem for Badiou is that *we simply stopped thinking, we stopped looking for genuinely new ideas*. The problem is, quite literally, the arrest of thought. And yet, Badiou suggests, 'it is through a certain labour of thought (*travail de la pensée*) that the human being becomes stronger than death'.⁸⁹ So while the prevailing ethics of the (Western) Subject as well as a countervailing ethics of difference operate as the 'main (albeit transitory) adversary for all those who endeavour to put forward (*faire droit à*) a line of thinking, any line of thinking',⁹⁰ an ethics of truths works by contrast as both a swift invitation to carry on, and a thinking built on discernment, courage, and caution. For there is no doubt that discernment is needed to avoid getting caught up with simulacra. And courage is needed too, to avoid capitulating. And finally caution is needed to avoid confusing our commitment to a signal truth with a fatuous commitment to *the Truth* (whichever that might be). Hence then Badiou's conclusion, from which we started off:

'An ethics of truths seeks neither to submit the world to the abstract government of a Law [*Droit*], nor to fight against an external and radical Evil. Instead it attempts to face up to Evil, by way of a fidelity that is appropriate to the truths – an Evil which it has recognized that it is the obverse, or the shadowy aspect, of those truths.'⁹¹

7. Conclusions

Alain Badiou's Platonism of the multiple and, specifically, his ethics of truths invite us to consider whether today's widespread sense of disappointment and closure about democracy and the rule of law *and* about many of the alternatives which we have been capable of imagining so far should not be rearticulated as a figure of nihilism, specifically as a figure of 'betrayal', and whether what may be required may not be instead discernment, courage, and caution, and to

87 Ibid., p. 113.

88 Ibid., p.114.

89 Badiou 2010, supra note 48, p. 28.

90 Badiou, supra note 36, p. 125.

91 Ibid., p. 127.

remain alert to the always possible occurrence of new signal events. Thus to a language of illusion, oversight, or mirage, emerging from the apparent breakdown in modernity of both a stronger humanism and a healthy *Kultur* of the Other Badiou prefers an ethics of truths which starts from the obvious existence of certain generic truths and yet is never closed off to the invention of new ones. And so the point for Badiou is not that democracy and the rule of law may be under attack (for they are not) nor, on the other hand, that there may be certain insurmountable limits to the Law of the Other but, rather, that there are certain generic truths for all to see and that we might want to start from those truths until such moment as new truths are brought about through the active involvement of many, which are open to all and which will have marked a critical change in the situation. To put it otherwise, the problem for Badiou is that we may have stopped thinking, we may have stopped looking for genuinely new ideas, we may have stopped believing in existing truths, or that new truths might always follow from new, unexpected events. The problem in short is the arrest of thought, that thought may have come to a halt, that we may no longer regard ourselves to be free to think what might be the Good in a situation and, then and only then, what would *not* be the Good, what would be Evil.

As presented, Badiou's ethical proposal is far from being fully developed and it is bound to be contentious, in more than one way.⁹² And yet it does suggest a powerful alternative to the dominant ethics of the One (or of the Same), as well as to a transcendent ethics of the Other (or of the Different), in favour of an immanent ethics of 'that which comes about', that is to say, an ethics of truths. As such, Badiou's ethical proposal contributes to a unique and imaginative critique of current events as they ceaselessly appear on the horizon of a more interconnected world, specifically a critique which purports to offer a more affirmative, and even optimistic, message than many competing analyses of democracy and the rule of law.

92 See Sections 4 and 5, *supra*.