fulfilling nomos before the law: on thanos zartaloudis' the birth of nomos[1]

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INTRODUCTION

Thanos Zartaloudis' *The Birth of Nomos* (EUP 2019) is an outstanding achievement. Its length, profundity, and assemblage of sources and subjects are overwhelming. Re-reading Greek poetry and the philological practices and traditions which transmitted, among other things, Homer, Hesiod, Pindar, Heraclitus, and the tragedians, with and against the grain, Zartaloudis frees up fundamental texts and interprets them anew. Using the patient framework of the historian and the philologist, Zartaloudis' rendition of the sources are, to use his own words, "conservative" yet open-minded. This combination of patience and open-mindedness to philological and philosophical speculation provides much food for thought. In the words of Giorgio Agamben, which actually open the first page

of the book, *The Birth of Nomos* "[...] renovates entirely our understanding of a fundamental term in the history of Western culture [...]", and it launches its readers towards the task to "rethink all of the themes that our ethical and political tradition has gathered around the word 'Law'". (Zartaloudis, i)[2]

In her essay on Walter Benjamin, Hannah Arendt wrote that "in the final analysis all problems are linguistic problems".[3] Just as "the Greek polis will continue to exist at the bottom of our political existence—that is, at the bottom of the sea– for as long as we use the word 'politics'".[4] One may argue that the same is true regarding the words *nomos* and Law. Yet, to the burdensome tradition that carries and covers its supposed foundations, preemptively challenging any take at its disclosure and exposure, to render that tradition inoperative (which is Zartaloudis' aim) is truly bold and breathtaking. Our reading aims to advance an arrangement of the work, highlighting its force and arguments, in order, ultimately, to consider its significance vis-à-vis the effectuality that sustains and surrounds the word Law. In other words, following the book's indebtedness to the work and thought of Giorgio Agamben, we advance a reading that indicates how this influence informs the research protocols mobilized in *The Birth of Nomos* and asks about some of the many speculative projections which may be pursued further taking Zartaloudis' scholarship as a point of departure. To do so, we provide an attentive reading of the book, while positioning it towards both Zartaloudis' earlier work and Agamben's oeuvre.

Anticipating our conclusion, we argue that *The Birth of Nomos* contends two main lines of analysis, which underlie its understanding and interpretation of all its sources throughout the whole work. First, Greek poetry has as its anchorage an understanding of the relation—if, as it will be discussed, one could write here of relation—between words and deeds that is completely otherwise. Second, the way *nomos* entails existence is also different vis-à-vis the way Law orders reality in the conventional modern understanding. Whereas the latter way would be marked by propriety and appropriation, the former is characterized by something that could not be described as a necessity or a process, and, most importantly, as appropriation—but rather as, in a certain sense, use. The first section is, then, dedicated to the protocol animating Zartaloudis' reading of Greek poetry, while the second section is dedicated to the indication, analysis and elaboration on its two key lines of argument.

1. A GENEALOGY OF *NOMOS* AS A PHILOLOGY OF ITS USES AND ITS *ARCHÉ*

At the start of the third and last section of the Preface of *Birth of Nomos*, we read that the method employed could be called "a genealogy", under the condition that "we agree that words do not have 'core' meanings, but rather uses (and that these uses cannot be distinguished from the existence in which they are experienced". (Zartaloudis, xxi) Some pages later, the text places a minor emphasis on a reading protocol—the 'semantic' method—as followed by Martin Ostwald in his *Nomos and the Beginnings of the Athenian Democracy* (Zartaloudis, xxxiv), which Ostwald himself explains is the attempt to identify and classify the great variety of uses of a certain term, enabling one "to discover the basic concept underlying each term in its own right",[5] by proceeding "inductively from the particular contexts" in which the terms are found, followed by an attempt "to discover whether a common denominator exists which at once gives a basic meaning of each term and explains how this meaning is applied in the contexts in which each term appears".[6] As the arrangement of these texts in the book suggests, one may attempt to read Zartaloudis' remarks on method, that is, on the inexistence of core meanings and the indistinguishability between uses and their corresponding existential experience, as aimed at Ostwald's semantic method and, most importantly, at its underlying comprehension of language. Perhaps it is so, but in any case the way language is apprehended and worked with is one of the keys to grasp not only the novelty of *The Birth of Nomos*, but an important first step in understanding the problems that it circumscribes and answers to.

"Philologists", as one reads in Agamben's *The Kingdom and the Glory*, "are more used to analyzing the meaning of words than their efficacy".[7] In a nutshell, Zartaloudis' scholarship could be described as a concern with the efficacy of nomos, subjecting the question to a thorough reading of an impressive array of original sources, while keeping an eye on how heavily they are burdened by tradition, and carefully following Agamben's note of philological caution. Perhaps a small interpolation on Agamben's text is fitting at this point, since it can offer us a cipher to understand the birth of *The Birth of Nomos*: "In order to understand the semantic history of the term *nomos*, we need to remember that, from the linguistic point of view, what we are dealing with is not really a transformation of the sense (*Sinn*) of the word, but rather a gradual analogical extension of its denotation (*Bedeutung*)".[8] In fact, Agamben continues, "the semantic nucleus (the *Sinn*) remains within certain limits and up to a certain point unchanged, and ... it is precisely this permanence that allows the extension to new and different denotations".[9] How does this extension, an analogical extension, take place? As the passage quoted above indicates, through the efficacy of language—or, by language as efficacy or, more precisely, in its performativity. Following William

Watkin's reliable schematization of Agamben's work on language—which has as its primary characteristic "its communicability defined in terms of its intelligibility or its operativity"[10]—in our attempt to expose the significant understanding of language and its taking-place that underlies Zartaloudis' research into nomos we should briefly consider some further parameters, drawn from Agamben's *The Sacrament of Language* and *The Signature of All Things*.

By way of the sacrament, words and deeds, word and action, are related. The relationship between word and deed is a concern that cuts across Hannah Arendt's work. Correspondingly, one can read Agamben's engagement with this relationship as an intimate, even if not announced, response to Arendt's grasp of it[11]; its unannounced character adding, admittedly, to how underdeveloped this vein of inquiry regarding Agamben's work currently remains. Reading some of Agamben's work through its connection with Arendt's is, indeed, of great help to its exposition. In *The Human Condition*, Arendt famously writes that "power is actualized only where word and deed have not parted company".[12] To succeed in endowing words and deeds "with some permanence", arresting "their perishability", is to "enter and be at home in the world".[13] One can easily read here what Agamben calls the anthropogenesis underlying the relation between word and deed, nothing less than that which is at stake in his discussion on the sacrament of language. If Arendt hopes to bring forth promises as the frame to bind words and deeds with an eye to the Greek political experience, Agamben searches to highlight its underlying apparatus, through the paradigm of the oath. In his words:

> For the living human being who found himself speaking, what must have been just as—perhaps more—decisive is the problem of the efficacy and truthfulness of his word, that is, of what can guarantee the original connection between names and things, and between the subject who has become a speaker—and, thus capable of asserting and promising—and his actions.[14]

The oath appears, in this regard, as the epistemological paradigm which exposes the operation of the relation between words and deeds, which takes place as and with anthropogenesis itself: "The oath express the demand, decisive in every sense for the speaking animal, to put its nature at stake in language and to bind together in an ethical and political connection words, things, and actions".[15]

As binding, and as relation, "the moment of the binding (through an oath) of human

potentiality (*dunamis*) to a particular socio-political and vocal form", (Zartaloudis, 176) sacrament is itself in the form of what Agamben calls abandonment. That is, abandonment "is the pure form of reference to something in general, which is to say, the simple positing of relation with the nonrelational".[16] Alongside or, perhaps, always already later—as its "epiphenomenon"[17]—to the anthropogenesis that brings and abandons human beings to language, there is the taking place of what one may refer to, using Zartaloudis's term, as the *anthroponomikos*.

One could interpret Zartaloudis' ingenious terminology as the philosophical-poetic transformation of two Agambenian insights regarding law—closely related to the question of the "efficacy of words". First, for Agamben, "the particular structure of law has its foundation" in the presuppositional structure of human language, which he takes as the fact that language in linguistic and philosophical thought has been considered to operate negatively, positioning something beyond itself (which, at its limits, is and remains ever-ineffable) but this presupposed and silenced negativity can be shown to appear through language itself, expressing "the bond of inclusive exclusion to which a thing is subject because of the fact of being in language, of being named", thus "to speak [*dire*] is, in this sense, always to 'speak the law,' *ius dicere*".[18] As Zartaloudis wrote in an earlier work: "The presupposition of the founding of law and politics (as much as religion itself) is not then to be assigned to a pre-juridical or a pre-religious realm but instead to the presupposition, within human language, of the relation between words and things, or language and praxis".[19]

The second insight refers to the performativity of language, which is exposed through an analysis of the oath. The oath establishes itself as the measurement of the relationship that it itself constitutes between word and action through "a process of desemanticization and suspension of concrete praxis":

> It can generally be said that not only language and law but all social institutions have been formed through a process of desemanticization and suspension of concrete praxis in its immediate reference to the real. Just as grammar, in producing a speech without denotation, has isolated something like a language from discourse, and law, in suspending the concrete custom and usage of individuals, has been able to isolate something like a norm, so the patient work of civilization proceeds in every domain by separating human praxis from its concrete exercise and thereby creating that excess of signification over denotation.[20]

This passage appears in a key chapter of *State of Exception*, titled "*Force-of-law*". Correspondingly, in *The Sacrament of Language*, one reads: "The 'force of law' that supports human societies, the idea of linguistic enunciations that stably obligate living beings, that can be observed and transgressed, derive from this attempt to nail down the originary performative force of the anthropogenic experience".[21] To nail it down is to desemanticize as a way of bringing out a "consubstantiality" or a "threshold" between word and action.[22] Linguistically speaking, one may suggest that whenever words and deeds are bound, "the semantic aspect of language is deactivated and appears for a moment as an empty rotation; and, yet, it is precisely this empty turning that supplies it with its peculiar, almost magical, efficacy: that of producing glory".[23] An in-depth analysis of the signature of glory in Agamben's oeuvre is beyond the scope of this article. However, a brief reference can help us return to Arendt's assessment of power's relation to the threshold between word and action. Glory, according to Agamben, "is precisely what takes the place of that unthinkable emptiness that amounts to the inoperativity of power. And yet, precisely this unsayable vacuity is what nourishes and feeds power (or, rather, what the machine of power transforms into nourishment".[24] In other words,

> [t]he essential negativity of power and of human being is equaled by another negativity; that of the ritual enunciation of an oath that says nothing. This double negativity, or enigma, can be rendered properly intelligible, Agamben suggests, only if placed on the threshold between the juridical and the religious, and understood as delimiting and founding something more essential: the very presupposed nature of the 'animal that speaks'.[25]

And yet, Zartaloudis, as we saw above, writes that "uses cannot be distinguished from the existence in which they are experienced"; in fact, this would be the real meaning of *anthroponomikos*, "since nómos lies within the very uses of the mortals", its form being "inseparable from 'living' or 'using'." (Zartaloudis, xvi) Nevertheless, if a law to the epiphenomenon of relating words and deeds could be said to exist, it would be "an ordering that, nonetheless, and among others, orders *semantically* too". (Zartaloudis, 119, emphasis in the original) An ordering that, first of all, orders semantically its deactivation through the establishment and stabilization of an empty semantic nucleus.[26] One may well call this law "the Law of law".

Ten years earlier, Zartaloudis described this as belonging to "the old European schema", that is the schema through which the law of a long modernity is

dogmatically and negatively related to "something unsayable, or ineffable from 'time immemorial,' or yet another absolute vertigo".[27] In this relation, law "always it seems attempts to be ahead of itself".[28] Moreover, in this early piece Zartaloudis pointed out that one should start to think the before of law as "only the before",[29] against its presupposed exteriority from which it derives its force,[30]; such a before being not-otherwise than what is called 'the social',[31] "the very taking place" of law, its transmissibility as "the potentiality of our second nature".[32] Perhaps this is why one needs, according to Agamben, to free "the experience of abandonment" from "every idea of law and destiny"—from a "Law of law"—which opens one "to the idea that the relation of abandonment is not a relation, and that *the being together of the being and Being does not have the form of relation*", or at least not a negative relation.[33] This wouldn't mean a parting of ways, but a "remaining without relation". The engenderment of this remnant could be called "usage—or rather, *ethos*".[34] *Ethos*, meaning a way of life and being—as Zartaloudis translates it throughout *The Birth of Nomos*. (*Cf.* Zartaloudis, 64, 70, 119, 342)

To the schema, or the signature, of the Law of law, one may read Zartaloudis as opposing the uses of law as brought to language—an ethology of the *cosmopoiesis* of law, to use some of his other terms. However, before demonstrating the unfolding of this project—what we call a fulfillment of the signature of the Law of law—it is worthwhile to consider the qualification of the Law of law as a signature and to question why the uses of law would be, if not its counterpart, "a third space, like a threshold wherein the poles of the juridical and the non-juridical cannot be fused, and where law is [not] otherwise than it is".[35] To this end, let us turn to Agamben's *The Signature of All Things*.

The sign, Agamben writes, "signifies because it carries a signature that necessarily predetermines its interpretation and distributes its use and efficacy according to rules, practices and precepts".[36] Signatures have their locus "in the gap and disconnection between semiology and hermeneutics".[37] In a way, then, signatures close or stabilize this gap, establishing the efficacy of words through its emptiness, "presenting as necessary what is in fact a deep historical contingency".[38] If the sphere of law is the sphere of "an efficacious word", Agamben continues, "then law is the sphere of signatures par excellence, where the efficacy of the word is in excess of its meaning (or realizes it)".[39] In signatures, there occurs a placement between common and proper, or between potentiality and act, that is set through their distinction and exceptional relationship.

On the contrary, or as its indifference, use implies a passage between these poles

that "comes about every time as a shuttling in both directions along a line of sparkling alternation on which common nature and singularity, potentiality and act change roles and interpenetrate".[40] So far, the relation of use to signature has been an underdeveloped line of inquiry within the secondary literature dedicated to Agamben's thought. One may arguably use as a cipher to this problem Agamben's comments on what changes in the world after the arrival of the Messiah: "What is new, instead, is the tiny displacement that the story introduces in the messianic world. And yet it is precisely this tiny displacement, this 'everything will be as it is now, just a little different,' that is difficult to explain".[41] As will become clearer below, *The Birth of Nomos* can be read as advancing, between the lines, something akin to a statement regarding the signature of Law and the usage of law, or what amounts to this very 'and'.

Be that as it may, the Law of law can obviously be interpreted as a signature—or even the signature par excellence—because it determines the way norm relates to fact, law to life—the signifier to the signified.[42] To grasp its operation, by way of its double paradigm, which "marks the field of law with an essential ambiguity", crossed by a "normative tendency in the strict sense, which aims at crystallizing itself in a rigid system of norms whose connection to life is, however, problematic if not impossible" and "an anomic tendency that leads to the state of exception or the idea of the sovereign as living law", is the task of a philosophical archaeology. Philosophical archaeology, as Agamben calls it, reaches back "beyond the split between signature and sign and between the semiotic and the semantic in order to lead signatures to their historical fulfillment".[43]

To fulfill a signature is to turn the necessity of its effectuality—which conditions the intelligibility of a tradition and, correspondingly, a set of practices—inoperative, which as Watkin proposes, means to show its contradictions and contingency.[44] This is said and done through the deconstruction of "the paradigms, techniques, and practices through which tradition regulates the forms of transmission, conditions access to sources, and in the final analyses determines the very status of the knowing subject".[45] To this *pars destruens* corresponds the *pars construens* of philosophical inquiry,[46] opening the possibility of engaging "anew the sources and tradition".[47]

Yet, Zartaloudis calls his work—if indeed there would be a name suitable to it—a "genealogy". Thus, it follows closely the protocols advanced by Agamben, accurately reading the documents of the manuscript tradition, from Homer to the tragedians, keeping a close eye on most of the significant entries in the

philological practice that rendered them for the present. Nevertheless, there remains the feeling that Zartaloudis does so not to deactivate the signature of the Law of laws. Zartaloudis considers it to be already fulfilled. Thus, his work could be read as an effort that comes the day after its deactivation. A couple of lines after establishing this note of caution regarding the transmissibility of one's sources, Agamben affirms a protocol—a recurrent one in his work—that is directly discussed by Zartaloudis in the opening pages of *The Birth of Nomos*. An analysis of this protocol may help bring about the distinction—if there is any—between an archaeology and a genealogy, but, most importantly, it will help establish the reasons that sustain Zartaloudis' choices about his sources—hermeneutically speaking, it will reveal the ground of the privilege of his privileged texts—and, correspondingly, the force that can be projected into his work.

Whenever one aims at "the moment of arising" or "emergence" (*Entstehung*) of a certain "dis/juncture" which signs the possibility of intelligibility of a certain practice, one must take an important precaution, according to Agamben. "Just as a chemical compound has specific properties that cannot be reduced to the sum of its elements", Agamben writes, "what stands prior to the historical division is not necessarily the sum of the characteristics defining its fragments".[48] Therefore, one should try to "imagine an x that we must take every care in defining, practicing a kind of archaeological *epoche* that suspends, at least provisionally, the attribution of predicates that we commonly ascribe" through signatures to a determinate set of statements.[49] In other words, to work archaeologically, one needs to suspend signatures—and yet, as stated above, the messianic end of archaeology is to deactivate or fulfill signatures. Thus, archaeology stands at the threshold of its own limit, "in the double sense of end and principle".[50] (Agamben, 1998: 15) In Zartaloudis' insightful elaboration on this precaution, we read as follows:

> In the Western (juridical) modality of cognition, it seems that 'always-already' the terms used to describe what predates the so-called juridical forms and actions are those of the juridical (or, rather fictional or magical) *dis/juncture* between word and action and, more widely, the perennial juridico-philosophical enigma of the *dis/juncture* between 'language' and 'reality'. (Zartaloudis, xviii)

Zartaloudis contends in the subsequent pages of the section titled *Pré-droit* that the sources, read anew in his work, predate the signature of Law. To disregard a semantic core that would reveal itself from the documents of the manuscript tradition and, retroactively, determinate their disposition and revelation, and

to do so with the tradition that formed itself around the word and practice of *nómos/nomós* is to effectuate something of a double suspension. Or, perhaps more precisely, a suspension and sidestep. As an answer to the hermeneutical task of introducing strangeness in sameness, Zartaloudis suspends philologically what he calls the juridical framework that conventionally rendered the Greek ancient texts immediately readable in modernity. By reading them anew, we argue, Zartaloudis offers an elaboration (as genealogy) on the "tiny displacement" that comes with the messianic deactivation of the signature of Law. Nomos is then exposed "not through the worldview of a theodicy or an *oikonomia*, but of a cosmodicy and of use, of things just as they are".[51] "This", Zartaloudis suggested, in fact, nine years ago, "is the idea of justice". The "very taking place of beings just as they are: their poietic being in pure potentiality (*poiesis* does not refer to the genre of poetry, but to the generic nature of potentiality)".[52]

A "return to the Greeks", then? Perhaps that is so. Admittedly, if *The Birth of Nomos* receives the critical fortune that it deserves, one could hardly fail to foresee the formulation of criticisms quite similar to those raised against Arendt's *The Human Condition*. One can think here of Arendt's silence on Greek slavery, for example,[53] a silence that, along similar lines, has its place in *The Birth of Nomos*. This is discussed in our concluding section. For now, it should suffice to point out two things.

First, this movement is not without parallels in Agamben. One may think here of the curious excursus inserted between paragraphs 8.3 and 8.4 of *The Kingdom and the Glory*, where Agamben considers the Homeric "figure of glory", that is "entirely the work of man, mere glorification". The passage ends with a citation that seems to work along the lines of Walter Benjamin's art of quotations.[54] If pushed to the limit, as was arguably done by Ovid, many centuries later, this "'glorifying' strain of poetry" suggests that "not just heroes, but 'the gods too (if I may be allowed to say so) exist through poetry; even the majesty of one so great has need of the voice of someone to celebrate it.'"[55] One could and must question oneself about the quotation marks that detach 'glorifying' in this passage. Quotation marks, Jacques Derrida once wrote, "call for another word, another appellation, unless it alters the same word, the same appellation, unless it re-calls the other under the same".[56] Its apparatus "lends itself to theatricalization, and also to the hallucination of the stage and its machinery: two pairs of pegs hold in suspension a sort of drape, a veil or a curtain. Not closed, just slightly open".[57] Does this mark stand for an act of profanation? Perhaps. As Zartaloudis explains, employing explicit dramaturgical metaphorics, an act of profanation "aims to return something that has been

separated from the human sphere back to it, not by destroying the rite of law in question, but by eliminating the mythologeme that seeks to stage the relation between the power of a sacred act and the captured thing's use in an obligatory normative manner".[58]

Second, and furthermore, there seems to be a strong resonance between the Homeric figure of glory and what Agamben writes about the *Idea of justice*. Justice would be born for a human being as "a heralding gesture or a vocation". "In this sense", Agamben continues, "the most ancient of human traditions is not Logos, but Dike (or, rather, they are indistinguishable at the start)". Human beings, "believing that they are handing on a language", actually "give each other voice; and in speaking, they deliver themselves over without remission to justice".[59] As one finds in a footnote of *The Birth of Nomos*, this essay, if not these words, are what "inspired, in more than one way", his genealogy. (Zartaloudis, 355, note 55) A genealogy on "the 'originary' state of the law", thus exposed as "one of participation in a generic potentiality, that cannot be owned or possessed, but only used".[60] As this passage and the one quoted earlier, both from Zartaloudis' earlier book *Giorgio Agamben: Power, Law and the Uses of Criticism*, indicate that that which cannot be owned, and poietic being, are two important keys to access the "tiny difference" between the signature of Law and the use(s) of *nomos*. Therefore, the following section is dedicated to a reading of certain chapters of *The Birth of Nomos* that correspond to these two privileged sites of inquiry.

2. THE SIGNATURE OF LAW AND ITS FULFILMENT: *NOMOS* AS WAY OF LIFE

The schema of a re-reading of *The Birth of Nomos* advanced here, which argues for a detachment of the chapters dedicated to propriety and poetry (or, more precisely, to what remains before the signatures of propriety and poetry, that could be *Kleros* and *Mousike*), does not derive its ground from Zartaloudis' past work alone. The inquiry around the correspondent uses to those words seems to follow a different protocol than the one at work among the other chapters in the book.

Generally, Zartaloudis' text proceeds through the confrontation of the philological tradition—which, in a sense, offers directedness to the interpretation, even if it is a direction that the interpretation itself aims to fulfill, turning it ineffectual—and the texts themselves. It presents a key-passage from the sources, it reviews the philological work dedicated to it, discerning between rubble and

genuine insight—a distinction that is rigorously handled by way of ordinary historiographical and philological (hermeneutical, perhaps) criteria, such as the indication of anachronisms, misinterpretation of context or partial reading of the sources (*Cf.* Zartaloudis, 49, 55, 63, note 69, 194, 208 236, 277)—while it aims to liberate the texts of Homer, Hesiod, Pindar, Heraclitus and the tragedians in their strangeness. From passage to passage, the sources incline the text to some speculative temptations. There are moments in which one can sense the historian's hand forcing a resignation on the speculative mind, as these leaps to contemplation. In a way, the text goes from falling short of the transmission of language to the exposure of language itself, one could risk oneself writing. As such, those moments are short and careful in character, indicated by tropes such as "speculative manner", (Zartaloudis, 371) "speculatively", (Zartaloudis, 354) "merely speculative", (Zartaloudis, 383) and "speculative philosophical sense", (Zartaloudis, 71) among others.

The chapters "The Nomos of the Land" and "*Nomos Mousikos*" seem to break away from these protocols. One could argue that the final sections of "*Nomos Moiregenes*" do so as well. Whereas it may be argued that all chapters make use of discussions and studies on the corresponding practices to the words therein analyzed, in most of them this recourse is interwoven with the interpretation of the text itself, which obviously has the upper hand. In these chapters, instead, the sources seem to assume a marginal character, giving space to an extensive elaboration on the appliance (*Bewandtnis*) which the sources not so much presuppose as expose with fearsome density, in its arrangement and destination.[61]

2.1. *NOMOS* EXPOSED I: *MOUSIKE*

Why speak of "fearsome density" here? Zartaloudis' book restrains him to scrutinizing the uses of *nómos* and *nomós*, one and the other words with their distinct stresses, transmission patterns, and etymologies, all carefully considered in the book, reading "in[to] the normalcy-setting and *ethos*-transmitting Greek poetry". (Zartaloudis, xxi) Poetry, one reads in a later elaboration, "is not a mere accompaniment to the key events of a political community but formed by, as much as forming, a social act". (Zartaloudis, 345) The relationship between poetry and poiesis—of Greek poetry as *logopoiesis*, or, more precisely, as the cosmopoietic aural existence, as an interaction of the "*logopoietic dunamis*", or as the power of "*sacred* transmission" (Zartaloudis, 359, emphasis added)—is an underlying theme of *The Birth of Nomos*. However, it remains presupposed and underdeveloped until the last chapter, "*Nomos Mousikos*". In a sense, then, the final chapter should be

read first since it elaborates on the ground that justifies the exemplarity of the sources chosen and the protocol employed in their interpretation. Moreover, it should be read having in mind Agamben's probing and ongoing thinking about poetry, which is indicated and referred to in a series of footnotes. (*Cf.* Zartaloudis, 249, note 83, 251-252, note 86, 355, note 56) Notwithstanding the fact that one could hardly do justice to Agamben's philosophical engagement with poetry in a few pages, the following proceeds through some brief remarks on the subject, which shall contribute to a circumscription and rearrangement of Zartaloudis' text.

Tellingly enough, poetry is structurally defined in Agamben's oeuvre by way of an "epistemological paradigm" that is quite similar to the one mobilized to define the signature of Law. Poetry, obviously, is a signature as well: it is "the *oikonomia* between the semantic and the semiotic in our tradition, whose moment of arising is Plato's *Republic* and the 'expulsion of the poets' myth promulgated there".[62] Just as Law implies the suspension through the stabilization of the semantic, as a condition and the conditioning of the efficacy of words—hence, relating words and action—, poetry, with its "bitter tendency to isolate words",[63] living in "the tension and secession (and also, therefore, in the virtual interference) between sound and meaning, between a semiotic series and a semantic one",[64] is "precisely that linguistic operation that renders language inoperative", deactivating "its communicative and informative functions", resting within itself, contemplating "its potency of saying" and "in this way" opening "itself to a new possible use".[65] Whereas Law turns language exceptional—the abandonment of language as the call to conscience which founds guilt, perhaps—poetry renders it exemplary. Correspondingly, one should remember that "exception and example are correlative concepts that are ultimately indistinguishable and that come into play every time the very sense of the belonging and commonality of individuals is to be defined".[66]

By way of a series of "semiotic techniques",[67] such as rhyme and *enjambement*, poetry foregrounds—or is the foreground itself—the chiasm between sound and meaning.[68] This disconnection—a "sublime hesitation"—between meaning and sound is called the "poetical heritage that thought should bring through".[69] Nevertheless, this disconnection—and the "institutions of poetry" which form themselves around it—has a beginning in time when the "'natural' nexus" between music and language, sound and meaning is ruptured, which was called in

Ancient Greek *para ten oiden*, meaning "against or alongside song". In this space alongside *mousike*, prose has its place. Parody, therefore, can be understood as "the disjuncture between song and word and between language and world", which "celebrates in effect the absence of a place for human language".[70] Yet, rhyme, for example, would be born from *homeoteleuton* or parallelism, a secondary rhetorical figure in prose.[71] Paradoxically, "only poetry, it would seem, can pro-duce perfect prose".[72] The idea of prose—prose exposed as language—is the fulfillment of the signature of poetry. From the standpoint of its fulfillment, one may write, as Zartaloudis has done in a past piece, that "poetry stands beside prose not as an otherness, but as a beating heart without body". This "originary rhythm between power and weakness, prose and poetry" would stand "perhaps as a reminder of the music (the ode) that the ancients could still hear before the emergence of prose as par-ode (what stands beside the song)".[73]

This ancient hearing returns and is meticulously elaborated in the final chapter of *The Birth of Nomos*. "*Mousike's* essential link to language and to poetry was audible to the archaic ear". Poetry—and remember that this is of "paramount importance" - "originates within the experience of *mousike*". (Zartaloudis, 344) *Mousike* can be named "the experience of the Muse", which, Agamben writes, is the experience of "the origin and the taking-place of word, in a way that music [*mousike*] expresses and governs in a determinate society and in a determinate time the relationship that men have with the event of word".[74] *Mousike* "marks the chasm between man and his language, between voice and *logos*",[75] and, in doing so, discloses "the place of language". Yet, this opening can be interpreted as a rather different affair than the one that goes through under the sign of what Agamben names Voice—with a capital V. In voice, the place of language "is always already captured in negativity".[76] Voice articulates originally the passage from animal voice to human language as "the voice of death".[77]

Since *Language and Death: The Place of Negativity*, Agamben has speculated about a way of "relating" to "the ungraspability of the originary place of the poetic word" (another reference that Agamben accords to the 'name' Muse), "the unspeakability of the event of language", which, in fact, does not 'relate' as a relation, which, following Agamben, is always already in the form of abandonment, the abandonment of anthropogenesis.[78] The text then asks about an experience of language "that is not marked by negativity and death",[79] which, as such, would be what is "most habitual" for man, "his *ethos*, his dwelling", an ethos that is neither

"something unspeakable or *sacer* that must remain unsaid in all praxis and human speech", nor a "nothingness, whose nullity serves as the basis for the arbitrariness and violence of social action", but "social praxis itself, human speech itself, which have become transparent to themselves".[80] The resonance of those words to Zartaloudis' project as a whole is evident.

Does *mousike* entail such an experience between song and word, and language and world, which would be beyond relation, beyond the form of relation, disclosing "the relation of abandonment" of man to language, not as a parting of ways—but also and no more as negativity—but as a remainder "without relation"?[81] Both Agamben and Zartaloudis seem to think so. As the first affirms and the second quotes, "the primary opening of man in the world is not logical, but musical".[82] (Zartaloudis, 355) As such (and the Greeks, as Agamben contend, knew this perfectly well), "human beings in all times are more or less consciously politically educated and disposed through music".[83] Perhaps, therefore, *Nomos mousikos* is nothing more than a pleonasm. And yet, through this redundancy, Zartaloudis complies with what Agamben terms as the philosophical task per excellence,[84] that is, to reassign the senseless flux of sentence and sound—in this particular case, the idle talk of normativity as such—to its musical place.

The reassignment begins with a word of caution: one should not perceive "the wide practices of *mousike* as 'artistic', since *mousike* forms (orders) activities and events as varied as a civic celebratory ethos or military formation in war". "Indeed", Zartaloudis continues, *mousike* included "the singing of epics", "the carrying out of rituals", "victory celebrations", "the practice of symposia", "processions", and "poetry". Hence, *mousike* (which encompasses all the sources interpreted in the book) was both "a dynamically *cosmopoietic* sphere of knowledge" and a "*cosmopoietic* power". (Zartaloudis, 343-344) In its dynamics and power, *mousike* intersects "with rituals in a variety of life practices", suggesting a close relation between it and "ritual, language, ordering and magic" (Zartaloudis, 347), "a direct expression" and "'formation' of the divine nature of creativity as such". (Zartaloudis, 349) In sum, *mousike* has an intimate relation to "the ordering of the cosmos, the polis and the ethos". (Zartaloudis, 354)

This intimacy brings the text to characterize *mousike* as "an intiatory act in living, a force of regeneration and inspiration". *Mousike* is the "open" itself, the *chaosmos* as Zartaloudis calls it, that is, the taking place of the original event of the word, marking human beings' experience of language as "inherently poietic", vis-à-vis other animals, "which have only song". As a divine gift to a certain lack of the

human *phone*, *mousike* implies a *logopoietic dynamis* that the poets and gods share alike, the poetic glory of a *cosmopoietic* aural existence. (Zartaloudis, 359) Therefore, the Muse, which has *mousike* as its "plateau", names "the event of attempting to remember the advent of the word, its musical cosmopoiesis". (Zartaloudis, 355) In its remembrance, *mousike* entails "the enunciatory act of truth-binding", composing, through *mimesis* and ritual, "the unity of word with song-speech", as "the regenerative divine rhythm of living". (Zartaloudis, 360) And, as a recreative/ regenerative act, as the genesis of *kosmos* itself, *mousike* allots, distributes, and shares. On its final pages, the chapter deals with the musical uses of *nómos*. While "the earlier relation between ordering, *nomos* and *mousike* cannot be known in any reliable sense" (Zartaloudis, 393), the sources, and their later interpreters (such as Plato and Aristotle, but the tragedians as well) who took part in their multi-threaded plateau of uses, Zartaloudis contends, transmit the fact that "music was at the heart of the original experience of political *poiesis*". (Zartaloudis, 394) "Nomos was, after all, to be sung and heard". (Zartaloudis, 396) This is the final sentence of the book, which concludes the final thread of discussion within the work. And yet, by way of etymological analysis and close philological reading, the text actually advances, quite early on, a relation between *mousike* and distribution. On the final pages of the "*Nomos Moiregenes*" chapter, Zartaloudis establishes that Moira would be "the threshold, in contemporary terms, between necessity and normativity, between the must and the ought, between nature and right". (Zartaloudis, 64) On another elaboration regarding the word, Moira would also be the binding of life to its own ordering and actualization as cosmos, (Zartaloudis, 48) as the fastening and binding of "the indeterminacy of existence", (Zartaloudis, 67) through the distribution of its parts, bounded to their boundaries. Both directions point the text to a confrontation with *meropes anthropoi*. Presuming, "for our purposes", a "later speculative derivation", the text offers this enigmatic and formulaic phrase as a reference "to those who distribute (*rather than articulate*) a voice" (Zartaloudis, 68, emphasis added), meaning that humans, "in contrast to other animals", "divide/distribute/transmit (*memerismenen*) a voice". To the crucial extent that this "scission/distribution" would be "at the same time what unites humanity in its common experience of speech as a power (potency)". Therefore, "what mortals receive is the ordering, the distribution, of voice (a non-articulate voice that is characteristic of human beings, *anthropoi*, which they then have to articulate or actualize", and *nomos* could be understood as "the dispensation of provinces or forms of life, that is, as the order of things". (Zartaloudis, 70)

There seems to be a distinction, although an ambiguous one, between distribution and actualization or articulation, which stands as the kernel of nomos as distribution. Be that as it may, the text argues that as the experiences of potencies, the *moirai*, "early on perhaps" were "not exhausted in their fated articulation (the act)". (Zartaloudis, 70) Having in mind distribution, which is, in effect, a dispensation of indeterminacy, or, in the words of an earlier text, "the expropriation of an expropriation",[85] what would come to the fore as the exhaustion of potency? To be sure, the interpretation of *meropes anthropoi* closes the Moira chapter, which is followed by the chapter titled *The* Nomos *of the Land*. As ascertained above, this chapter, in our reading, also escapes the overall protocol of the book. Thus, it could be suggested that the exhaustion of potency is property. In what follows, we aim to elaborate on this suggestion.

2.2. *NOMOS* EXPOSED II: *KLEROS*

The *nemo* family of words, Zartaloudis ascertains, is encountered "in various uses closely attached to a sense of 'possession-use' or 'holding' (as well as indissociably attached to 'enjoying', 'dwelling', 'inhabiting', 'using', and, to an extent perhaps, implicating a wider sense of ethos or 'way of being')". (Zartaloudis, 72) Reviewing the literature on the economic structures of the Mycenaean world—although it should be clear that Zartaloudis does not dedicate the chapter to the Mycenaean world itself, nor claims the Homeric epics necessarily 'describe' this period—the text suggests a plethora of dispersed land-'holdings' and uses, involving "acts of using-possessing, distrusting (and managing) land". (Zartaloudis, 80) By way of the complementary practices of *ki-ti-me-na* and *damos*, land was "distributed-shared as such, *rather than as subject to a process*". (2019: 82, emphasis added) Whence, it is suggested that "a further sense of 'possession'/'use' 'holding' rather than 'ownership' may be more helpful to the understanding of such landholding", emphasizing "the practice of use(s) of land (...) rather than some sense of holding in a formal juridical sense". (Zartaloudis, 82)

What underlies this formal juridical sense, which seemingly implies the subjection of land to ownership through a process? "Right", Hegel wrote in the §40 of the *Grundlinien der Philosophie des Rechts*, "is in the first place the immediate existence which freedom gives itself in an immediate way, i.e. (a) possession, which is property-ownership".[86] (HEGEL, 2008: 56) Joachim Ritter suggested cogently that the logical beginning of law as property should be interpreted as an indication of the role played by Roman Law in the development of modern legal rationality. In the upheaval of "political revolution and the emergence of civil society", the

"concepts of Roman Law" would have been "melted down and filled with the substance that belongs to the contemporary world".[87]

One may be entitled to ask what "melted down" actually means here. Notwithstanding the new filling, it is indicated through Ritter's statement that something remains regarding property—which, as abstract freedom, for the first time brings to determination "the freedom of man as the freedom belonging to European world history".[88] Its abstraction comes from the exteriority—an exteriority that one may perhaps call a negative and *topical* profundity[89]– which it founds as a sphere of right, characterizing property as a "'taking possession,' in which I bring a natural entity under my external 'power'",[90] "the acting grip of man, with which the natural is torn from its independence and brought under the disposition of man".[91] The exclusion of nature which entails its inclusion as property is at the beginning of the determination of freedom as right. Everything depends on what "beginning" can mean. If beginning is what is primordial or "untimely", Kelsen contends about Hegel's understanding of property,[92] for example, the *initium* of legal consciousness is also its *principium*, marked as it would be by propriety as its form and formation.[93] [94] Conversely, Zartaloudis' reading of Ancient Greek poetry indicates, among the Greeks and, more importantly perhaps, through them, a way of being that does not understand property as the *principium* of law, and thus propels the exposure and deactivation of Law as signature.

That being said, one can grasp the reason why the text comes to grips, punctually but intensively, with Carl Schmitt's interpretation of *nomos*. As is well-known, for Schmitt *nomos* is an *Urwort* which comprehends land-appropriation as a "fundamental process of apportioning space", as "the measure by which the land in a particular order is divided and situated", and also "the form of political, social and religious order determined by this process." As *ordo ordinans* "essential to every historical epoch—a matter of the structure-determining convergence of order and orientation"—it makes manifest, or it is the manifestation itself of "world-historical events".[95] *Nomos* as the Law of law determines history in its eventfulness through the process of appropriation, distribution and production.[96] In other words, *nomos*, for Schmitt, is historicity itself, just as it is the measure between authentic and inauthentic history.[97] Therefore, it may be sustained that Schmitt's understanding and elaboration of *nomos* work as a perfect counterpoint to Zartaloudis' approach. On the one hand there is the rendition of *nomos* as the kernel to the mythologeme of Law, in order to mark it as the struggle which always already happens —exceptional and, as such, a real possibility (*reale Moglichkeit*)—measuring necessarily and exhaustively what happens, enframing it

as the agenealogical abandonment of an appropriation.⁹⁸ On the other hand, there would be an understanding of *nomos* as the inexhaustible potentiality of the ways of being. For that reason, we would like to expand and elaborate on the moments of *The Birth of Nomos* where Schmitt appears and is confronted.

The section of the book which is dedicated to Schmitt's contention on *nomos* in *Der Nomos der Erde* is titled "The Word that Wasn't There". It opens by quoting the first verses of the *Odyssey*, the invocation of the Muse, with its epic themes, and the following passage: "Many were the men whose cities he saw and whose *noon* he learned. (*kai noon egno*)". As Zartaloudis recounts, the "noon" was subjected to philological controversy—beginning when Zenodotus, the superintendent of the library of Alexandria, replaced *noon* with *nomon*. This replacement gave ground to two equally controversial and misleading, in Zartaloudis' opinion, suggestions. On the one hand, from Josephus to Jean Bodin, there is the view that "the notion of 'law' itself is entirely lacking in Homer.' (Zartaloudis, 115) On the other hand, "that Homer did in fact originally refer to *nómos*". From his reading of the text with its grain—"it is certainly worth noting that we do not meet *nomos* in its paroxytone form (*nómos*) in any other of Homer's verses" (Zartaloudis, 117)— Zartaloudis argues that while Zenodotus' replacement would be a case of "an early anachronism" (Zartaloudis, 117), the verses of Homer offer "ample elements of what one could describe as an early ethological pluriverse based on 'customs and traditions' (i.e. *themis* and *dike*)" (Zartaloudis, 117) which, he maintains, is "far more interesting". (Zartaloudis, 117)

Contrary to this self-styled "conservative, while open-minded, speculation" (Zartaloudis, 117) is Schmitt's understanding of the verse and its meaning. In fact, we are told that *KAI NOMON EGNO* is inscribed on Schmitt's grave at the Catholic Cemetery in Plettenberg-Eiringhausen—the same phrase that was embroidered in Schmitt's cloth napkins. (Zartaloudis, 118) Although Zartaloudis derives from this remarkable fact, for his purposes, only that "Schmitt's philology was obsessively marked", there is, of course, much more food for thought here. Bracketed as it was in his tombstone and cloth napkins, one may see here an index (indeed, a death knell) to the force underlying Schmitt's work. In a way, *The Birth of Nomos* seems to suggest that a similar bracketing occurs regarding "the extant rich and polyvalent literary evidence" that goes against Schmitt's semantic ordering of nomos, with a strong correspondence vis-à-vis his understanding of *nomos* as an original act (Zartaloudis, 119-120), "a historical or fundamental act of commencement" (*ein geschichtliche oder grund-Vorgang*).⁹⁹

One may argue that this bracketing is a removal as well. As Van der Walt puts it, at "the heart of the 'concrete order' thinking" endorsed by Schmitt, there would be the removal of "the trump card of transcendent knowledge (...) in matters of justice and just causes".[100] But there is more to this political and polemical reduction.[101] One of the greatest merits of Van der Walt's reading of Schmitt—and, moreover, the reason that it seems so helpful to interpolate it within the discussion of Zartaloudis' book—is how he interprets the fate of Melos in the Peloponnesian War through Schmitt's political reduction: "Using Schmitt's terminology, Melos becomes the non-place, or the destruction of place—the *Entortung* where the Athenian *nomos* gives way to the blind vicissitudes of natural forces, that is, of *physis*".[102] According to Van der Walt, one would have in Thucydides' narration of the discourse of the Athenian envoys to the Milesians the historical record of this *Entortung*. One could start with a quote that is not discussed by Van der Walt himself, and yet is directly related to his point—and, as will become clear below, to the present argument as well. To the Melians' statement that the "present meeting is indeed about the question of survival", which would call for the exploration of "many different lines of argument and thought", the Athenians answer in a way that is in complete resonance with the Calliclean opinion on justice, as stated in the *Gorgias*:

> Our concern must rather be with the practical possibilities, based on what we each actually know. You understand as well as we do that in the human sphere judgments about justice are relevant only between those with an equal power to enforce it, and that the possibilities are defined by what the strong do and the weak accept.[103]

An answer, too, that is directly related to the Athenians' assessment of the Law of laws:

> There is nothing either in our principles or our practice at odds with human assumptions about the gods or with human purposes in their own sphere. In the case of the gods we believe, and in the case of humankind it has always been obvious, that as a necessity of nature [*physeos anagkaias*] wherever anyone has the upper hand they rule. *We were not the ones to lay down this law, nor the first to take advantage of its existence. We found it already established, expect to leave it to last forever, and now make use of it, knowing full well that you and anyone else who enjoyed the same power as we do would act in just the same way.*[104]

Throughout *Der Nomos der Erde* Schmitt criticizes the sophistically constructed distinction between *nomos* and *phusis*,[105] which would be just "apparently in the service of progress and refinement, but actually in the service of an ideological play of artificial divisions that served to promote civil war".[106] And yet, as Van der Walt ascertains, "Schmitt saves and secures the distinction between *nomos* and *phusis*, or law and physical force, upon which he insists throughout *Der Nomos der Erde*, by integrating characteristic aspects of *phusis* into *nomos*".[107] In other words, Schmitt's point would be the following one: "Given that humans rely on force or power to create order (...), this is the highest order that they are capable of".[108] Indeed, it is no surprise that from Schmitt's perspective the relation between *nomos* and *phusis* should be one of abandonment and exception. *Nomos* is abandoned to *phusis* just as it excludes *phusis* in the first place. Furthermore, this relation presupposes the bracketing and removal of "transcendent knowledge" (*noos*) as indicated above. Perhaps only without transcendent knowledge may words and deeds be presupposed (lawfully) to relate exceptionally (unlawfully). When contemplation enters into the picture, their relation is different.

Hence, one may argue that this is the kernel of Schmitt's criticism of Hölderlin's translation of and commentary on Pindar's fragment—to which the book dedicates three entire sections, titled respectively "Hölderlin's un-Heraclean *Nomos*", "Cosmonomy", and "Neither a *Nomodicy*, nor a *Nomomachia*"—and of the discussion between Socrates and the anonymous Athenian citizen in *Minos* which, in fact, opens *The Birth of Nomos*. The discussion on Hölderlin's translation of Pindar's fragment 169a comes after a review of Agamben's take on it. Emphasizing the philological question surrounding the reconstruction of Pindar's fragment vis-à-vis the version presented in Plato's *Gorgias* (in the original one would have in line 3 *dikaion to biaiotaton*, whereas in Callicles famous rendering of it, one finds *biaion to dikaiotaton*) and how this debate informs Agamben's interpretation, Zartaloudis points out that Hölderlin used as his source for the translation an edition which did not contain its longest version and was constructed along the lines of the Calliclean rendition of it. (Zartaloudis, 241) This contextualization is important because of the way the text introduces and justifies its detour through Hölderlin's translation and commentary. One reads as follows: "It is of further interest, for my purposes, that Plato's ultimate aim at this point in the Gorgias is to emphasize the preference for knowledge (Sophia). It is, then, worth following Hölderlin's commentary to his translation of the fragment to see why that may be the case for the German poet also". (Zartaloudis, 246)

First, Hölderlin's translation: "*Das Gesetz, / Von allen der König, Sterblichen und / Unsterblichen; das führt eben / Darum gewaltig / Das gerechteste Recht mit allerhöchster Hand*". Zartaloudis himself translates it into English as: "The law, / Sovereign/King of all, / both mortals and immortals; it is for that reason / that it compellingly/ violently guides, / The most just justice/Right with a supreme hand". (Zartaloudis, 241) In his commentary, Hölderlin states that both mortals and immortals, for different reasons, live in division, having the necessity of distinguishing different worlds with the consequence that "the immediate [*das Unmittelbare*] is, strictly speaking, impossible for mortals and immortals". (Hölderlin in Zartaloudis, 247) To this conclusion, Hölderlin adds: "However [*aber*], strict mediacy [*die strenge Mittelbarkeit*], is the law [*das Gesetz*]. That is why, compellingly, it guides the justest justice with a sovereign hand". Stabilizing the "vital relations [*lebendige Verhältnis*] in which, in time, a people has encountered itself and continues to encounter itself", law as strict mediacy renders "King" not as "the highest power", but as "the sign for the supreme ground for cognition [*Erkentnißgrund*]". Not "an ideal *nómos*, or an overpowering force (*Macht*)", as Zartaloudis ascertains, "but instead the pathway (reminiscent, perhaps, of Parmenides' *palintropos*) whereby 'absoluteness' (to paraphrase Heraclitus) likes or prefers to hide: it is *mediation without ends*". (Zartaloudis, 249) Accordingly, in this *cosmonomy*, "the immediate remains necessary for the encounter, if forever withdrawn from sight, and even its withdrawal can only be cognized mediately". (Zartaloudis, 249)

Schmitt famously criticizes Hörderlin for translating "the word nomos as 'law'",[109] which prompted the latter into "the false path of this unfortunate word, although he knew that, in the strictest sense, law [*Gesetz*] is mediation", whereas nomos, "in its original sense" would be "precisely the full immediacy of a legal power not mediated by laws" as a "constitutive historical event—an act of legitimacy, whereby the legality of a mere law first is made meaningful".[110] Both Agamben and Zartaloudis argue that Schmitt "completely misinterprets"[111] Hölderlin, confusing "the poet's *Gesetz* with his own object of critique of positivist law". (Zartaloudis, 253) Yet, if Van der Walt's reading is correct and Schmitt's aim is to discard transcendent knowledge altogether, it may be argued, *pace* Agamben and Zartaloudis, that Schmitt grasped Hölderlin perfectly well. Two key moments in Schmitt's article "*Nomos–Nahme–Name*" seem to sustain this alternative reading. To make his point regarding the primordiality of appropriation in the epochal process of *nomos*, Schmitt contends that "no man can give, divide, and distribute without taking. Only a god, who created the world from nothing, can give and distribute without taking".[112] Some pages later, after stating that "a land-appropriation is constituted only if the appropriator is able to give the land a

name",[113] Schmitt describes the "visibility, publicity, and ceremony" that takes place with authentic land-appropriation (authentic historicity) as an overcoming of "the satanic attempt to keep power invisible, anonymous, and secret"; the ceasation of the abstraction of ruling in the name of law and the becoming-concrete of the situation, through the question, "What then is the name of the law?"[114] To avoid or postpone such an answer, or, rather, to sing the impossibility of such an answer is to render law pure: "Law is certainly power and appropriation, but as pure law it is only *pure appropriation*, as long as its authors remain anonymous, and the true sovereigns remain hidden in *darkness*".[115] "Law", Schmitt states, "is still not a name. Humanity and reason are not names". That being so, he finally asks: "Has the power to name and give names disappeared?"[116]

"The hymn", Agamben writes in *The Kingdom and The Glory*, "is the radical deactivation of signifying language, the word rendered completely inoperative and, nevertheless, retained as such in the form of liturgy".[117] In its austere connection of words, "whose greatest exemplar" is none other than Pindar himself, the hymn is characterized by its "incurable absence" of content, in its turning to "the void of language as the supreme form of glorification". In the same context, Agamben indicates how "a decisive shift" happens in Hölderlin's poems concerned with gods and demigods, in his hymns. Whereas the hymn as a form "celebrates the name", Hölderlin writes "elegies in the form of hymns", which are "the lament for the impossibility of proffering the divine names", and which shatter, therefore, "the divine names and, at the same time", take "leave of the gods".[118] To Schmitt's question, Hölderlin's answer, both in poem and in translation, would be yes, whence the displacement—and transformation, as Ian Cooper correctly observes[119]—of the "juridico-political problem into the sphere of the theory of knowledge".[120]

To Schmitt's elegiac question, which signs the status of law as "being in force without significance (*Geltung ohne Bedeutung*)",[121] Hölderlin's response seems to be the singing of significance without force (*Bedeutung ohne Geltung*).[122] As Zartaloudis writes, "not a *nómos-basileus*, but a *kosmos basileus*". (Zartaloudis, 254) Thus, pure appropriation would rather be giving and distributing, without appropriation, a trace that "is not proper to any being whatsoever, and even less to some kind of substance overhanging the world", but the "common impropriety, the non-belonging and the non-dependency, the absolute wandering of the creation of the world",[123] as the acknowledgment of "the significance of each particular life ('*die Bedeutung der besonderen Lebensweise*') defined by the rupture of separation ('*Urtheilung*'), by attending to it as an expression of freedom ('*der nothwendigen*

Beschränktheit dieser Lebensweise ihre Freiheit zu geben')".[124]

From the current standpoint, one can turn back to the beginning, to Zartaloudis assessment of *Minos*. The *Minos* starts abruptly, with Socrates asking without any proper introduction or preparation—as if the question of law imposed itself without history or context—of an Athenian citizen: "Tell me, what is law?"[125] The immediate answer of his anonymous companion is to call for an elaboration: "To what kind of law does your question refer?" To this, Socrates responds that the particular point of his question is exactly this: "What is law as a whole?" The Athenian citizen answers: "Well, what else should law be, Socrates, but things loyally accepted [*nomizomena*]?" Socrates' reaction is to introduce a difference between "speech" and "the things that are spoken", between "sight" and "the things seen", and between "hearing" and "the things heard". There should be, therefore, a distinction between *nomos* and *nomizomena*. Moreover, it is by way of *nomos* that *nomizomena* are accepted [*nomizetai*]. That being so, "what is this law whereby they are so accepted?"[126] To this, the Athenian citizen responds: "Our resolutions and decrees, I imagine; for how else can one describe law? So that apparently the whole thing, law, as you put it in your question, is a city's resolution".[127] The *nomos* to *nomizomena* would be, then, *psephismata*, *dogma poleos*. Yet, confronted by the existence of bad laws and bad opinions in a city, the citizen is led by Socrates to the definition of *nomos* as what "tends to be the discovery of reality [*ontos einai exheuresis*]".

The *dunamis* of *nomos* as "the 'revelation' of the true (*alethes*)" is "preferable" (Zartaloudis, xv) or, indeed, introduces a distance between *nomos* and its actualization in use (*chresis*), as *nomizomena*. In Zartaloudis' own elaboration:

> It is possible, therefore to speculate from the outset that the experiential 'form' of a *nómos* is a *dunamis* (power) as distinct from what is 'held' (actualized) as a *nómos* (the *nomizomena*) in each instance. 'Transcendent' to the actuality of this or that *nómos*, however, is only the *dunamis* (or potentiality) of *nómos*, which does not lie outside of its actuality, but rather is immanent in its use(s). (Zartaloudis, xvi)

To discuss *nomos* "as a whole" is to introduce vis-à-vis its uses, within its uses themselves, the "transcendent knowledge" which Schmitt wants to get away from, none other than *nomos* itself: "What is revealed in and by a *nómos* is the appearance of 'what is', and this 'searching out' or 'discovery' (*ex-heuresis*) takes place each time according to the *dunamis* of *nómos* to indicate the intelligibility

or potentiality (the *idea*) of 'what is.'" (Zartaloudis, xvi) As hinted by Zartaloudis himself, just like Hölderlin, Plato displaces the problem regarding the totality of law from a juridico-political milieu to a contemplative one. In doing so, he lays down the path to a discussion of laws—if it may be accepted, for the sake of argument, the interpretation advanced by Leo Strauss—which sustains that the *Minos* should be considered as an introduction to the late dialogue *Nomoi*.[128] On top of that, this displacement entails a practical transformation that is shown by both dialogues.

In the *Minos*, to consider *nomos* as the discovery of reality allows Socrates to interrupt or suspend what is most *proper* to the Athenian citizen—the *prelude* to the Athenian laws itself, which offered soundness to his answer regarding the *nomos* to *nomizomena* as *psephismata*, *dogma poleos*, but also to his refusal to appraise Minos as a great, if not the greatest, lawgiver. Minos, the Athenian citizens tells Socrates, "was a savage sort of person, harsh and unjust".[129] To this Socrates answers: "Your tale, my excellent friend, is a fiction of Attic tragedy", because the Athenians avenged themselves in poetry for their defeat in combat to Minos, who compelled them "to send a regular tribute of seven youths and seven maidens to be devoured by the Minotaur in the Cretan labyrinth".[130] And yet, the Athenians would do many times worse than legend with the destruction of Melos in the Peloponnesian War.

Nevertheless, one could argue that in both instances, the law underlying the acceptance of their appropriation is the one stated by Callicles in the *Gorgias*, but also, as narrated by Thucydides, the one declared to the Milesians by the Athenian emissaries: war and its natural necessity. The *Nomoi*, for its part, starts with the explicit dismissal of war as the correct ontological principle of lawgiving: the creation of commonality, or, as Zartaloudis puts it, *cosmopoiesis*.[131] Hence, if this explored constellation of propriety, necessity, nature, war, and law has any standing, *The Birth of Nomos* can be read as suggesting the grounding in Greek experience of another, strange and different way of thinking the social, "our second nature", posited before the emergence of the signature of Law. Furthermore, it may be argued that through the exposure of the idea of *nomos*, displacing it away from the effectuality of Law, the argument reinforces, just as it presupposes, its inoperation.

CONCLUDING REMARKS

Following the threads introduced above, one is led to consider Zartaloudis' take

on *polemos*, which may work as a conclusion to this engagement with *The Birth of Nomos* as well. The book's considerations of *polemos* appear in a chapter entirely dedicated to Heraclitus' notion of *nomos*. As Zartaloudis reads Heraclitus anew, *polemos*, "his most fundamental thought", would be the juncture where the roads of the *nómoi* of the universe and the polis alike meet, each time, and it would be "the harmony of 'strife' that needs to be heard, rather than a dystopic or utopian resolution of it in the disparity of differences". *Polemos*, then, is

> "what binds and unbinds the mortals to the polis and what binds the polis to the divine or co-versing *nómos*. At this binding juncture and disjuncture, the human *nómos* pursues indefinitely the divine (*nómos*), through strife and discord, that is, life and death". In other words, the essence of *nómos* and *nómos*, its *dunamis* and *nomizomena* have as their nature *polemos*, which is "irreparably imperfect". (Zartaloudis, 210)

If, as Zartaloudis argues, *polemos* "*is* the polis, the *nómos* and *dike* (the essence of *nómos*)" (Zartaloudis, 210, emphasis in the original), one is entitled to wonder about the omission of any discussion of Heraclitus' Fragment 53. It reads as follows: Πόλεμος πάντων μὲν πατήρ ἐστι, πάντων δὲ βασιλεύς, καὶ τοὺς μὲν θεοὺς ἔδειξε τοὺς δὲ ἀνθρώπους, τοὺς μὲν δούλους ἐποίησε τοὺς δὲ ἐλευθέρους (Polemos is the father of all and the sovereign of all, some it has marked out to be gods and some to be human beings, some it has made slaves and some free). When questioned about its absence by the authors, Zartaloudis referred us[132] to an earlier piece of his—quoted and related above[133]– which discusses the fragment in question. However, in this piece one misses a discussion on the second part of the fragment, pertaining to the making of the *eleutherous* and *doulous*. Nevertheless, one reads Zartaloudis arguing that *polemos* should be considered as "neither a *gigantomachia* between Gods, nor a conflict on the human terrain", nor as "a strife structured on oppositional relations" or even "a synthetic 'movement' of differences". *Polemos* would rather be "at the level of becoming (ontologically), neither a prioritized referent-ground, nor an exclusive power of the 'polis'", and, therefore, "a universal nomadic '*nemein*', an a-symphony (multiplicity); that is, a non-dialectics of construction, deconstruction, reconstruction [something that] 'happens' in the rhythm of becoming".[134]

Only when *polemos* is considered a necessity of nature (*physeos anagkaias*) can law be engendered dialectically as Law. Perhaps this is the reason that Alexandre Kojève indicated that legality is the dead body of authority—of the authority between master and slave, it may be added—or, "more exactly, its 'mummy'—a

body that preserves itself, although without soul or life".[135] After the reification of the relation between master and slave[136] (the after-establishment of this relation would be reification itself, because, then again as one reads in Kojève, "whereas Authority excludes force, Law implies and presupposes it"[137]) comes propriety. Let us elaborate this thread a little further. As Kojève renders this image of the movement of self-consciousness, it is *anthropogenetics* itself:

> The master dominates what is animal in him (and that manifests itself as the instinct of self-preservation), subordinating it to what he has of specifically human (this human element manifests itself, indeed, with the desire for recognition, with "vanity", as something that lacks any biological, "living" value). The servant, instead, subordinates the human to nature, to the animal.[138]

Nevertheless, as it is well known, the master needs the slave—in fact, the slave is the "truth" of self-sufficient consciousness. Only by interposing the slave between oneself (the master), and things, as the slave processes things, may the master fulfill his desire. This desire, Hegel writes, "has reserved to itself the pure negating of the object, and, as a result, it has reserved to itself that unmixed feeling for its own self. However, for that reason, this satisfaction is itself only a vanishing, for it lacks the objective aspect, or stable existence."[139] Conversely, the work of the slave "*cultivates and forms*. The negative relation to the object becomes the form of the object; it becomes something that *endures*".[140] It becomes—if one allows the allegorical rendition of Hegel's allegorical reading machine—propriety.[141] And with it, the emergence of the signature of Law takes place. Yet, one reads in Agamben's *The Use of Bodies*:

> One can ask, however, whether mediating one's own relation with nature through the relation with another human being is not from the very beginning what is properly human and whether slavery does not contain a memory of this original anthropogenetic operation. *The perversion begins only when the reciprocal relation of use is appropriated and reified in juridical terms through the constitution of slavery as a social institution.*[142]

If the *anthropological machine* (Agamben) is always-already operating, reifying humanity through the inclusive-exclusion of animality, how can there be a memory of an "original anthropogenetic operation" that is anterior to the anthropological machine itself, to appropriation and reification? One may sustain that *The Birth of Nomos* answers positively to this possibility, contraposing to a reading and

framing of *polemos* as the always-already appropriation of impropriety, a reading that thinks it as an expropriation of expropriation and *nomos* as the *dunamis* to the ways of living. At the heart of *nomos*—at its birth—one would find not necessity, but contingency, not a force without significance, but, perhaps, significance without force.

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NOTES

1. We are very thankful to Thanos Zartaloudis for his comments on an earlier draft.

2. Giorgio Agamben in Thanos Zartaloudis. *The Birth of Nomos*. Edinburgh: Edinburgh University Press, 2019, p. i. This and all parenthetical references are taken from Thanos Zartaloudis. *The Birth of Nomos*. Edinburgh: Edinburgh University Press, 2019.

3. Hannah Arendt. Walter Benjamin. Trans. by Harry Zohn. In: *Men in Dark Times*. New York: Harcourt Brace Jovanovich, 1970, 204.

4. Arendt, *Walter Benjamin*, 204.

5. Martin Ostwald. *Nomos and the Beginnings of the Athenian Democracy*. Oxford: The Clarendon Press, 1969, 7.

6. Ostwald, *Nomos*, 10.

7. Giorgio Agamben. *The Kingdom and the Glory: For a Theological Genealogy of Economy and Government*. Trans. by Lorenzo Chiesa and Matteo Mandarini. Stanford: Stanford University Press, 2011a, 225.

8. Agamben, *Kingdom*, 20.

9. Agamben, *Kingdom*, 20-21.

10. See William Watkin. *Agamben and Indifference: A Critical Overview*. Lanham: Rowman & Littlefield International, 2013, 245.

11. As Bonnie Honig has argued, "Agamben himself is indebted to Arendt's work, though the debt is not always acknowledged", (Bonnie Honig, "Is Man a "Sabbatical Animal"? Agamben, Rosenzweig, Heschel, Arendt", *Political Theology*, p. 1-23, 2018, 17. Unfortunately, scholarship on this relationship usually focuses on those moments where Agamben directly quotes and engages with Arendt's work, whereas there are whole parts of his work which resemble not only the pathmarks and threads opened by Arendt, but also her wording of them, without directly mentioning or discussing Arendt herself; and this seems to us to be the case regarding the connection between word and deed, language and action.

12. Hannah Arendt. *The Human Condition*. Chicago: The University of Chicago Press, 1998, 200.

13. Hannah Arendt. *Between Past and Future*. New York: Harcourt & Co., 1961, 43.

14. Giorgio Agamben. *The Sacrament of Language: An Archaeology of the Oath*. Trans. by Adam Kotsko. Stanford: Stanford University Press, 2011b, 68.

15. Giorgio Agamben. *Sacrament*, 69.

16. Giorgio Agamben. *Homo sacer: Sovereign Power and Bare Life*. Trans. by Daniel Heller-Roazen. Stanford: Stanford University Press, 1998, 29.

17. See Giorgio Agamben. *Sacrament*, 70.

18. Giorgio Agamben. *Homo sacer*, 29.

19. Thanos Zartaloudis. *Giorgio Agamben: Power, Law and the Uses of Criticism*. New York: Routledge, 2011, 197.

20. Giorgio Agamben. *State of Exception*. Trans. by Kevin Attell. Chicago: The University of

Chicago Press, 2005a, 37.

21. Giorgio Agamben. *Sacrament*, 70.

22. Agamben, *Kingdom*, 182-183, 188.

23. Agamben, *Kingdom*, 232.

24. Agamben, *Kingdom*, 242.

25. Zartaloudis, *Giorgio Agamben*, 197.

26. As Agamben writes, the inner nature of the law would be its regulative and repetitive character: "The law has a regulative character and is a 'rule' not because it commands and proscribes, but because it must first of all create the sphere of its own reference in real life and *make that reference regular*. Since the rule both stabilizes and presupposes the conditions of this reference, the originary structure of the rule is always of this kind: "If (a real case in point, e.g.: *si membrum rupsit*), then (juridical consequence, e. g.: *talio esto*)," in which a fact is included in the juridical order through its exclusion, and transgression seems to precede and determine the lawful case". Agamben, *Homo Sacer*, 26, emphasis in original.

27. Thanos Zartaloudis. "*Ars Inventio*, Poetic Laws: Law and Literature—the and." *Cardozo Law Review*, v. 29, i. 5, p. 2431-2459, 2008, 2453.

28. Zartaloudis, "*Ars Inventio*", 2437.

29. Zartaloudis, "*Ars Inventio*", 2444.

30. Agamben, *Homo Sacer*, 18, 26.

31. Zartaloudis, "*Ars Inventio*", 2443.

32. Zartaloudis, "*Ars Inventio*", 2459.

33. Agamben, *Homo Sacer*, 60.

34. Giorgio Agamben. *Coming Community*. Trans. by Michael Hardt. Minneapolis: University of Minnesota Press, 1993, 19.

35. Zartaloudis, *Giorgio Agamben*, 288.

36. Giorgio Agamben. *The Signature of All Things: On Method*. New York: Zone Books, 2009, 64.

37. Agamben, *Signature*, 59.

38. Watkin, *Agamben*, 36.

39. Agamben, *Signature*, 75-76.

40. Agamben, *Community*, 19.

41. Agamben, *Community*, 52-53.

42. Watkin, *Agamben*, 45.

43. Agamben, *Signature*, 80.

44. See Watkin, *Agamben*, 45, 171, 222.

45. Agamben, *Signature*, 89.

46. Giorgio Agamben. *The Use of Bodies*. Trans. by Adam Kotsko. Stanford: Stanford University Press, 2016b, xiii.

47. Agamben, *Signature*, 89.

48. Agamben, *Signature*, 90.

49. Agamben, *Signature*, 90.

50. Agamben, *Homo Sacer*, 15.

51. Zartaloudis, *Giorgio Agamben*, 285.

52. Zartaloudis, *Giorgio Agamben*, 289.

53. The literature on Arendt's failure or her "Hellenistic bias" is huge. For a more nuanced and careful reading, see Roy Tsao "Arendt against Athens". See Roy Tsao. Arendt Against Athens: Rereading *The Human Condition. Political Theory*, v. 30, i. 1, p. 97-123, 2002. Tsao's piece opens insightfully with a passage taken from W. H. Auden's review of *The Human Condition* which could be interpolated into Zartaloudis' book for some interesting rearrangements of its text: "Miss Arendt is more reticent than, perhaps, she should be, about what actually went on in this public realm of the Greeks". To paraphrase Auden, one may advance the reading that Zartaloudis is more reticent regarding Greek slavery—which appears recurrently in his interpreted sources—than one would like him to be. This reticence is, to some extent, at least, unsustainable—as it will be indicated below, for instance, when discussing Heraclitus' notion of *nomos*, Zartaloudis advances the interpretation that the nature of *nomos* is *polemos*, a choice of words which calls for an engagement with Heraclitus' Fragment 53, which famously brings to language that *polemos*, understood as the king of all, makes (*epoiein*) freemen and slaves. Nevertheless, one could be generous towards his silence—to interesting interpretative results; a thread that is explored in our concluding remarks.

54. See Walter Benjamin. Karl Kraus. In: *Reflections: Essays, Aphorism, Autobiographical Writings*. Ed. and trans. by Peter Demetz. New York: Schocken, 1986.

55. Agamben, *Kingdom*, 203.

56. Jacques Derrida. *Of Spirit: Heidegger and the Question*. Trans. by Geoffrey Bennington and Rachel Bowlby. Chicago: The University of Chicago Press, 1991, 30.

57. Derrida, *Of Spirit*, 31.

58. Zartaloudis, *Giorgio Agamben*, 307.

59. Giorgio Agamben. *Idea of Prose*. Trans. by Michael Sullivan and Sam Whitsitt. New York: SUNY Press, 1995, 79-80.

60. Zartaloudis, *Giorgio Agamben*, 301-302.

61. Theodore Kisiel's elaborations on the challenge regarding the translation of *Bewandtnis* reveal its direct relationship to Zartaloudis' engagement with Greek poetry. In Kisiel's words: "*Bewandtnis* is at once an order concept and a style concept; it depicts the overall style or tenor of a set of actions in a practical setting (workshop, homestead) that necessarily shapes the practice. It is the very first of a line of concepts that the later Heidegger will gather under the pre-Socratic Greek rubric of *ethos*, which is first the spirit that haunts a dwelling, its *genius loci*, then the transmitted custom, practice, usage, tradition (*Brauch*) that structures our current dwelling; in short, the habit of a habitat, *how* it is inhabited". Theodore Kisiel. "*Was heißt das - die Bewandtnis?*

Retranslating the Categories of Heidegger's Hermeneutics of the Technical". In: BABICH, Babette. (ed.) *Hermeneutic Philosophy of Science, Van Gogh's Eyes, and God: Essays in honor of Patrick Heelan*. Berlin: Springer, 2002, 135, emphasis in the original. With this in mind, it may be argued that when the book turns to *mousike*—but also to *kleros* and *moira*—it does so in order to explore the appliance of the transmission medium itself (Greek poetry)—albeit in the other parts of the book, the investigation concerns itself with how this medium exposes contexts and uses indicated by the pair *nómos/nomós*. Therefore, it is in those moments that the distinction between *nómos* and *nomizomena*, the *dunamis* of *nomos* and its uses, and, thus, the *nómos* to *nomizomena* that renders it *nomizetai*, is most expressive.

62. Watkin, *Agamben*, 238-239, 240.

63. Agamben, *Kingdom*, 283.

64. Giorgio Agamben. *Categorias italianas: Estudos de poética e literatura*. Trans. by Carlos Eduardo Schmidt Capela and Vinícius Nicastro Honesko. Florianópolis: Editora UFSC, 2014, 179, our translation.

65. Agamben, *Kingdom*, 251-252, translation modified.

66. Agamben, *Homo Sacer*, 22.

67. Watkin, *Agamben*, 238.

68. Agamben, *Categorias*, 180, 184-185.

69. Agamben, *Categorias*, 33, our translation.

70. Agamben, *Categorias*, 170, our translation.

71. Giorgio Agamben. *The Time that Remains: A Commentary on the Letter to the Romans*. Trans. by Patricia Dailey. Stanford: Stanford University Press, 2005b, 84.

72. William Watkin. *The Literary Agamben: Adventures in Logopoiesis*. New York: Continuum, 2010, 57.

73. Zartaloudis, "*Ars Inventio*", 2435.

74. Giorgio Agamben. *Che cos'è la filosofia*. Macerata: Quodlibet, 2016a, 135, our translation.

75. Agamben, *Che cos'è*, 138, our translation.

76. Giorgio Agamben. *Language and Death: The Place of Negativity*. Trans. by Karen E. Pinkus and Michael Hardt. Minneapolis: University of Minnesota Press, 2006, 35.

77. Agamben, *Language*, 46, 47.

78. Agamben, *Language*, 78, 85.

79. Agamben, *Language*, 95.

80. Agamben, *Language*, 95-96, 107.

81. Agamben, *Homo Sacer*, 60.

82. Agamben, *Che cos'è*, 138.

83. Agamben, *Che cos'è*, 140, our translation.

84. Agamben, *Che cos'è*, 146.

85. Thanos Zartaloudis. "Without Negative Origins and Absolute Ends: A Jurisprudence of the

Singular." *Law and Critique*, v. 13, p. 197-230, 2002, 226.

86. G. W. F. Hegel. *Outines of the Philosophy of Right*. Trans. by T. M. Knox. Oxford: Oxford University Press, 2008, 56.

87. Joachim Ritter. *Hegel and the French Revolution: Essays on the Philosophy of Right*. Trans. by Richard Dien Winfield. Cambridge: The MIT Press, 1984, 127.

88. Joachim Ritter. *Hegel and the French Revolution: Essays on the Philosophy of Right*. Trans. by Richard Dien Winfield. Cambridge: The MIT Press, 1984, 130.

89. See Johan van der Walt. Law, Utopia, Event: A Constellation of Two Trajectories. In: SARAT, Austin et al. (eds.) *Law and the Utopian Imagination*. Stanford: Stanford Law Books, 2014.

90. Ritter, *Hegel*, 132.

91. Ritter, *Hegel*, 132.

92. Hans Kelsen. *A democracia*. Trans. by Ivone Castilho Benedetti et al. São Paulo: Martins Fontes, 2000, 291-292.

93. Johan van der Walt argues for a direct relation between utopian thought and the denouncement of private propriety. When this "great European debate" underpinned by the positions taken regarding the institution of private property "finally lost its fascination," the "utopian intuition" shifted its focus "to a more radical resistance—namely, the resistance to the very notions of propriety and the proper that ultimately informed and conditioned (...) the institutions of private property". (2014: 71) The reading explored above—which advances the idea that at the untimely moment of the emergence of Law as a signature propriety works both as its *initium* (as the institution of private property) and its *principium* (as the topical disposition of language)— is clearly indebted to his interpretation. One may add that the historical presentations of what he calls "articulations of the utopian intuition" can be understood as different takes on the homonymy between Law's *initium* and *principium*.

94. See Ritter, *Hegel*, 133.

95. Carl Schmitt. *The Nomos of the Earth*. Trans. by G. L. Ulmen. New York: Telos Press Publishing, 2006, 67, 70, 78-79.

96. Carl Schmitt. "Appropriation/Distribution/Production: An Attempt to Determine from Nomos the Basic Questions of Every Social and Economic Order." In: *The Nomos of the Earth*. Trans. by G. L. Ulmen. New York: Telos Press Publishing, 2006, 326-327.

97. Carl Schmitt. "Nomos—Nahme—Name." In: *The Nomos of the Earth*. Trans. by G. L. Ulmen. New York: Telos Press Publishing, 2006, 347-349.

98. Effective-possibility, real possibility (*reale Möglichkeit*), is the way of the Schmittian exception— and this is the time of *nomos*, or the *nomos* as *chronos*—as Derrida insightfully proposed in *The Politics of Friendship*: "The exception is the rule—that, perhaps, is what this thought of real possibility thinks. The exception is the rule of what takes place, the law of the event, the real possibility of its real possibility. The exception grounds the decision on the subject of the case or the eventuality. The fact that the case or situation (*dieser Fall*) arises only exceptionally (*nur*

ausnahmsweise) does not suspend, sublate or annul (*hebt … nicht auf*) its 'determining character'. On the contrary, this exceptionality grounds (*begründet*) the eventuality of the event. An event is an event, and a decisive one, only if it is exceptional. An event as such is always exceptional." Jacques Derrida. The Politics of Friendship. Trans. by George Collins. New York: Verso, 2006, 127-128. Its "innermost spring" is the following logic: "the passage from possibility to eventuality (which is here specified as minimal eventuality) and from eventuality to effectivity-actuality (which in the sentence is named real possibility, '*reale Möglichkeit*'). This passage takes place, it rushes into place, precisely where the abyss of a distinction happens to be filled up. The passage consists in fact in a denial of the abyss. (…) Whether the war takes place, whether war is decided upon or declared, is a mere empirical alternative in the face of an essential necessity: war is taking place; it has already begun before it begins, as soon as it is characterized as eventual (that is, announced as a non-excluded event in a sort of contingent future). And it is eventual as soon as it is possible. Schmitt does not wish to dissociate the quasi-transcendental modality of the possible and the historico-factual modality of the eventual. He names now the eventuality (*wenigstens eventuell*), now the possibility (*Möglichkeit*), without thematizing the criterion of distinction", Derrida, *Politics*, 86. It is the "undecidable eventuality qua real possibility" that "informs decisions and forms truth. This undecidable decision bestows the force of unveiling. This deciding signification which unveils the kernel of things accrues to the decision", Derrida, *Politics*, 128.

99. Johan van der Walt. *The Concept of Liberal Democratic Law Distilled*. New York: Routledge, 2019, 33. The pages indicated for Van der Walt's forthcoming work, *The Concept of Liberal Democratic Law Distilled*, are taken from the manuscript, which its author had the generosity of sharing with us.

100. Walt, *Concept*, 36.

101. The characterization of Schmitt's protocol as a political reduction, along the lines of the phenomenological reduction, is advanced by Michael Marder in *Groundless Existence: The Political Ontology of Carl Schmitt*, which inspired the interpretation advanced here. See Michael Marder. *Groundless Existence: The Political Ontology of Carl Schmitt.* New York: Continuum, 2010

102. Walt, *Concept*, 41.

103. Thucydides. *The War of the Peloponnesians and the Athenians*. Ed. and trans. by Jeremy Mynott. Cambridge: Cambridge University Press, 2013, 380.

104. Thucydides, *War*, 382, emphasis added.

105. It should be noted that *The Birth of Nomos* purposively does not deal with this distinction, nor with the sources that testify to and advance the contraposition between *nomos* and *phusis*. (*Cf*. Zartaloudis, xxxiv ff) That notwithstanding, the debate itself and its context are not crucial to the present argument. What is of great interest is the understanding that can be read through Thucydides' narration of war or struggle as the *arché* or *nomos* to *nomizomena*. One can read Plato's strategy of dismissing the whole antithesis debate in the tenth book of the *Nomoi* along these lines, reframing the matter as a question regarding the principle of movement (*dunamis*) to that

of *cosmopoiesis*, which, as such, is directly related to Zartaloudis' investigation. *Cf*. Plato. *The Laws of Plato*. Trans. by Thomas L. Pangle. Chicago: The University of Chicago Press, 1980, 286-288; 890a-891e.

106. Schmitt, *Nomos-Nahme-Name*, 342.

107. Walt, *Concept*, 43.

108. Walt, *Concept*, 44.

109. Schmitt, *Nomos*, 73.

110. Schmitt, *Nomos*, 73.

111. Agamben, *Homo Sacer*, 32.

112. Schmitt, *Nomos-Nahme-Name*, 345.

113. Schmitt, *Nomos-Nahme-Name*, 348.

114. Schmitt, *Nomos-Nahme-Name*, 349.

115. Schmitt, *Nomos-Nahme-Name*, 349, emphasis added.

116. Schmitt, *Nomos-Nahme-Name*, 349.

117. Agamben, *Kingdom*, 237.

118. Agamben, *Kingdom*, 238.

119. Ian Cooper. "Law, Tragedy, Spirit: Hölderlin Contra Agamben." *Journal of Literary Theory*, v. 6, i. 1, p. 195-211, 2012, 204.

120. Agamben, *Homo Sacer*, 33.

121. Agamben, *Homo Sacer*, 51.

122. There is a recurrent thought in Agamben's work regarding our "extreme epochal situation": "we live in a time that is not—or at least pretends not to be—determined by any historical *a priori*, which is to say, a post-historical time (or rather, a time determined by the absence or impossibility of such an *a priori*)". Agamben, *Use*, 114. It may be suggested, from the contraposition between Schmitt and Hölderlin explored above, that the "a priori" which makes all ontologies "hodologies", "which is to say, the way that being always historically opens toward itself", is none other than the power to give names. Agamben, *Use*, 114.

123. NANCY, Jean-Luc. Cosmos Basileus. *Lignes*, v. 3, i. 35, p. 94-99, 1998, 97, our translation.

124. Cooper, Law, 201, the sentences in parentheses are Hölderlin's.

125. Plato. Minos. In: *Plato*. v. VIII. Ed. and trans. by W. R. M. Lamb. London: Loeb, 1927, 338, 313b.

126. Plato, *Minos*, 391, 314b.

127. Plato, *Minos*, 393, 314b-c.

128. See Leo Strauss. On the Minos. In: *Liberalism Ancient and Modern*. Chicago: The University of Chicago Press, 1995. 65.

129. Plato, *Minos*, 411, 318d-e.

130. Lamb in Plato, *Minos*, 418-419, note 2.

131. See Plato, *The Laws*, 4ff, 625c ff.

132. On email with the authors. The authors would like to thank Thanos Zartaloudis for answering our questions pertaining to this article.

133. See Zartaloudis, *Without*.

134. Zartaloudis, *Without*, 216, our addition.

135. Alexandre Kojève. *La Nozione di Autorità*. Trans. by Marco Filoni. Milan: Adelphi Edizioni, 2011, 24, our translation.

136. It should be clear that this movement is itself a contestable interpretation made by Kojève. Contestable as it is, it does have some foundation. Kojève argues that the relation between master and slave is through and through a theory of authority. However, he contends that it does not comprehend all the possible ideal types of authority (Kojève, *Autorità*, 30 ff.). And yet, what he advances as the underlying structure of authority as relation can be aptly described as a formalization of the Hegelian dialectic between master and slave, because authority would always involve risk and recognition. Kojève, *Autorità*, 25.

137. Kojève, *Autorità*, 20, our translation.

138. Kojève, *Autorità*, 30, our translation.

139. G. W. F. Hegel. *The Phenomenology of Spirit*. Trans. by Terry Pinkard. Cambridge: Cambridge University Press, 2018, 115.

140. Hegel, *Phenomenology*, 115, translation modified; emphasis on the original.

141. It is of substantial importance to the present argument that in the few paragraphs directly dedicated to a discussion on slavery pertaining to its appearance in the sources, i.e. Greek poetry, Zartaloudis opens his commentary by noting how "some of the proximate characteristics of 'property' were approximated, not with regard to land, but with regard to 'slaves'." (2019: 95)

142. Agamben, *Use*, 14, emphasis added.