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Daniela Carpi and Klaus Stierstorfer

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Liminal Discourses

Subliminal Tensions in Law and Literature

Edited by
Daniela Carpi and Jeanne Gaakeer

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Daniela Carpi (University of Verona)

Introduction 1: The Sublime of Law

The philosophical enlargement of the concept's initial semantics has made the notion of the sublime a major issue for contemporary discourse. (Christian Moraru, "Sublime Ethics")

There has been a so-called "postmodern return" to the sublime, a return which has been influential within recent legal theory. (Janice Richardson, "The Law and the Sublime")

The sublime has been a predominant concept of aesthetic theory in Western art and philosophy, receiving a more explicit formulation in early eighteenth-century philosophy. In the last decades the concept of the sublime has been the object of wide scholarly attention and is still at the centre of the theoretical debates of our era. "This renewal of interest is perhaps timely: a notion that conjures up the inexplicable, the overwhelming, and the horrendous may be well suited to the current age"¹ asserts Jane Forsay. The concept of the sublime has moved out of the strictly philosophical and literary fields and crossed the borders between disciplines, finding an application also in the juridical field. The sublime has become an intellectual symptom of the "mode" that is characteristic of our age.

The aim of this introduction is to bring the fields of literature and law together by demonstrating that the discourses concerning the law are liminal in many ways, as the most recent interactions of interdisciplinary research have proved. We may speak of law and literature, which is the starting point for all subsequent theorizing, but we may also speak of law and visual arts (Sherwin, Douzinas, Carpi),² law and economics,³ law and culture (Sarat, Porsdam),⁴ law and equity

1 J. Forsay, "Is a Theory of the Sublime Possible?," *The Journal of Aesthetics and Art Criticism* 65.4 (2007): 381–389, 381.

2 R. Sherwin, *Visualizing Law in the Age of the Digital Baroque. Arabesques and Entanglements* (London: Routledge, 2011); R. Sherwin, *When Law Goes Pop: The Vanishing Line between Law and Popular Culture* (Chicago and London: University of Chicago Press, 2002); C. Douzinas and L. Nead, *Law and the Image: The Authority of Art and the Aesthetics of Law* (Chicago and London: The University of Chicago Press, 1999); D. Carpi, "Iconological subversion of the law in P. D. James's *A Certain Justice*," *Pólemos*, special issue on "Iconologia del diritto," 2 (2009), 28–35.

3 R. Cooter and T. Ulen, *Law and Economics* (New Jersey: Prentice Hall, 2011).

4 A. Sarat and T. R. Kearns eds., *Law in the Domains of Culture* [1998], The Amherst Series in Law, Jurisprudence and Social Thought (Ann Arbor: University of Michigan Press, 2000); H. Porsdam and T. Elhom eds., *Dialogues on Justice: European Perspective on Law and Humanities* (Berlin and Boston: DeGruyter, 2012).

(Carpi, Watt, Visconsi).⁵ Just recently, new possibilities of comparison have arisen (with Monateri and Sherwin in particular) connecting the aesthetics of the sublime to the legal act of administering justice or of interpreting the law. To understand how the law plays a role in the rhetoric of the sublime we must go back to the development of this aesthetic theory from its origins.

The first study of the value of the sublime is the treatise ascribed to Longinus *On the Sublime* (*Peri hypsous*), a document that was probably written as early as the first century A.D., but was first published in 1554. In 1674 it was translated into French and since then it has had a fundamental influence on literary criticism.

Writing within the classical historical tradition Longinus says that the sublime implies that, in emotions and in language, man can transcend the limits of the human condition. He proposes the idea of an agonistic struggle between man and nature. Longinus's approach is the opposite of Plato's declaration of poetic inspiration as dangerous divine madness or of the poet as a liar. Yet, like Plato, Longinus feels that the human is the technical aspect of the experience of art, while the sublime is the "soul," or that which eludes our experience of art. In order to understand the sublime, we must have some idea of what exists beyond the human, empirical experience. Longinus explains that this "beyond" is comprehended in terms of metaphor, or in terms of what is absent from the empirical world. Our sense of the sublime is an illusion, which draws us to new heights, to the realization that there is something more to human life than the mundane, the ordinary. In fact, the sublime implies a kind of mystery. The sublime is that which eludes every effort of the mind and of the imagination to picture it. It is what reduces all else to nothingness. It can be defined and described only in symbolic terms, which, ironically enough, defy the figurative arts and traditional manners of representation. Only through the art of the metaphorical language of poetry is it possible to allude to the sublime.

Longinus's contribution to concepts of the beautiful/sublime also includes the notion of the poet's "joining" in this vision of greatness. As readers, we gain a deeper sense of freedom through the awareness of our capacity to join in this greatness. The discussion of the sublime may also be taken as the first significant example of the comparative approach at work, because such an approach does not observe the conventional genre boundaries. In his citations and comparisons Longinus moves across prose and poetry, with examples drawn from oratory, epic

⁵ D. Carpi ed., *The Concept of Equity: an Interdisciplinary Assessment* (Heidelberg: Winter, 2007); D. Carpi ed., *Practising Equity, Addressing Law: Equity in Law and Literature* (Heidelberg: Winter, 2008); E. Visconsi, *Lines of Equity* (Ithaca and London: Cornell University Press, 2008); G. Watt, *Equity Stirring: The Story of Justice Beyond the Law* (Oxford: Hart Publishing, 2009).

and lyric poetry, drama, history, and philosophy.⁶ Hence when we speak of Longinus we think of words such as “transport,” “transcend,” “awe-full,” “flight,” “amazement,” and “astonishment.” Longinus is concerned with situations and effects which lead to a state of elevation that he calls *ekstasis* (transport, in the quite literal sense: a state of being “carried outside” oneself). Longinus associates sublimity variously with the inspired author, the “excited” text itself, and the impact on the audience (that is the reader’s reaction). What is particularly interesting and anticipates future developments in critical theory is the insistence on the act of reading/interpreting: the sublime therefore is the interpreter’s plunge into the flow of the text so as to discover its meaning. The consequences of *hypsos* are irresistible and lend themselves to a rhetoric of astonishment (*ekplexis*). Longinus wonders whether there is an art (*téchné*) of the sublime, hence introducing the recurring tension between nature/genius and culture/craft at play throughout the treatise.

Cohn and Miles’s essay “The Sublime in Alchemy, Aesthetics and Psychoanalysis” devotes much attention to the various meanings and derivations of the term “sublime.” Among the many they present⁷ I will share the following one: sublime is from the Latin root “sub-limen,” a threshold we must go beyond and overcome in order to attain ultimate meaning. This perspective suggests a daring movement from within and without the literary (or legal, in our case) text connecting more than one discipline and opening legal action to interpretation. The concept of threshold conveys an interdisciplinary method, which has always been ours in the law-and-literature approach and suggests a fusion of creation (of the legal text) and interpretation (the resistance of the text to signify), so that the sublime is both the act of doing justice and the act of reading the legal text itself.

In the fourteenth century the term “sublimate” took on an alchemical connotation: minerals in a vapor state erupting from the earth, taking on a figurative,

⁶ See R. Macksey, “Longinus Reconsidered,” *Modern Language Notes* 108 (1993): 913–934.

⁷ J. Cohn and T. H. Miles, “The Sublime in Alchemy, Aesthetics and Psychoanalysis,” *Modern Philology* 74.3 (1977): 289–304. “Sublime”: derivation from *super limas*: “above the slime or mud of this world.” *Limen* furthermore is said to be “connected” with *limus*, “sidelong,” with particular reference to the eyes. Sources for sublime words are the related words *limes* (boundary, road) and *limen* (threshold), with *limus-liquis* (the source of oblique, hence sidelong). These etymologies, whether English or Latin, accept the morpheme sub- as meaning either “up” or “down,” depending on whether one selects the “lintel” or “threshold” source for *limen-liminis*. While a significant number of Latin words, formed with sub-, certainly have the meaning of a movement upward, the original intention is always directed at the concept of a change in a position from below to above: *sublevo* – to raise up; *subduco* – to lift up; *subeo* – to come up; *subvecto* – to bring up.

metaphysical meaning of purification and elevation, of purity and loftiness also in a religious sense.⁸ These theological applications and their derivative forms give us the first symptoms of the confusion surrounding the idea of the sublime, that is to say, where the sublime lays and what the act of sublimation entails, whether sublimation is a state or a process, and whether it is a property of the defined object or of the evolving subject. These are some of the main questions. Beyond the religious uses of the word and the general seventeenth-century meaning of “lofty” and “purified”, we find the first relation between the sublime and the art of rhetoric: the expression of lofty ideas in an elevated manner in this period.

The most important alteration of meaning, however, occurs when the sublime is used by English critics in the Longinian sense to describe not the external cause of a particular aesthetic state in the beholder, but that state itself: the sublime has moved from object to subject. In the twentieth century the aesthetic use of the word sublime was primarily limited to discussions of literature and criticism from the classical and pre-Romantic periods. In our own time the term has been extended from a strictly literary field to the legal one. In addition, the legal act and the reading of the legal text share the characteristics of the sublime.

In 1986 Harold Bloom spoke of Longinus as the main influence on contemporary criticism in his text *Poets of Sensibility and the Sublime*⁹ and argued that the idea of criticism as a form of art derives from classical times. He even defined the years between 1650–1850 as the “age of the sublime” because the “sublime” is a philosophical category linking Enlightenment to Romanticism. Longinus considered the aesthetic category of the sublime in an agonistic way, as a struggle and an “intellectual warfare,” as Blake defined it in the Romantic period.

Geoffrey Hartman¹⁰ asserts that for Hegel the sublime is a dazzling light which overwhelms the spirit until imagination intervenes and reacts to this sense of annihilation. If the eighteenth century distinguished between the artistic sublime and the natural sublime, Hegel adds the category of the sublime of history: for Hegel in fact the sublime is a sort of contact with the mysteries of the past. The Neoclassical period was in fact typified by the admiration for our precursors’ genius and by the consciousness of their inimitability. On the contrary, for Hegel historical space is not the space of mystery, but of interpretation: it is both a hermeneutical and a pneumatic space. Towards the end of the eighteenth century the

⁸ See D. B. Morris, *The Religious Sublime: Christian Poetry and Critical Tradition in Eighteenth-century England* (Lexington: University of Kentucky Press, 1972).

⁹ H. Bloom, *Poets of Sensibility and the Sublime* (New York: Chelsea House Publishers, 1986).

¹⁰ G. Hartman, “From the Sublime to the Hermeneutic” in *The Fate of Reading* (Chicago: Chicago University Press, 1975).

sublime becomes a poetics of absence that allows the spirit to wander freely. The sublime therefore exists to be dominated by the spirit. Moreover, Hartman speaks of his more innovative theory, which is the sublime connected to the act of interpretation: the act of reading fills in the distance between the dazzling moment of original creation and its verbal effect. He re-reads Bloom's concept of the anxiety of influence by adding to it the reader's experience of estrangement when confronted by the resistance of the text to signify and therefore by a sensation of annihilation caused by the failure of the hermeneutical act, followed by an immediate reaction of plunging into the act of interpretation.

Harold Bloom¹¹ distinguishes between the American sublime (Emerson, Whitman) and the European sublime (Wordsworth). In the case of the European sublime we can speak of discontinuity with the past: tradition exists to be refuted, and the poet is the prophet who brings a new truth. In the case of Emerson, on the contrary, the sublime results from a catastrophe: the mystifying force of the past is rejected. The poetical "I," in Emerson, expresses its awareness of the past by having recourse to a system of tropes. The poetical I rejects the sensation of being indebted to the past by means of an incessant self-regeneration, as Nietzsche also asserted. The movement towards the past goes in two directions: at first Emerson attains a discontinuous perception of the authority of the past, thus paving the way for an upheaval in which the "I" is annulled (I am nihil). But thanks to this annihilation the poet can introject the regenerative energy of the past, which is thus transformed from a negative sensation into positive energy. According to Bloom, the main difference between the American and the European sublime is that in the former the sublime is an inner process, what shows God in me and fortifies me; in the latter it is an external element, an incessant exchange between mind and nature, the inside and the outside.

Paul De Man¹² examines the concept of the sublime in Kant starting from his third critique in *Critique of Pure Reason*. De Man observes how Kant establishes a fundamental connection between critical philosophy and ideology: aesthetics is intended as phenomenal cognition and represents the borderline between a transcendental and a metaphysical discourse. Kant's vision of the sublime stresses the reader's emotional reaction which can be ascribed both to a drive for cognition (the mathematical sublime) and to the discourse itself (the dynamic sublime). The most apparent example of the sublime is the impact of the

11 H. Bloom, "Emerson and Whitman: the American Sublime" in *Poetry and Repression* (New Haven, CT and London: Yale University Press, 1976), ch.9.

12 P. De Man, "Phenomenality and Materiality in Kant" in *Hermeneutics: Questions and Prospects*, eds. G. Shapiro and A. Sica (Amherst, MA: Massachusetts University Press, 1984).

"I" with natural phenomena: the immediate reaction when facing the power of nature is one of terror and a sense of estrangement, but then imagination sets in and transforms terror into a sensation of calm superiority. It is the typical process of the sublime that goes from a contraction to an expansion of the soul. The sublime therefore does not reside in natural phenomena, but in man's soul. In fact De Man defines Kant's dynamics of the sublime as a theory of moral effects. We must stress the fact that Kant's dynamics of the sublime is a dialectic between reason and imagination. Kant says that to reach the sublime we need two dialectical processes: "apprehensio" and "comprehensio aesthetica." The architectural vision of nature in Kant is therefore a totally material construction which does not involve the thinking mind. All this is quite different from Wordsworth's vision, where the sublime is a constant exchange between mind and nature, between the visible and the intellectual world. Kant's vision stems from a sense of pain caused by the failure to make the infinite visible. The pleasures of the imagination, which bring us beyond the sensible, derive precisely from this sensation of failure.

In the mid-twentieth century Iris Murdoch, in her two fundamental essays "The Sublime and the Good" and "The Sublime and the Good Revisited",¹³ speaks of the distinction between the Beautiful and the Sublime in Kant. Murdoch asserts that Kant's theory of the Beautiful is at the root of most Romantic theories. Kant considers the Beautiful the experience of a harmony between imagination and understanding, which should not be connected to any practical or conceptual use, but should be seen as an end in itself (thus it should be connected to art), while the Sublime is the experience of a conflict between reason and imagination. If the Beautiful lulls us, the Sublime uproots us.

In "The Possession of the Sublime,"¹⁴ Paul Fry asserts that the sublime is the sudden manifestation of a powerful moral force, a sort of possession. The sublime is the agonistic struggle for possession, meant in its actual demonic sense. To better explain his meaning he quotes Dante's canto of Ulysses: sublime is the temptation of cognition which implies the alienation of both the material and the spiritual world. Imagination is the drive that rises from the abyss of conscience and expresses what language cannot express. In the case of Dante's Ulysses the sublime is the meeting with one's estranged "I." In this case we may say that the sublime is the delight we experience when our self-preservation is threatened.

¹³ I. Murdoch, "The Sublime and the Good," *Chicago Review* 13.3 (1959): 42–55; "The Sublime and the Good Revisited," *Yale Review* 49 (1959): 247–271.

¹⁴ P. Fry, "La possessione del sublime" in *La via al sublime*, eds. M. Brown and G. Franci (Florence: Alinea, 1987).

This is Shelley's idea of the sublime, a sort of destructive experience where we find ourselves on the verge of annihilation. As mentioned above, the sublime resides not only in the text, but in the reader: the sublime is the reader's plunge towards non-comprehension at the risk of having his faculties annihilated. But this first sensation is superseded by a strengthening of the faculties of the imagination which allow the reader to overcome his first negative reaction. In the act of reading, the previous images of the message are deconstructed so as to reach a new understanding. The act of reading is sublime because it first has to face the chasm of non-understanding in a vertical movement of descent into one's private sensation of inadequacy, which is then followed by an upward movement of exaltation of one's ability to interpret.

The Romantic sublime, beginning with Burke's 1757 account, no longer focuses on rhetoric or the stock sources of the experience that John Dennis lists in his famous essay *The Grounds of Criticism in Poetry* (1704); instead it concentrates on the imagination or the emotions that are felt during the encounter with death. Death epitomizes Kant's¹⁵ idea of the sublime, that "absolutely great" thing that stretches the imagination of the survivor to its limits. With Burke and Kant the sublime ceases to be simply a phenomenon and becomes a movement in time, during which the imagination moves to an emotional extreme. Kant calls this movement "vibration," an "alternating attraction toward, and repulsion from, the same object" – namely death, in one of its manifestations. Burke imagined the sublime as a "mind [...] hurried out of itself, by a crowd of great and confused images."¹⁶

In the aesthetics of the sublime, silence, that is what cannot be represented, is the central *dynamis*, hence the metaphor of transgression as the overcoming of limits. This image is proposed by Thomas Weiskel,¹⁷ who is often quoted by Harold Bloom. Weiskel claims that the Romantic sublime arises when the normal relationship between signifying and signified is suddenly interrupted. This is the Romantic sublime's hermeneutical approach: it includes an experience in which words and images are de-stabilized and meaning is incessantly put into question, opening up new horizons of perception.

15 See I. Kant, *Critique of Judgment* [1790], trans. J. H. Bernard (New York: Hafner Press, 1951), 96.

16 E. Burke, *A Philosophical Enquiry into the Origin of our Ideas of the Sublime and Beautiful*, ed. J. T. Boulton (London: Routledge and Kegan Paul, 1958), 62. See also L. M. Austin, "The Lament and the Rhetoric of the Sublime," *Nineteenth-Century Literature* 53.3 (1998): 279–306, 287.

17 T. Weiskel, *The Romantic Sublime. Studies in the Structure and Psychology of Transcendence* (Baltimore and London: The Johns Hopkins University Press, 1976).

According to Sergio Givone¹⁸ the sublime is a historical device for producing and controlling the tragic. From a diachronical perspective the sublime is meant as delight (Burke) and a taming of the terrible (Nietzsche) at first; then it indicates a conflict between reason and imagination, a revelation of conflict because it makes reason aware of its limitations, thus driving it towards the absolute. It is a tragic agon that attains a sublime ethical reconciliation.

All the theories that have been described so far can be applied to the law and its interpretation. The law has always been considered absolute, sacred, universal and supreme: it has therefore almost been paired with the transcendent. The sacred glow which has surrounded the law is emphasized by its ritualization in trials, by the architecture of the Inns of Court, which stresses the idea of the unattainability of the law, and by many literary texts emphasizing the law as a sacred place (see Kafka's *Before the Law* as the most emblematic text). Therefore when Critical Legal Studies started to theorize about miscarriages of justice, the failure of the law, and the loss of all certainties in jurisprudence in the sixties, it sounded like a plunge into the abyss of the non-representability, like a disempowerment in the Kantian sense (the mind feels crushed by this sudden revelation of the uncertainty of the law, as in a vertical fall). In a state of shock or bewilderment and grief due to the miscarriages of law, the words of denunciation seem to reach a point of immeasurable sorrow. If the occurrence of the sublime is death, a metaphorical death, then in the accusations of Critical Legal Studies the law seemed to have fallen into a chasm of non-representability, into the annihilation of all certainties. From this position of disruption, a new reconstruction and a new innovative interpretation were required.

If we have moved from the concept of sublime as grand style (Longinus) to the insistence on emotion (the Romantic sublime), then the sublime is the reaction of the interpreter before the failure of justice: it corresponds to the vertical movement of the sublime, from disempowerment (a sense of loss and deracination when faced with the failure of the law) to re-empowerment (the law must go on to signify, justice must be redressed): "Justice, like beauty, like love, is always more than we can say. We recognize it as much by its sublime fullness as by its uncanny absence. Indeed, absence is precisely what makes the sense of fullness sublime."¹⁹

18 S. Givone, "Il sublime e il tragico" in *Studi di Estetica*, special issue on "Il sublime: creazione e catastrofe nella poesia" 4/5 anno XII, fascicolo VII (1984), 55–64.

19 R. Sherwin, *Visualizing Law*, 168.

The panic of the sudden dissolution of all juridical certainties (verging on a centripetal nothing) causes a reaction of denunciation which is itself a symptom of re-empowerment.

Richard Sherwin in particular speaks of the sublime of the law connected to its visibility in contemporary culture.

The anxiety that accompanies baroque visibility, on the one hand, which is at bottom a fear of the loss of meaning, and the uncanny presence of the visual sublime on the other, frame the contemporary, culture-wide quest for visual competence.²⁰

Sherwin intends “sublime” as the surplus of meaning conveyed by digital images: the visual baroque of simulation. Only in the cry of failure ensuing from the attempt to carry out justice, only in the incessant quest for a just system can law approach its greatness. Great is the attempt, the quest for the law. This sense of absence within presence is what constitutes the sublime.

In the contemporary crisis of *méta-récits*, at the core of which lies religion, law has become a sort of lay religion. The sacredness of the law, its aloofness, its epistemological inaccessibility and incommensurability have often been stressed.²¹ If God is the “beyond” *par excellence* that exceeds nature and man, and the altar is the place of the sublime where the pact between man and God is re-enacted, then the trial court is a sort of revision of the medieval connection between microcosm and macrocosm. This is where the microcosm is the legal setting, with the judge at its centre (the judge’s bench as the altar) conducting order, and the macrocosm is the world at large with God at the centre of the universe: “The altar, through its likeness, reminds us of the sacrifice of the Lord, but at the same time, in being used as a table, it dissimulates the sacred ground.”²²

The trial court re-enacts the fall of man (the crime), his punishment or redemption, in the same way as we have sin and redemption in religion: the movement of the sublime, composed of annihilation and re-creation, happens both in religion and in the law. Annihilation through sin or crime causes a disempowerment of the individual who necessitates a re-empowerment through the restoration of order. The religious sublime means the plunge into the unconscious and the inexplicable of the soul. In the same way, the sublime of the law implies a kind

²⁰ Sherwin, *Visualizing Law*, 5.

²¹ See D. Carpi, “The Law Firm as the House/ Home of Law in P. D. James’ *A Certain Justice*” in *Constructions of Home. Interdisciplinary Studies in Architecture, Law and Literature*, ed. K. Stierstorfer (New York: AMS Press, 2010), 23–35.

²² C. Douzinas, “Sublime Law: On Legal and Aesthetic Judgements,” *Parallax* 14.4 (2008): 18–29, 20.

of sacred belief in the capacity of the law to bring about a sort of metaphysical justice. In both cases, in the law and in the sacred, meaning is centred on iconology, representation and theatricalization. We can speak of a metaphysics of representation deriving from iconomachic controversies: “Both the Longinian and the Romantic sublimities are dislocations that occur through an overwhelming rush of images or a confrontation with emptiness and loss. This is the instant in which the mind loses itself.”²³

If, as Richard Sherwin asserts, the law nowadays is part of a visual culture, visibility itself stresses the dislocation of the sublime. It is the revelation of the invisible through the visual. This marks an awkward change in signifying practice: the sublime is not only the rhetorical gesture, the *dynamis* of the vertical movement of the fall into the abyss of disempowerment and the ascensional movement of reempowerment, but the sublime is also the quest for ultimate meaning: sublime is the tension towards an absolute form of justice which however remains unattainable. Still, the agonistic struggle towards the refusal to accept failure continues. Boundaries are incessantly crossed in the movement between different fields of expression, between the certainty and uncertainty of the law.

The call of that which is infinitely Other, followed by our time-bound response, constitutes the source and substance of what we experience as the sublime. Contact with that which is infinite explodes reason and its yearning for certainty, totality, and systematic knowledge. The sublime is sublime to the extent that it always points to that which exceeds representation.²⁴

Sherwin’s words underscore the sacred aspect of the law: in the case of religion too the Other is infinite and escapes representation. It is the almost transcendent aspect of the law that causes the experience of the sublime because we are in the presence of something we would like to possess and know systematically but which baffles our attempts. Sherwin insists on the concept of the visual sublime, that is the law’s embodiment in a source of knowledge that is visually manifested (for instance on the screen) as an uncanny absence.

If, as Costas Douzinas suggests, “the sublime is obscure, it overawes but also creates intense pleasure in the attempt to comprehend what overwhelms the mind and defies reason,”²⁵ then the cry against the miscarriage of justice emphasizes the awe in front of the law and the bafflement experienced by its interpreter.

²³ Austin, “The Lament and the Rhetoric of the Sublime,” 303.

²⁴ R. Sherwin, “Sublime Jurisprudence: on the Ethical Education of the Legal Imagination in our Time,” *Chicago-Kent Law Review* 83.3 (2008): 1157–1196, 1177.

²⁵ Douzinas, “Sublime Law,” 7.

The law exceeds interpretation: we deconstructively try to get at the ultimate meaning of the law, at the intention of the legislator, so as to apply the law equitably, but its ultimate meaning always escapes us. The frustration of the attempt however marks the incessant quest: the quest itself is sublime.

We are surrounded by laws, codes and regulations, but like Kafka's man from the country "Before the Law," we do not know where or what the law is. The law is heard and can only be seen in its inadequate representations and in the pathetic garments of its servants and door-keepers.²⁶

Sublime is both the law as an object in its ontological transcendence and the legal act of interpretation, thus reconnecting the contemporary concept of legal sublime to Longinus's insistence on the act of reading. We are dealing with a question of judgment. Sublime experience embodies cognitive failure: we become aware of our limitations. We cannot get to the essence of the law even if we construe a broad notion of it. Our own limitations in the application of the law are the focus of the legal sublime: we strive for an absolute application of justice but we realize that this is impracticable. No absolute justice will ever be attained.

In the *Critique of Practical Reason* Kant refers to the "sublimity of our own supersensuous existence;"²⁷ it is an awareness of the transcendent self as a moral legislator that sublime experience has been aiming for all along.²⁸ This movement within and beyond the law constitutes an aesthetic and a moral pleasure, which is involved with the Burkean concept of delight. We enjoy this game of disruption with what is after all a position of security inside a well assessed legal system: the legal system remains solidly rooted in itself and our objections to it can be contained within a sort of mental, rhetorical game. We realize our limitations at these times of cognitive failure, and this realization brings with it a certain pleasure. These moments of cognitive failure make us experience our vulnerability at the hands of the law, which is a sort of transcendent realm, a system we acknowledge but cannot withstand. This is a subjective sensation, connected to the particular experience of every single individual: it leads us to a feeling of awe and a deeper respect for the law itself. This feeling of disempowerment before the law cannot be universal because every one of us experiences it at different times and before some situations and not others; still it is a sensation of being overwhelmed and

²⁶ Douzinas, "Sublime Law," 8.

²⁷ I. Kant, *Critique of Practical Reason*, trans. Lewis White Beck (Upper Saddle River, NJ: Prentice Hall, 1993), 92.

²⁸ J. Forsay, "Is a Theory of the Sublime Possible?"

crushed by a system we cannot control, which most often we do not understand, and which often seems incomprehensible in its outcomes.

Our attempt at theorizing about this sensation of sublimity represents the re-empowerment of our cognitive faculties, that is to say that our first sensation of being overwhelmed by the law represents our fall into the chasm of incommensurability, but our attempt at making sense of this sensation represents the interpreter's reaction to this vertical fall. This is how the Kantian concept of the *dynamis* of the sublime can be applied to the law. The law is the unrepresentable, the absent absence which appears immanently in its effects. This is also what Pier Giuseppe Monateri means when he asserts that the category of the legal sublime implies a disappearance of the subject (the judge, in this case) for the sake of the predominance of the object (the symbols of justice, for example, the gavel, epitomising the judge's action in court).²⁹ It is Lyotard's concept of the sublime which implies the possibility of Being and the concomitant possibility of non-Being.³⁰ If there is the idea of the unrepresentable at the heart of Lyotard's concept of the sublime, we realize that the law is the unrepresentable (for example, let us think of Kafka's "Before the Law"): it is a displacement of the task of thinking.³¹

The ethical aspect of the legal sublime is to contain the arrogance of the law: the jurist must learn to accept the fallibility of the juridical system and strive to attain a more equitable form of justice. He must act as the intermediary between the abstract, transcendent aspect of the law and the difficulty of its application. He must accept the gap between the disembodied essence of the law and its material application, between the Idea of the law and its reflexion, like in Plato's myth of the cave.

The impossibility to attain justice re-echoes Nietzsche's sense of nihil. Impossibility is both the condition and the paradoxical power of a sublime aesthetic. Therefore the sublime of law also includes the sense of nihil that engulfs the viewer of the law. The crisis in epistemology that we are facing nowadays brings us into the chasm of nihil: we have the impression that justice is impossible, that hardly any justice is carried out in contemporary society, and thus we reach a sense of total annihilation. This has been called the "death drive (*Todestrieb*)" by Freud. In the face of this utter deracination we experience a sublime fall

²⁹ P. G. Monateri, "The Books and the Gavel: L'immagine della Legge e la teoria del 'Sublime americano'," *Pólemos* 1 (2011): 3–20.

³⁰ J. F. Lyotard, *Lessons of the Analytic of the Sublime* [1991] (Stanford CA: Stanford University Press, 1994).

³¹ See R. Gasché, "The Sublime, Ontologically Speaking" in *Yale French Studies* 99: *Jean-François Lyotard: Time and Judgment*, eds. R. Harvey, L. R. Schehr (New Haven, CT and London: Yale University Press, 2001), 117–128.

into the abyss of non-meaning. This process is both an aesthetic movement (this loss is experienced in its negative beauty) and an ethical one (we lament the loss of certainty in the law as a sort of betrayal by the law). Over and over again have philosophers theorized about miscarriages of justice during the last thirty years and our minds have been impregnated with these theories: it is very hard for us to recover our faith in the law. In order not to become totally abject because of this negative perspective, we “play” with this loss, we find a sort of negative pleasure, or delight, in denouncing this loss and in trying to attain an aesthetic revival, an aesthetic purification through language: if Coleridge’s *Mariner* finds his purgatorial phase in the constant repetition of his sin, in the same way we constantly speak of the uncertainty of the law in order to purify it from its sins. We must in some way recover the law, we must find shelter in it: thus our words of lamentation have the sublime function of reconstituting it and of reinserting it once more within its sacred glow.

