

Rethinking the notion of a 'higher law': Heidegger and Derrida on the Anaximander fragment

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ABSTRACT: The Anaximander fragment, in the readings of both Heidegger and Derrida, speaks of that which exceeds positive law. In this article, the author provides a detailed reading of Heidegger's *Der Spruch des Anaximander*, showing how Heidegger relates this fragment to his thinking of Being, the latter having been 'forgotten' by metaphysics. Heidegger's reading at the same time involves a contemplation of technology and of the ontological relation of beings to each other. Derrida's reading of Heidegger's *Der Spruch* highlights specifically those parts of Heidegger's text where that which precedes Being's gathering, Being's disjoining or dissemination, is pointed to. This disjoining, Derrida contends, speaks of the gift of a day more ancient than memory itself and ties in closely with certain aspects of the thinking of Marx. Derrida's focus on that which precedes Being is in turn related to his contemplation of the law or condition of possibility of technology and also of that which makes possible a relation to the other as other. This condition of possibility, or the gift of Being, which Heidegger's text also speaks of, involves a 'higher law' which can serve as a 'measure' for the evaluation, interpretation and transformation of positive law.

Key words: Heidegger, Derrida, Anaximander, technology, death drive, justice, time, Being, gift, adikia

INTRODUCTION

It can hardly be disputed that in most Western democracies, despite their Bills of Rights, and primarily because of the effects of the free market, the gap between rich and poor is growing ever wider. In many parts of the rest of the world, poverty, inequality and suffering are even more widespread. Western democracies and international law dominated by Western legal and conceptual thinking has contributed and still contributes directly and indirectly to this state of affairs. This urgently calls for reflection on the notion of a 'higher law' which could function as a 'measure', in the interpretation as well as in the reform of national and international legal norms and concepts. Natural law theory in its present forms, as well as most of the other legal philosophical theories developed in the twentieth century, is capable of giving only limited assistance in this regard, especially because of their failure to confront their inscription within what can for the moment simply be termed 'Platonism'. In admittedly different ways and to different extents, the thinking of Heidegger and of Derrida as well as some of those following in their wake can assist in proceeding beyond the current impasse in legal thinking. Heidegger's thinking in relation to Being as *inter alia* elaborated on in his reading of the oldest surviving

fragment of Western thinking, *Der Spruch des Anaximander* (Heidegger 1975, 13-58; 2003, 296-343),¹ provides an indispensable starting point for thinking about justice in the 21st century and beyond. Heidegger's contemplation of Being in *Der Spruch* and elsewhere ties in with natural law thinking insofar as it concerns itself with the 'origin' of beings, including of law. In his reading of the early Greek thinkers he however challenges the notion that they are simply contemplating the laws of nature, as is usually believed.

The focus of this article, as the title indicates, will be the fragment of Anaximander (ca 610 BC to 547 BC). Anaximander is usually referred to as a pre-Socratic thinker. Like Thales, Anaximander reflected on the origin, principle or rule (*arche*) of that which exists. Whereas Thales thought that everything that exists derived from water, Anaximander regarded the *apeiron*, the limitless, indeterminate or indefinite as that from which all things derive. Simplicius, in his book *On Aristotle's Physics*, drawing from Theophrastus, reports the saying of Anaximander as follows:

Anaximander of Miletos, son of Praxiades, a fellow-citizen and associate of Thales, said that the material cause [*arche*] and first element of things was the Infinite [*apeiron*], he being the first to introduce this name of the material cause. He says it is neither water nor any other of the so-called elements, but a substance different from them which is infinite [*apeiron*]; from which arise all the heavens and the worlds within them.

...

And into that from which things take their rise [*genesis*] they pass away [*phthoran*] once more, "as is meet [*kata to chreon*]; for they make reparation and satisfaction [*didonai diken kai tisin*] to one another for their injustice [*allelois tes adikias*] according to the ordering of time," as he says in these somewhat poetical terms (Burnet 1920, ch 1, s 13, footnotes omitted).

The ancient Greeks did not use quotation marks, so that it is not perfectly clear where the actual words of Anaximander start and where they end. The quotation marks above were introduced later on. The translations of Nietzsche in a treatise completed in 1873 and published posthumously in 1903 and of Diels, also from 1903, referred to by Heidegger, are similar in most respects to that of Burnet. For our purposes the most important differences lie in Nietzsche's translation of the phrase *didonai...diken kai tisin allelois tes adikias* as "they must pay penalty and be judged for their injustice" and Diels as "they pay recompense and penalty to one another for their recklessness" (Heidegger 1984, 13).

Through a close reading of Heidegger's *Der Spruch* as well as a brief overview of Derrida's commentary on this text in *Spectres of Marx* (1994, 23-9),² a preliminary attempt will be made in this article to rethink the notion of a higher law as a 'measure'

¹ This text was published for the first time in 1950. The German version will be referred to only in cases where it requires our specific attention.

² *Specters of Marx* of course ties in very closely with Derrida (1992a, 3-67 and 1992b).

for positive law.³ The detailed reading of Heidegger undertaken here is called for by the inadequate attention his analysis of the fragment has thus far received in the legal context.⁴ A patient reading of Heidegger's text is worth double the effort as it is (only) through such a reading that Derrida's reading can (also) be understood. An analysis which does justice to Derrida's reading would require a detailed analysis of the relevant pages in *Specters* as well as a consideration of their broader context, an analysis of Derrida's other texts on Heidegger, the meticulous consideration of a number of aspects of Derrida's writings, including his relation with Levinas vis-à-vis Heidegger regarding the respect to be accorded to the other as other, technology, the necessary and impossible task of translation, the ghost and its relation to the work of Abraham and Torok, the notion of inheritance, as well the work of mourning and the death drive as analysed by Freud. For reasons of space such a comprehensive analysis will not be possible here. It will have to suffice to briefly outline Derrida's evaluation of Heidegger's reading.

HEIDEGGER'S READING OF THE FRAGMENT

Prologue

Before enquiring in more detail into Heidegger's reading of the Anaximander fragment, it is necessary to place his reading in a broader context. As also appears from his other texts, Heidegger is of the view that metaphysics started with Platonism, when Being or the 'is' of beings is interpreted as the most universal of beings and as idea (Heidegger 1982, 164). Being is therefore interpreted on the basis of beings and with reference to (the essence of) beings. Being itself is not thought by metaphysics. Being is instead turned into a being, for example the Supreme Being as first cause or the subject of subjectivity (Heidegger 1982, 207-8). Metaphysics, as Heidegger (1982, 209) points out, has a fundamentally onto-theological character. A

³ The word 'measure' is bound to be somewhat controversial here. The reference is of course not to a measure in the traditional sense; nonetheless the 'notions' of justice, the gift and hospitality in Derrida's texts and which relate to the notion of a 'higher law' which is invoked here, clearly have a role which is not completely at odds with what is traditionally understood under 'measure'; see eg Derrida and Roudinesco (2004, 60-61). Strictly speaking what we are dealing with here is a 'measure without measure'.

⁴ The three most detailed considerations of Heidegger's *Der Spruch* in a legal context are by Wolf (1950, 218-34); Zartaloudis (2002, 213-6); and Oppermann (2003, 45-69). Oppermann reads the fragment as entailing a view of justice as a rhythmic process where *tisis* (understood as care) complements justice/law as restitution. This is no doubt a commendable proposal in principle. Unfortunately little account is taken in this article of Heidegger's questioning of the metaphysical tradition by enquiring into Being and the ontological difference between Being and beings - apparent inter alia in the equation of Being in Heidegger's thinking with 'what is' in the article (at 59). A conception of justice is thus developed which would clearly be metaphysical on Heidegger's terms. Zartaloudis, relying primarily on Agamben, refers to Heidegger's analysis of the fragment as part of an attempt to proceed beyond Heidegger's thinking of Being (as well as that of Derrida) which is said to still be caught within the logic of transcendental negativity. He consequently reads *dike* in the fragment as the "unifying multiplicity-unity of what tends apart" (at 220). The claims of the author concerning the inadequacies in the thinking of Derrida and Heidegger regarding metaphysics can be addressed only indirectly in this article. Wolf's exposition of the fragment, although not a commentary on *Der Spruch*, corresponds in most respects with that of Heidegger, more specifically with an earlier version based on lectures in 1941 at Freiburg University published in Heidegger (1981, 94-123). See also Douzinas (2000, 24-5); Hamacher, (2005, 887-8); Corrington (2002, 781-802); Lewis (2006, 293-309).

further feature of metaphysics is its conceptuality which starts when with Plato, Being is understood as the essence of beings. The writings of the early Greek thinkers, including Anaximander, are not as yet under the influence of metaphysics and that is why Heidegger attaches such importance to them (cf. De Boer 2000, 177).⁵ Their importance furthermore lies in the intimation they had of, as Heidegger (2000, 174-5) puts it, the “suddenness and uniqueness of Dasein, an intimation into which they were urged by Being itself”. This passage makes clear the close relation in Heidegger’s thinking, also after *Being and Time* (1962), between Being and *Dasein*, without however making of Being a product of man (Heidegger 1993, 240). The early Greek thinkers, as Heidegger also points out elsewhere, were exposed to Being which disclosed itself to them as *physis*, *logos*, *dike*, *moira* and *chreon* (Heidegger 1984, 55; 2000, 175). Heidegger’s reading is therefore an attempt to read the fragment in a non-conceptual way, an attempt to ‘think like the early Greeks’.⁶

Heidegger sees metaphysics as finding its ultimate expression in Nietzsche’s interpretation of Being as will to power. Because the metaphysics of subjectivity here attains the peak of its development, the most extreme withdrawal of Being takes place (Heidegger 1982, 237, 241). The consequence of this is a profound uncertainty in man. Because man is in a covert way the abode of Being itself in its advent, the withdrawal of Being leads to uncertainty without man being able to discover the source and essence of this uncertainty (Heidegger 1982, 235). This leads to man seeking self-assurance in beings which are “surveyed with regard to what they can offer by way of new and continuous possibilities of surety” (Heidegger 1982, 235, 238). This search for certainty finds its ultimate expression in modern technology as an attempt to secure permanence, but which instead points to man’s homelessness.⁷ The greater the danger that technology will slip away from human control, the more urgent the will to mastery becomes (Heidegger 1977, 5). The usual definitions of technology are that it is a means to an end or that it is an activity of man, both definitions being instrumental and anthropological in nature (Heidegger 1977, 4, 5). Heidegger seeks a definition of modern technology which brings it into relation with Being. For Heidegger (1977, 20), the essence of technology consists in enframing (*Ge-stell*) which refers to the challenging forth of man “to reveal the real, in the mode of ordering, as standing reserve”. This role of standing reserve or being on call for duty is now also taken on by man himself (Heidegger 1977, 27). Enframing is not however here to be understood as a genus or as essence in the traditional way (Heidegger 1977, 30). Heidegger in other words seeks to give a non-metaphysical definition of technology. Modern machine-power technology, although it only developed in the second half of the eighteenth century, is a result of representational or calculative

⁵ This is of course not to suggest that Heidegger views Plato and Aristotle as representatives of a fallen sort of thinking in comparison to the early Greek thinkers. He clearly admires them and regards their thinking (also) as a radicalization and advancement in relation to the questions first raised by the early thinkers; see for example Heidegger (2008).

⁶ At the same time, it needs to be pointed out that Heidegger, in reading these texts, does not attempt to reconstruct what the early thinkers actually thought; see further *infra*.

⁷ For analyses of Heidegger’s views on technology in the legal context, see eg Wolcher (2004); and Tranter (2007).

thinking which according to Heidegger (1977, 22) has its origin in the seventeenth century. Enframing is in other words a result of the sending or destining of Being as objectifying representation (Heidegger 1977, 24, 29-30). Even in its concealment and precisely in its being concealed, Being nevertheless remains as promise of itself (Heidegger 1982, 226-7). Heidegger's reflection on the early Greeks could be read as in part an attempt to address the question of modern technology. Heidegger does not, as is often thought, view technology simply negatively. He nevertheless sees an extreme danger in its essence. This danger, he notes, does not lie in the potentially lethal machines and apparatus of technology, but in its preventing man from entering "into a more original revealing and hence to experience the call of a more primal truth" (Heidegger 1977, 28). Technology, we could say in somewhat simpler terms, points to the rule of subjectivism, both individual and collective, in modernity, and at the same time, shows that subjectivity as well as the certainty and security that seemingly goes with it, are an illusion (Heidegger 1977, 152). In the danger of technology therefore also lies a saving power, according to Heidegger (1977, 32-3), as it may reveal to man his essential belonging to and responsibility in relation to what grants, preserves or safeguards (*das Gewährende*). Technology can in other words show a way beyond subjectivity.

Insofar as Heidegger's reading of the fragment is concerned, it is important to note that he is not engaging in a philological or psychological exposition, seeking to determine what was present to the thought of Anaximander (Heidegger 1984, 18, 57). Such a reading would amount to a calculation and the loss of thinking (Scott 1994, 131). Heidegger also does not seek to come to a more accurate formulation in his translation of Anaximander as compared to the standard translations (Scott 1994, 132). This does not however mean that his is an arbitrary translation. The question Heidegger (1984, 20) seeks to answer is what comes to language in the fragment. As we will see, Being, and therefore also man's relation to death, stands central in his reading. Heidegger's 'problem' with traditional interpretations of the fragment lies in their relation to Platonism. Nietzsche categorises Anaximander as a pre-Platonic philosopher, and Diels refers to him as a pre-Socratic (Heidegger 1984, 14). Hegel, although he does not refer to the Anaximander fragment, regards the early Greek thinkers as pre-Aristotelian (Heidegger 1984, 15). The philosophies of Plato and Aristotle are in this way used as a standard to consider and judge the early Greek thinkers. Platonic and Aristotelian concepts and representations are furthermore used to guide the interpretation of these thinkers. It is also mistaken, according to Heidegger (1984, 14), to believe that logical thinking can guide us in interpreting the fragment, as logic was developed only later in the Platonic and Aristotelian schools. Theophrastus, who lived until about 286BC, as Heidegger (1984, 15) furthermore points out, was a contemporary of Aristotle and the latter's student. Both Aristotle and Theophrastus regarded the early thinkers as having contemplated the things of nature and as looking for the origins of beings in nature. This is also how these thinkers are thought of by Hegel and those after him. The word generally used for nature (*physis*), at the time of Aristotle however took on a different meaning than it had for the early Greek thinkers - the broad sense of the totality of being. *Physis* in

Platonic/Aristotelian thinking designated a special region of beings separated from *ethos* and *logos*. These reflections on nature of the early Greek thinkers are furthermore after Hegel thought of as inadequate in comparison with the thinking on nature developed in the Platonic and Aristotelian schools, as well as in the schools of Stoicism and of medicine (Heidegger 1984, 16).

As already noted, the Anaximander fragment was copied by Simplicius in his commentary on Aristotle's *Physics*, the commentary being written in 530 AD. Simplicius was a Neoplatonist, and the copy of the fragment derived from Theophrastus. As Heidegger (1984, 16) points out, from the time that Anaximander had pronounced his saying to the time that it was written down by Simplicius, more than 1000 years had gone by. Heidegger here raises the question whether the fragment can still tell us something after 2500 years. It being the oldest one given to us by the Western tradition of course does not give it any more weight. If the thinking expressed in it however surpasses all that came after it, the fragment would have a claim to our attention (Heidegger 1984, 18). As we saw above, according to Heidegger, the early Greek thinkers thought Being as such, whereas since Plato, Being had become the name for the essence of beings or the Supreme Being. Being is thought as constant presence, as presence at hand (Heidegger 2000, 206-8, 216, 220). The early thinkers however thought of Being as presencing and of truth as unconcealment (Heidegger 1977, 146). At this stage of Greek thinking, as Heidegger (1984, 18) puts it, the "Being of beings is gathered (*légesthai*, *logos*) in the ultimacy of its destiny....The history of Being is gathered in this departure". This destiny, as we saw above, according to Heidegger finds its ultimate expression in Nietzsche's will to power. In addition to its other concerns, Heidegger's reading of the fragment is an attempt to think the future in a way different from how it is done by historiography: predicting the future with reference to the past as determined by the present (Heidegger 1984, 17). This, according to Heidegger, effectively amounts to the destruction of the future. Derrida's thinking, as we will see below, closely ties in with that of Heidegger in this respect (Derrida 2002, 219).

Translating and interpreting the fragment

Heidegger acknowledges that his translation will appear violent. However such 'violence' is necessary if one is to attempt to understand what comes to language in the fragment, that is, if one reads it as a thinking of (the truth of) Being (Heidegger 1984, 19, 20). The traditional interpretations of the fragment are to the effect that it refers to the origin and decay of things and that it describes the process thereof. In these interpretations the fragment describes a kind of economy of exchange in nature. It would thus be a vague statement about an exchange of constructive and destructive moments, but without as yet an understanding of the laws of motion. It would furthermore be a kind of primitive natural science, a description of nature in human terms of a moral and juridical nature, by referring to justice and injustice, recompense and penalty, sin and retribution. Theophrastus's final words in the paragraph cited above would then be understood as rightful criticism of Anaximander

for his use of poetic terms to describe the processes of nature. Grammatically, Heidegger (1984, 20) points out, the fragment consists of two clauses. For easy reference, the Greek version of the fragment is set out here:

ex on de he genesis esti tois ousi kai ten phthoran eis tauta ginesthai kata to chreon. didonai gar auta diken kai tisin allelois tes adikias kata ten tou chronou taxin.

The matter of *ta onta* which is at stake in the first clause, Heidegger points out, literally refers to ‘things’ or ‘beings’ in their multiplicity. This is not a reference to an arbitrary multiplicity, but to the multiplicity of beings in their totality (Heidegger 1984, 20-21). ‘Beings’ is furthermore not to be understood here as referring only to things or to the things of nature as the translation above as well as others seem to suggest. It refers also to man, “things produced by man”, “the situation or environment effected and realized by the deeds and omissions of men”, as well as “daimonic and divine things” (Heidegger 1984, 21). These are not simply *also* in being, as Heidegger (1984, 21; 2003, 305) notes, but are even more so in being (*seiender*) than are things of nature. Heidegger is here clearly alluding to his existential analysis in *Being and Time* of *Dasein* as the only being whose Being is an issue for it (Heidegger 1962, 32). The Aristotelian-Theophrastian assumption that the matter with which the first clause is concerned, *ta onta*, is to be understood as a reference to the things of nature in a narrow sense is therefore groundless (Heidegger 1984, 21). This is also the case with the criticism that what Anaximander says here about nature and which should therefore have been expressed in scientific terms is imperfectly expressed by him in moral-juridical language. In interpreting the fragment one must furthermore abandon the idea that Anaximander is speaking here with reference to the traditional disciplines of ethics and jurisprudence. This does not however mean that Anaximander did not yet have an understanding of law and ethics (*Sittlichkeit*) (Heidegger 1984, 21; 2003, 305). The distinctions we currently draw between disciplines such as ethics, jurisprudence, physics, biology and psychology, were however not as yet made at the time of Anaximander. This does not mean that what is expressed in Anaximander’s saying is simply some vague indeterminacy. The words *dike*, *adikia* and *tisis* in the fragment, Heidegger furthermore notes, do not have a limited disciplinary meaning, but rather a broad or rich signification which cannot simply be confined to the traditional disciplines. They are specifically used “to bring to language the manifold totality in its essential unity” (Heidegger 1984, 22). What Anaximander says is therefore anything but primitive, a confusion between disciplines, or simply an anthropomorphic interpretation of the world.

We can only enter into dialogue with the Greek thinkers when listening occurs, Heidegger contends. This requires that the words that are usually understood as referring to ‘beings’ and ‘to be’ are heard in a different way. These include *ta onta* (beings), *einai* (to be), *estin* (is), and *on* (being) (Heidegger 1984, 23). Heidegger emphasises that he does not wish to question the correctness of the traditional way in which these words are translated. He however asks whether we have really thought what the words ‘being’ and ‘to be’ mean in our own languages and furthermore

whether these translations are sufficient in order to understand what the Greeks were addressing with these words (Heidegger 1984, 24). According to Heidegger (1984, 25), in early Greek thinking Being still illuminates itself in beings which makes a claim to a certain essence of man. This essence of man unfolds historically as a sending of Being. Being at the same time grants or safeguards (*wahren*) this essence and releases it without the essence separating itself from Being (Heidegger 1984, 25; 2003, 310). The reason for the forgetting of Being in Western thinking lies in the fateful withdrawal of Being as it reveals itself in beings or in Being's holding on to its truth (Heidegger 1984, 26). In its illumination of beings, Being sets them adrift in errancy. The inability of man to see himself, Heidegger (1984, 26) notes, "corresponds to the self-concealing of the lighting of Being". World history could be said to be a result of this keeping to itself or *epoche* of Being (Heidegger 1984, 26-7). The important question in translating the fragment is therefore whether it speaks to us of *onta* in their Being (Heidegger 1984, 27). Heidegger clearly believes that this question should be answered in the affirmative. We have to look at *ta onta* not simply in terms of what it expresses, Heidegger (1984, 28) points out, but in terms of its source which is also the source from which the fragment speaks. It is therefore necessary to at first remain outside the fragment so as to, as Heidegger (1984, 28) puts it, "experience what *ta onta*, thought in Greek, says".

Remaining for that reason for the moment 'outside' the fragment, Heidegger first considers the question of its authenticity. He notes that it is not clear from Simplicius's quotation of the Anaximander fragment where it starts or where it ends (Heidegger 1984, 28). Based on the words used, some of which according to Heidegger (1984, 28-9) are Aristotelian in structure and tone rather than archaic, and the practice of quotation of the Greeks, he concludes that only the following can be regarded as an actual quotation from Anaximander: "...*kata to chreon. didonai gar auta diken kai tisin allelois tes adikias*".⁸ It is also precisely this part, as Heidegger (1984, 30) points out, which is regarded as 'rather poetic' by Theophrastus, which therefore hints at their 'original' nature. This does not however mean that the rest of the paragraph of Simplicius has to be disregarded: it can still serve as secondary testimony concerning Anaximander's thinking. This brings us to the question of how the words *genesis* (originating) and *phthora* (passing away) in the part left out are to be understood. Must they in other words be understood as pre-conceptual words (taking account of the fact that conceptuality is possible only from the moment that Being is interpreted as idea, and from then on is unavoidable) or as Platonic-Aristotelian conceptual terms (Heidegger 1984, 29-30)? In light of the above, the answer to this question is evident. Heidegger (1984, 30) thus takes the view that *genesis* and *phthora* are not to be understood in the modern sense of development and decline, but in the light of *physis* (Being) "as ways of luminous rising and decline". Although *genesis* can be interpreted as originating, it should therefore be understood here as "a movement which lets every emerging being abandon

⁸ In the earlier version (Heidegger 1981, 51), the first and last parts, which are left out in the later version, are still analysed as part of the fragment.

concealment and go forward into unconcealment” (Heidegger 1984, 30). Similarly *phthora* must be understood as a going which “abandons unconcealment, departing and withdrawing into concealment” (Heidegger 1984, 30).

In light of the reasons for the exclusion of the first part of what is traditionally thought as making out part of the fragment, Heidegger (1984, 30-1) notes that we cannot be sure whether Anaximander used the words *on* or *ta onta*, although there are no indications against this. Insofar as the word *auta* in the second clause is concerned, because of what it says and also because of its reference back to *kata to chreon*, it must necessarily be understood as a reference to “being-in-totality experienced in a pre-conceptual way”, or to beings. A more difficult question is what *ta onta* refers to when account is taken of the above (Heidegger 1984, 31). Heidegger points out that *ta onta*, with all its modifications (*estin, en, estai, einai*), speaks everywhere in the Greek language. In terms of its subject matter, its time and the realm to which it belongs, it provides us with an opportunity to consider something which lies outside philosophy (Heidegger 1984, 31-2). In Plato and Aristotle, *on* and *onta* become conceptual terms, from which the terms ontic and ontological are derived. The word *on* however has a double function: it refers both to the ‘to be’ of a being and to a ‘being’ which ‘is’. The distinction between ‘to be’ and ‘a being’ lies concealed in *on*, Heidegger (1984, 32) notes. The words *on* and *onta* are presumably truncated forms of the original words *eon* and *eonta* which are used inter alia by Parmenides and Heraclitus (Heidegger 1984, 32-3). The ‘e’ which relates *on* and *onta* to *estin* and *einai* are thus only to be found in these original words (Heidegger 1984, 32). The word *eon* (usually translated as ‘being’) is not only the singular form of *eonta* (usually translated as ‘beings’) but refers to Being or as Heidegger (1984, 33) expresses it, to “what is singular as such, what is singular in its numerical unity and what is singularly and unifyingly one before all number”.

The word *eonta* is explored further by Heidegger with reference to a passage in Homer’s *Iliad* where the seer Kalchas is called on to explain the reasons for the plague sent by Apollo to the Greek camp. What appears from this passage is firstly that a distinction is drawn between *ta t’ eonta* (that which is in being), *ta t’ essomena* (that which will be) and *pro t’ eonta* (the being that once was). *Ta eonta* thus refers to ‘being’ in the sense of the present (Heidegger 1984, 34). The present is however not here to be understood in the modern sense of a ‘now’ as a moment in time or in terms of a subject representing an object to itself. The ‘present’ must be understood in terms of the essence of *eonta*, and not vice versa. The word *eonta* nevertheless refers also to the past and the future, that is, to beings that are not presently present. Beings which are past and to come are also to be understood here in terms of what is present, that is, they are beings not presently present. This is borne out by the reference the Greeks made to that which is presently present as *ta pareonta*, meaning ‘alongside’, in the sense of coming alongside into unconcealment. That which is present is therefore not to be understood in relation to a subject, but rather in terms of “an open expanse...of unconcealment, into which and within which whatever comes along lingers” (Heidegger 1984, 34). As should be clear from the above, that which is presently

present (*ta eonta*) cannot be understood in isolation from what is absent. As Heidegger (1984, 35) puts it, “[e]ven what is absent is something present, for as absent from the expanse, it presents itself in unconcealment”. What is presently present is also only such in its lingering awhile, that is, in its arriving in-between a double absence. The experience of the seer Kalchas, as Heidegger (1984, 35-6) points out, consists in a gathering of all things present and absent. He in other words has an experience of Being itself.

Being, as the presencing of what is present, Heidegger (1984, 37) contends, must be understood as already truth in itself. Truth must not however here be understood in the metaphysical sense as a property of beings or of Being. Truth in other words does not refer to a characteristic of divine or human cognition or a property in the sense of a quality. Instead, truth must in light of the above be understood as the gathering that clears and shelters. Heidegger (1984, 37) spells out the following implications of this understanding of Being for that which presences:

What is presently present in unconcealment lingers in unconcealment as in an open expanse. Whatever lingers (or whiles) in the expanse proceeds to it from unconcealment and arrives in unconcealment. But what is present is arriving or lingering insofar as it is also already departing from unconcealment toward concealment. What is presently present lingers awhile. It endures in approach and withdrawal. Lingering is the transition from coming to going: what is present is what in each case lingers. Lingering in transition, it lingers still in approach and lingers already in departure.

The (excluded) section directly preceding the fragment should therefore be understood not as expressing simply the passing away or inevitable destruction of things as appears at first sight, but rather as giving expression to their transitional structure (De Boer 2000, 178). Underlying and pervading the lingering of things in presence is their arising out of and returning to absence or unconcealment and is to be compared with the metaphysical approach of excluding from what is present all absence. This clearly assists with an understanding of Being itself, namely as a presence which is thoroughly pervaded by absence (Heidegger 1984, 37; De Boer 2000, 178). We could also say that Being must be understood as presencing embedded in a twofold absence (Heidegger 1984, 41; De Boer 2000, 179). This amounts to a jointure (*Fuge*) between presencing and its twofold absence (Heidegger 1984, 41; 2003, 327). In the words of Heidegger (1984, 41-2): “What is present emerges by approaching and passes away by departing; it does both at the same time, indeed because it lingers”. This analysis also informs Heidegger’s translation of *dike*: not as justice as is usually the case, but as joint or juncture (*Fug* or *Fuge*) or as referring to (the claim of) Being (Heidegger 1984, 39, 43; 2000, 177-8).

Heidegger (1984, 37-8) continues his analysis by pointing out that also in Homer, *ta eonta* does not refer exclusively to the things in nature or to objects of human representation. This of course ties in with Heidegger’s reading of the reference to

'beings' in the fragment as referring not only to the things in nature. Homer applies the term *eonta* inter alia to "the Achaean's encampment before Troy, the god's wrath, the plague's fury, funeral pyres, [and] the perplexity of the leaders" (Heidegger 1984, 38). Man too belongs to *eonta*, Heidegger (1984, 38) points out: "[H]e is that present being which, illuminating, apprehending, and thus gathering, lets what is present as such become present in unconcealment". After this analysis of that which lies 'outside' and which at the same time serves as the source of the fragment, Heidegger returns to the fragment itself by commenting on its second clause. The word *auta*, he points out, refers back to what was named in the first clause: *ta onta*, which as we saw refers to everything presently and un-presently present in unconcealment (Heidegger 1984, 40). As indicated above, this includes a reference to everything that presences by lingering awhile: "gods and men, temples and cities, sea and land, eagle and snake, tree and shrub, wind and light, stone and sand, day and night" (Heidegger 1984, 40).

The question Heidegger (1984, 41) poses next is what at bottom runs through whatever is present, or stated differently, what is the basic trait of what is present. The answer: *adikia*. For the reasons stated above, Heidegger however wants to depart from the traditional translation of this word as 'injustice'. He then asks three questions which necessarily take us back to the question of technology addressed earlier, as well as the ontological (which is at the same time an 'ethical') question of respecting others as others:

How is what lingers awhile in presence unjust? What is unjust about it? Is it not the right of whatever is present that in each case it linger awhile, endure and so fulfil its presencing? (Heidegger 1984, 41)

In seeking an answer to these questions, Heidegger (1984, 41) notes that the word *a-dikia* suggests that *dike* is absent. *Dike* is often translated as 'right' and even as 'penalty'. Heidegger however contends that to really understand what comes to language in the fragment we must resist our moral-juridical notions. The fragment can then be heard to say that wherever *adikia* rules, all is not right with things, that is, something is out of joint. This raises the question whether the traditional translations of *dike* fit here. Heidegger points out that the fragment does not say that what is present is only occasionally out of joint. It says that what is present as such is out of joint. What presences can however only possibly be out of joint, Heidegger contends, if presencing at the same time consists of jointure. The joining or jointure that is at stake here relates to the discussion above of 'whiling'. As we saw, whiling is necessarily related to a two-fold absence: approaching and withdrawal. It is in this 'between' where the jointure is to be found. Heidegger (1984, 41-2) phrases this as follows:

In both directions presencing is conjointly disposed toward absence. Presencing comes about in such a jointure. What is present emerges by approaching and passes away by departing; it does both at the same time, indeed because it lingers. The "while" occurs essentially in the jointure.

How are we to understand the fragment when it says that *adikia*, understood now as disjuncture, is the fundamental trait of *eonta*? Heidegger (1984, 42-3) understands *adikia* here as the attempt of what is present to endure, or to insist upon its while. This seems to tie in directly with his analysis of modern technology as briefly set out above, as well as with the ontological question of the respect to be accorded to others as others. As we saw, Heidegger (1993, 244) contends that modern technology's 'essence' lies in subjectivism or the self-assertion of man as an attempt to ensure security and certainty. Man in other words abandons his relation to Being in Platonism, and even more so in modernity, the age which is most characterised by *adikia* (cf. Scott 1994, 140). Heidegger (1984, 42) however points out that the fragment does not only say that what is present consists in disjunction. In spite of the attempt of man to maintain himself in disjuncture, he still remains in a relation with Being (Heidegger 1984, 43).

This brings us to the translation of the word *didonai*. Heidegger (1984, 43) seeks to relate *didonai* in the fragment to *diken* and reads it as saying that "whatever lingers awhile with a view to disjunction *didonai diken*, gives jointure". Heidegger (1984, 43) then asks what 'give' means here. He continues as follows:

How should whatever lingers awhile, whatever comes to presence in disjunction, be able to give jointure? Can it give what it doesn't have? If it gives anything at all, doesn't it give jointure away? Where and how does that which is present for the time being give jointure?

According to Heidegger, giving here relates to the manner of presencing. Giving in this context does not entail giving away, but acceding or giving-to (*Zugeben*), giving what properly belongs to another (Heidegger 1984, 43; 2003, 329). As we saw above, what belongs to that which is present is the jointure of its while. In the jointure, whatever lingers keeps to its while. It does not insist upon sheer persistence. Jointure therefore belongs to whatever lingers awhile, which in turn belongs in the jointure. Heidegger at this point equates jointure with order. *Dike* is thus to be understood as enjoining order. *Adikia*, on the other hand, is disjunction or disorder. Whatever comes to presence does not therefore simply fall into disjunction, but instead surmounts disorder (Heidegger 1984, 44). The word *didonai* is consequently to be understood as designating this "letting belong to" (Heidegger 1984, 44). This amounts also to an acceptance by that which comes to presence that it belongs to the non-present, in other words, to death (Arendt 1977, part II 193), which as we know from *Being and Time* (1962, 294) belongs to man as his own-most possibility, "the possibility of the absolute impossibility of Dasein" (cf. Heidegger 1984, 101).

The next question Heidegger (1984, 44-5) considers is to whom *didonai diken* or the giving of order is directed. On Heidegger's reading, present beings only become present when they let enjoining order belong *allelois*, that is, to one another. The word *allelois* in the fragment, according to Heidegger, is not related to *diken* and to

tisin as the translation of Diels has it, but only to *tisin*. The latter word, Heidegger points out, is usually translated as penalty. This translation is not wrong, but this is not the original and essential significance of the word. Heidegger instead relates *tisin/tisis* to esteem and to heed, to taking care of something. This stands in contrast with what was said above regarding *adikia*. In seeking to persist, as we saw, that which lingers awhile does not pay attention to the others that linger, to the order of the while (Heidegger 1984, 45-6). They instead strike “a haughty pose toward every other of its kind. None heeds the lingering presence of the other” (Heidegger 1984, 45-6).⁹ In order to bring *tisis* in line with its more original meaning as well as in relating it to what was said above regarding *adikia*, Heidegger (1984, 46; 2003, 332) translates *tisis* as *Ruch* or *reck* (*care*), which consists in letting something remain in its essence or as itself. This part of the fragment can therefore be understood as saying that beings which linger awhile let order (*Fug*) belong, *didonai diken*, insofar as they do not disperse themselves by arrogantly persisting and not leaving room for each other among what is present (Heidegger 1984, 47; 2003, 332). Beings in other words give order by allowing *reck* to pervade their relation with others, *didonai...kai tisin allelois* (Heidegger 1984, 47). We must therefore understand *allelois* in close relation with *tisis* and within the context of the manifold of what lingers awhile (*ta eonta*) in the open expanse of unconcealment and not simply as indeterminate reciprocity in a chaotic manifold as the translations of the fragment usually have it. The word *kai* between *diken* and *tisin* is consequently also not simply to be understood in its usual sense as ‘and’, but as describing the manner in which beings grant order: by giving *reck* to one another.

The word *adikia* is according to Heidegger in light of the above to be understood as referring to the disorder of the reckless. Beings in other words let order belong, and thereby also *reck* to one another, in the surmounting of disorder (*adikia*). The questions Heidegger (1984, 48-9) seeks to answer next are to whom the order of jointure belongs and what brings about this order. This is essentially about the relation between the first and the second clauses and establishing which clause is the determining clause. To answer these questions, Heidegger shifts his attention to the word *gar*, translated as ‘for’ or ‘namely’. This word serves as a reference back to the first clause, Heidegger points out. The second clause, one could say in light of the discussion above, comments on the manner of the presencing of what is present. The only remaining words of the first clause, *kata to chreon*, usually translated as ‘according to necessity’, must therefore speak of presencing itself as well as the extent to which presencing determines what is present as such. Only in this way can the second clause, by commenting on the manner of presencing of the present, refer back to the first clause by means of *gar*. The question this raises is whether presencing is to be understood in terms of what is present, or the other way around. The word *kata*, usually translated as ‘according to’, here means, Heidegger contends, ‘from up there’

⁹ Wolf (1950, 231-3) gives a detailed analysis of *adikia* in this respect. The privilege accorded in this reading to a close-knit community (see 230-1) in attempting to translate Heidegger’s thinking of Being into Being-with-others-in-law, is noteworthy; see Wolf (1972, 140-159); and Minkkinen (1999, 75-82) for an excellent analysis of Wolf’s fundamental ontology of law.

or 'from over there'. The word thus "refers back to something from which something lower comes to presence, as from something higher and its consequent" (Heidegger 1984, 49). As Heidegger points out, that which is present can only become present as such in consequence of presencing. As we saw, it is only in the surmounting of disorder (*adikia*) that what lingers awhile can become present. *Adikia* nonetheless constantly haunts lingering as an essential possibility. As we also saw, beings which linger awhile let order belong and also *reck* among one another. This provides the answer for Heidegger as to whom the order of jointure belongs to: to that which comes to presence by way of presencing, which occurs by means of a surmounting. Because of the essential relation between the two clauses, Heidegger (1984, 49) furthermore concludes that *chreon* is in turn that which "enjoins matters in such a way that whatever is present lets order and *reck* belong".

Heidegger next proceeds to consider the meaning of *to chreon*. As already indicated, ever since Being becomes the idea in Plato, a distinction is no longer drawn between presencing and what is present. Presencing is instead understood as the most universal or the highest of present beings, in this way also becoming a being among other beings (Heidegger 1984, 50). The essence of presencing, and thus also the distinction between presencing (Being) and what is present (beings), in this way remains forgotten. According to Heidegger this forgetting of the ontological difference is not a result of some inadequacy in thinking. It instead belongs to the self-veiling essence or the destiny of Being, since Being keeps to itself. Because of this, the ontological difference collapses and remains forgotten. In this forgetting of Being the history of the Western world, that is metaphysics, comes to the fore (Heidegger 1984, 51). That which 'is', or is regarded to exist, stands in the shadow of the oblivion of Being. The importance of the early Greek thinkers, as indicated above, lies in their preceding of this history. Even though these thinkers did not think the ontological difference in itself, its trace can still be detected in their language (Heidegger 1984, 50-1). The word *chreon*, Heidegger (1984, 51) points out, derives from *chrao*, *chraomai* and alludes to the hand (*he cheir*), and suggests getting involved with something, reaching for it, extending one's hand to it. The word *chrao* also bears the connotation of placing something in someone's hands or of handing over, delivering, or letting something belong to someone (Heidegger 1984, 51-2). This delivery nonetheless keeps the transfer in hand as well as that which is transferred. *To chreon* must consequently be understood as "the handing over of presence which presencing delivers to what is present, and which thus keeps in hand, i.e. preserves in presencing, what is present as such" (Heidegger 1984, 52).

Heidegger (1984, 52; 2003, 338) thus translates *to chreon* as *der Brauch*, which Krell renders as 'usage'. Usage as a translation of *to chreon* is not to be understood here in the usual and 'modern' sense of "utilizing and benefiting from what we have a right to use" (Heidegger 1984, 52). It should be understood in the sense of to brook [*bruchen*], Latin *frui*, German *fruchten*, *Frucht*, Heidegger (1984, 53; 2003, 338) contends. The originary sense of 'usage', as Heidegger points out, is to enjoy and to be pleased with something. Only in its derived sense does it refer to consuming or

gobbling up. Along the lines of usage is thus to be thought as letting something present come to presence as such or in light of the above, “to hand something over to its own essence and to keep it in hand, preserving it as something present” (Heidegger 1984, 53). Enjoyment is therefore not to be identified with some form of human behaviour, and consequently with some being, not even of the highest being. It rather refers to “the manner in which Being itself presences as the relation to what is present, approaching and becoming involved with what is present as present: *to chreon*” (Heidegger 1984, 53). This translation is furthermore to be viewed in light of the relation between Being and man. Being is ‘needful’ of an abode, which is only to be found in man (Heidegger 1982, 244). Being itself is need (*das Brauchen*) and man, as we saw above, is in need of Being (Heidegger 1982, 244, 248). Heidegger (1984, 54) summarises as follows this understanding of *to chreon* and its relation to *tisis* and *dike*:

As dispenser of the portions of the jointure [of what is present in the transition between twofold absence (arrival and departure)], usage is the fateful joining: the enjoining of order and thereby of reck. Usage distributes order and reck in such manner that it reserves for itself what is meted out, gathers it to itself, and secures it as what is present in presencing.

The enjoining of order necessarily involves the limitation of what is present and thus also the imposition of boundaries. This brings us to the question of the *apeiron*, the boundless or indefinite in the thinking of Anaximander as the origin of everything that is present. The *apeiron* is mentioned by Simplicius in the first part of his exposition of Anaximander’s thinking quoted above. *To chreon* is at the same time *apeiron*, Heidegger (1984, 54) contends. As we saw earlier, accompanying the process of presencing as jointure, there is the constant danger of disjointure. Usage, insofar as it is also the boundless, is responsible for this too.

Heidegger’s translation of the fragment finally reads as follows: “...*entlang dem Brauch; gehören nämlich lassen sie Fug somit auch Ruch eines dem Anderen [im Verwinden] des Un-Fugs*” (Heidegger 2003, 342). Krell translates this as follows: “...along the lines of usage; for they let order and thereby reck belong to one another (in the surmounting) of disorder” (Heidegger 1984, 57).¹⁰ Heidegger’s acknowledgement that this translation cannot be proved scientifically and that it is not based on a philological and historical analysis, is of course no reason for ridicule, but is based on the realisation that the whole notion of proof is a product of metaphysics which poses man as subject (as against an object) as the ultimate measure of things (Heidegger 1982, 238). Heidegger’s reflection on the Anaximander fragment in this specific way is thus clearly also an attempt to think through the crisis

¹⁰ Heidegger (1981, 123) concludes that in every word of the fragment, Being is spoken of, also there where it specifically mentions beings. Diels and Kranz (1951, 487-8) have declared in response to Heidegger’s translation that in the language of the 6th century BC the concepts *dike*, *adikia*, *diken*, *didonai* and *tisis*, already belonged to the specific sphere of the law and that *to chreon* can never mean ‘der Brauch’.

of the modern age. This crisis, Heidegger (1984, 57) notes towards the end of his analysis, cannot be understood by applying the modes of thought of the current age:

Curiously enough, the saying first resonates when we set aside the claims of our familiar ways of representing things, as we ask ourselves in what the confusion of the contemporary world's fate consists.

Man has already begun to overwhelm the entire earth and its atmosphere, to arrogate to himself in forms of energy the concealed powers of nature, and to submit future history to the planning and ordering of a world government. This same defiant man is utterly at a loss simply to say what *is*; to say *what this is* – that a thing *is*.

At first sight this passage appears to confirm the wide-spread view of Heidegger as an enemy of technology, a reactionary, and an extreme nationalist, an expression therefore of a narrow-minded provincialism. Read attentively, with reference also to Heidegger's other texts, the passage does not amount to a critique of or opposition to modern technology. It instead views modern technology as pointing to the sending of Being in the modern age in the form of will to power. Insofar as the apparent negative evaluation of the United Nations in this passage is concerned, reading this statement together with Heidegger's other statements on internationalism, casts some light thereon. Internationalism, at least in its current form, is according to Heidegger (1993, 244-5; 1977, 152-3) simply an extension of collective or national subjectivism to the international level (cf. Derrida 2001a, 408-9 n 79 and 80).

DERRIDA'S EVALUATION OF HEIDEGGER'S READING

Derrida understands and commends Heidegger's *Der Spruch* as an attempt at a thinking of justice which goes beyond juridical-moral considerations. Derrida's main question in *Specters of Marx* is however whether Heidegger does not privilege, as he does elsewhere, the gathering or joining of Being rather than its disjoining or dissemination. As Derrida (1994, 27) puts it, does Heidegger not skew the asymmetry between the gift and what is given ("the accorded favour"), in favour of the given? This seems to happen in spite of the fact that Heidegger himself posits what is given as the accorded favour, in this case "of the accord that gathers or collects while harmonizing" (Derrida 1994, 27). This move carries the risk of re-inscribing justice under the sign of presence. His thinking of *didonai diken*, as Heidegger (1984, 43; 2003, 329) himself notes, is an attempt to think *dike* on "the basis of Being as presencing" (*aus dem Sein als Anwesen gedacht*) and as "the ordering and enjoining Order" (*der fugend-fügende Fug*). Although this presence is a received or unveiled presence (Being as presencing), it remains appropriable and gathered together (Derrida 1994, 27; 1987a, 318). A further difficulty in Heidegger's reading lies in his constant invocation of more 'original meanings'. This invocation is based on the assumption that there is some fixed sense, object or referent anterior (some being or Being itself) and exterior to the word and is according to Derrida (2007, 102)

provoked by a desire for presence.¹¹ For Derrida (2007, 99, 404; 1998, 73-5 fn 30; 1986, xxxvi-xlviii) meaning is always derived, a strategy or economy of deferral or deterrence. This of course does not make Heidegger's reading wrong in any sense, but it calls for a reading of the fragment which exceeds the primary focus on Being. Derrida (1994, 27) therefore asks whether it is not rather in the *Un-Fug*, disjointure or dissemination of Being (and of time), in other words, in *adikia*, that a relation to the other as other, that is justice, is possible (cf. Derrida 2005a, 150).¹² The consequence of the privilege accorded by Heidegger to gathering rather than dissociation is that one risks leaving "no room for the other, for the radical otherness of the other, for the radical singularity of the other" (Derrida and Caputo 1997, 14).

To say that Heidegger privileges gathering, does not mean that he disregards disjointure completely. Heidegger's text, due to its heterogeneity,¹³ necessarily stands open to a different reading and in the first part of his short commentary Derrida emphasises specifically those parts of the text where Heidegger notes, but does not thematise the splitting, division or dissension in Being (cf. Derrida 2008, 7-26).¹⁴ One could say that Derrida's reading of the fragment entails a different way of 'listening' than that of Heidegger (Derrida 1982, ix –xxix; 1993). This 'notion' of a division or split in Being can easily be misunderstood. In brief, to speak of the split in Being or of the 'other' of Being, does not amount simply to a falling back onto beings, and more specifically on the human being as 'concrete other', for example (Derrida 2001a, 168-9).

Derrida thus emphasises, more so than Heidegger, the dissension in Being. This dissension makes joining, and thus also Being and ontology, possible (Derrida 1994, 51).¹⁵ It also necessarily involves a relation with death, but the latter no longer belongs to Being in the way in which beings, and specifically *Dasein*, belong to Being in Heidegger's analysis. Heidegger (1962, 294; 1984, 101) views death as an essential

¹¹ This should not be understood simply as a 'psychological' reading of Heidegger. The desire for presence that Derrida invokes here stands in a *differential* relation with the desire for death, a structure or rather 'stricture' which clearly exceeds and 'precedes' psychology and psychoanalysis, as well as ontology and phenomenology; see Derrida (1987b).

¹² Derrida explores briefly certain aspects of Heidegger's *Der Spruch* elsewhere, eg in Derrida (2008, 49; 2005b, 84-5; 1998, 60; 1982, 64-7; 1993, 195).

¹³ The notion of heterogeneity requires letting go of the assumption that a text is simply a consciously organized whole. A text is instead (also) to be read as being ruled by an illegible remainder in the unconscious; see also Derrida and Ferraris (2001, 9).

¹⁴ See further Derrida (2007, 114-5) on the words *Anwesen* (being or becoming present, or presencing) and *Anwesenheit* (presence) in Heidegger (1977, 115-54), and which we see in Heidegger's statement regarding the attempt to think *dike* on "the basis of Being as presencing" (*aus dem Sein als Anwesen gedacht*) (Heidegger 1984, 43; 2003, 329).

¹⁵ The dissension in being which must be overcome is also addressed by Heidegger in a number of other texts. Especially illuminating is Heidegger (2000, 141-2) where he notes that in order to open itself to unconcealment, Being has to gather itself, in other words it has to "have rank and maintain it". He continues as follows: "Gathering is never just driving together and piling up. It maintains in a belonging-together that which contends and strives in confrontation. It does not allow it to decay into mere dispersion and what is simply cast down" (at 142).

part of life,¹⁶ but still as the own-most possibility of *Dasein*. To have a relation with the other as other, a different thinking of the relation with death is required. This is made possible, as Derrida has shown elsewhere, by an analysis of the law of language (and of technology)¹⁷ as well as Freud's analysis of the death drive (Derrida 1987b).¹⁸

ADIKIA AS 'HIGHER LAW'

Does the Anaximander fragment indeed speak of a higher law as was suggested in the introduction? In the readings of both Derrida and Heidegger the fragment refers to a splitting, division, dissension or dissemination in Being which 'precedes' Being (cf. Derrida 2007, 122, 127). Both readings refer to a disjointedness in all that is living (all beings) because of the disjointedness in Being itself. Heidegger, primarily because of his analysis of death as belonging to *Dasein*, emphasises gathering or joining and the need for *adikia* to be surmounted. Derrida, on the other hand, attempts to bring to the fore that the Greeks did not only have a pre-metaphysical experience of Being itself or of presencing, but that in their texts there are also traces of an impossible experience of disjointedness (cf. Derrida 2007, 115). On Derrida's reading the assurance that lies in the original gathering, sending and epochality of Being is placed in question by *adikia* (cf. Derrida 2007, 104, 120-2, 404-5; and Marrati 2005, 93-4). There can now no longer be any guarantee of destiny gathering itself up, identifying itself, or determining itself (Derrida 2007, 128). This dissemination or the thrownness of *Dasein* offers a chance and a responsibility without limit which necessarily has implications for the reading of texts (Derrida 2007, 128, 352-3). Every text throughout the history of Being, also every legal text, is affected by *adikia* as its law and must therefore be read to speak thereof (cf. Derrida 2007, 405). This 'must' remains a choice, but we are always already situated within the 'space' of this choice (Derrida 1997, under heading 4). Both natural law and positive law are furthermore derived from this law. This (higher) law is nonetheless without power and mastery. It involves the greatest weakness and is nothing present. It speaks of a disjunction in time which precedes the notions of presence and absence. This disjunction is the result of a desire which precedes all desire, of absolute pleasure, death which does not 'belong' to 'me' or to 'us'; it involves dispersion, and dissemination without return. This desire precedes philosophy, psychoanalysis, ontology and law. It can be called unconditional justice, the gift without return, or absolute hospitality. It haunts, and will continue to haunt both positive and natural law.

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¹⁶ Heidegger (2000, 139) explains this in simple terms as follows: "For the capricious, life is just life. For them, death is death and only that. But the Being of life is also death. Everything that comes to life thereby already begins to die as well, to go towards its death, and death is also life."

¹⁷ Derrida (1989b, 10) reads Heidegger's insistence that the essence of technology is nothing technological (Heidegger 1977, 20) as a (still) very traditional philosophical approach insofar as it seeks to purify essence from original contamination by technology. Derrida (1989a, 140-1) for this reason contends that the essence of technology is (still) technological and cannot be thought without death.

¹⁸ This analysis of Freud (2001a, 7-64) in his *Beyond the Pleasure Principle*, Derrida reads as being to some extent in tension with the role and importance Freud attributes to the Oedipus complex; see also Freud (2001b, 153-154) on the Anaximander fragment and the Oedipus complex.

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