

ART SUPPOSES JUSTICE: REFLECTIONS ON “DAS TRIBUNAL”

INTERVIEW WITH JOSEPH COHEN AND RAPHAEL ZAGURY-ORLY

LENA-JOHANNA HERRMANN

For the opening weekend of the “Globale” Exhibition at the ZKM, in Karlsruhe, Peter Weibel planned a two day event entitled “das Tribunal”. Numerous thinkers, philosophers, historians, jurists, economists, artists and activists, were brought together in the staging of a ‘Tribunal’ to “judge” the crimes against humanity and the genocides of the 20th century. At the entrance hall of the ZKM, a type of trial was performed. Dr. Joseph Cohen and Dr. Raphael Zagury-Orly, two contemporary philosophers lecturing in Ireland, Israel, France and Germany, participated in its elaboration and moderated the event. A few days after, they very kindly agreed to this interview on “das Tribunal”. Both thinkers describe the event as a rich and meaningful experience, one that definitely remains open to different readings and interpretations. With both, a conversation took place allowing for an attentive look at the lesser thought aspects of “das Tribunal”.



Fig. 1 The presenters of the “Tribunal”: Raphael Zagury-Orly (left), and Joseph Cohen (right).
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LENA-JOHANNA HERRMANN: The “Globale” exhibition at the ZKM in Karlsruhe opened with “*das Tribunal*” and you, Dr. Joseph Cohen and Dr. Raphael Zagury-Orly, were asked to moderate the event which was both performative art and theoretical discourse. As philosophers, what were the central ideas regarding the possibilities of such a performative format and which orientation did you put forth during its planning?

RAPHAEL ZAGURY-ORLY: We are both, as you say, philosophers. I would say, in many ways, we remain traditional philosophers; meaning, we are very attached to tradition, to thinking through tradition, to reinterpreting tradition. In this sense, we believe that philosophy, philosophical thinking, occurs through an incessant re-elaboration, which is never dissociable from a questioning, of our tradition.

But we have been trying to rethink, for at least five years, the question of possible formats for philosophy and other *platforms* for philosophical discourse. That is, we have been struggling with the very idea of format and more generally of the “form” in and for philosophy and its discourse. In many ways, I believe we have been struggling with the “form” of format and the staging for philosophical discourse. Why? Mainly because, just like every other philosopher taking philosophy seriously, we have noticed a certain type of fatigue in regards to the conventional

format of conferences, a certain type of wearing down of the traditional manner in which philosophy and philosophical discourse are expounded. Certainly, this does not mean that we are abandoning the traditional academic format which, as you know, is never far from some kind of performance. I think we still keep the faith in the traditional format of philosophical discourse, but faced with this fatigue, this exhaustion, also the *crisis* of the book to which we must add the tiredness affecting both the writing as well as the listening to a “conference paper”, well, faced with this wearing down of philosophical discourse at work in contemporary Western thought, the idea to rethink, to reinvent different formats has, for us, been something of an urgency, something of a necessity – if I may say so.

LENA-JOHANNA HERRMANN: I see. Is there something to interrogate in the relation between philosophy and format, that is, to question the role or status of format for philosophy?

RAPHAEL ZAGURY-ORLY: Yes, indeed. Format, just as “style”, are never secondary. The format is never simply secondary to content and this separation, in truth, this hierarchy between the ephemeral, exterior, superfluous and the interior, hidden meaning and signification, is, if not simply obsolete, entirely untenable. For, when there is format it never ceases to disturb the simple and continuous transmission of a content by introducing a dimension of unpredictability. And thus what form, format, is searching for is precisely to see something *other* arise. To what extent this “Tribunal” led to another type of format for philosophy, for philosophical discourse, that is another question – I am sure we will get to that eventually in our discussion. But what I can say now is that there was something we were searching to displace, to shift, to dislocate in the traditional format of philosophical discourse, and more generally in the form of academic conferences, colloquiums, meetings and Symposiums. Again, not to abandon these traditional formats, but rather to reengage them in other contexts. That is, rethink entirely what occurs through public speech. Re-question and find a novel form for the relationship between philosophy and public speech, between the philosophical and the public spheres; perhaps to give a chance to *another*, even other modalities of communicating.

You see, and I can say this for both Joseph Cohen and myself, we remain very suspicious of the frames, patterns, templates and models of communicative discourse. But never do we refuse simply both the necessity and the exigency of communicating. There is, undoubtedly, a necessity for philosophy to communicate, to offer the ground from where a rigorous, rational, transparent communication can be had and deploy itself according to universal categories, understandable, recognizable, analysable by all, but there is also the necessity for philosophy to leave, to step outside this reasoned horizon of communication, to escape beyond the eternal expectancy of simplification and invent other modes of discourses, performatives, acts. And I think we saw in this “Tribunal” at least the chance of such an invention, of such a new platform, another platform capable perhaps of allowing for other unpredictable encounters.

JOSEPH COHEN: Just to rebound: obviously your question deals with the relationship between philosophy and performance. You are quite right to ask this question, and I thank you for asking it, because in many ways philosophy has always been a type of performance, philosophy undoubtedly embodies itself in a voice, in a gesture, in a style, and consequently demands, requires, even searches for its *mise en scène*. Philosophy indeed has always entailed an art of manifestation. Since the beginning, it sought, not only to be a discourse demonstrating *what really is*, but also of *showing itself* to be that discourse, of *demonstrating itself* as that which explicates and can justly, truthfully, faithfully show to all “what really is”, “what really is not”, “why such is”, “why such is not”, etc. Certainly, this does not mean that philosophy is reducible to being *just* a show or *just* a performance – and indeed in the history of philosophy there subsisted a very long

and powerful denial, even a certain disdain of the “show”, of the “scene”, which is not far from the denegation, in this very history, of the “body”. But this has profoundly changed. And today, we must acknowledge this change and act in accordance.

LENA-JOHANNA HERRMANN: Socrates’s speech, for example.

JOSEPH COHEN: Yes, exactly, Socrates, and from Socrates onwards. I can say, and Raphael Zagury-Orly also, that Jacques Derrida’s lectures and conferences, Jean-François Lyotard’s seminars, Jean-Luc Marion’s classes, just to name here a few, were great *performances* of philosophy. In this sense, and this was interesting for us, the staging of “*das Tribunal*” inscribed itself in the history of philosophy. As we know and as you just said, in many ways philosophy begins with the scene of a tribunal: Socrates’ trial. In that tribunal Socrates puts on a performance. He is subjective, objective, speaks from a singular point of view as well as argues from a universal idea of justice and Good; he is sarcastic, ironic, he plays with the accusation, reverses the accusation, places himself above the Law and yet at the same time under the Law, both in the Law and outside the Law. – There is an incredible performative element at work in Socrates’ “*Apology*”. So the “Tribunal” is to be inscribed within a tradition of performance in philosophy. It is not an unedited form, and yet, what was interesting for us, was the possibility to rekindle that form – but otherwise and differently.

One of the reasons why we needed to reinvent this form, reinvent this performance was that the “Tribunal” we were seeking to put on dealt, not so much with philosophy, but with the crimes of the 20th century, the genocides of the 20th century and wanted to address the question: what is left of justice in the global, technological, economical becoming of our humanity? So it sought more, so to speak, than to just perform the trial of philosophy. It wanted to put on trial how humanity has dealt with its own history and furthermore how humanity enacts itself throughout its history.

Another idea that is important here which we discovered in the course of not only of the preparation, but most explicitly in the performance, of the “Tribunal” itself, is that in every type of renewal of a philosophical performance lies the question of the Law. It was present in Socrates’ performance and it was present in our performance.

There is the question of the law, and of course: who says *law*, says *form*. The law is a form, a formalisation. What we were seeking to undo is a traditional form, is a traditional form of law in order to orient towards – perhaps – the possibility of thinking no longer *in* this law, but differently this law, and thus to think another idea of justice.

LENA-JOHANNA HERRMANN: And you saw a chance in this format, that of “*the Tribunal*”?

RAPHAEL ZAGURY-ORLY: We have to be very careful here. Cautious with the very idea of chances, of giving chances, of opening up to chances, to novelty, to new possibilities. We were looking into risking something, but we recognized, almost immediately, that to transform the form, to affect the form in such a manner as to engage into something *other*, is bordering on the impossible. And thus, very quickly, we were caught up with the conventional parameters of discourse, of historicism, of academism, and the logic of judgment, of right and of the law. And retrospectively, this was very interesting for us. And here we must explain very succinctly what we were seeking to bring forth. Our idea, so to say, was to instigate, through this “Tribunal”, a heterogeneity between *Right* and *Justice*, that is between the logic which is predominant in what we call the “court of justice” and the philosophical idea of justice.

For many reasons, we did not succeed in introducing this tension, between *Right* and *Justice*, and failed in displaying this somewhat fragile and delicate idea of a *Justice* beyond *Right*. And there is a philosophical issue here as well as an explanation to be had for this failure. For, and it became

all the more palpable in the preparatory stages as well as in the event itself, where it became patently obvious, there is a radical misunderstanding, perhaps a fundamental impossibility, at work in institutions, in this very institution here – which is, of course, a great institution – to understand, to put on, to enact this heterogeneous tension. And yet, a performance which would not be subjected to the patterns, nor restrained by the institutional structures, the modes of the classical or traditional "Tribunal" could have, perhaps, allowed us to approach this heterogeneous tension between *Right* and *Justice*.

LENA-JOHANNA HERRMANN: Following on your answers, would you say that this very tension, between *Right* and *Justice*, was simply eclipsed in the "Tribunal"? Would it be right to say that what you sought to bring forth in the "Tribunal" was, in a certain manner, shunned by the normative structure, institutional context in which it was held, exhibited and presented?

RAPHAEL ZAGURY-ORLY: Perhaps, I ought to say this firstly: we all attempted to bring forth something other than the usual, procedural, pre-determined structure of our courts of law and legal institutions in this project. The specificity which was ours and that we sought to engage – and which perhaps was not shared by all the organizers of this "Tribunal" (but such is also the law of putting on events such as these) – was to show this heterogeneous tension between *Right* and *Justice*. Of course, this does not mean we were seeking to do away with *Right* in order to plunge entirely into a hyperbolic idea of *Justice*, entirely rebellious to all institutionalization and irreducible to all or any exercise of *Right*. In order, for this other idea of *Justice* to surge, the exercise of *Right* must also be affirmed, confirmed, established. A certain idea of *Justice* supposes such an exercise of *Right*. However, the idea of *Justice* must always remain heterogeneous, irreducible to *Right*.

And to return to how the "Tribunal" was put on here at the ZKM, a quote comes to mind. It is a quote from Heidegger, when he speaks of Schelling's *Freiheitschrift*. He says: Schelling's philosophical system and project is a "grandiose failure". Do you know this quote?

LENA-JOHANNA HERRMANN: I did not know that quote.

RAPHAEL ZAGURY-ORLY: Well, I am not saying: what we did is a *grandiose failure*, but it is, at least, a *significant failure*, a *thought-provoking failure*. And this is also something we heard from both participants and spectators. Indeed, the simple fact that many people came to us and said, "You should try this elsewhere", as if they felt something other was sought after, other than what was being displayed, is quite telling. And it is true, we were looking for something *other*, a place where the difference, the irreducibility, the heterogeneity between *justice* and *right* could present itself. Certainly, this difference did not appear at the "Tribunal" as radically as we were hoping. There was something there, at the tip of everyone's tongue, the desire for some, the need for others, the urgency I would say, for another idea of *Justice* capable of questioning *Right*, capable also of suspecting the procedural, institutional, technical praxis of *Right* as well as its *unthought* metaphysical presuppositions: subject, judgment, comparison, recognition, repetition, etc. There was an urgency to see the possibility of thinking towards this idea of justice working through, always suspecting *Right* and *Law*, tenuously standing at its limits. And although this idea of *Justice* was not deployed or wholly presented, it was nonetheless manifesting its *potential*, its *potentiality*. Perhaps it was doing so in a certain *absence*, or retraction, from what was actually presented. But it was manifesting its *possibility*, at least in that it refrained to reduce itself to conventions, to universalisation, to the homogenisation of discourse: crimes against humanity were supposedly judged and would be thus *de facto* "behind us" and according to the same conventional rationality, we will now judge the crimes against the environment, against animality, the crimes of capitalism, etc.

To go straight to the point: Justice ought never to simply conform to our faculty of justification, to finding and stating a justification for everything, and thus to banalize, trivialize, simply reduce everything under a general statement as “it is all for the better.” Justice, this other idea of justice persistently seeks to remain distinct from justification. Certainly, we are attached to the universality of judgment, however we are searching for the possibility to think towards a universality which is closely tied to singularity, to the singularity of each and every crime, and to the necessity of a justice which remains irreducibly attentive to the singularity of crimes without ever claiming to put, so to say, these on the same plane. Is the singularity of this justice feasible, possible. I do not yet know. However, I cling to this idea.

LENA-JOHANNA HERRMANN: But how is this singularity thinkable in relation to performance?

JOSEPH COHEN: If we return to the Socrates trial, what is radically different from what occurred here, in the “Tribunal”, is that in the *Apology*, the philosophical intention, the idea of the “Good beyond Being”, the incapacity for a human court of Law to grasp its own essence, foundation or ground, *and* its enactment, its performance, its staging are wholly and entirely in tune. The intention verses into its performance and the performance mirrors perfectly the intention through the very figure of the orator, Socrates. Indeed, Socrates performs the *Apology* of philosophy as his own defence. And inversely, Socrates’ defence against the charges laid on him by the court of Athens is the *Apology* of philosophy itself. Both the performance of the philosopher and the essence of philosophy are conjoined, both are ultimately the *same*. And hence, there is no distance, no hiddenness, no concealment in Socrates’ *Apology*: it is the presentation, direct and unswerving, of the philosophical ideal of truth, justice, good. Here, however, and in following what Raphael Zagury-Orly has just said, the performance of the “Tribunal” showed something, but the mode of this performance was oblique, indirect, veiled. Through another modality of complexity, the “Tribunal” showed *without* showing the irreducibility of another idea of justice. It showed its impossibility to show a radically heterogeneous idea of justice, irreducible and heterogeneous to *Right*. In this sense, the “Tribunal” presented its own incapacity of displaying the otherness of the idea of justice. It presented that other to the determined structure of judgment, of justification, of legal discourse and convention, occurred the necessity and the urgency of another idea of justice. Here is thus the difference with Socrates’ trial: the performance of the “Tribunal” showed how it is showing the *other* than that which is actually being presented. It shows a type of *absence*, and says something like: “what is shown is in fact pointing to that which is not yet shown; what is performed is not yet what urgently desires and needs to be performed”. Or again: “there is not yet a true, good or faithful performance of the idea of justice”.

LENA-JOHANNA HERRMANN: It showed what it cannot show?

JOSEPH COHEN: In a certain manner, yes, it showed – if it showed anything – that something *has yet* to be shown, that something needs or desires yet to be performed. Perhaps the “Tribunal” showed this other idea of justice as unrepresentable in the scope of representation. And thus, perhaps it showed the idea of justice occurring through its *irrepresentability*. What does this mean? Perhaps, we are here close to what the late Levinas marks in *Otherwise than Being*, as the act of the *other* in the structure of the same, dislocating, disturbing, deranging the configuration of identity. To give justice its chance, we ought incessantly to tear it away from its association with *Right* and dissociate it from its fixation in the juridical determination. As if, without release, without end, without complacency, one must think the idea of justice in a confrontation to the impossibility of determination, through the reiterated experience of its inadequation to *Right* and from which the possibility of *just* questions can be posed in regards to the exercise of *Right*, in rapport to the concrete and determined practise of law.

LENA-JOHANNA HERRMANN: Could you elaborate further on the "not yet" of this idea of justice, the "not yet" of its "just" presentation or performance?

RAPHAEL ZAGURY-ORLY: This morning someone came up to me and said: "I was at the 'Tribunal'". Perhaps you should consider putting it on in the Avignon Festival or another art space, like the Centre G. Pompidou in Paris." I am not going into "Should we do it?/Should we not do it?" One point however: there remains much to explore as to the performative platform for philosophy, as to how philosophy gives itself in performance and in which manner to invent other performative gestures for philosophical discourse, questions, etc. And there remains much to further in regards to the relationship between Justice and Art.

If people, after the "Tribunal", approached us, I believe it was for at least two reasons. Firstly, I suppose people saw or understood something was, in some way, missing or missed, something remained to be exploited, deployed, and attempted. And secondly, somehow, people felt that, through our participation in this project, another idea of justice was seeking to come through. Another idea of justice which works far from moralization, "lesson-giving", another idea of justice which does not fit or fixate itself in a "good conscience", which does not revel in self-righteous discourses all claiming to have "settled" or "resolved" once and for all historical questions of justice and injustice. Such discourses quickly fall into a spiral of justification, which transforms itself into nothing less than an unjust relativism of cases: the Rwandan genocide is comparable to Mao's atrocious auto-genocide through famine, the *Shoah* is akin and understandable through a comparison to Stalin's *gulags* or as a reaction to Stalinism, etc. What we ought to say here, in regard to this logic, is that there always comes a moment in the scope or the sphere of *Right* where one can claim that we have, as a community, performed the necessary work of recognition which we assume and take on ourselves, and, in regards to historical crimes, affirm having conducted the *right* repairing, mending, restoring of our rapport to these and therefore can be justified in reengaging, beyond the catastrophe of our past historical actions, our very history. However, and we must stress this here, this moment of "mending", "comprehension", "moving on" ought never be affirmed *as such*, so to say, and resolved. Certainly, we are not simply stating that historical catastrophes are as such incomprehensible, not to be understood, compared between them or subjected to historical analysis. We are rather marking that there remains something problematic in the will to comprehend and resolve through historical analysis or comparison all historical catastrophes. There is something terrible in this will to comprehension which means that there ought to be more than this will, we ought to constantly search for other modalities of thinking historical catastrophes, of thinking thus beyond the will to comprehend them. We must rather incessantly mark – and such is the work of this other idea of justice, insubordinate and heterogeneous to *Right* – the unsatisfied, unaccomplished, unresolved relation to our own history, its catastrophes and our consciousness of our historical becoming. The worst enemy of justice is always "auto-satisfaction", this pretention that "enough has been done, and we can move on, we can leave the past behind and look into the future unscathed". Indeed, the worst enemy of this idea of justice is to relate to it by already claiming that "the wounds of Spirit heal without leaving any scars", to paraphrase Hegel.

JOSEPH COHEN: Another element we need to question is the idea of *globality*. The "Tribunal" was the opening performance of the *Globale* exhibition. *Globale*, the title thus, is a clear reference to a process which is always surpassing our own subjective freedoms, a process to which we belong before belonging to ourselves. This process is, of course, known as globalization. Our first question needs thus to be: what is the "logic" of this juxtaposition? What does it mean to begin with a "Tribunal" which evolves into and opens towards a "globalizing process"? What does it mean to open an exhibition entitled "*Globale*" with a "Tribunal" of the 20th Century, of the crimes of the 20th

Century and which furthermore addresses also the crimes we are already committing at the turn of the 21st Century?

LENA-JOHANNA HERRMANN: Would you say that the term *Globale*, the concept of globality, globalization, ought to have been discussed further?

JOSEPH COHEN: What we are saying is that this juxtaposition conceals a “logic” which is, for us, highly problematic. Why? Because it maintains that since we have elaborated the laws and the norms, the “right” judgment through which we can evaluate and judge the crimes of the 20th Century and now that these norms or laws have been recognized as “effective”, all is left for us to do is apply these same laws and norms to the 21st Century and to the crimes we are in the process of committing: crimes against the environment, against animality, the crimes of capitalism and wealth distribution in our “globalized” world, etc. Everything happens as if there was one single movement stretching from the 20th to the 21st Century and that, through this movement, through the recognition of the proper, adequate, appropriate laws and norms to judge the events of our past history, we simply cast these on the historical occurrences of the 21st Century. The question, however, is: who may claim we possess, for the 20th and *a fortiori* for the 21st Century, the “effective” laws or norms to judge the crimes committed? What idea of “justice” is at work when the laws, the norms are already predetermined, already pre-thought as adequate and suitable to judge and, consequently, resolve the historical catastrophes we have caused and the ones we are prompting, inciting, initiating?

RAPHAEL ZAGURY-ORLY: Our idea of justice marks – and to say it pointedly – that we have *not yet* the proper laws, the norms in order to judge the 20th Century, nor are these to be thought as “effective”, “adequate”, “suitable” for the 21st Century. Our idea of justice is always to be searched, requires to be incessantly reformulated, re-evaluated, according to the singularity of historical and political contexts, according to the singular histories and languages of each situation. Never does this idea of justice impose itself in a determining manner. It rather calls onto the singular. In this sense, for both Joseph Cohen and I, the idea of justice we are seeking to engage with re-examines incessantly its relation to universality. Thus also, and at the same time, always retracts, refrains from being perceived or inscribed in the “*global*”, in a type of “global justice” – for it constantly seeks to *suspend* its globalization in order to concentrate on the singular, and from the singular redefine, each time, the universal, that is the law to apply and put into effect. Certainly, as Levinas says, this is a “difficult universal” to think, but such is the risk and the chance of this idea of justice, and thus of an idea of justice which suspends the pre-determination of a simple technical applicability of laws and norms to situations which are each time singular and always require further complexification.

LENA-JOHANNA HERRMANN: This semester, at the HfG – Karlsruhe, you are holding a seminar entitled “*Truth supposes Art supposes Justice*”. You deploy this idea of *justice* and *art* in their relation to *truth*. This seminar, as you state it, owes a great deal to Jacques Derrida’s own work on truth, art and justice. Can we see in the performative act of the “*Tribunal*” – which of course took on a form close to scenic art in order to present theoretical questions and problems – an opening to your idea of justice?

JOSEPH COHEN: That is really the heart of the matter. Firstly, yes, we conducted at the HfG this semester a seminar on the relationship between art, justice and truth. The title “*Truth supposes Art supposes Justice*” was also the title we gave to the project and proposal we had submitted to the ZKM for the *Globale* exhibition.

LENA-JOHANNA HERRMANN: That was the name?

JOSEPH COHEN: Yes, that was the name of the original project for *Globale*, which was sensibly different from the "Tribunal".

LENA-JOHANNA HERRMANN: Why did you choose to entitle your *Seminar* as well as the original project you had submitted to the ZKM "*Truth supposes Art supposes Justice*"?

JOSEPH COHEN: There would be a lot to say about the idea developed in the seminar; much to say on the relationship between truth, art and justice, as well as on the "logic" of supposition which is involved in this relationship. We spoke extensively about this in our seminar beginning with the question: what does this supposition mean? What does this supposition, at work here between truth, art and justice, entail when it is not reducible to a structure of conditionality, when it is not only signifying a cause-effect relationship? The question however is: Did "*the Tribunal*", the performance that happened at the ZKM at the opening of this "*Globale*" exhibition, somehow reflect this "*Truth supposes Art supposes Justice*" idea?

We said, in the beginning, that the "*Tribunal*" showed without showing, showed that it was not yet thinking this other idea of justice. And to add to this idea, I think we should say the following: we need in order to think this relationship of "*Truth supposes Art supposes Justice*" a language which is capable of faithfully translating what occurs in the *supposition* here at work between Truth, Art and Justice. It seems to me that the idea of justice, we are here seeking to think, cannot simply be understood as emanating solely from a faculty of judgment. Why not? Because it calls onto, as Raphael Zagury-Orly was just saying, the singularity of the event, of the case, of the situation and refuses any type of pre-determination or pre-vision on the given singularity. And furthermore, it persistently calls into question, and thus suspends, interrupts the constitution and the institution of a judgment through the structure of a tribunal.

And here in the "Tribunal" it was about judging. We were judging. The whole setup was in fact one allowing, permitting and engaging a judgment, a judgment of "right" and a "right" judgment. And we were troubled by this set-up and indeed had a difficult time fitting into it. However this trouble, this difficulty plunged us back into the philosophical question which was at the very origin of our idea and project: What is a justice *without* judgement? What is a justice that does not verse into judgement or into the faculty of judgement?

RAPHAEL ZAGURY-ORLY: I would add to this another point. The idea of a justice *without* judgement, which is probably one of the most important ideas in our project, does not mean that we were then or are now or will be tomorrow *against* the institution, the rule of Law, the court of justice, or, for that matter, judgment itself. It would not be very serious and ultimately counterproductive. What we were hoping for was to bring the conventional court, the institution and the rule of law, to a confrontation with its limits, and, through this confrontation, let its own "inoperativity" appear, transpire and manifest itself, whilst bringing it to, making it, itself, inoperative.

We are very attached to the curious expression by Diderot, "to stand at the limits of truth...": Art and justice, although differently, both have a certain manner of performing, acting, standing at the limits of truth... What we were attempting to show, in this class, is that art and justice entertain an unresolved relation to truth and consequently that they cannot be subjected to truth, but rather must maintain with truth a type of interval, a space, a *hiatus* thrusting truth outside of itself and forcing it to think otherwise than according to its own modality. Needless to say that truth here is, for us, on the side of *Right*. When one speaks of the "limits of truth" certain passage beyond these limits is disclosed and revealed.

LENA-JOHANNA HERRMANN: Are you seeking to make art out of justice?

RAPHAEL ZAGURY-ORLY: To *bring out* art, more than to *make it* art – or, and to follow here Nietzsche, to think *justice as an artist*.

JOSEPH COHEN: What is interesting for us are these instants where justice *overflows*, surpasses, undermines also the rule of law, to the point where – perhaps here occurs the “bringing out of Art” – justice intervenes, interrupts, suspends and renders the very process of law, of the rule of law, the very work of the “*Tribunal*” inoperative and through this inoperativity opens it to another process, one perhaps more *just* than judgment.

RAPHAEL ZAGURY-ORLY: At the very moment which Joseph Cohen just marked, have we abandoned judgement or have we redefined judgement beyond its traditional presuppositions? We do not want to decide. We do not wish here to simplistically state: “judgment is condemnable and we must abandon it”, or: “judgement has to be redefined outside of its traditional definition.” We wanted to leave this open and let a certain indecision hover over this moment.

JOSEPH COHEN: And one more word about judgement and non-judgement, abandoning judgement or redefining judgement. This indecision is not driven by the intent to open the scene of a reconciliatory form of *grace* or *forgiveness*. I think that the word is well chosen here – to render the entire process *inoperative*, *ineffective*, and to the point where the process recognizes its own *inoperativity* in its very operation, its own manner of being inoperative due to its perfect, determined operativity, and consequently of being submerged by that which it cannot cope with... Kant certainly saw something of this auto-limitation, this “auto-destruction” of judgment through its very capacity and faculty to determine itself. This is why he introduced and formulated in the *Critique of Judgment* the “reflexive judgment”.

RAPHAEL ZAGURY-ORLY: And this is why we find need to supplement the great insight of the third *Critique* by the further readings of Nietzsche, Lyotard, and Derrida.

LENA-JOHANNA HERRMANN: If I understand you correctly, there is a strong, meaningful, profound alliance between inoperativity, a certain form of “ineffectivity”, and art and justice?

JOSEPH COHEN: Indeed, there is a strong alliance between the “inoperativity”, the “ineffectivity” of the rule of law, where, when the law experiments its own limits, the necessity of invention becomes urgent, palpable. This is the “*place*” from which could, *may-be* – and we should always say “may-be” when speaking of justice, as Derrida often said – occur this other idea of justice. Other than *Right*, piercing and forcing *Right* to be other than itself, worked by that other idea of Justice which insists on the “deconstruction” of *Right*, its pretension, its sovereignty and its predominance. A certain promise inherent to the dismantling turn *Right* could perhaps take – a turn which would have to respond, no longer to “truth”, but rather to an irreconcilable idea of justice.

LENA-JOHANNA HERRMANN: As you mentioned forgiveness, I will move to another question. In the summer of 2013, Joseph Cohen, you lectured at the HfG on forgiveness. I also know that Raphael Zagury-Orly has lectured on this topic before and furthermore that you are both writing on this question. You have thematised and explicated the question of forgiveness as always vacillating between impossibility and possibility. How does a performance like the “*Tribunal*” reflect or display the impossibility of forgiveness?

JOSEPH COHEN: The “*Tribunal*” – but perhaps this was inevitable – operated a certain generalisation, a certain “relativization” by levelling and ultimately flattening all the crimes of the 20th Century to their being accountable and answerable in the same manner and within the same horizon of comprehension. It paved the way for a type of philosophical, conceptual generality, and in this manner did not confront the radical singularity of each crime. As intellectuals, we have the

duty to address and confront singularity, the singularity of each crisis, catastrophe, crime we face in history.

LENA-JOHANNA HERRMANN: Why is the question of singularity so important for the question of forgiveness? How are both these questions related?

JOSEPH COHEN: Firstly, it would have been necessary to pose, in a radical manner, the question of singularity and through this question open to the possibility/impossibility of forgiveness. The "Tribunal" did not, not enough anyhow, pose the question of singularity and hence served a very simplistic idea of forgiveness as "*moving on*", interiorizing, evolving, reconciling one's self with the past, restoring the wrong and the possibility of going beyond it. In other words, the "Tribunal" reduced the question of forgiveness to that of self-forgiveness. A "Tribunal" which already forgives itself, which always grants itself its own forgiveness through the acting of its judgment, which is always assured of its purpose and already determining the conditions through which forgiveness can effectively be given, who could still call this a "tribunal", a court of justice? In this sense, the idea of forgiveness in the "Tribunal" was never radically posed as a question, but was almost – which is highly problematic – taken as an obvious given.

RAPHAEL ZAGURY-ORLY: True. We never talked about this in detail, or in these exact words or phrases. We never spoke of the role of forgiveness, pardon, grace, in this "Tribunal". And it is true, one of the consternations that we had about this is - even though it was a "Tribunal", even though it had all the pretensions of judgment –, in a certain manner, the "Tribunal" had already given its *grace* before there was an actual judgment. It is, of course, true that judgment and forgiveness are not concomitant, they are indeed, and in many ways, opposed. However, in this "Tribunal" – and perhaps in others also – they were never too far apart, almost as if they were engaged with each other to play the role of a pacification of History. And thus we were just going through the motions of rendering operative this *grace*, and consequently this "putting to the past", this forgiveness and reconciliation with History. Here, the question of forgiveness was never radically posed. That is, we never confronted forgiveness, grace, pardon, to the unforgivable. We never challenged the very logic of this curious and ambiguous alliance between judgment and forgiveness. One must always think that there lies a dimension of obscenity of a certain forgiveness.

LENA-JOHANNA HERRMANN: Because forgiveness was never seen as impossible?

RAPHAEL ZAGURY-ORLY: Because it was never confronted to the impossible. This also means, paradoxically, that forgiveness was never questioned as a possibility worthy of that name. Forgiveness was already taken for granted. And this was a very disturbing, troubling realization for us in this performance, in this "Tribunal". For, thinking from this *other* idea of *justice*, the question of forgiveness necessarily must be reposed, rethought, re-elaborated in a strictly and wholly different manner than how the law, the rule of law, the courts of law put into effect, or embody it. In these forgiveness, is always thought through different modalities of reconciliation, which are never too far from of "grace", "mercy" or "pardon". It is as if we ought now to unleash forgiveness from its metaphysical or theological correlates of expiation.

JOSEPH COHEN: The question of forgiveness must take on another type of vocabulary, another type of logic, new performatives and significations. And must thereby be rigorously dissociated from all work of time supposed by penal judgment. How are we to rethink forgiveness otherwise than as the truth of judgment? Remember what Hegel said of "forgiveness", that it was the idea from which judgement could be thought and in which the judge found its ground – is there not another idea of forgiveness which would be linked to another idea of justice? Perhaps ought we to think of another idea of forgiveness which will not appear as the reconciling truth of judgement,

but which would *also* – without simply fixing itself in the negative – confront forgiveness to its *other*, the unforgivable. Perhaps, I say *perhaps* as I don't believe in wholly or entirely fixing justice in either stance, justice sometimes calls for non-forgiveness, and the unforgivable, perhaps justice requires that it not accomplish itself in the forgiving determination of justice and but rather to interrupt forgiveness, to suspend the act of forgiveness. Something in forgiveness, in that forgiveness worthy of its name need be uncomfortable with publicity, with the public scene, need keep in itself an impossibility to give itself, that is need be attracted to silence.

LENA-JOHANNA HERRMANN: Would that mean a justice that would not forgive?

RAPHAEL ZAGURY-ORLY: Not exactly... I think we spoke of a certain discomfort that was ours after the "Tribunal". It is obviously an embarrassment with the therapeutical, eco-biological, sanitary language of the reconciliatory horizon of the court of Law, of the "Tribunal". But it is an even bigger discomfort with the fact that if you pertain to question this horizon of justice, you are perceived as refusing, as resentful, as vengeful. You are seen as trapped, fixed in the negation of the process by which can be restored a pacification of History. It is terrible to be placed in the situation of the one who always seeks to interrupt, break, and disrupt the effective and proper functioning of the social body.

And I want to add that one of strongest tonalities of the "Tribunal", a reiterated discourse as well as a silent, almost inaudible and yet tenacious presupposition, was: "we are over this untenable idea of singularity". We are no longer willing to think the singularity of a catastrophe, of a crime, of an event and we certainly are done with expounding all the concealed *aporias* of thinking "singularity".

And I am not necessarily referring to the *Shoah*. This is always a very difficult situation. For as soon as you raise the idea of singularity, we immediately associate it to the *Shoah*, the extermination of Jews in Europe, and consequently one is always suspected either of hierarchizing between crimes, between genocides, or then (but often one does not go without the other) of simply negating the "importance", and thus the suffering in other crimes, of other genocidal experiences. In this sense, and to answer your question more clearly, we are not seeking to fixate justice in either form: its resolution in forgiveness or its stubbornness in an unforgiving position. Just as we often, too often, confound forgiveness with all the terms which revolve around it, "excuse", "regret", "amnesty", "prescription", etc., we also confuse justice with the penal code, the law... Forgiveness and justice ought to stay heterogeneous and irreducible to these concepts. Derrida's analyses are here central.

JOSEPH COHEN: Indeed, nothing could be further away from thinking "singularity" than this process by which singular crimes, singular genocidal experiences or histories are either hierarchized, relativized or negated. What is engaged here is thinking the "singularity" of each and every crime in *terms* of singularity. And thus a redefinition of universality through singularity. I will mark here almost a preliminary remark: let's not hurry into the different healing processes, therapies, "work of mourning" strategies; let's not be so quick in adopting the same remedies for historical traumas, catastrophes, past, present or future; let's not fall into the perfectly operative machine of "declaring one's fault" and "being forgiven" in order to assure the peacefulness of our historical consciousness. The "economy" of forgiveness, the modalities of avowing, of pleading for forgiveness, the giving and the receiving of forgiveness, are never devoid of ruses and can always conceal more than one ploy or hoax. As Derrida would say, and this holds for both justice and forgiveness, as soon as forgiveness or justice are called on to serve a given finality or a *telos*, be it spiritual or religious, be it to engage a redemption, a salvation, a reconciliation, each time that justice and forgiveness seek to restore a normality, be it socio-political, psychological, historical,

then we can be sure, and assured, that neither forgiveness nor justice is worthy of their names, of what they name. What does this mean for *justice*? What does this mean for the *law*?

LENA-JOHANNA HERRMANN: This makes me think of another passage from Derrida where he evoked the idea of calling onto the *ghosts* of the 20th Century. Derrida wrote in "*Spectres of Marx*" about the necessity of learning to live with ghosts as: "*learning to live, a time without tutelary present [...]. To live otherwise, and better. No, not better, but more justly.*" In this quote, and furthermore in *Spectres of Marx*, Derrida deploys the idea of "responsibility towards ghosts". Perhaps, through this responsibility – indeed, in this quote, Derrida also speaks of justice and following what you say justice here ought not to necessarily call onto forgiveness as reconciliation – these questions could have been approached differently. What is at work between responsibility, justice and what Derrida here calls "spectres"?

JOSEPH COHEN: We were seeking to firstly redefine our traditional and conventional logics of mourning, the ontology of memory in history. In other words, we were seeking to redefine the traditional relation between ontology and history. Of course, through this question is revealed – and Heidegger here is determinate – the predominance of presence. The History of Being is the deployment of presence. However for us, each time History confounds itself with presence, the question of the *spectre* appears immediately. That is, appears that which is at once and simultaneously neither absent nor present, and thus interrupts, suspends, exceeds the predominance and the logic of presence – the *spectre*. How are we to relate to History, no longer as the deployment of presence, but as the incessant occurrences of *spectres*? Here is reposed radically the question of mourning and is engaged a redefinition of our traditional and conventional logics of mourning. In other words, here lies the possibility to think another "work of mourning" than that which culminates in the "incorporation", "interiorization", "integration" of the dead or of death, of the historical traumas or catastrophes. In this manner, we are seeking a certain re-elaboration of the Freudian concept of mourning too close to a therapeutic goal and to the metaphysical, juridical, medical notion of crisis, which is always momentary and called to be surpassed in the History of Being. What must be said here - and again to return to the urgency and necessity of this *other* idea of justice, in view of human history and the manner in which humans relate to their history – is that, the historical traumas and singularly the victims of our history incessantly reappear as *ghosts*, as *singular spectres* in that history.

LENA-JOHANNA HERRMANN: Are you engaging in the idea that humans are to respond and be responsible for ghosts, for spectres?

RAPHAEL ZAGURY-ORLY: A certain phenomena of spectrality ought to bring us to redefine, rethink, and entirely reconsider our traditional notions of history, memory, responsibility, forgiveness, justice. We have, indeed, never finished, never accomplished our engagement with History – That is we never cease to engage our responsibility towards what has passed as well as towards that which is to come. The spectre marks this exigency. The spectre commands that we commit to that which exceeds presence, that which exceeds what is present, and thus engages us in a responsibility *without end* towards the fragile, the one who is not living, and thus who does not resist the process of history constantly re-asserting itself, re-shaping, rebuilding and repairing itself. The call of responsibility and of justice reverberates here unmistakably in the face of this fragility. We are called to responsibility in the face of these beings without defence, dead or not yet born which we carry in us and with us.

LENA-JOHANNA HERRMANN: So it is also a question about the future, about the "*to come*"?

JOSEPH COHEN: The necessity here is to redefine responsibility *otherwise* than according to the rationale of presence, of “being-present” to one’s self as well as being equally assured of the presence of the other. Contrarily to a conventional position or idea, where one responds to that which is immediately present, we are here advancing that the call to responsibility occurs from an *irreducible excess* to what is immediately present. In this sense, the spectre, the ghost, calls us and recalls us to a situation of essential dissymmetry. We are solicited, concerned, called, more than ever, by the one who was there before us, by the one who never presents one’s self as our simple equal (the one who is deprived, powerless) and by the one who is to come. Each time the question of responsibility and justice is posed there is a certain “*spectralisation*” of the other which occurs. And this “*spectralisation*” of the other marks the irreducibility of the other, its irreducibility to presence. And to which justice must firstly respond.

RAPHAEL ZAGURY-ORLY: This is an important point. I want to add the following on what Joseph Cohen called, after Derrida, “essential dissymmetry”. For indeed, this “essential dissymmetry” – and we refer here back to what Derrida writes on the rapport between time, temporality and the spectre, spectrality – is the work of two dissymmetries: that which has passed and that which is to come. Between these two dissymmetries, the “present” is dis-joined, out of joint, and only appears in this disjunction, in this being “out of sync”. In other words, we are not claiming here a simple eradication of the authority of the present. Rather, we are invoking that the present is always and already worked by its disjunction which occurs to it because of its past and its future to come. Justice must remain this heterogeneous “weak force” constantly questioning, redefining, transforming, in the present, the structure of law and right. We can understand perfectly well, here, there, and everywhere, the need for each to reconcile themselves with their past, that is, in philosophical terms, to represent to one’s self the past and inscribe this representation in a horizon of signification. However, one must also know that each time this reconciliatory gesture operates, justice bears the blow, that is justice, in some manner, suffers from this reconciliatory essentialization of history. Let me add one more point here: what remains of art, literature, cinema when it employs itself to serve the common and current economy of social, historical, psychological reconciliation? And in this sense, do they not join justice as they, art, literature, cinema, revolt against this reconciliatory temporalization and expose themselves to that which is intractable, untreatable, and irreducible to all strategies or economies of the continuity of history.

LENA-JOHANNA HERRMANN: Being in the audience of the “Tribunal”, I felt there was a latent ambiguity which can be formulated as such: “who is judged and who is the judge?” Somehow, it seemed as if we, inheriting Europe’s historical debt, were reinstated in our traditional, conventional, classical status of judges, whereas the victim appeared only as an *abstract other*, as an exterior entity to the entire process of judgment. Certainly, the victim is defined, classed, categorized *as a victim* – but this definitional characterization is almost the most certain manner of excluding it, the other, from the very possibility to *speak* in the process, and thereby command a redefinition of judgment according to the singularity of its calling. Can this vagueness, regarding the status of the other, be understood as a possibility to re-problematize justice, judgment, and rethink what we mean by “other” and “victim”?

JOSEPH COHEN: It is true that in this “Tribunal” - and this links back to the idea that forgiveness was taken for granted - the victim never really appeared. We were always talking about victims, certainly, but the call of the victim was unheard. There was never the singular call of the victim, the singular outrage of the victim. Only a general discourse *about* the victim. But the victim – in its singularity – was never heard and never spoke. But also, and it should be said, the judges never appeared, the prosecution, the jury were never seen, nor heard. And this is just as grave. We were seeking to reveal the limits, the strategies, the economies of the “Tribunal”, but in order to perform

such a questioning and confrontation between law and justice, it would have been necessary for the entire structure of law to be present, to be working and deploying itself through its language, its legitimacy, its force and power. It would have been necessary that the "Tribunal" be in place and be put in place. We did not have this. We had what we can only call a type of *simulacra* of the "Tribunal". Why? There are undoubtedly profound reasons for the performance of this *simulacra*. We don't however believe it is due to the "performance" element – for who says "performance" cannot mean a simple platform...

RAPHAEL ZAGURY-ORLY: Perhaps a last word, even if there could never be here a last word, would be, and we ought to insist on the concrete urgency, actuality, practicality of this exigency of justice: we ought never to let *Right* operate solely by itself, and therefore must never allow *Right* to give itself a clear conscience, a good conscience.

JOSEPH COHEN: Never let *Right* settle with itself, incessantly opening it to that which remains other, radically irreducible: an idea of justice as impracticable as just and as just as impossible to yet translate as *Right*.