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# IS A DETERMINANT JUDGMENT REALLY A JUDGMENT?

RODOLPHE GASCHÉ\*

The concern with the power of judgment arises in Hannah Arendt's work in response to critical events in modernity in which, as a result of the impotence of familiar standards and categories to provide answers and orientation, this power has become undone.<sup>1</sup> Arendt already broaches the crisis of understanding and judgment in 1953, that is, two years after the publication of her work on totalitarianism, in an essay entitled *Understanding and Politics (The Difficulties of Understanding)* where she states that "the rise of totalitarian governments is the central event of our world." However, it is only as a result of her reading (or rather re-reading) of Kant's *Critique of the Power of Judgment* in 1957 that Arendt explicitly begins to develop a political concept of judgment that would be up to the challenge of events that defy both common sense and cognitive understanding.<sup>2</sup> In a letter from August 29, 1957, to Karl Jaspers she writes:

At the moment I'm reading the *Kritik der Urteilskraft* with increasing fascination. There, and not in the *Kritik der praktischen Vernunft*, is where Kant's real political philosophy is hidden. His praise for "common sense," which is so often scorned; the phenomenon of taste taken seriously as the basic phenomenon of

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1. See ALBRECHT WELLMER, *Hannah Arendt on Judgment: The Unwritten Doctrine of Reason*, in *ENDSPIELE: DIE UNVERSÖHNLICHE MODERNE: ESSAYS UND VORTRÄGE* 309, 311–12 (Suhrkamp, 1993); see also FRANK HERMENAUF, *URTEILSKRAFT ALS POLITISCHES VERMÖGEN. ZU HANNAH ARENDT'S THEORIE DER URTEILSKRAFT* 15–17 (1999).

2. HANNAH ARENDT, *Understanding and Politics (The Difficulties of Understanding)*, in *ESSAYS IN UNDERSTANDING 1930–1954: FORMATION, EXILE, AND TOTALITARIANISM* 308 (J. Kohn ed., Schocken Books, 1994) [hereinafter ARENDT, UNDERSTANDING].

judgment . . . ; the “expanded mode of thought” that is part and parcel of judgment, so that one can think from someone else’s point of view. The demand for communicativeness. . . . I’ve always loved this book most of Kant’s critiques, but it has never before spoken to me as powerfully as it does now that I have read your Kant chapter.<sup>3</sup>

It is only at this time that her reflections on judgment and the faculty of judgment become informed by and critically measure themselves up to Kant’s conception of a distinct faculty associated with judgment and that she takes issue with the elements that constitute a judgment of taste distinct from a cognitive judgment. A case in point is Arendt’s uncompleted manuscript of *Introduction into Politics*. Sometime between 1957 and 1958, she writes that in the political arena “we cannot function at all without judging in general [*Urteilen überhaupt*], because political thought is essentially based in the power of judgment [*Urteilstkraft*].”<sup>4</sup>

These posthumously published fragments of the *Introduction* do not further elaborate on this assertion that political thought is “essentially based in the power of judgment,” but the observations set forth there about this power—made in explicit reference to Kant—already show to what extent Arendt’s attempt to link political thought to the capacity of judgment presumes an ongoing debate with Kant’s *Critique of Judgment*. From these concerns in the mid-fifties to the projected third and concluding part on judgment of her work *The Life of the Mind*, of which, unfortunately, she had no time to write any more, Arendt’s reflections on the political are consistently involved in seeking to make Kant’s understanding of judgment in his last critical work fruitful for a theory of politics. But I hold that it is never Arendt’s intention to provide a correct reading of Kant’s third *Critique*. From the start she has a certain conception of political judgment, and her aim is to find elements to develop this concept philosophically in the works of the philosopher

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3. HANNAH ARENDT & KARL JASPERS, CORRESPONDENCE: 1926–69, at 318 (Lotte Kohler & Hans Saner eds., Robert Kimber & Rita Kimber trans., 1992). The reference is to 1 KARL JASPERS, DIE GROßEN PHILOSOPHEN (1957). Arendt edited the part of Jaspers’ work devoted to Kant, which appeared in an English translation by R. Manheim in 1962. However, it should be remarked that Jaspers does not elaborate extensively on reflective judgment. Moreover, in the two pages devoted to the difference between determinate and reflective judgment, he is primarily interested in the reflective judgment’s accomplishment with respect to the manifold of nature and its laws, as well as its role of accounting as a teleological judgment for particular objects of nature that, because of their inner organization, are contingent from the perspective of the lawfulness that is the hallmark of knowledge. Indeed, Jaspers barely mentions the judgment of taste that for Arendt is the paradigm of the reflective judgment. KARL JASPERS, KANT 60–63 (H. Arendt ed., 1962).

4. HANNAH ARENDT, THE PROMISE OF POLITICS 101 (Jerome Kohn ed., 2005) [hereinafter ARENDT, POLITICS] (translation revised).

whom she considers the sole exception in a tradition of political philosophy that follows Plato's condemnation of the public realm and politics. From early on Arendt scholars have addressed her concern with judgment and have critically taken issue with her reading of the *Critique of the Aesthetic Power of Judgment* as containing essentially a political philosophy, which, as Arendt herself acknowledges, Kant never explicitly developed.<sup>5</sup> They have also argued regularly over the thesis that Arendt's understanding of judgment evolves from an earlier period in which judgment is more intimately associated with action, to the later position in *The Life of the Mind* where it is supposedly framed by the contemplative nature of the mind.<sup>6</sup> Finally, more often than not these two types of commentators have flatly questioned her reading of Kant. I do not intend to challenge these interpretations in any direct fashion; my aim is much more modest. By focusing in a somewhat more technical way than is generally the case in Arendt scholarship, on one Kantian distinction in particular—the difference between determinant and aesthetic reflective judgment—I wish to explore how Arendt's suggestion, however problematic, that the aesthetic judgment alone is a genuine judgment, and an instance of the power of judgment, paves the way for a political conception of judgment. This conception is needed in order to set what she calls the *Erscheinungsraum* constitutive of the political sphere radically apart from political and public spaces characterized by violence and in order to be able to discriminate within this space of appearances between those that are right or wrong.

Let me return to Arendt's remarks on judgment in the *Introduction into Politics*. She writes:

In our use of language [that is, in German], the word "judgment" has two meanings that certainly ought to be differentiated but that always get confused whenever we speak. First of all, judgment means organizing and subsuming the individual and particular under the general and universal, that is, the orderly assessment [*das regelnde Messen mit Massstäben*] by applying standards to them, with respect to which the concrete has to identify itself, and which permit deciding about it. Behind all such judgments there is a prejudgment, a prejudice,

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5. See, e.g., Robert J. Dostal, *Judging Human Action: Arendt's Appropriation of Kant*, 37 REV. OF METAPHYSICS 725–55 (1984).

6. See, e.g., Ronald Beiner, *Interpretive Essay of HANNAH ARENDT, LECTURES ON KANT'S POLITICAL PHILOSOPHY* 89–156 (Ronald Beiner ed., 1982) [hereinafter ARENDT, LECTURES].

since the standard against which particulars are to be held, once it is adopted, is not put in question any more.<sup>7</sup> In spite of what Arendt says here about the standard in this first meaning of judgment, which, no doubt, refers to Kant's determined concepts, one can easily recognize that she is speaking of "determined judgment." Apart from the fact that in such judgments the particular is notoriously subsumed under something that is already known in advance of the act of judging, prioritizing the known over decision, the categorizing and ordering implied in such a judgment have, as Arendt suggests, "more to do with thinking as deductive [*schlussfolgernden*] reasoning than with thinking as an act of judgment."<sup>8</sup> Furthermore, to conflate determining judgment with the power of judgment

tacitly assume[s] that human beings can be expected to render judgments only if they possess standards, that the faculty of judgment is thus nothing more than the ability to assign individual cases to their correct and proper places within the general principles which are applicable to them and about which everyone is in agreement.<sup>9</sup>

But, according to Arendt, there is a second meaning of the word, and the thing, "judgment." She writes:

Judgment can, however, mean something totally different, and indeed it always does when we are confronted with something which we have never seen before and for which there are no standards at our disposal. This judgment that knows no standards [*das massstablos ist*] can appeal to nothing but the evidence of what is being judged, and its sole prerequisite is the faculty of judgment, which has far more to do with man's ability to make distinctions than with his ability to organize and subsume.<sup>10</sup>

Again, in spite of what is said about the power of judgment as having more to do with the ability to make distinctions than with subsumption—a contention that is, undoubtedly, tributary to Kant's translation of "*facultas dijudicandi*" as "*Urteilkraft*" but that also shows, as we will later see, that Arendt's conception of judgment, as well as her reading of Kant on this matter, is strongly guided by the Aristotelian concept of *phronesis*. There

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7. ARENDT, *POLITICS*, *supra* note 4, at 102 (translation revised).

8. *Id.* at 104.

9. *Id.* at 103.

10. *Id.* at 102.

is no difficulty in recognizing Kant's notion of reflective judgment in her description of the second meaning of judgment, to which she refers as *massstabloses Urteilen* (judgment without standards), especially since she explicitly mentions Kant's concept of the judgment of taste. In any case, this kind of judgment without standards is the only one that merits the name judgment, since it alone is called forth when there is something to be judged or decided about in the strict sense of the word. As we will see later, there is more to this characterization of the reflective judgment as one without standards; it also anticipates the subject matter that calls for reflective judgment itself. Arendt refers to such a judgment as "original judgment," in German, *ursprüngliches Urteilen*, which I would rather translate here as "authentic" or "genuine judgment."<sup>11</sup>

In the "Postscriptum" to the first part of *The Life of the Mind*, entitled *Thinking*, Arendt contends that "[n]ot till Kant's *Critique of Judgment* did [the faculty of judgment] become a major topic of a major thinker."<sup>12</sup> In her own translation into German of the essay *The Crisis of Culture*, she goes so far as to suggest that Kant is the first discoverer of the power of judgment. Indeed, she writes that Kant "discovered this phenomenon in all its grandeur precisely when he was examining the phenomenon of taste and hence the only kind of judgments . . ."<sup>13</sup> This point is stressed again in the *Lectures on Kant's Political Philosophy* where Arendt submits that "behind taste, a favorite topic of the whole eighteenth century, Kant had discovered an entirely new human faculty, namely, judgment . . ."<sup>14</sup> It is true, of course, that judgment as a faculty has not received as much attention in the tradition as other faculties, such as thinking, reason, or the will, and that it is Kant who provided the most specific determination of this power of the mind. Arendt's statements are nonetheless a bit startling if one thinks of Aristotle, of the venerable juridical and rhetorical concepts of *iudicium*, and of the reflections on taste from Baltasar Gracian (who coined the word "taste"), through Earl of Shaftesbury and Alexander Gottfried Baumgarten, to Georg Friedrich Meier. In any case, as the citation from the *Lectures* demonstrates, Arendt's point is that it is "behind taste" that Kant discovered this "entirely new faculty," which is not to be confounded with the aesthetic judgment itself but is nonetheless reflective

11. *Id.* at 104.

12. HANNAH ARENDT, *THE LIFE OF THE MIND, VOLUME ONE: THINKING* 215 (1978) [hereinafter ARENDT, *LIFE OF THE MIND*].

13. HANNAH ARENDT, *BETWEEN PAST AND FUTURE: EIGHT EXERCISES IN POLITICAL THOUGHT* 221 (1987) [hereinafter ARENDT, *PAST AND FUTURE*].

14. ARENDT, *LECTURES*, *supra* note 6, at 10.

by nature and therefore also essentially distinct from logical, syllogistic, or determinate judgment. Indeed, in the “Postscriptum,” Arendt makes it clear right away that what she understands by judgment as a distinct capacity of the mind “[has] nothing in common with logical operations—as when we say: All men are mortal, Socrates is a man, hence Socrates is mortal.”<sup>15</sup> It has nothing to do with the capacity of drawing logical conclusions. Logicality, she says in *Understanding and Politics*, is the “substitute” one is likely to accept “wherever common sense, the political sense par excellence, fails us in our need for understanding . . . .”<sup>16</sup> In fact, by recalling Kant’s reference in the *Anthropology from a Pragmatic Point of View* to “logical *Eigensinn*,” that is, logical private sense (if not pigheadedness), Arendt holds that even though such *Eigensinn* would cut off all logical cognition from experience, the implication is that logical, or determinant, judgment can in principle “function without communication . . . .”<sup>17</sup> Yet, this also implies, therefore, that for her determinant judgment is not a judgment as she understands it. As we learn from *Between Past and Future*, if a logical judgment (but a moral judgment, as well) is not a judgment to begin with, it is because in these judgments there is nothing to judge, to decide, to *krinein*, and thus—strictly speaking—they are not judgments at all. The capacity to judge, she repeatedly argues, is one “for making distinctions.”<sup>18</sup> In her remarkable discussion in her *Lectures on Kant’s Political Philosophy* of what causes a sense judgment such as the judgment of taste, that is, a judgment that is based on what has been considered one of the lower senses and whose judgments are entirely private and non-communicable, to become nonetheless the vehicle for the aesthetic reflective judgment that makes claims to universality and is eminently communicable, Arendt highlights the fact that the judgment by the private sense of taste is from the start discriminatory in an immediate fashion.<sup>19</sup> Indeed, this instantaneous discrimination of the judgment of taste as a lower sense provides the model for the reflective judgment concerning the beautiful, which is discriminatory, as well.

According to Arendt, Kant assumed that the question of how to discriminate between right and wrong, beautiful and ugly, true and untrue, does not exist for Truth and the Moral Law, since these are given in

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15. ARENDT, LIFE OF THE MIND, *supra* note 12, at 215.

16. ARENDT, UNDERSTANDING, *supra* note 2, at 318.

17. ARENDT, LECTURES, *supra* note 6, at 64.

18. ARENDT, UNDERSTANDING, *supra* note 2, at 407.

19. ARENDT, LECTURES, *supra* note 6, at 66–67.

advance, and particulars only need to be subsumed under them. By contrast, since Kant “defined judgment as the faculty which always comes into play when we are confronted with particulars,” a decision has to be made “about the relation between a particular instance and the general . . . .”<sup>20</sup> Speaking with political judgment in mind, which, besides judgments of taste, is the main example of a judgment in a rigorous sense, or, rather, is the instantiation of the power of judgment itself, Arendt writes that the faculty in question is “[t]he faculty of judging particulars (as Kant discovered it) . . . .”<sup>21</sup> More precisely, “[i]t is the faculty to judge *particulars* without subsuming them under those general rules which can be taught and learned until they grow into habits that can be replaced by other habits and rules.”<sup>22</sup> In short, only judgments that are reflective, rather than determinant, are judgments in the strict sense. It is this claim that I wish to investigate hereafter.

On what basis can Arendt dismiss determinant judgment as a judgment to begin with? Is this simply an outrageous contention? Or are there developments, or statements, in the *Critique of Judgment* that could support Arendt’s claim, at least up to a certain point? Consider, for example, Kant’s observation in section thirty-five of the third *Critique*:

The judgment of taste differs from logical judgment in that the latter subsumes a representation under concepts of the object, but the former does not subsume under a concept at all, for otherwise the necessary universal approval could be compelled by proofs. All the same, however, it is similar to the latter in that it professes a universality and necessity [which] is grounded only on the subjective formal condition of a judgment in general [*eines Urteils überhaupt*]. The subjective condition of all judgments is the faculty for judging itself, or the power of judgment.<sup>23</sup>

Could Kant’s contention that the reflective judgment meets the conditions of a judgment in general be construed in such a manner as to justify its characterization as being the only judgment worthy of this name?

20. HANNAH ARENDT, RESPONSIBILITY AND JUDGMENT 137 (Jerome Kohn ed., 2003) [hereinafter ARENDT, RESPONSIBILITY].

21. *Id.* at 189.

22. *Id.* at 188–89.

23. IMMANUEL KANT, CRITIQUE OF THE POWER OF JUDGMENT 5:286–87, at 167 (Paul Guyer ed., Paul Guyer & Eric Matthews trans., 2000) (footnote omitted). Page references, e.g., 5:286–87, are to the volume and page number in the *Akademie* pagination. The second page number, e.g., 167, refers to the corresponding page in the 2000 Guyer edition.

“[T]he capacity to judge,” Arendt contends, “is a specifically political activity . . . .”<sup>24</sup> Even though Kant never developed a political philosophy, Arendt holds that the outlines of such a philosophy, and hence of a theory of judgment, are to be found in the *Critique of Judgment*—more precisely, in what Kant develops about reflective judgment in distinction from determinant judgment in the parts devoted to the judgment upon the beautiful and, even more narrowly, in the parts devoted to the artwork (in distinction from the beauty of nature) and the genius of art. It needs to be pointed out that the privilege that Arendt accords to Kant’s elaborations on the genius and the beautiful arts is justified to some extent by the fact that the problem of communicability and critical debate of judgments of taste is only explicitly broached in Kant’s elaboration of the reflective aesthetic judgment concerning artificial beauty as opposed to the beauty of objects of nature. Yet, Arendt’s reading of Kant’s elaboration on judgment has encountered reservations of all kinds, and—though it is true that her strategy in reading Kant invites close critical scrutiny—in what follows I will largely, but by no means completely, abstract from such considerations. After all, which great thinker has not misconstrued some of his or her sources for developing a novel approach to some venerable problematic?

In order to understand how Arendt can make the point that a logical judgment is not truly a judgment, let me take up the well-known but not necessarily well understood distinction between determinant and reflective judgments. Although the distinction in question is not exclusive to the *Critique of Judgment*—I refer, for example, to #81 of the *Logic* from 1800, which is limited to the accomplishment of the teleological judgment—it is the the third *Critique* that commonly serves as the source for making the distinction. Its common phrasing is well known:

If the universal (the rule, the principle, the law) is given, then the power of judgment, which subsumes the particular under it . . . is *determining*. If, however, only the particular is given, for which the universal is to be found, then the power of judgment is merely *reflecting*.<sup>25</sup>

But, thus defined, this definition is not only formal; it also has something formulaic about it. Furthermore, because of the inverse logic of the definition process it suggests a *facile*—if not self-evident—and very

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24. ARENDT, PAST AND FUTURE, *supra* note 13, at 221.

25. KANT, *supra* note 23, at 5:179, at 66–67.

simple distinction, and more often than not it is in this form that one encounters it in the literature. Only by paying some attention to the notions of “subsuming” the particular under the universal and of “finding” (or, as Kant also says occasionally, of “ascending [*aufsteigen*]” from the particular to the universal) and, especially, to what “reflecting” amounts to in a reflective judgment does this distinction lose its deceptive simplicity. Indeed, reflection is not simply the opposite of determination. As Kant makes amply clear through his insistence on the fact that the power of judgment is only “merely” reflecting when it is a question of finding the universal for a particular, determining judgment also involves some reflection. The question, then, is what reflection accomplishes in a “merely” reflective judgment and what the universal is that it finds, or to which it ascends, in distinction from what happens in a determining judgment.

Since, for Arendt, only the reflective judgment—whether aesthetic or political—is the unadulterated expression of the power of judgment, let me first recall that, before offering the distinction between both kinds of judgment, Kant maintains that “[t]he power of judgment in general is the faculty for thinking of the particular as contained under the universal.”<sup>26</sup> Now, Arendt also seems to make this point when she argues that there is judgment only where one confronts the particular without having in advance fixed concepts, standards, or rules to subsumptively account for it. When faced with the particular, the power of judgment is the only way “to say what is”—*legein ta eonta*, an expression by Herodotus that Arendt frequently invokes<sup>27</sup>—by finding the “general,” which, as she remarks a bit enigmatically, “must be seen as contained in the particular” and thus able to account discriminately for the particular.<sup>28</sup> Or, in the seminar notes on *Imagination*, she says that reflective judgments “‘derive’ the rule from the particular.”<sup>29</sup> By contrast, when Kant submits “that the power of judgment in general is the faculty of thinking the particular as contained under the universal,” it is, first of all, to establish firmly that both determinant and reflective judgments are judgments in a rigorous sense (one of the effects of the formulaic declaration of what distinguishes them is, precisely, to emphasize their intrinsic judgmental form). Even though

26. *Id.* at 5:179, at 66 (footnote omitted).

27. ARENDT, *PAST AND FUTURE*, *supra* note 13, at 229.

28. However, when at the end of her last lecture, Arendt highlights the problematics of the exemplar, her talk about the universal as being contained in the particular not only becomes clear, but also points in the direction of how to conceive of such a universal in the first place.

29. ARENDT, *LECTURES*, *supra* note 6, at 83. Arendt continues: “[i]n the schema, one actually ‘perceives’ some ‘universal’ in the particular.” *Id.*

Arendt frequently refers to Kant's statement that the power of judgment is the faculty to think the particular in relation to the universal, her emphasis on the particular, or, more precisely, on "the world of particular appearances" encountered when the thinking ego no longer moves among generalities, is such that solely the reflective judgment is attributed a judgmental quality.<sup>30</sup> Her assertion that "judgment deals with particulars," rather than with universals, aims at the same conclusion. As Arendt submits, the faculty of judgment "is the faculty to judge *particulars* without subsuming them under those general rules which can be taught and learned until they grow into habits that can be replaced by other habits and rules."<sup>31</sup> Indeed, according to Kant, determining reflection only subsumes, or, in conformity with the meaning of "subsumption" in the eighteenth century, "comprehends," "unites," or "combines" (*zusammenfassen*) the particular under a general term (*Oberbegriff*).<sup>32</sup> But if it is unnecessary for the determinant judgment "to think of a law for itself in order to be able to subordinate the particular in nature to the universal," it is simply because "the law is sketched out for it *a priori*," and is thus a "transcendental [law,] given by the understanding . . ."<sup>33</sup> The concepts given to determinant judgments are thus the concepts constitutive of objectivity in general and not some empirical and historically based rules that at one time were appropriate to judge but have now become ossified. Kant writes that the judgment is determining when it yields to "the universal laws without which nature in general (as object of the senses) could not be conceived . . ."<sup>34</sup> These laws are not replaceable. It follows from this that what Arendt calls "concepts" are not at all Kant's pure forms of the understanding that relieve the determinant judgment from finding the laws for the particulars of nature.

Furthermore, it also needs to be pointed out that the reflective judgment is not at all a judgment free of subsumption. In section thirty-five of the *Critique of the Power of Judgment* it is made clear that in a reflective judgment the imagination itself, as a subjective power of the mind, is subsumed under the mental power of advancing from intuitions to concepts, that is, of the understanding as a subjective faculty.<sup>35</sup> Now, from Kant's statements that the determinant judgment "has *nothing to do* but

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30. ARENDT, *LIFE OF THE MIND*, *supra* note 12, at 215.

31. ARENDT, *RESPONSIBILITY*, *supra* note 20, at 188–89.

32. FRIEDRICH KLUGE, *ETYMOLOGISCHES WÖRTERBUCH DER DEUTSCHEN SPRACHE* 896 (2002).

33. KANT, *supra* note 23, at 5:179, at 67.

34. *Id.* at 5:183, at 70.

35. *Id.* at 5:286–87, at 167.

[to] subsume under given laws,” or that it “has *nothing further to do* than to provide the condition of subsumption under the *a priori* concept of the understanding that has been laid down for it,” Arendt implicitly draws the conclusions that a determinant judgment does not do very much, that it is not really involved in the activity of judging, and that, consequently, it is barely—if at all—a judgment.<sup>36</sup>

However, Arendt also acknowledges that, even when judgment only “subsumes the particular under its appropriate general rule . . . this apparently simple operation has its difficulties, for since there are no rules for the subsumption, this must be decided freely,”<sup>37</sup> thus suggesting that the determining judgment is not so deficient as far as the activity of judging is concerned. Indeed, what about Kant’s claim that the transcendental power of judgment also needs to provide the condition of subsumption, that is, “the succession of the determinations of one and the same thing?”<sup>38</sup> Before I take up Arendt’s own understanding of the reflective judgment however, I would like to raise the question of whether, indeed, the reflective judgment in Kant involves such greater operational activity than the determinant judgment. Undoubtedly, Kant’s talk of the reflective judgment’s need “to find” the universal for the particular, or “to ascend” to the universal when only particulars are given, suggests a more laborious procedure. Yet since such finding or ascending is in this case accomplished by way of reflection, everything depends on what, precisely, “mere reflection” consists of.

Before I attempt to answer this question, let me first point out that after having characterized “the capacity to judge [as] a specifically political ability in exactly the sense denoted by Kant,” Arendt contends in her essay *The Crisis in Culture* that this understanding of judging is “virtually as old as articulated political experience. The Greeks,” she continues, “called this ability [*phronesis*] . . . .”<sup>39</sup> Several remarks are warranted here. First, from all of Arendt’s references to *phronesis* it is clear that Arendt has in mind Plato’s, but also (and especially) Aristotle’s later conception of this notion as calculating intelligence.<sup>40</sup> However, that does not yet make her a Neo-

36. *Id.* at 5:183, at 70 (emphasis added).

37. ARENDT, RESPONSIBILITY, *supra* note 20, at 137.

38. KANT, *supra* note 23, at 5:183, at 70.

39. ARENDT, PAST AND FUTURE, *supra* note 13, at 221.

40. *See, e.g.*, HANNAH ARENDT, THE HUMAN CONDITION 226 n.66 (1958). Although the notion of *phronesis* as understanding and judging is already to be found in Aeschylus’ *Eumenides*, Arendt does not take the meaning of the term that it has there, namely, according to Athena’s *phronein*, assigning and guaranteeing to “everyone his proper place in the *polis*.” CHRISTIAN MEIER, THE GREEK DISCOVERY OF POLITICS 115–16 (David McIntock trans., 1990).

Aristotelian as Albrecht Wellmer has argued. Though she understands *phronesis* as deliberation, for Arendt it is not a deliberation in view of calculating well-balanced means for prudent action.<sup>41</sup> Second, however surprising it may seem to link reflective judgment to Prudence or to Practical Wisdom, this association may have its origin in Kant's Introduction to the *Critique of Judgment*, even though Kant speaks here of prudence as only a technical-practical rule—a rule that derives from a determining concept. He writes: “[a]ll technically practical rules (i.e., those of art and skill in general, as well as those of prudence, as a skill in influencing human beings and their will), so far as their principles rest on concepts, must be counted only as corollaries of theoretical philosophy.”<sup>42</sup> Third, if one does not lose sight of Arendt's claim that it is “behind taste” that Kant discovered “an entirely new human faculty, namely, judgment,” the reflection that Arendt links with *phronesis* is certainly not the “mere reflection” that, for Kant, constitutes the reflective judgment of taste. In any event, for the moment, it must suffice to point out that by linking *phronesis* to reflection, reflection in the reflective judgment is understood by Arendt to correspond to the calculation (*logizesthai*) and, especially, the deliberation (*boulesthai*) by which Prudence is characterized and that, in the same way as the reflective judgment, always deals with particular things. In view of what I will establish hereafter about Kant's understanding of the nature of reflection in the reflective judgment, I note only that deliberation takes a long time according to Aristotle, distinguishing it from the skill in conjecturing, which he says operates rapidly. Deliberation, by contrast, “takes a long time”; it is slow. “Deliberative Excellence,” Aristotle adds, “is not the same as Quickness of mind . . . .”<sup>43</sup>

Of what, then, does reflection in the reflective judgment consist, and what does it accomplish? According to section thirty-five of the third *Critique*, the judgment of taste, when faced with a particular for which it has no concept, bends or folds back upon itself inasmuch as it itself is the subjective condition of all judgments. As Kant remarks, “[t]he subjective condition of all judgments is the faculty for judging itself, or the power of judgment.”<sup>44</sup> In reflecting upon itself, thus being “itself, subjectively, both

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41. WELLMER, *supra* note 1, at 309.

42. KANT, *supra* note 23, at 5:172, at 60.

43. ARISTOTLE, THE NICOMACHEAN ETHICS 353 (G.P. Goold ed., H. Rackham trans., 1934) (footnote omitted).

44. KANT, *supra* note 23, at 5:287, at 167 (footnote omitted).

object as well as law,<sup>45</sup> the reflective judgment discovers within itself the law for its act, which is none other than—precisely—the “subjective formal condition of a judgment in general.”<sup>46</sup> But what is this subjective law, which allows the judgment of taste to profess “a universality and necessity” like determinant judgments do, but one that, in distinction from the latter, is merely subjective? With regard to a representation by means of which an object is given to us, the subjective formal condition for judgment itself, which grounds the judgment when no concept for this object is available, is “the reciprocal relation of the understanding and the imagination,” that is, their subjective agreement or consonance (*Zusammenstimmung*).<sup>47</sup> When bending back upon itself in the face of an object that it cannot subsume under a given concept, the faculty of judgment discovers within itself the very purposiveness of this reciprocal relation to which it submits itself as an *a priori* law in reflecting and judging the particular in question. This harmonious play of the faculties of representation, their purposiveness being beneficial for cognition in general, is the very *concept* that reflective judgment must find and under which it in turn subsumes the mere form of the representation of an object, thus performing a judgment in all its formal rigor. Because the concept to be found in a reflective judgment is that of the subjective condition of all judging, Kant can state that the judgment of taste is “a judgment in general.”<sup>48</sup> The reflection that constitutes it consists in turning upon the faculty of judgment’s subjective conditions and discovering purposiveness as the concept under which it then can reflect upon the object and subsume the representation of the object (rather than the object itself). If such a judgment asserts the beauty of an object, which is immediately followed by the feeling of pleasure, it is because representation and reason find themselves in agreement. In short, rather than a pondering, meditating, or deliberating operation that takes time, it follows from all of this that “the operation of reflection”<sup>49</sup> takes place immediately when confronted with an object for which no determined concept is available but, that in light of its form in its representation, is judged beautiful. Even though at first the reflective judgment appears much more laborious than the determinant judgment, it is not. The subjective free play of the faculties of representation for cognition in general, that is, the concept that the

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45. *Id.* at 5:288, at 168.

46. *Id.* at 5:287, at 167.

47. *Id.* at 5:286, at 166.

48. *Id.* at 5:287, at 167.

49. *Id.* at 5:294, at 174.

reflective judgment must “find” (or to which it must “ascend”) in order to subsume the representation of its object, takes place in an instantaneous fashion. Compared to what, according to Arendt, is the case in political judgment concerning particulars, no complex search or lengthy deliberation and reflection are involved in the aesthetic reflective judgment. It happens in no time, time being understood here in an empirical sense. Of course, this does not mean that time as a transcendental form would not be implied in subsuming the particular under the found concept. Indeed, in the same way as in determinant judgment, the law of the subsumption of a particular under the concept to be found by a reflective judgment would also be that of the succession of the determinations of the particular.

This all seems to suggest that Kant’s elaborations on the operation of reflection in a judgment concerning particulars for which no determinate concept is available has little similarity with Arendt’s understanding of judgment. In fact, as is obvious from her lectures on Kant—especially from her comments on section thirty-nine—Arendt completely ignores the fact that for Kant the reflective judgment of the beautiful is grounded on the free play of the powers of cognition. She proceeds immediately to the *sensus communis* as a sense that guarantees the power of judging.<sup>50</sup> So, is Arendt simply wrong in looking at the reflective judgment as a model for political judgment, as a number of her critics have suggested? Indeed, what about Kant’s implicit understanding that the discovery of the law for judging particulars for which no determined concept exists, in every single case in which one is confronted with such an object, must be accomplished again? Is it not this Kantian specificity of the reflective judgment that in fact undergirds Arendt’s contention that the reflective judgment alone is a genuine judgment? Even though the reflective judgment is not more toilsome than the determinant judgment and occurs in no time, the reflection that constitutes it must be relaunched on every occasion when one finds oneself in the presence of a particular without available concepts in order to secure the agreement of the singular object’s representation with the powers of representation. Furthermore, the concept or principle that must be found for a particular must be a rule that reflects this particular and not another—in short, a rule that is appropriate to this particular in all its singularity. In this context, it would be necessary to follow up on Kant’s observation in sections nine and thirty-nine that the subjective consonance of the faculties of representation in a reflective

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50. ARENDT, LECTURES, *supra* note 6, at 70.

judgment is a function of their proportionality. Needless to say, proportionality is another term for agreement or consonance. At the same time, the notion suggests variability in the way the consonance of the faculties is achieved. Thus, I would suggest that it is the possibility of the differing proportionality of the faculties that allows a reflective judgment concerning a particular to provide a law that allows for its subsumption as that particular as that and no other. A judgment of taste is also always, as Kant holds, a “singular judgment.”<sup>51</sup>

Yet, if the task of Arendt’s power of judgment does not consist in finding the general in the form of the subjective formal conditions of the judgment in general for the particular for which no pre-given concept is at hand, how, then, is one to conceive the reflection that the power of judgment requires? Although the answer to this question is very much a function of the kind of particulars that require such reflection, one can safely assume that she conceives of reflection as deliberation (by the many, rather than the lone subject) about things that in the public realm, in its *Erscheinungsraum*, are of immediate concern to it. The power of judgment as the political faculty par excellence is from the start shared by all, even though Arendt also stresses that in each case it has to be performed by a singular subject. As Arendt reminds us on several occasions, no one can be relieved of this burden—the burden of freedom. In this case, however, it is not so much the play of the faculties that provides the concept as the expanded mindset through which I can think in the place of others, which then allows me to come up with a general concept under which to subsume the particular.

At this juncture, a thorough investigation of Arendt’s conception of “appearance” would be warranted, for it not only constitutes the public space but also the very particulars for which no universal is available in advance, and that thus invite judgment. Such an investigation would have to distinguish the phenomena constitutive of the political sphere from both the Kantian and Husserlian conception of phenomena as well as explore how the ancient model of the *agon*—which, in Arendt’s understanding, gives each protagonist “the opportunity to show himself as he really is, that is, by appearing in reality to become fully real [*wirklich in Erscheinung treten und damit völlig wirklich zu werden*]”—provides the model for her understanding of the public *Erscheinungsraum*.<sup>52</sup> However,

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51. KANT, *supra* note 23, at 5:215, at 100.

52. ARENDT, *POLITICS*, *supra* note 4, at 106 (translation revised). Even though Arendt characterizes “purposiveness” as a less fruitful regulative idea for judging, by linking this idea in her

if in the present context, I defer such an investigation in order to take up Arendt's discussion at the very end of her *Lectures on Kant's Political Philosophy* of the two ideas on which one must reflect in order to arrive at judgments, I do so on the basis of understanding the particulars judgment is concerned with as being made up by appearances within the sphere of publicity.

The first of these ideas is "purposiveness," and the second, which Arendt qualifies as "by far more valuable," is "exemplary validity."<sup>53</sup> In support of her argument she quotes Kant's statement from the *Critique of Pure Reason* that "examples are the go-cart of judgment." What is important for our discussion is that Arendt distinguishes the exemplar from Platonic ideas or Kantian concepts and from mere abstractions, both of which concern the cognition of things, as pertaining to reflective judgment—in short, to judgments in a strict sense. As Arendt recalls, "'example' comes from *eximere*, 'to single out some particular.'" And she adds: "[t]his exemplar is and remains a particular that in its very particularity reveals the generality that otherwise could not be defined."<sup>54</sup> In other words, for Arendt, the exemplar is the general or universal that the reflecting judgment is to find in the absence of pre-given concepts for a particular. Furthermore, if exemplarity is an idea that must guide the reflection upon a general for a particular in the absence of concepts, it is also because such a general is already "contained in the particular," which itself is of the order of an appearance in the public space. And, finally, if such a general is contained in the particular it also follows that this general is, as something exemplar, paradoxically, still particular. If the Kantian idea of the exemplar is, for Arendt, a more fruitful solution to the problem that the reflective judgment must solve, it is precisely because the reflective judgment discovers—through reflection and deliberation—something general that because still particular does not override the particularity of the object to be judged. Rather than doing violence to the particular, the exemplarity that is drawn from the particular as capable of it, empowers, if I may say so, the particular. Although for reasons of space, a detailed discussion of Arendt's interpretation of Kant's notion of a *sensus communis* must in turn be deferred, it should be clear that reflection in a reflective judgment that is guided by the idea of exemplarity

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interpretation to being at home in *this* world, judgment is implicitly shown to be the prerogative of a being that belongs to this world and no other, and the activity in question is a way of affirming it.

53. ARENDT, LECTURES, *supra* note 6, at 76.

54. *Id.* at 77.

is, for Arendt, predicated on public deliberation of the appearances that make up the public and political *Erscheinungsraum*.

Undoubtedly, if the power of judgment that Kant discovered when he came upon the judgment of taste is not identical to the reflective judgment of taste but indeed, as Arendt suggests, the more fundamental power of judgment that is constitutive of the political, one cannot expect the analogy between the judgment of taste and the political judgment to be seamless.<sup>55</sup> From what I have shown about the concept that has to be found in an aesthetic reflective judgment so that the particular can be subsumed under it—namely, that this concept consists in the subjective purposiveness of the faculties of representation—it is clear that Arendt does not have in mind Kant’s prime concern of securing judgment in the absence of concepts for particulars and, hence, the fundamental conformity between nature and reason. Although Arendt notes in passing at one point in her *Lectures on Kant’s Political Philosophy* that “purposiveness is an idea by which to regulate one’s reflections in one’s reflective judgments,” Robert J. Dostal is also correct when he holds that “throughout her lectures Arendt studiously avoids the theme of purposiveness which is the single dominant and unifying theme of the *Critique of Judgment*.”<sup>56</sup> It also follows from this that the judgmental accomplishment of the power of judgment as an intrinsically political faculty must be very different from that of the pure aesthetic judgment. Here one would have to return again to Arendt’s identification of the power of judgment with a certain *phronesis* and to her characterization of judgment as involved in distinguishing, discriminating, and deciding. Let me also add that, if one follows Maurizio Passerin d’Entrèves’ remark that, in order to connect the activity of thinking to that of judgment as Arendt attempts to do in *The Life of the Mind*, one must release judgment “from ossified categories of thought and conventional standards of behavior,” thus making it reflective rather than determinant, then one must

55. See IRINA SPIEGEL, DIE URTEILSKRAFT BEI HANNAH ARENDT 23–25, 148–60 (2011).

56. ARENDT, LECTURES, *supra* note 6, at 76; Dostal, *supra* note 5, at 740. Dostal rightly points out that in her discussion of the involvement of imagination in the reflective judgment, Arendt completely ignores the relation of imagination to the understanding and thus also, as I claim, to the concept to which, in a reflective judgment, one must ascend to be able to subsume the particular to it. See HERMENAU, *supra* note 1, at 57. It is clear from her dismissive reference to this central concept of purposiveness that Arendt overlooks the para-epistemic importance of the aesthetic judgment on the beautiful of nature and mistakes purposiveness as a concept belonging to the teleological judgment. She does not recognize that in Kant the concept of purposiveness is precisely the concept to be found in the case of a particular object of nature for which the understanding cannot provide a concept.

also relieve it from much of what constitutes for Kant the aesthetic reflective judgment itself.<sup>57</sup>

So far I have held that what Arendt understands by “reflection” in a judgment about a particular for which the understanding cannot come up with a determined concept is akin to deliberation. I now turn very briefly to her comments on Kant’s referral to “the operation of reflection” in section forty of the *Critique of the Power of Judgment*, that is, in “On Taste as a Kind of *Sensus Communis*.” According to Kant, *sensus communis* is “the idea of a communal sense,” i.e., of “a faculty for judging that in its reflection takes account (*a priori*) of everyone else’s way of representing in thought, in order *as it were* to hold its judgment up to human reason as a whole . . . .”<sup>58</sup> Kant defines the operation of reflection when he writes:

Now this happens by one holding his judgment up not so much to the actual as to the merely possible judgment of others, and putting himself into the position of everyone else, merely by abstracting from the limitations that contingently attach to our own judging; which is in turn accomplished by leaving out as far as is possible everything in one’s representational state that is matter, i.e., sensation, and attending solely to the formal peculiarities of his representation or his representational state.<sup>59</sup>

For Arendt, reflection in a judgment, and especially in a judgment of taste, “always reflects upon others and their taste, takes their possible judgments into account.”<sup>60</sup> It is here that for Arendt the imagination comes in, above all (if not primarily) as re-productive imagination. Basically defining it as the power to make present what is absent, such as, for instance, possible opinions of others on some matter, the imagination, first, “transforms an object into something I do not have to be directly confronted with but that I have in some sense internalized,” in short, into a representation. Arendt concludes that “[t]his operation of the imagination prepares the object for ‘the operation of reflection.’ And this second operation—the operation of reflection—is the actual activity of judging something.”<sup>61</sup> The actual opinions of others on a given subject matter are

57. Maurizio Passerin d’Entrèves, *Arendt’s Theory of Judgment*, in THE CAMBRIDGE COMPANION TO HANNAH ARENDT 245, 248 (Dana Villa ed., 2000).

58. KANT, *supra* note 23, at 5:293, at 173 (footnote omitted) (emphasis omitted).

59. *Id.* at 5:294, at 174 (footnotes omitted).

60. ARENDT, LECTURES, *supra* note 6, at 67.

61. *Id.* at 68.

thus less relevant than the representations of these opinions in one's inner sense (these being stripped of all matter, according to Kant, so as to be able to attend solely to the formal peculiarities of these representations, including one's own).<sup>62</sup> This leads one to deliberate about them in a judgmental fashion according to "the standards of the operation of reflection" that, according to Arendt, are pleasure and displeasure.<sup>63</sup> As a function of the imagination, then, reflection is intrinsic to judgment in that, even though it is a subjective act, judgment is not private but communal from the start. At its core, the reflection upon the viewpoints of others is a form of deliberation within me, not between me and myself but between me and others regarding communal matters and aiming at deliberate choice (*prohairesis*).

If Arendt can hold that the determinant judgment is not really a judgment at all, is it not because—at least in the case of the aesthetic judgment—the reflective judgment is, as Kant has shown, not only judgment in general but also an autonomous form of judging with *an a priori* principle of its own? Arendt does not explore the transcendental nature of Kant's investigation into what constitutes a pure judgment of taste, yet Kant's demonstration that the aesthetic power of judgment is a particular faculty with an *a priori* principle of its own, which distinguishes it from determinant or logical judgment, is important for Arendt's claim that judging is a distinct faculty of the mind. Arendt looks in Kant to establish the faculty of judgment in all its independence from knowledge and truth, something Albrecht Wellmer has branded as a "mythology of Judgment." For Wellmer, to put determinant judgment into question rests on a narrow conception of rationality informed by the traditional way of understanding argumentation in the sciences.<sup>64</sup>

As a political faculty from the start, Arendt develops judgment in analogy to what Kant establishes about the pure judgment of taste. Indeed, in analogy to Kant's separation of the judgment of taste not only from judgments by the senses but also, above all, from judgments of cognition (and morality) and to Kant's claim that the aesthetic reflective judgment enjoys a law particular to itself, Arendt, in turn, argues that the power of judgment, as "the most political of man's mental abilities," is a distinct faculty with a "logic" of its own. Needless to say, this does not mean, as a number of critics hold, that she aestheticizes the political. The notion of analogy consists precisely in establishing structural resemblances between

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62. KANT, *supra* note 23, at 5:294, at 174.

63. ARENDT, LECTURES, *supra* note 6, at 69.

64. WELLMER, *supra* note 1, at 314, 321.

two entities or domains whose irreducible differences remain intact. Before Arendt even links judgment with the specific type of phenomena that constitute the sphere of publicness and ground it in the *sensus communis*, Kant's transcendental inquiry into the judgment of taste serves Arendt in securing the claim of the autonomy of judging as a faculty that, distinct from what the judgment of taste establishes when it calls a particular object beautiful (rather than ugly or, at its worst, nauseating)—namely, its formal conformity (or non-conformity) to the powers of representation—is all about distinction, discrimination, and decision.

To conclude, let us keep in mind that for Arendt the political is the realm of action (as opposed to labor and work) not only between men in the plural but also between free men. If Kant's reflective judgment has been so important for Arendt in the context of her political reflections, it is because of this activity's—or faculty's—autonomy. The domain of the interactions of men in the public space is a domain that, in principle, is not ruled by a utilitarian logic of end and means. The latter belongs to the realm of work. Action, and in particular, judgment, as the most political of all acts, is not only an activity of free men, but is itself free and its own end. One is reminded here of what Aristotle in Book VI of *Nicomachean Ethics* says about political action, to which Arendt subscribes entirely. Arguing that “doing [*praxis*] and making [*poiesis*] are generically different, since making aims at an end distinct from the act of making,” Aristotle submits that “in doing [or what Arendt calls action, *prattein*] the end cannot be other than the act itself: doing well is indeed the end.”<sup>65</sup> Judging as an action, which for Arendt implies the in-between dimension of the commerce of human beings qua free beings, is a doing that qua doing well is its own end. It is a doing whose meaning is immanent to it and does not lie in an end separate from or outside it.<sup>66</sup> It is autonomous and free. The detour through Kant's *Critique of the Power of Judgment* aims first at philosophically buttressing this insight before using other elements from it—such as the *sensus communis*, the enlarged mentality, the relation between actor and spectator, and exemplary validity—to flesh out this autonomous activity's further characteristics.

I return briefly to Arendt's characterization in *Introduction into Politics* of the reflective judgment as “a judgment without standards [*massstabloses Urteilen*],” distinct, therefore, from determinate judgment

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65. ARISTOTLE, *supra* note 43, at 337 (footnotes omitted).

66. See ARENDT, *POLITICS*, *supra* note 4, at 193–94.

that applies concepts or standards known in advance to the particular to be subsumed under them. In this *Introduction*, she writes that:

[b]ecause by its very nature action always creates relationships and ties as it moves into the world, there is inherent in it excessiveness or boundlessness [*Masslosigkeit*] . . . . To the Greek mind, this excess did not lie in the immoderateness of the man who acts, or in his hubris, but in the fact that the relationships arising through action are and must be of the sort that keep extending without limits. By linking men of action together, each relationship established by action ends up in a web of ties and relationships in which it triggers new links, changes the constellation of existing relationships, and thus always reaches out ever further, setting much more into interconnected motion than the man who initiates action ever could have foreseen.<sup>67</sup>

Action, Arendt says in other contexts, triggers linear processes whose end cannot be contained in advance by any concept of an end or goal. But this boundlessness and excessiveness “inherent in those free human actions that establish relationships” in unforeseeable, unpredictable, unprogrammable ways are at the same time a danger in that they can unleash “devastating processes” that create “a wasteland between men . . . .”<sup>68</sup> In order to “seal off action from the danger of excessiveness always inherent in it,”<sup>69</sup> without making it subservient to utilitarian ends and means and thus destroying action’s political nature, the free judgmental activity of a judgment without standards is called for. Without applying in advance known concepts or standards to particular actions, judgment discriminates each time in a singular way between those actions that cement the public space and those that put it in jeopardy. Such judgment without standards is the only way of warding off the danger that besets all free action without destroying the latter’s intrinsically free nature.

A final remark, finally! As Arendt has pointed out on several occasions, the Greek *polis* continues to be the inevitable reference point for rethinking politics and the political against a philosophical tradition that proceeds from the presupposition that the political is only at best of secondary importance. For a short period a public space opened up in which the free citizens’ actions and speeches not only concerned the well-

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67. *Id.* at 186–87 (translation revised).

68. *Id.* at 190.

69. *Id.* at 196 (translation revised).

being of the *polis* but also primarily secured that very public space itself. However limited and short-lived the *polis* was, and in spite of the historico-social conditions under which political activity became possible for the limited number of Athenian citizens, what became possible at that time—the exercise of an autonomous faculty of judgment that maintained itself through actions and deeds that were its own ends—remains for Arendt the starting point for reflecting on politics. Yet, in no way does Arendt ever dream of a return to the Greek *polis*. Rather, the institution of a public space that is its own end, that is, the institution of deliberation and judgment as performed in the marketplace, continues to live on as an idea in light of which any elaboration on politics today, especially in extreme conditions, must be conducted. Arendt’s insistence on judgment as a faculty that is autonomous is a regulative idea of sorts, not in the sense that this independence could ever be approximated, however tangentially, but in the sense that for her it is necessary to demand this unconditional autonomy in times when judgment has been corrupted and deprived of its spontaneity.