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Is it possible — and what would it mean — to *decline* accusation? To courteously "withhold oneself from" accusing (Oxford English Dictionary, "decline" (v.), online edition, 2015, 14th entry)? To "formally object" (OED 15th entry) to accusation's jurisdiction — i.e., its capacity and authority to speak (the) law, *jus dicere*? To "abandon" or "forsake" (OED 16th entry) accusation altogether? To "lower" it, "bring it down," "degrade" (OED 18th entry) it — i.e., divest it of its status? Perhaps the possibility and meaning of declining accusation in one or more of the above senses are bound up with the degree to which, and the ways in which, it is possible to inflect accusation ("grammatically"; OED 21st entry) — i.e., to *decline* it.1

These questions arise from an engagement with some of the work George Pavlich has undertaken over a number of years. His work has involved shifting the focus of inquiry from crime to accusation or, rather, showing how inquiry into crime is necessarily inquiry into accusation because of the "gatekeeping" role the latter plays in criminal justice (Chapter 1, this volume, pp. 21–43). Accusation's gatekeeping role is tied not only to its crucial part in constituting what various historically situated we's wittingly or unwittingly take to be crime, criminality, and criminals but also, and simultaneously, to its role in constituting these historically situated we's themselves.

To put it simply, Pavlich's work is motivated by the ethical and political resolve to issue a resounding "no" to accusation — i.e., to decline it — or at least to decline its current forms, which "fuel disproportionate criminal justice expansions" (Pavlich, this volume, p. 39) and produce "excluded subjectivities." Because some form of accusation is likely to stay with us, however, his work both invites and undertakes an inquiry into the various historical declinations or inflections of accusation — for example, rationales (Pavlich 2000b), apparatuses (Pavlich, this volume), and even syntaxes (Pavlich 2007) of accusation. Tracing the declinations of accusation allows one to better appreciate accusation's key gatekeeping role. Moreover, understanding the various declinations of accusation is meant to help loosen the hold of specific forms of accusation on us, perhaps even open up the possibility of different — better2 — declinations of accusation. The hope or promise is that of a "more open, democratized, and potentially inclusionary" accusation, one that, tellingly, may require "different grammars of accusation" (Pavlich, this volume, p. 39).

Pavlich's work claims that the status and significance of accusation, its hold on us, is in some measure a question of grammar, understood as the rules, or the knowing-how, that guide our participation in various "language games."3 To call into question specific accusatory "forms of life" (Wittgenstein 1958, aphorism 23), to decline accusation "existentially," may require us to consider accusation as a "mode of address" (Pavlich 2000b, 141) that is inflected differently in different languages, times, and places. The political question of "how not to be governed thus" (ibid., 142, following Foucault 1997) is, at least in part, a grammatical question of "how to speak" (Pavlich 2000b, 141),4 hence the need for "different grammars of accusation."

In this chapter, I take up Pavlich's invitation to attend to the question of how to speak, to consider "different grammars of accusation." I do so by turning to some "consequential wordplays" (Pavlich 2000a, 12) that emerge when some of Pavlich's own concerns are attended to, drawn out more, made even more explicit. The most significant of these consequential wordplays reveals the ontological weight or stakes — deliberately taken on by Pavlich — of his grammatical concerns. "Accusation" translates the Greek κατηγορία, a term originally meaning "accusation" (or "charge," *Intermediate Greek-English Lexicon* 1889, 422), but which became, thanks probably to Aristotle, a fundamental term of ontology.5 This translation allows Giorgio Agamben (2008, 15) to claim, in a play on words, that "accusation is perhaps the juridical 'category' par excellence: that without which the entire edifice of law would crumble: the implication of being in the law." Emerging as it does from Agamben's treatment of Franz Kafka, this quote resonates with Pavlich's understanding of accusation's primordial gatekeeping role (see, for example, Kafka 1992).
This chapter tries to draw out just how much Pavlich's attempt to decline accusation relies on, is indissociable from, or perhaps is nothing other than an attempt to decline category. The chapter is exploratory in two important ways. First, I explore what I take to be key aspects of that portion of Pavlich's work touching on “different grammars of accusation” and do so by way of selectively engaging with specific articles of his (especially 2000b, 2007). I do not exhaustively survey Pavlich's work, nor summarize it. Second, I explore the belonging together of grammatical and ontological sensibilities that come to the fore in Pavlich's declination of accusation, a declination which allows one to better experience the relation between language games and forms of life. I do not try to treat the rich question of ontology and its history.

I begin with Pavlich's framing of the question of “how to speak.” His treatment of accusation as a “mode of address” is meant to call into question the ontological status we tend to grant to crime. This treatment is tied to a shift of attention from criminology's crimen to its logos, from criminology's ostensible object to the mode of address by which criminology summons its object into being, constitutes it. Deliberately following Friedrich Nietzsche, Pavlich seeks to call into question not simply the “being” of crime but also that of accuser and accused as stable and discrete entities.

While Pavlich marries his use of logos and “mode of address” to his Nietzschean concerns about the being of crime, his use of these terms echoes quite closely Martin Heidegger's language in a section of Being and Time in which the question of “how to speak” is at issue. In the section titled “Addressing Human Beings,” I consider this echo. In Being and Time, Heidegger prefers to use existentialia to speak of human beings, declining to use categories, a term that was traditionally used to address beings in general (Heidegger 1962, 70). With regard to human beings, he declines a categorial ontology — even, one might say, grammar — in favour of an existential one. Can it be that Pavlich's efforts to decline accusation are best understood in light of their resonance with Heidegger's declination of category?

Pavlich explicitly turns to both Jean-Luc Nancy and Emmanuel Levinas, thinkers greatly influenced by and writing in response to Heidegger, in his attempt to gesture toward a different grammar of accusation, one grounded in a more radical appreciation of being-with (Nancy) and of the other (Levinas). For Pavlich, moving toward a different grammar of accusation involves moving from an accusation that presupposes (while it produces) stable identities of accuser and accused to an accusation that bears better responsibility for the “co-appearance” (Pavlich 2007, 96) — indeed, the co-constitution — of accuser and accused. What is striking here, and I consider this in the sections “From Co-Appearance to Comparison” and “Declining Category,” is that Pavlich's turn to Nancy and Levinas to reach for a grammar that would decline accusation is a turn to a more original, more humble and humbling, accusation. Indeed, accusation figures importantly in the attempts of Nancy and Levinas to (re)think ontology and ethics. In English translations of Nancy, for instance, the English “co-appearance” is the translation of the French comparution, which signifies, among other things, the moment when an accused appears to face charges and make a plea. For Nancy and Levinas, comparution points to a fundamentally prior accusation, an original or even “pre-original” (Levinas 1991, 9) bearing of a charge. Heidegger, Nancy, and Levinas help us see better how Pavlich's concern is that this pre-original charge not be simply discharged in the accusation, the charging, of discrete others. As Levinas (1991, 124) puts it, this pre-original charge is, presumably unlike criminal accusation, “indeclinable.”

Having tentatively explored the grammatical and ontological shifts Pavlich invites us to make, I turn, in the section “An Existential Declination of Punishment,” to Linda Meyer, a scholar who has tried to effectuate this kind of shift toward a more existential grammar of punishment. Influenced by both Heidegger and Levinas, Meyer's work more specifically attempts to rethink some basic categories of criminal law by translating them into Heidegger's existentialia, specifically those articulating the temporality of human beings.

Meyer's turn to an existential grammar resonates with a broader shift from retributive understandings of punishment to so-called restorative ones. The latter have been subject to great scrutiny — by, among others, Pavlich himself — in part because of their tendency to reproduce dominant grammars of criminal law. In the final section I invite the reader to consider the possibility that insufficient attention has been paid to the grammars of Indigenous languages and practices of, for lack of a better word, punishment. It may well be that these grammars speak to Pavlich's Levinasian, Nancyian — and Nietzschean — concerns.
A Question of How to Speak: Logos and Crime's Ontological Status

Pavlich understands "criminal accusation" as much broader than a technical element or stage of criminal procedure. Much more than a technical matter, accusation is an ethical one (Pavlich 2007, 80). In Pavlich’s work, accusation emerges as the privileged entry-point into the criminal justice system, one that determines who will be subject(ed) to the gaze of the system and how they will be so subject(ed) (Pavlich, this volume, p. 31). Indeed, Pavlich’s turn to accusation is in large measure motivated by his interest in “forgetting crime” (2000b), in abandoning “crime,” or at least in divesting “crime” of the privileged and self-evident ontological status he believes it enjoys. The presumed reality of crime proves to be an aspect of Nietzsche’s “illusion of being” (Pavlich 2000b, 141, quoting Nietzsche 1968, 377). Crime and criminals are not so much discovered as they are produced (Pavlich 2009), called into being by way of accusation.

Forgetting crime, then, involves declining accusation – that is, accusing differently. In a piece on “The Lore of Criminal Accusation,” Pavlich (2007, 94) writes of specific ways of speaking as playing “a central role in fixing ‘crime’ as an ontological entity per se” and points to “the difficult task of re-politicizing crime and returning that particular reification to its contingent spawning grounds.” Yet, as Pavlich writes, “just as crime has ‘become’ a reality through – interalia – criminology’s discipline, its formulation is amenable to fundamental revision in post-disciplinary settings.” He adds: “one could conceive of a logos, mode of address, whose point is to grapple with complex processes by which crime ‘becomes’” (Pavlich 2000b, 141). These passages point to the desire to transition from a logos that “fixes beings” to one that addresses not fixed beings but, in his words, processes of becoming. Declining accusation, then, requires thinking about ontology.

Felicitably, Pavlich finds his question of logos or mode of address in crimen (criminology’s ostensible subject or object) itself. Noting its roots in the Greek κριμέν, Pavlich recalls a forgotten sense of crimen as accusation. In the past, crimen connoted “such meanings as verdict, accusation, cry of distress (as in raising the hue and cry), offence and crime” (Pavlich 2000b, 144). Indeed, rather than signify solely or principally the judicial decision, and by metonymy the act concerned by the decision (Rey 1992, 911, my translation), crimen, as accusation, signifies the prior judgment by which an act, a being, even becomes knowable or identifiable as a fit subject for judicial decision, and for criminal justice much more broadly.

Of course, accusation does not simply find fit subjects for criminal justice; it also produces them. The production of the ostensible reality of crime requires the production of “real” criminal subjects. Pavlich (2000b, 144) explicitly understands accusation as calling someone to account, laying one’s charge (turning to Ayto 1990, 5), and his treatment of accusation emphasizes what we might call its interpellative quality (cf. Martel, this volume; Althusser 1972). Accusation calls people to account and calls people to account; it both creates “excluded subjects” and requires the accused to “engage in technologies of self formation” (Pavlich 2000b, 144).

Degrading the ontological status of crime, then, involves calling into question the solidity and obviousness of the subjects presupposed and produced by practices of accusation. For instance, in his “The Lore of Criminal Accusation,” Pavlich (2007, 94) identifies a “pervasive grammar” that enables a sense of criminal accusation grounded on at least two assumptions: (i) the act of accusing involves an authorized subject who charges another with being the intentional subject of a criminal act in the interests of a common order; and, (2) the subjects (both accuser and accused) are taken to be discrete, established, beings, a priori entities, whose identities shape, rather than being constituted by, accusatorial performances.

A prime example of a discrete, established being or entity is precisely what Pavlich calls the “intentional subject,” which we might call more generally “the causing or responsible subject” (Pavlich is interested in all kinds of imputable, predicative subjects beyond the standard intentional one – e.g., Pavlich 2009). After all, “accusation” translates the Greek ἀξιωθαι, which means to “charge,” to “censure,” to “blame,” but also simply to “impute” (Intermediate Greek-English Lexicon 1889, 24). “Accusation” is drawn from the Latin ad- or ad-causa (OED). The causa of accusation translates aitia – as in translations of Aristotle’s so-called four causes (Aristotle 1929, 194b16–195a4). What is more, an aitia is a "charge, accusation" – translated as crimen – “and then the guilt or fault implied in such an accusation,” but it can also be used to signify “credit” rather than “blame” (Intermediate Greek-English Lexicon 1889, 24). Pavlich’s inquiry into the declinations of accusation involves thinking about the various ways in which responsibility...
can be, and has been, imputed to specific others—and, at the same time, collectively declined and discharged.

The enormous difficulty of moving from the “pervasive grammar” that underlies much criminal accusation to a “different grammar” is the same as the difficulty of moving from being to becoming. Indeed, the assumption of fixed subjects, prime of which is “the causing or responsible subject” or the “willing and intending” subject (Constable 2014, 49), evokes Nietzsche’s (1990, 48) remark that “I fear we are not getting rid of God because we still believe in grammar” (see also Nietzsche 1967, 44–46). God here appears as the ultimate responsible subject, and our inability to rid ourselves of him is tied to our constant use, in our daily speech, of sentences with (human and not-so-human) subjects (see also Constable 2014, 57). Indeed, different grammars of accusation may be easier to fancy—that is, to imagine and to desire—than to actualize.

Is a different logos or mode of address possible? Can a logos address processes of becoming rather than fixed beings? As we have mentioned, and as we shall see, Pavlich’s wish for a life-affirming yes as an answer to these questions is tied to his concern that, in my words, the charging of accusation not involve a kind of collective declining or discharging of our ethical and political responsibility for living together.

Addressing Human Beings

While he does not mention or reference Heidegger, and while he explicitly reaches for a “deconstructive, critical logos of crimen,” Pavlich’s (2000b, 146) use of “logos” and “mode of address” is strikingly similar to Heidegger’s language in a section of Being and Time concerning the logos or mode of address appropriate to human beings. In this section, Heidegger explicitly declines to use κατηγορέω, another Greek verb translated as “accuse,” to address human beings. His declination of κατηγορέω is tied to his declining to speak of human beings, following our metaphysical tradition, as “subjects” (Heidegger 1962, 72). His use of existentialia is tied to his address of human beings as “Dasein” (ibid.). In short, Heidegger declines “categories” in favour of existentialia, and “subject” in favour of Dasein.

Logos, says Heidegger in these pages, lets “something be seen.” In every logos, he goes on, we have already “addressed ourselves to being; this addressing is κατηγορέωσθαι.” Κατηγορέωσθαι, he reminds us, pointing to the verb’s pre-philosophical sense, “signifies, in the first instance, making a public accusation, taking someone to task for something in the presence of everyone.” However, “when used ontologically, this term means taking an entity to task, as it were, for whatever it is as an entity—that is to say, letting everyone see it in its being. The κατηγορίαι are what is sighted and what is visible in such a seeing” (Heidegger 1962, 70; see also 89).

If, with Aristotle, κατηγορία (category) becomes a philosophical term regarding how one can or ought to address beings in general, Heidegger declines to use the same term for human beings. Human beings are “whos” and not “whats” and need to be addressed as such (Heidegger 1962, 71). Following Aristotle (1938, 1b25), we speak of beings in terms of categories such as substance (οὐσία), quantity, quality, relation, and so forth. Following Heidegger (1962), precisely because subject (subjectum, ὑποκείμενον) (72) and substance (substancia, ὀυσία) (123) must be problematized and can no longer be presupposed, we speak of human beings in terms of existentialia, such as “being-in” (as in “being-in-the-world”) and, equiprimordially but most importantly for present purposes, “being-with” (149).

To what extent is Pavlich’s attempt to decline accusation related to, to what extent does it depend on, Heidegger’s declination of κατηγορία? In any case, does attending to Heidegger lead us to different grammars of accusation?

We see an answer to these questions when we turn our attention to how Pavlich wishes us to decline accusation or what he wishes to decline current forms of accusation in favour of. Pavlich (2007, 94) concludes his “The Lore of Criminal Accusation” with a section entitled “Amending the Paradigms of Criminal Accusation.” This amendment is an attempt to decline accusation so as to mend it. In this section, we see a move away from an accusation that simply arrests the accused and compels his or her appearance—i.e., one that presumes and produces fixed subjects. If Pavlich’s ontological move begins with Nietzsche, it continues with Nancy and Levinas. As he writes, drawing on both Nancy and Levinas, the promise of his amended lore “is to pursue forms of ‘being with’ not delineated through notions of crime, and to recast otherness by recognizing that it is an ‘interior’, that designates its own excess” (95).

Pavlich’s mending of accusation—and his amended accusation—involves drawing attention to what, to borrow a turn of phrase from Heidegger, “always already” happens in accusation: the “co-appearance of accuser and accused,” as well as the “co-appearance of disorder and order.” As Pavlich (2007, 94, 95) writes, accusation generates “collective formations such as
"normal societies," 'peaceful communities' by "ordering, regulating, displacing, and naming excess." His emphasis on co-appearance is nothing other than an attempt to have accusation accuse or address itself -- that is, bear responsibility for what it always already does: explicitly or implicitly address (and call into being) not simply the accused but also the accuser -- as well as the community and order in the name of which, or under the auspices of which, accusation take place. An accusation that does not decline responsibility for "being-with" is, presumably, an existential and not a categorial one.

In reaching for an existential grammar of accusation that emphasizes and bears responsibility for co-appearance, for being-with, Pavlich draws attention to a different sense of the causa in accusation, one that is no longer heard but which resonates with the publicity or community of the ἁγωνά in κατηγορία. As Heidegger (1971b, 173) says, causa as "case" is prior to causa as "cause." Noting the closeness of causa and res, he writes: "The Old German word thing or dinge, with its meaning of a gathering specifically for the purpose of dealing with a case or matter, is suited as no other word to translate properly the Roman word res, that which is pertinent, which has a bearing" (see also Agamben 2008, 15).

This rethinking of causa, of res, of "thing" resonates with Pavlich's attempt to have accusation, somehow, address processes of becoming, rather than fixed beings. Pavlich seeks to draw attention to how a case becomes a case: How does some "thing" -- a "crime" -- become a matter for collective concern or deliberation? At the same time, Pavlich seeks to draw attention to how we forget the being of a case: How does some "thing" -- a "crime" -- reveal, betray, the manner in which we are with one another? His work draws attention to what is always already happening in an accusation and attempts to get us to think about what accusation accuses.

So far, we have seen how Pavlich's grammatical concern with the category of accusation leads him to think about ontology and, as well, about modes of accusation that involve a different, indeed better, address of human beings. What is striking, however, as we shall see below, is that his turn to Nancy and Levinas is also a re-turn to accusation. Declining a categorial grammar of accusation in favour of an existential one involves reaching for a kind of accusation that "acknowledge[s]" (Pavlich 2007, 95) a primordial guilt or indebtedness (Heidegger 1962, 325), a primordial call (320), a primordial being-accused or accusation.

From Co-Appearance to Comparution

As we have seen, the "co-appearance of disorder and order," as well as the "co-appearance of accuser and accused" -- rather than the simple appearance of the accused -- are key to Pavlich's understanding of both criminal accusation and its amendment. These co-appearances are both what already happens in accusation and what a "more open, democratized, and potentially inclusionary" (Pavlich, this volume, p. 39) accusation ought to attend to more explicitly, more responsibly. Paradoxically, Pavlich's efforts to rethink accusation as co-appearance bring us, by way of the French comparution, right back to accusation.

Though he does not attribute the term "co-appearance" to Nancy or Levinas, these two thinkers are prominently present in Pavlich's amendment of the paradigm of criminal accusation. Indeed, it makes sense to read this term in light of their presence, as we shall do now. "Co-appearance" is one of the English words translators use to translate the French comparution -- for instance, in Being Singular Plural, the translation of Nancy's Étre singulier pluriel (1996) (to which Pavlich turns in his conclusion to "The Lore of Criminal Accusation"). Other words used to translate comparution are "comparance" (e.g., in "La Comparution/The Comparance" and The Inoperative Community, the translations of Nancy's Comparution [1991a] and La communauté désœuvrée [1999] respectively) and "summons" (e.g., in Otherwise Than Being, the translation of Levinas's Autrement qu'être (works to which Pavlich does not explicitly turn). Comparution, comparation, literally says "co-appearing" but is also fraught with legal significance.

Comparation refers to the appearance of someone before a court -- for example, the appearance of someone accused for the reading of the charge and then the plea.\textsuperscript{12} Comparation speaks to the relation of accusation to such things as arrest and appearance. One might say that in addition to pointing to these as other moments in the process of criminal justice, the finger of blame or the hailing (Althusser 1972) of accusation seeks to "arrest" someone and have him or her appear as something, both to others and to him or herself. Accusation calls someone out into the open as such and such.

However, Nancy and Levinas, in different but close ways, use comparation in reference to a kind of original charge "we" or "I" bear, one that cannot be dis-charged. Only by our attending to this original and indeclinable
accusation (e.g., Levinas 1991, 124) does it then become possible to decline accusation as Pavlich wishes to – that is so as not to experience accusation as the dis-charge of our own individual and collective responsibility by way of the “charging” of specific “others,” who are thereby fixed, and having been so fixed, excluded as such. We begin with Nancy.

Co-appearance is part of Nancy’s attempt, which spans much of his work, to hold on to, to think through, Heidegger’s “being-with” as truly “co-originary” with Dasein (Nancy 2000, 26). As Nancy writes, “Co-appearance, then, must signify … that ‘appearing’ (coming into the world and being in the world, or existence as such) is strictly inseparable, indiscernible from the cum or the with” (61). Indeed, Nancy (1991a, 35) specifies, co-appearing is so originary that, no matter how great “the will to destroy community,” “we cannot not com­pare.” Of course, Nancy’s holding on to Heidegger’s existential ontology means leaving behind the temptations of a categorial ontology: “Being-in-common does not mean a higher form of substance or subject” (27).11 Precisely because being-in-common does not mean a higher form of substance or subject, it cannot be con­jured into or out of being.

Nancy’s thinking of co-appearance is at once ontological and grammatical. It is tied to his engagement with a question of how to speak and, more specifically, how to speak (of) community. He asks: “How are we to say we?” (Nancy 1991a, 70). With Nancy’s extended mediation on the “with” of “being-with” (in which the “with” emerges not as a kind of addition or qualifier of being but as being itself) comes a renewed understanding of language or speech, of logos. The “reason” of logos, Nancy (2000, 87) writes, “is to offer, and only to offer (giving it tone and intensity), the cum: the with of meaning, the plurality of its springing forth.” Indeed, language “exposes the with, exposes itself as the with” (87).13 The truth of language is not representation, nor even signification, but exposure – of the world and of beings to, with, one another (88; see also 17–48).

Indeed, by virtue of language, we are always already saying “we.” Does this mean that we should never be saying “we,” and rather just let this saying happen? In large measure, yes. The question of how we are to say “we” paradoxically becomes one of how we are not to say “we”: “We do not have to identify ourselves as ‘we,’ as a ‘we.’” Rather, we have to disidentify ourselves from every sort of ‘we’ that would be the subject of its own representation, and we have to do this insofar as ‘we’ coappear” (Nancy 2000, 72). As we have begun to see, Nancy’s emphasis on the “co” leads to a declination of the usual ways we tend to think of “appearance” – for example, as the appearance of an object for a subject – and challenges us to see, or not to see but to experience, our co-appearance differently.

If Pavlich turns to Nancy and co-appearance to rethink accusation, Nancy, as we have just seen, turns to accusation – by way of co-appearance – as part of his thinking or rethinking of being-with. In “La Comparution/The Comparance” (1992), Nancy plays up and plays on the legal sense of comparation. According to Nancy, we are ceaselessly called to appear – “naked” (372) – before the law of our existence. The emphasis on “naked” recalls the exposure that is the truth of language and of being (Nancy 2000, 88). It evokes an original address that, so to speak, un-dresses – that is, it undoes “our” pretensions to right (see OED on “dress”) and requires us to answer the charge of existence, to specify whether and how we have adequately disidentified ourselves from the sorts of we that would be the subject of their own representation (Nancy 2000, 72).

The charge of existence is precisely the “with” of being-with, of being, the “with” that is none other than being. As Nancy says (1992, 373), we summon ourselves to appear and we judge ourselves “by the given that we do not exist alone. Or rather that there is no one that is only One.”16 Playing again on a legal phrase, Nancy (1991b, 61) writes that communism was the “mise en demeure” (demand letter, but literally “placing home”) that we addressed to ourselves after the “death of God.” The West must answer: “What have you done to community?” (Nancy 1992, 374).17

Pavlich’s work reaches for grammars and practices of accusation that would, somehow, satisfy community’s “demand letter.” These would, to quote from Nancy (2000, 71), undertake a better “staging of co-appearance.” They would also be part of a “praxis” or “ethos” (ibid.) that does not produce “excluded subjects” (Pavlich and Unger, this volume, p. 10) by turning “we” into a substance or representation (Nancy 2000, 71). The “more … inclusionary” (Pavlich, this volume, p. 39) logos or mode of address Pavlich is reaching for is, paradoxically, one that excludes without excluding, one in which the truth of language as exposure is not eclipsed by language as signification.

But (how) can exclusion not exclude? While recognizing that “the working of injustice is always, in some manner, an exclusion” (Nancy 1992, 392), Nancy also recognizes the necessity of exclusion in the very structure of community.18 This does not, however, mean that exclusion is always the same. He explains that, “to exclude, exclusion must designate: it names, identifies, gives form” (ibid.; “gives form” translates donne figure). An
exclusion that excludes, presumably one that excludes unjustly, is one that makes cognizable and re-cognizable (Antaki and Kirkby 2009) the excluded as, so to say, "other"(ed) (Pavlich 2007, 91), expelled from the “in” of an in-common reduced to a substance. But just as we cannot forsake exclusion, Nancy (1992, 393) goes on, we cannot forsake giving form (in French, la figuration). And so, he writes, “The crucial double question of the in-common would thus be: how to exclude without fixing (figurer)? And how to fix without excluding?”

Excluding without fixing (giving form, figurer) and fixing without excluding demand a splitting of what accusation, in the problematic grammar of the lore, combines: “naming excess” (Pavlich 2007, 93). The idea is to avoid names, representations, images, figures of “the community” and of those the community excludes, perhaps through accusations. Must - can - inclusion and exclusion somehow be separated from “figuration”? Can - must - a logos address and accuse but without designating, naming, identifying, giving form? Without categorizing? These kinds of questions also figure in Levinas’s work.

Declining Category

If, for Nancy (2000, 21), “no ethics would be independent from an ontology,” Levinas famously puts ethics prior to ontology. Indeed, Levinas tends to see the ontological as unable to leave the categorial and its manner of accusing. For him, ontology, despite its promises, cannot ultimately rescue or distinguish the who from the what (Levinas 1991, 27). One might even say that, if we follow Levinas (who is perhaps close to Nietzsche on this point), the ontological status we tend to accord to crime is tied to the status we mistakenly accord to ontology and to its manner of accusing. Rather than dispense with accusation altogether, Levinas declines what he takes to be ontology’s accusation in favour of the accusation of ethics, an accusation he ties to the accusative case we know from grammar. We see this at work mostly in Otherwise Than Being (1991), a work which speaks directly to Pavlich’s concern with “different grammars of accusation.”

What Levinas takes to be ontology’s accusation involves a logos that compels appearance, that involves designation:

In falling under this saying that ordains, matter takes on meaning, and shows itself to be this or that, a thing. This fall – or, this case – a pure surrender to the logos ... is the essence of the accusative. The logos that informs prime matter in calling it to order is an accusation, or a category. (Levinas 1991, 110)

The surrender of prime matter to the logos is mirrored in the accusation of ethics, an accusation in which the subject is “subjected not, like matter, to a category, but to the unlimited accusative of persecution. The self, a hostage, is already substituted for the others” (118). The pure surrender here is different than that of prime matter to categories. It has the character of an obsession:

In obsession the accusation effected by categories turns into an absolute accusative in which the ego proper to free consciousness is caught up. It is an accusation without foundation, to be sure, prior to any movement of the will, an obsessional and persecuting accusation. It strips the ego of its pride and the dominating imperialism characteristic of it. (110)

This “stripping” resonates with the idea, introduced in our treatment of Nancy above, of an original address that, unlike the logos that accuses prime matter, undresses. What is more, words like “persecution,” “hostage,” “obsession” speak to the “unconditional, indeclinable, absolute” (124) character of this radical undressing or exposure, of the accusation of ethics in which one finds “oneself while losing oneself” (11).

Levinas thinks or explains subjectivity (i.e., the accusation of ethics) grammatically – and, more specifically, from an “accusative that derives from no nominative” (ibid.). The priority of the accusative over the nominative is nothing other than the priority of a subjected subject to a sovereign subject, of a subject who is thrown under to one who underlies or grounds. As Levinas says,

In responsibility for another subjectivity is only this unlimited passivity of an accusative which does not issue out of a declension it would have undergone starting from the nominative ... Everything is from the start in the accusative. Such is the exceptional condition or unconditionality of the self, the signification of the pronoun self [translating se] for which our Latin grammars themselves know no nominative form. (112, square bracket is mine)
It is precisely in this broader context of the declination of the accusation of ontology in favour of the indeclinable accusation of ethics that Levinas uses the word comparution. He writes:

The way I appear is a summons [comparution]. I am put in the passivity of an undeclinable assignation, in the accusative, a self. Not as a particular case of the universal, an ego [moi] belonging to the concept of ego [Moi], but as I [moi], said in the first person – I [je], unique in my genus. (139, square brackets are mine)[1]

Aside from “comparution,” this passage contains another term with legal significance: “assignation.” Though they can both be translated by summons, assignation and comparution mirror one another. One compar in response to an assignation; assignation compels comparance. Comparution, for Levinas, is not a mutual or reciprocal co-appearance. Indeed, Levinas specifies that “the neighbor assigns me before I designate him. This is a modality not of a knowing, but of an obsession, a shuddering of the human quite different from cognition” (87). As Levinas writes, invoking Aristotle’s Categories, “he assigns me before I designate him as τὸ ὑποκείμενον” (86; see, for example, Aristotle 1938, 3b10). When he speaks of assignation or comparution, Levinas (1991, 45) is gesturing toward a “saying which signifies prior to essence, prior to identification.” He is gesturing toward “the signification to the other that occurs in proximity” (46), toward “saying as exposure to another” (48). This saying of proximity is prior to “arousing an appearance” (46). In this way of thinking, designation expels the other from within me, allows me to dress myself up, enclose myself. For Levinas, designation is not the work of ethics, of proximity, but of ontology.

This assignation before designation – which for Levinas comes along with the priority of ethics to ontology – suggests that proximity does “without representation, ontology, logos” (87). Original or pre-original address, in Levinas, is prior to the re-cognition, even self-recognition, the logos allows. The priority of proximity to the logos means that “form” itself is not yet there. On the one hand, “the face of the neighbor ... escapes representation” and is “nudity, non-form” (88). On the other hand, my responsibility for the other, my exposure, involves a “stripping beyond nudity, beyond forms” (15; see also 49), beyond the logos. As he writes, “the subject resting on itself is confounded by wordless accusation” (127). He adds, “The persecuted one cannot defend himself by language, for the persecution is a disqualification of the apology. Persecution is the precise moment in which the subject is reached or touched without the mediation of the logos” (121).[2]

As a result, all logos, all address, potentially accuses a dis-charging. The mediation of ethics by way of the logos seems to open up the possibility of a dis-charge of responsibility; the logos serves to diminish the radical exposure to the other, the radical significance of proximity. Indeed, with Levinas, the very mode of address of ethics is distinct from the logos. Thus, the work of Levinas would appear to make much more difficult, if not impossible, an amended lore of accusation, one that somehow does not decline the indeclinable and original accusation of ethics. Levinas’s position here, in relation to Nancy’s, seems to make the passage from ethics to politics or law a most definite fall.

An Existential Declination of Punishment

So far, we have seen how Pavlich’s amendment of the lore of accusation, his search for different grammars of accusation, leads to an original accusation in which responsibility for being-with and for others is indeclinable. Only by holding on to this original accusation can accusation be practised, spoken, in such a way as to not simply be an ethical and political dis-charge onto others, a dis-charge by which we discharge – but never truly exonerate – ourselves. We have also seen how for Pavlich, following Nancy and Levinas, designation, figuration, giving form – i.e., the accusation of category – is part of the problem.[3]

In this and the next section, I consider different ways of speaking (of punishment) that are either influenced by or resonate with the kind of thinking that informs Pavlich – e.g. Nietzsche, Heidegger, Levinas, and Nancy. The idea here is to look at grammars that somehow hold on to the primordial charge or accusation Pavlich gestures toward. We begin with Linda Meyer, whose The Justice of Mercy (2010) is an attempt to speak about punishment in such a way as to hold on to “being-with” (Heidegger) and the “other” (Levinas) throughout what we might call the criminal justice process. While she does not address accusation directly, she outlines the kind of world of criminal justice an amended lore of accusation might be a gate to.

Meyer attempts to rethink punishment in order to avoid the pitfalls of a categorical ontology or grammar. The categorical ontology to be rejected

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is not simply tied to instrumental or utilitarian accounts of punishment but, in addition, to what she calls Kanticist (not Kantian) accounts of punishment grounded in understandings of human beings as rational beings. In short, Kanticism neglects the Kant of the third Critique in which human beings are approached not simply as rational beings but as embodied beings who share “this world” (Meyer 2010, 17). Meyer follows Heidegger’s and Levinas’s declination or “deposition” (Levinas 1991, 127) of the subject in claiming that being-with and exposure to the other precede reason, and that grace (and giving or being GIVEN) comes before justice (and deserving or owing). Her “new approach” (Meyer 2010, 67) to punishment, the different grammar she outlines, seeks to hold on to the “primary address” (41) of the other that she draws from Levinas and which we sketched out above. This new approach involves rectifying what we might call the category mistake of utilitarian or retributivist approaches to punishment.

Meyer rectifies these mistakes by choosing to speak of punishment existentially. Paradoxically, this involves thinking of punishment “as a work, rather than as a tool” (Meyer 2010, 67). Punishment is not primarily or mostly a thing or process we use to obtain or generate results we will or want. It is, rather, like a work of art, a “coming-to-presence of a truth” (67; Meyer is following Heidegger 1971a here). This first step is a crucial one as it deposes, from the very beginning, the pretensions of the intentional, punishing subject. This first step also echoes Pavlich’s criticism and amending of the lore of criminal accusation insofar as it invites us to consider what always already happens in punishment, which is at the same time, and paradoxically, what could happen or ought to happen in punishment when it “works.”

As opposed to “Hegel’s account of retributive punishment” (Meyer 2010, 67), however, the truth that comes to presence in punishment is not the irrationality of wrong and the restoration of the offender to “his or her full humanity as reasonable/willful” (68). Rather, “punishment, if it restores, would restore us instead to our full human condition as being-in and being-with” (68). Punishment would serve to re-charge, not to dis-charge, the human condition of being-with. Rather than lack of rationality, wrong becomes a “failure to attend to others” (71), a kind of “obdurate indifference” (72) to others that reflects our own estrangement, not from our rational essence but from the world (71). With wrongdoing comes the “sundering” of the points of view of victim, offender, and witness (81), which “ideally” “come back together” in the sentence of punishment (81). As Meyer writes, “the memory of wrong, then, brings out of itself the reunion with the other and with the self, the recognition of one’s own being as being-with” (87). Co-appearance (or compenance) it would seem, is the work of punishment.

For punishment to work, all involved—and not simply the accused—must acknowledge their own being as being-with. This means that punishment itself should not, cannot, decline the original accusation of ethics. In punishment, we must attend to others without reducing them, fixing them, to a form or figure of wrongdoing. Meyer (2010, 85) writes:

We cannot assume we have plumbed the depths of the other. The other must appear to us as both revealing and hiding, as all that appears does. We cannot reduce him or her to a character, to a “criminal,” to a “victim,” or to a “sufferer.” We cannot appropriate; we cannot grasp; we cannot assume.

This refusal to confidently designate others makes desert—tied to a calculable justice—give way to settlement—tied to an incalculable grace—and leads to more humility in the so-called administration of justice (ibid.), even to an un-dressing “of the moral pretensions of the criminal law” (103). Accordingly, Meyer emphasizes the role of compass with regard to victim, but also offender. Being-with can never be discharged. In Levinasian terms, we ought not to allow our designation of others to come before—that is, in the way of—our assignation by them. Indeed, “we have a moral imperative to be with” offenders (92), no matter who they are, no matter how much we might be tempted to dismiss them as so clearly not like us. Their compenance is necessarily our compenance.

Meyer is careful to use the existentials Heidegger identifies in Being and Time (1962) —tied to Dasein’s temporality—to draw out different aspects of wrong and punishment. In Being and Time, Befindlichkeit, or how one finds oneself, names the past aspect of being-in-the-world; Verstand, or understanding, names the present aspect; and Rede, or speech, names the future aspect. For example, when dealing with the present, with “the self-understanding of punishment as ‘for a wrong’” (Meyer 2010, 69), Meyer recasts the “basic criminal mental state” as one more like “obdurate indifference” (72). Her characterization of the pain of punishment is tied to Befindlichkeit, to what she calls “the emotional mood or
attunement associated with the experience of a past wrong as a wrong” (76). Here, pain appears not as something we, as punishers, inflict on others: “the pain of punishment is in seeing the wrong, not in serving the sentence” (98).

Most significantly, Meyer’s translation of the categorial (understood broadly so as to include Kanticism) into the existential is meant to bring our punishment as the possibility of addressing wrong as wrong by way of punishment as sentence – by way of Rede or speech. Meyer plays on “sentence” so that it emphasizes not merely a penalty to be served (e.g., in time), but rather, or also, a mode of address. First, Meyer (2010, 78) writes of the pain of the memory of wrong in terms of trauma and identifies it as something that is difficult to address: “victim and offender are cut off from each other, each locked in a separate kind of trauma that cannot be brought to language and therefore cannot be shared.” However, the bringing to language of the wrong, of the trauma, may be possible as the work of punishment. Meyer writes: “The Rede of punishment as sentence” is “the coming to speech (and therefore to sense) of the wrong” (81). “The Rede of the witness is ‘sentence’ – a unification of confession and testimony into a narrative that makes ‘sense’ of the wrong and allows it to move into a future” (ibid.).

What comes to speech in sentence is not the wrongdoer categorized and named as such, but rather the human condition of being-with itself. Co-appearance emerges both as what was forgotten in the wrong and what comes to work in the punishment. Punishment emerges not as a collective discharge onto offenders but as a kind of re-charge, to whatever extent possible, not of the offender’s rationality but of the being-with of victim, offender, and witness.

Rethinking the mode of address of sentence in this way leads one to see what is at stake in Pavlich’s attempt to amend the lore of criminal accusation. While Meyer (2010, 101) does not insist on specific institutional forms or practices of punishment, she does invite us to ask – indeed, she insists that we ask – whether we are “letting” the work of punishment – that is, co-appearance – happen. As Nancy might ask: (How) are we staging co-appearance in punishment? Are we adequately disidentifying ourselves from a representable “we” in our practices of punishment? As Levinas (1991, 112) might ask: Do our practices and words reflect that “everything is from the start in the accusative” for “us,” too?

Restorative Grammars, Existential Grammars?

While Meyer’s work does not insist on specific institutional forms or practices of punishment, her approach appears to resonate with what has come to be called “restorative justice,” a phrase usually associated with both a relational approach to wrongdoing and punishment and even a de-centring of punishment in favour of healing (see, for example, McCaslin 2005). In light of Pavlich’s work, one might ask: why ought not an amended lore of criminal accusation open the gate to a different world of justice than that of punishment as usually understood? Perhaps forgetting crime involves forgetting punishment as well?

Nevertheless, Pavlich himself has been critical of much of what goes under the label “restorative justice.” More specifically, he has written about the way restorative justice performs the “imitor paradox” (Pavlich 2005, 14): “restorative governmentalities” purport to “offer a substitute for criminal justice whilst predicating themselves on (and so imitating) existing criminal justice arrangements” (13). For instance, they “presume the existence of both ‘victims’ and ‘crime’ as defined by legal jurisprudence” (22). Restorative justice, one might say, fails to forget crime (Pavlich 2000b). It does not sufficiently or adequately take up the “difficult task of re-politicizing crime and returning that particular reification to its contingent spawning grounds” (Pavlich 2007, 94). Without an ontological move akin to Nietzsche’s, it would seem, it is difficult to achieve a truly different mode of address, a different grammar of accusation.

I would like to end this chapter with a brief invitation to explore the possibility that at least some of what sometimes goes under the label “restorative justice” accuses a different grammar, a grammar that might even accuse the dominant grammar of criminal justice but without being “parasitic” (Pavlich 2005, 109) on it. I am thinking specifically here of the work that insists on the experience of Indigenous languages as necessary to grasp the fundamental challenge to dominant ways of thinking – of experiencing – posed by Indigenous “justice” understood as “restorative.”

For instance, Sâkâj Henderson (2002, 4) relates the widespread physical imprisonment of Indigenous peoples – recall Pavlich’s concern with the gatekeeping function of accusation – to their “cognitive” imprisonment, tied to, among other things, loss of language (2 and 45).

In his (and other) accounts, what we call “law” and “language” appear as intertwined, and the experience and possibilities of each are experienced
together. As Marianne Constable (2014, 135) argues with regard to US law:
"like the English language, its grammar of subject-predicate-object carries
with it particular habits of judging and understanding" (see also Kelley
emphasised the flux of the world, encouraging harmony in all relationships.
This was the centre of their legal institutions and heritage." In the language
of this chapter, we find something like Pavlich's Nancyian concern for
being-with or co-appearance grounded in something like Pavlich's Nietz­schean worries regarding intentional subjects and discrete, bounded
entities.

Not so long ago, Dorothy Lee drew out some of the political and ethical
import of these kinds of grammatical and ontological considerations,
articulating this as a question: can it be that different languages make it
easier or harder to experience the authoritative as non-authoritarian (borrowing from
the title of Vining 1986)? As Lee (1966, 20) put it:

Among the Wintu Indians of California, the principle of the inviolate
integrity of the individual is basic to the very morphology of the language.
Many of the verbs which express coercion in our language — such as to
take a baby to (the shade), or to change the baby — are formed in such a
way that they express cooperative effort instead. For example, the Wintu
would say, "I went with the baby," instead of, "I took the baby" ... In Wintu,
every interpersonal reference is couched in grammar which rests on this
principle of individual integrity.

Lee (1966, 20) writes: "what we express as an act of force is here expressed
in terms of continuity between self and other." This grammatical continuity
between self and other is as ontological as it is ethical: "Wintu starts with
an original oneness," whereas social science begins with "delimitation"
(ibid.). "To someone brought up in the Indo-European tradition ... the
plural is derived from the singular," but in Wintu, "nouns ... all make reference
primarily to generic substance" (ibid.). Indeed, the Wintu language
reveals "the fleeting significance of delimitation" (15). (How) would Nancy's
Being Singular Plural need to be thought and said in Wintu? In Mikmaq?

A different grammar of accusation may require that we learn to speak
anew or re-experience how we speak so that we can, for example, begin to
experience the cognitive imprisonment of the subject in the nominative
case. It may also be important, even necessary, however, that we learn to
speak new languages. After all, Emile Benveniste (1969, 70) notes how
Aristotle's "categories" issue from the structure and possibilities of the Greek
language and not from the so-called things themselves. Our habits of
attention, then, including our ways of tending to others, may be related to
our "grammatical habits" (Constable 2014, 63). These grammatical habits are
tied to daily stagings and un-stagings of co-appearance.

Henderson, Lee, and others show us that "other grammars are possible"
(Constable 2014, 57n13). These other grammars may accuse "us" differently,
as they encourage us to accuse differently.

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Notes
1 One declines articles, adjectives, nouns ... Declension is prominent in languages such
as Greek, Latin, and German. While it knows some declension — for example, of
pronouns — English is much more familiar with the conjugation of verbs.
2 On the priority of the "different" over the "better" see van der Walt (2001) and my
specific reference in Anjaksi (2013).
3 Grammar, suggests Pavlich (2013, 33), following Wittgenstein, is to be understood as
(rules regarding acceptable, appropriate) "ways to use particular words in a discourse
thus generating meaning in context."
4 Note Foucault's words: "as soon as people begin to have trouble thinking things the way
they have been thought, transformation becomes at the same time very urgent, very
difficult, and entirely possible" (Foucault 2001, 457). See also Tully (2003).
5 And, of course, of importance far beyond Aristotle. For example, see Kant (1998, 212,
Bi06) for his table of categories, understood as "pure concepts of the understanding."
6 The "Lore" is an informal and oral body of knowledge through which a certain grammar
of accusation is learned and passed down. Pavlich (2007, 82) identifies a recurring but
"simple" syntax to be found In such a phrase as "I accuse you of stealing my trinket."
This syntax reveals a whole grammar that makes claims about "appropriate" forms of
life" (83).
7 Like many others today, Pavlich uses "reality" to speak of what we might call ontological
status. How "reality" came to acquire such sense and resonance is itself a fascinating
question — especially so insofar as the re of reality is tied to the status of accusation, a
point to which we shall return in "Addressing Human Beings" below. See generally
8 It also evokes Donald R. Kelley's (1987, 64) observation that the Roman law tripartite
division of subject, thing, and action reflects the Indo-European linguistic structure of
subject, object, and verb.
As he says, turning to Levinas with regard to otherness: “The Law could thus be re-formulated to acknowledge the mutual constitution of accuser and accused, each fundamentally responsible for the being of the other. This view echoes those who describe how the ethical subject is always already a response to the call of the other. Levinas, for instance, indicates how the ‘I’ comes to be only as response to an amorphous collective ‘face’ that calls” (Pavlich 2007, 95, reference omitted).

11 Nancy writes specifically of the “concentration camp,” the “extermination camp.”

14 The “in-common” is “incommensurable with any ontology of substance and subject” (Nancy 1992, 379). This and the surrounding pages of Nancy are worth reading in light of Heidegger’s thinking regarding “the λόγος as ἀναφορά” (Heidegger 1962, 56).

16 The French says “il n’y a pas de Seul qui existe” (Nancy 1991a, 56). Hannah Arendt (1973, 17) in her reflections on what he has learned from his Indigenous friends, such as Skéjé Henderson, Leroy Littlebear, and others, Rupert Ross (1996, xxvi) relates the “fundamentally different ways of thinking” required by “restorative justice processes” to his appreciation for the lived experience of Indigenous languages. See in particular the chapter entitled “Watch Your Language.”

17 Henderson (1995, 14) adds: “Mikmaq customary law was a subtle and complex normative order, where flux was the universal norm and there was no noun-based system of positive law.”

23 The “out” in “without” is left out in the translation.

24 With Levinas, as opposed to with Nancy, we see an extreme reaction against the verb “to be” (Lehman 1991, 4). As Derrida (2000, 184) writes with regard to Totality and Infinity, “nonviolent language would be a language which would do without the verb to be, that is, without predication.” No predicates, no categories.

References


