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Worms

Primordial Juris-prudence and Viral Being

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‘So I may say,
“I died of living,
Having lived one hour”’
H.D. *Epitaph* (1925)

“One man contemplates, another digs his grave”
Albert Camus (1979, 64)

Introduction

There are worms at the heart of being (Gabel and Kennedy, 1984, 17). This thought, posed in one of the seminal texts of Critical Legal Studies, provides a starting point for a jurisprudence of the virus: a primordial juris-prudence. To think viral life requires a tentative appropriation of Heidegger’s *Being and Time*. Dasein is radically open to the possibility of viral infection as a condition of what it is.¹ Primordial juris-prudence is jurisprudence split apart, re-composed and engaged with a peculiar ontology of obligation revealed by the pandemic. Etymologically, primordial juris-prudence is the ‘seeing’ of *ius*: that which binds or obligates. Prudence is the projection forward from the condition of being bound.² Jurisprudence is conventionally focused on the ways in which legal and moral/ethical rules obligate, but the wager of this essay is that we are bound in a primordial way to our condition. Thinking Dasein’s ruin is the task for primordial juris-prudence.

This re-reading of *Being and Time* is not an exercise in a ‘typology of death’(Heidegger, 1962, 291; 292-3). Viral being binds us to countless human and non-human others. In the most extended sense, viral being can be seized by Dasein as a resolute response to common suffering. Resolute, a key term for the argument, will be defined as we go along. In outline, the term describes Dasein taking its inherited ruin upon itself. Dasein’s resolute response will enable the passage between Heidegger’s notion of conscience and

juris-prudence. Primordial juris-prudence seeks to understand the ontological articulation of a mode of public responsibility or solidarity for the burden borne by all Dasein.

Time are hard enough. Why go back to *Being and Time*'s austere mode of analysis? Subjected to a certain distortion, Heideggarian thinking can engage with matters of pressing concern. *Being and Time* is provisional and invites improvisation to 'get at' themes left covered up. Unfortunately, on first reading, this approach might seem somewhat disorientating to the reader. This cannot be entirely avoided. To borrow from the metaphor of the circle, one is tracing (de)couplings that require the mis(use) of concepts that exist in a network (Heidegger 1962, 195; Irigaray 1999, 6). How else could we sketch the ontology of the 'soft machine'? This peculiar, impersonal mode of analysis is the way in which a strange passion finds oblique expression. The 'severe' style is perhaps not unrelated to MacNeil's notion of "reading jurisprudentially" (2007). Reading *Being and Time* 'jurisprudentially' in such a way builds on the work of Adriana Cavarero (2011; 2016). This essay shares with Cavarero the need to read Heidegger differently and to think in terms of what might be called 'the insufficient self' (Blanchot, 1988, p.6). Our argument also has a somewhat complex relationship with Irigaray.³ Embodied as man, woman, neither or both, the insufficient self is the 'host' open to infection. Its biological constitution is shared by all human beings exposed to the air (and in certain respects connects humans with animals).⁴ We will move tentatively around the perimeters of Being defined by these themes.

It is important to distinguish this approach from other influential engagements with Heidegger in legal theory and jurisprudence.⁵ We will not be concerned with a notion of the 'sovereign virus' or infection as exposure to an 'outside' that 'founds' a 'community' in the *exstasis* of death. Admittedly, primordial juris-prudence borrows from meditations on the inoperative or unavowable community. Primordial juris-prudence is also in touch with the debate on hospitality. But, it would be too precipitous to describe the analysis presented here as explicitly engaged with Bataille, Blanchot, Derrida or Jean-Luc Nancy. In relation to Nancy, though, the juris-prudential concern with conscience does suggest that a 'measurement' of Being is possible, provided it operates with the terms of Dasein's own ruined constitution; provided we can share the hospital of our Being together.⁶ The measuring, or sharing of Being is entirely cognizant of the differences and structural inequalities that characterise the everyday world of Dasein.

The argument will develop as follows. The first section of the paper will deal with a general question: if the constitution of the human being has always been open to viral infection, what does this tell us about the terms in which the virus can be thought?⁷ Whilst the virus can be studied scientifically and made present- to-hand, its mode of existence, both in the everyday, and the more formal scientific sense, is a kind of ubiquitous invisibility. The virus also ‘appears’ as an ‘outside’ that has been ‘internalised’.⁸ Notions of presence- to-hand and dwelling can be re-thought to get at the chemico-biological nature of viral life. We will think in terms of spittle, fluid, breath, air and touch: touching others and touching objects. Viral *auf-sein* is microbial life swarming on the surfaces we touch, swarming on the skin. But viral life is also wound up with our Being together: *Mitdasein*. This moves towards an analysis of the ‘they’ world that departs from conventional understandings of *Being and Time*. Although the ‘they’ world swarms with viruses, the ‘they’ turn their backs on the very real challenges posed by the pandemic to the organisation of everyday life. Dasein cuts through the ‘idle chatter’ of the ‘they’ when it resolutely takes on the significance of common demise. This line of analysis requires a re-working of Heidegger’s notion of the call of conscience (Heidegger, 1962, 70). A juris-prudence of viral being relates the call of conscience to the *munera* of the hospital because Dasein can be in solidarity with all those who share a common fate.

Viral Being

This section outlines the basic terms of the re-reading of *Being and Time* and reviews the relevant concerns with microbiology and pathogenesis as they relate to an ontological analysis of viral Being.

An account of viral being must articulate how the virus shows itself ‘in’ and for Dasein. As such, it is necessary to work with and against Heidegger’s fundamental ontology. To think viral being is to understand that Dasein is constantly breaking down. Heidegger is aware that the analysis of Dasein can ‘break down’ but the breaking down that we are tracing is somewhat different (Heidegger, 1962, 284). Thinking Dasein’s breakdown is certainly related to grasping Dasein as a whole. But, we need to realise the strangeness of the fundamental flaw *within* Dasein itself. This will enable a description of the primordial structures that ruin Dasein in advance.⁹ In this context, ‘primordial’ does not signify some

archaic or historically prior meaning that requires reconstruction. The primordial mode of the analysis grasps how Dasein ‘show[s] itself from itself’ (Heidegger, 1962, 37). In other words, Dasein’s ruined constitution is significant for the kind of Being that Dasein is: a Being whose ‘essence’ is existence (Heidegger, 1962, 32). The analysis will first engage with Dasein’s existence, before turning to the world of everyday concerns where Dasein exists.

In order to describe Dasein’s ruin, primordial analysis must be distinguished from the ‘viewpoint of biology and physiology.’ One can study Dasein in the world of ‘animals and plants’ as a form of life defined by ‘data and statistics’ but in so doing, one remains with the ‘biological-ontical’ (Heidegger, 1962, 290-291). The critical question is the relationship of biological analysis to the thinking of Dasein. How does the virus show itself to Dasein? One of the modes of appearance is biology or microbiology. This paper does not seek to investigate the ontological nature of micro biological research. The focus is, primarily, on how the virus announces itself in the life of Dasein. An important point follows. The very idea of Discourse is at stake.¹⁰ We will follow a line of fracture around the distinction between the ontological and the ontic, Dasein and things. Dasein is humus. Dasein is riddled with worms (Heidegger, 1962, 242).¹¹

To put this another way: the being that is meant to be specific to Dasein (what it ‘consists of’) is bound up with a biological-chemical materiality that allows the ‘non-living’ virus to attach itself to the body of living Dasein (Heidegger, 1962, 243). This concern must be related to the way in which the virus appears to everyday Dasein. Viruses remain unavailable, at least to Dasein’s everyday dealings with the world. But viruses enter into Dasein itself, ultimately robbing Dasein of its own most ‘in order to’: Dasein’s authentic projection into the future. Dasein becomes the vehicle for a more powerful ‘in order to’ that has the potential to erase signification and to wipe out individual Dasein.¹²

We will argue that resolute Being towards-death must be related to a ‘passivity’ that is, in fact, an essential aspect of authenticity. The argument will re-appropriate a term that Heidegger uses to describe the biological-ontical: the clinical demise of Dasein. It will be important to study the modes in which demise takes place in *Mitdasein*: in the ‘they’ world where Dasein is with others. This investigation moves towards the final movement of the argument. Demise can come upon Dasein ‘accidentally and at random’. Dasein’s demise shatters or breaks apart the ‘they’ world (Heidegger, 1962, 292-3). From this perspective, themes of care, solicitude and ‘welfare work’ can be re-thought. The final section will sketch,

in a tentative way, an understanding of viral solidarity that counters the tranquilization and commercium of illness and death in the 'they' world.

So, in order to follow the final phase of the argument, we need to be aware that care expresses itself in solicitude. Whilst the first mode of solicitude, and one already touched upon, is the care of patient, there is another mode of solicitude that expresses itself as welfare work (Heidegger 1962,158). It is this second mode of solicitude that resonates with a response to the virus as a common problem for all Dasein. There is thus at least the possibility that in the *Mitdasein* of being with the sick, of falling sick oneself and being cared for, solicitude reaches something authentic. Something that cannot be 'covered' over by the 'they'. Anxiety can be associated with a specific mode of resolution: communal care for suffering.

Thus far, we have sketched out how a thinking of viral being must transform the analysis in *Being and Time*. It is now necessary to deal with the question of how one can work between ontological analysis and microbiology. We need to investigate a key term: pathogenesis. As suggested above, a feature of primordial analysis is a concern with what is both hidden and revealed in the etymology of words. So, a necessary first step is to examine the etymology of pathogenesis. The word comes from the Greek roots of pathos (πάθος), meaning 'experience' or 'suffering' and genesis (γένεσις). The term, in its scientific sense, relates to the network of practices and meanings that constitute microbiological research into the origins of disease. It is necessary to work with this microbiological sense of how the virus reveals itself to Dasein. But, what does the word conceal? Ontological analysis must pose the meanings of a word at a primordial level. At this level, pathogenesis can be seen as the study of what binds Dasein to its suffering. We are bound to our suffering as a consequence of what we are. We are generated by our suffering. To build this analysis, we will have to move between the micro-biological and the ontological. Our guiding question: why are we bound to our suffering?

Dasein is fundamentally susceptible to viral infection. Fundamental, in this context, signifies that Dasein is open to viral infection because of what it is. This is not somehow accidental, or visited upon Dasein by ill fortune. Dasein is immanently unwell:

'Pathogenesis is the process by which viral infection leads to disease. Pathogenic mechanisms include implantation of the virus at a body site (the portal of entry), replication at that site, and then spread to and multiplication within sites (target organs) where disease or

shedding of virus into the environment occurs.....Viruses are carried to the body by all possible routes (air, food, bites, and any contaminated object). Similarly, all possible sites of implantation (all body surfaces and internal sites reached by mechanical penetration) may be used. The frequency of implantation is greatest where virus contacts living cells directly (in the respiratory tract, in the alimentary tract, in the genital tract, and subcutaneously)....'(Baron et al. 1996)

Pathogenic mechanisms can be seen as the portals through which the virus enters the bounded system of the body. Rather more precisely, the portals of the body are sites of constant transfer between 'inside' and 'outside' – between the body and its environment; other bodies and surfaces.¹³ Being is patho-genetic:

'Viruses reproduce after attaching and transferring their genetic material into a host cell. The host's cellular machinery is then redirected to the making of more viruses and results in the death of the host cell in the vast majority of cases.' (Rohwer et al 2009, 2771)

The virus 'is' with us. We are its host (the resonances of the word host will be investigated presently). Viruses move into us through the air. One might even say that they come with the words we speak; with the movement of mouths, in gusts of spittle. They come through the portals that we open to our lovers—in the fluids of the kiss and other intimate forms of congress. Viruses work with us. Viruses cover our tools, our hands, the things we exchange, our money: our surfaces. Viruses work us over. The places where we meet others are where viruses meets us. "Undying worms" (Milton 1909, 222)

How can this analysis be developed?

Da-sein: Presence- to- Hand, Readiness-to-Hand, Disinfected Surfaces, Dwelling, Swarming

The virus can be made present- to- hand. Heidegger does, strangely enough, hint at this concern. In *Being and Time*, illustrations of presence- to- hand are the symptoms of a disease and the organic disturbance of the body that are present at hand in a fever (Heidegger 1962, 52-54). Through presence- at- hand, the world appears to Dasein:

‘being lies in the fact that something is, and in its Being as it is; in Reality; in presence-at-hand; in subsistence; in validity; in Dasein; in the ‘there is’ (Heidegger, 1962, 26).

Presence- at- hand has both every day and more sophisticated forms which are attendant on the formal, scientific study of the world. Presence- at- hand thus frames the peculiarity of understanding viral being. In our everyday world, we come across the virus through ill-health. How do we encounter this threatening interiority? Even though it can be understood as operating ‘inside of us’ viral infection takes place in the absence of our thinking. The virus expresses its own being through ours.

The virus uses us.

‘-’

The clue to thinking viral Dasein is Heidegger’s occasional hyphenation of Dasein:

Da-sein.

The sense is of Da-sein as Being-there; where Being and there (which carries too many significations to reconstruct in this essay) are thus separated. The word is broken in the middle- opened up.

But to what?

The first response might be that the hyphen separates the subject from the world: the being from ‘there-ness’. Closer inspection reveals something more frightening: the separation within Dasein means that the subject can become an object. The sensing subject can become entirely object. Dasein suffers its demise and becomes a ‘dead thing’.

The hyphen indicates the path of the virus into Da-sein.

A fuller analysis of this feature of Da-sein would have to show how the hyphen is related to the ‘splitting up’ or ‘dispersal’ of Da-sein as a mode of its Being in the world. This would take us to the problem of Being that always runs the risk of becoming the facticity of

the patient: the one who can carry nothing out, get nothing done, whose *existentiale* is a concern only to recover the health that will allow him/her/ them to attend properly to the world of their concerns. In the sickbed, the patient rolls over. Faces the wall. But this is to run ahead with the argument.

How can we think of the mechanisms of transfer, or viral passage?

Given our concern with touch and surfaces, the starting point for thinking about Dasein is perhaps the problematic of equipment; a word translated occasionally into English as 'stuff'. Thus, equipment is the stuff of the world that reveals itself in relation to an 'in order to' (as we use equipment towards an end). This might seem a long way from any analysis of viral contact, but it is a necessary step in the formal analysis of viral being:

'Equipment-in accordance with its equipmentality-always is in terms of [aus] its belonging to other equipment : ink-stand, pen, ink, paper, blotting pad, table, lamp, furniture, windows, doors, room.' (Heidegger, 1962, 97)

Stuff that is present- to- hand brings us into contact with the surface of things. Presence -to- hand becomes readiness- to- hand when stuff is used in practical dealings towards an end. Thing-equipment is covered with the traces of another Dasein's viral presence. Consider the readiness- to- hand of the hammer. We need to think about fingers curled around the shaft where another's fingers have been, or, where another's fingers will be. Readiness- to- hand is a viral interface. This is merely part of a wider problem. The path of infection can be followed from equipment and readiness to hand, to Being alongside the world and Being in the world.

Being alongside the world is a description of the spatial coordinates of things. It is meant to be entirely distinct from Dasein's being embodied 'in' the world. Dasein's Being in the world never has the meaning of simple spatial location. In distinction, Being alongside the world can be expressed in terms of things adjacent, next to, or beside each other. However, even if a table is by the wall, it would not be quite right to say that it is touching the wall. Only Dasein can touch objects or other Daseins. Touch is fundamental to the way in which Dasein encounters the world. But touch is also a viral vector. At once, we need to think of what touching transmits to Dasein. Through touch, the virus transports itself along the '-' into

the heart of Da-sein. Most precisely, the virus is not at hand, or in the readiness of things. The virus is present 'on' the hand, and remains where the hand has been. What, then, is the being of this most peculiar 'on' of the virus?

The 'on' must be understood in a sense missed by Heidegger. In contrast with '*in-sein*' 'on-sein'—or---'*auf-sein*'—describes what comes into contact with the skin and is picked up by touching. And *auf-sein* does not scale up, but down. What does this mean? Like the '-' it requires us to think about what can be encountered through touch but not seen. Viruses are measured in nanometers.¹⁴ This measure is difficult for Dasein to grasp. It is hard to know where Dasein's chemical constitution begins and ends as there is a 'coevolutionary relationship[s] between viruses and their natural hosts.' Thinking at this scale opens up the imaginary of the human being in a way similar to Heidegger's meditations on the first photographs of the world taken from space. But viral scale is a far more disturbing concern. The virus is entirely un-like a photograph of the world as it does not exist in a visual register. Where does this take us?

Swarms of infinitesimally small particles have an ultimate signification for Dasein. This significance manifest itself scientifically in the mathematics of very small numbers. But, what is the significance of the infinitesimally small for Dasein's dwelling 'in' the world? At least in its everyday and non-scientific dealings with the world, Dasein does not think in terms of the infinitesimally small. We need to try a different approach. The clue to the everyday sense of the virus lies concealed in the etymological roots of the very term that describes Dasein's Being in the world:

'In' is derived from 'innan'-'to reside' 'habitare', 'to dwell' (sich auf halten]. 'An' signifies 'I am accustomed', 'I am familiar with', 'I look after something' (Heidegger 1962, 80)

Dwelling is the primordial way in which Dasein 'is.' Dwelling as living provides *existential* coordinates for the very way in which Dasein encounters and comes to know the world. Furthermore, dwelling is the underpinning and expression of care, and can thus be related to the way in which Dasein comes to know itself. But, if the problem of knowing is left to one side, we need to deal with the infection of dwelling. How is dwelling infected? The mechanism has always been there - present in the German and Latin etymologies that Heidegger uses to understand the word. If we return to the Proto Indo European root for

dwelling, *dheu, we arrive at the semantics of ‘dust, cloud, vapor, smoke’ and words related to ‘defective perception or wits’. The dwelling has a prior inhabitant whose modes of being are not those of Dasein.¹⁵ The swarm. The “ill mansion” of Being (Milton 1909, 120).

If the swarm has already infected the dwelling, it must also compromise care. A problem that is hinted at in *Being and Time*. Given-ness, as that which is difficult to discover, must also keep something from Dasein. The world is ‘lit-up’ for Da-sein, given to interpretation, but something is always out of view. Heidegger does indeed suggest that this might concern orders of being that are not illuminated in Dasein’s everydayness. A radical reading of *Being and Time* allows an appreciation of the ongoing, seething mass of viral auto-mutilation that is inseparable from Dasein’s Being in the world. Viral ‘in order to’ is not human. Viruses use the world of Da-sein to perpetuate the senseless text of themselves.

Viruses love company.

The ‘They World’, *Mitdasein* and Public Care

Viruses swarm amongst us. In ontological analysis, this ‘amongst us’ is *Mitdasein*, or the ‘with world’ of Dasein. We will work with an understanding of Dasein that has been put forward to suggest that Dasein is inherently social, and we will show how the ruined condition of Dasein can be borne by all Dasein. However, there is nothing that compels individual Dasein or public Dasein to take up responsibility for common vulnerability to infection. Heidegger’s analysis is primarily relevant in showing how responsibility for common suffering is something that Dasein may authentically take upon itself. From this perspective, the concern with the relationship between *Mitdasien* and the ‘they’ can be clearly brought into focus. The primordial risk is that Dasein loses itself in the ‘they’ world as it attempts to take the significance of its own Being with others upon itself. In order not to lose itself Dasein must take on a resolute response to viral being: a response which has to be awakened in Dasein’s own conscience.

So, *Mitdasein* and the ‘they’ world are where Dasein in its everydayness encounters the virus. The importance of speech before others as a mode of infection has already been discussed. No wonder, then, that the ‘they’ manifest themselves in idle chatter. Dasein is forced to contend with the spittle ejected by speakers as they speak. Infection is a condition

of speaking with others. Infection through speech with others defines the world of the 'they'. The 'they' world is also a world of surfaces touched by countless hands; stale air and overcrowded buses, tubes and trains. The pandemic might have enabled some workers to avoid commuting but those who were compelled to work, or engaged in essential care work, had to confront heightened risks of infection.¹⁶ Are we arguing that detachment from the 'they' world is a form of saving oneself from infection? No, this would show a callous indifference to a common plight. In order to avoid misunderstanding the 'they' world, we need to return to the concern with *Mitdasein* and responsibility.

It is certainly the case that Dasein can lose itself in the 'they' world.¹⁷ Dasein surrenders to convention and un-analysed presumptions about 'the way the world works.' In the 'they' world, the risk of the virus is 'levelled' down to become 'idle talk.' The challenges posed by the pandemic to ways of living are ignored as the 'they' turn away from the crisis and assert the return to 'normality'. Turning away can take many forms: uninformed propaganda about viruses and their transmission;¹⁸ evasions or opportunism from government and profiteering from private enterprise.¹⁹ In 'turning away' 'the economy' is privileged over the welfare of people, and the 'against one another' of competition is 'loudly' reaffirmed (Heidegger 1962 219).²⁰ The economic costs of the pandemic are carried by those least able to bear them.²¹ Intervention is presented as an invasion of liberty.²² Liberty, in this sense, is another mode in which significance is levelled down, and a 'correct order' of private property asserted. Any sharing of resource is begrudgingly limited to 'the emergency'.

The question becomes: can the 'they' world be shattered by a viral pandemic? How can levelling down and idle talk provide an 'awakening' for Dasein? Answering these questions requires analysis of how Dasein has lived through the pandemic. There were many ways in which the experience of the pandemic challenged the terms of the 'they' world's hegemony over social life. One particular concern provides a focus: falling ill, and the relationship between public and private care. The starting point is the experience of illness. Illness removes the patient from the everyday world. The world of illness (for the sick, or the carer) is one of exhausting concern. The patient is handed over to the 'biological significance' of the demise of the body (Heidegger 1962, 280).

In suffering or in caring for suffering, Dasein encounters a profound form of reification. The carer fears the becoming object of the one cared for and the patient is lost in suffering and dread. There is a real risk that the Dasein of the patient will become 'no more

than a lifeless thing' (Heidegger 1962, 282). The 'becoming thing' of Dasein is the realisation of the most negative features of the 'they' world as the burden of suffering has been privatised: a matter of concern for individual Dasein. But, in caring, there is at least the possibility that Dasein realises that the 'they' world has been organised in such a way as to avoid the difficulties and responsibilities of care. Responsibility cannot be born alone. It is a social concern. This is the mode in which the anxiety of care becomes intensified and opens onto further ontological analysis (Svenaeus 2011).

Care, in a primordial analysis, returns to argument about *Mitdasein*. Care is about how others count, or how (in Tawney's phrase) 'they' come to be 'in reach' of us.²³ Most importantly, care, and the sharing of the world can be related to solicitude (Heidegger, 1962, p.157).²⁴ Solicitude translates the German *fürsorge*, which is glossed as 'welfare work' (Heidegger, 1962, p.158). In English we would 'speak of welfare work or social welfare' (Heidegger, 1962, fn.,157). To stress: the care we are analysing is general and public in its expression.

The Hospital and The Call of Conscience

An essential link can be made between solicitude, welfare as public care and the notion of the hospital. The ontological signification of the word hospital has become buried in the everyday meaning of the word and needs to be recovered.²⁵ Start with the radicals that make up the word hospital: *potis* and *hostis*.²⁶

Potis and *hostis* relate to 'a...series of words' that includes the Latin *munus*: 'a duty or public office' or an institution provided at public expense (Benveniste, 1973, 79). The meaning of hospital is fundamentally that of a public institution (and the proper study of *ius*).²⁷ The second important concern relates to the etymological meaning of the word *potis*, which is contained in the compound hospital. This brings to light a very particular issue. *Potis* becomes transformed in usage so that it signifies both 'mastery' and 'identity' (Benveniste, 1973, 72-3). Thus, the one who offers care is the master of themselves. How could this possibly build our argument? The one who offers care is the resolute one whose solicitude expresses itself as welfare work. We will have to wait until the last section of this argument for a fuller primordial analysis of the *hostis* or host. There is a prior point. The one who is master is the host of the virus.

The master is the broken one. He who possess himself, possess his own rotten state (Donne 1971, 290). The master is the insufficient self. In the ontological sense of hospital, the host is not so much the master as the one who may also need care. The master becomes the *hospes*: the one who receives the patient whilst at risk of falling ill (Benveniste, 1973, 78). That mastery can be unmastered is the primordial meaning of being bound to one's own ruin.²⁸ This can be connected to the line of analysis around the notion of the *munus*. The experience of anxious care is simply too much of a burden for individual Dasein to bare. Communal resolution is necessary to transform anxious care into a social concern for Dasein. Hospital: *munus* or public office.

But, what do we mean by 'necessary'? Dasein takes on welfare work in authentic resolution; a theme that requires engagement with the call of conscience. It is vital to stress that conscience 'opens up' within Dasein itself. Conscience calls to Dasein from Dasein. The call is 'abrupt' and triggers something in the one who wants to be brought back to resolution. Conscience's recursivity can be interpreted as the way in which the terrible presence of common demise comes home to Dasein. The inner call does not seal Dasein off from others. Dasein is host to itself and the call comes as its own-most un-mastering. The echoing of the call of conscience enables the re-interpretation of another important theme in the ontology of hospital and welfare work.

One of the meanings that resonate in the word host includes the strange notion of a measuring rod, called in Latin a *hostorium* (Benveniste 1973, 76). The *hostorium* was a strickle, or a tool used for ensuring a level measure. Might the call of conscience ensure Dasein's own level measure? This interpretation resonates with Benveniste's comment that the sense of *hostis* relates to what 'compensate[s] [or] equalise[s]' (Benveniste 1973, 76). If we are warranted in deriving the *hostorium* from the verbal form *hostio*- 'I make even'- then we have the clear sense that Dasein makes itself even with other Dasein through measuring itself against the requirement for resolute public care.

Thus, in the call of conscience there is a peculiar parallel between the given-ness of Dasein's flawed constitution and that which might be resolutely seized upon as an authentic response to what all Dasein shares. The binding of Dasein to all other Dasein is the nothing or 'nullity' of the call (Heidegger, 1962, 329). The call is the reminder to Dasein. As host Dasein is vulnerable: permanently at risk of becoming nothing. Moreover, *ius* taken back to its etymological root is related to the PIE word whose meaning is reconstructed as 'vital

force' and 'life'. Thus, in our re-working of this term, *ius* is connected to the compromise of vital force in Dasein's constitution.²⁹ Primordial juris-prudence presents itself as the proper way to study the call of conscience, precisely because Heidegger comments that the call is a power 'that I can never get in my power, that which grounds me beyond my reach' (Heidegger 1962, 357). An aporetic power of vulnerability.

Viral being and the call of conscience are bound up together in what Dasein 'is'.³⁰ From this perspective, primal juris-prudence is the seeing of that which is thrown up ahead: the possibility of grasping resoluteness. Juris-prudence is, then, the study of Dasein's comportment to something that we might call solidarity. Solidarity articulates the relationship between constitutional vulnerability and the responsibility that Dasein can take on for all Dasein.³¹

Conclusion: Ego autem sum verm

In conclusion, we can return to the claim that this essay put forward a primordial analysis of jurisprudence. If primordial analysis is provisional, then it should be seen as a score for improvisation. This sense of primordial is picked up in the term juris-prudence. There is no warrant for an ontology of jurisprudence in *Being and Time*. It is opened-up in the same way that Albert Ayler's improvisations are invited by the melodic structure of 'Swing Home Sweet Chariot'. Juris-prudence, in its most basic presentation, requires a location of thinking law in Dasein's structured totality. If Dasein is by its very nature vulnerable, then, at the primordial level, juris-prudence should guide law towards a way in which common vulnerability can be articulated. This points towards a primordial analysis of wealth and inequality, and law's relative blindness to these terms. That hospital should be interpreted as *munus* is not a historical claim. The hospital as the focus of juris-prudence is an articulation of what *munus* could be taken as meaning within primordial analysis of law. A circular argument? Yes. But, "[i]n the circle is hidden a positive possibility of the most primordial kind of knowing" (Heidegger 1962, 195).

This drama of Dasein and viral being has played itself out in the scholar's study whose coordinates are books, paper and equipment used for writing. Remembering Marx's statement that one cannot philosophise on an empty belly, one can only philosophise when one is in passably good health. Mick Garrity has summed up the relations of class power on

which the comfortable, pensive isolation of the scholar is based. The middle classes stay at home and the working classes bring things to them. This is the social reality of the pandemic. If Dasein's primal precariousness is to be grasped, primordial juris-prudence must also provide an analysis of structural inequalities that are inseparable from the ways in which Being is lived in the world.

At this point, we can briefly return to the analysis of the 'they' world. The 'existential determinations' of Dasein must address the general mode of social and economic reproduction (Marcuse 2005, 42). Without following Marcuse's Heideggerian Marxism, this analysis can be developed to describe the erosion of institutions that had been set up to protect welfare. The hospital, or the publicly funded *munus* better known as the National Health Service, is now in profound crisis. How is it possible to re-imagine and re-create the production/ social reproduction nexus in the wake of the pandemic? ³² Primordial juris-prudence contributes an engagement with what law is taken to be. The thinking of *munera* can be extended beyond the figure of the hospital to a broader interpretation of norms. Legal obligations, rights and duties should be re-shaped to structure networks of reciprocal work, association and care (Glazebrook, 2019).³³ Re-defining the *ius* of the *munera* is the jurisprudential response to the old antagonist who reminds us of the parlous state of our world.

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¹Primordial analysis endeavours to understand Dasein's Being. *Dasein* is untranslatable, but means something like 'being there.' Thus, primordial questions of *Dasein's* Being relate to our nature as human beings involved in the 'there' of our ongoing lives. *Dasein's* 'who' can be defined by asserting that *Dasein* is 'in every case I myself.' However, the 'who' takes us towards the others amongst whom *Dasein* lives; an issue inseparable from sense, Discourse and language. Thus, the 'who' of *Dasein* is the primordial fact that being is always Being with others. Primordial, in this context, describes the fundamental structure of Being: Being with, or even Being between others. Perhaps the best way to think about the primordial is to grasp the way in which Dasein must be located in a 'structured' totality of relationships; relationships with itself and its world (Heidegger 1962, 120, 169, 225). This 'must' also determine the way in which Dasein is understood and written about. In this way primordial analysis relates to the networked nature of concepts used to analyse Dasein. As the primordial meaning of Dasein can be obscured in the world in which Dasein lives, primordial analysis seeks to uncover connections that reveal a 'whole'. Note: primordial analysis is always tentative and provisional. Heidegger remains aware that there are "horizons" of Being whose understanding requires mutations of the terms used in *Being and Time*. In very brief overview, this relates to the core of the present argument about the way in which the virus and Dasein are equiprimordial or co-determining. This necessitates a re-working of the fundamental terms that are used to analyse Dasein. This re-working takes us to the essential terms presented in this argument: the issue of how the virus presents itself (a kind of viral hermeneutics), presence to hand (and related terms), care, Discourse (as understanding), language and other terms such as touch, speech and spittle. Equally primordial are the terms that describe Dasein's world with other Dasein: *Mitsein* and *Mitdasein*. *Mitsein* is equiprimordial with *Mitdasein*, or essential to the way in which Dasein lives as both an "ego" and in relation to others (Heidegger 1962 149-150). These terms link to the primordial analysis of the 'they', welfare, the call of conscience and the hospital. For a consideration of Dasein and primordial Temporality, see footnote 30. A working definition of primordial juris-prudence is sketched below.

² Primordial juris-prudence requires radical thinking about the law. Radical in two senses. Primordial thinking must locate law in Dasein's structured totality. This structured totality is seized by Dasein through Discourse. If Discourse is, in part, language, then primordial analysis of juris-prudence begins with the etymology of this very word. For reasons explained throughout this essay, the approach to Discourse deployed is not a search for authentic, pure or historical meanings. This meaning of juris-prudence depends on a reconstruction of the semantic scatters of the word. Juris-prudence can arguably carry the sense of the 'seeing' of 'binding'; or seeing as binding. The 'seeing of binding' is sketched out in primordial terms in footnote 30. Heidegger is very much engaged with the 'as' and the importance of seeing as pointing out: an essentially poetic way of thinking (Heidegger 1962, 190). The Latin *provideo* carries a range of meanings covering senses of caring for and foresight (Lewis and Short, 1879). Its root *video* can be traced back to the Proto Indo European root **weyd* which carries the reconstructed meaning of to see. Cognate meanings can be traced to the Greek *πρόοιδα* (*próoída*) or 'to know in advance' (Liddell & Scott, 1940). The suffix 'pro' is

related to the Indo European *pró. The reconstructed sense of *pró is ‘toward or leading to’ (Pokorny 1959, 813-815). *Ius* can be defined as the rights of Roman citizens as specified by *leges*, the laws. There is an important link between *ius*, *leges* and *munera* or civic obligations and duties. In Roman law *munera* were duties or obligations owed by the citizen to other citizens. This meaning echoes distantly in the English word community. We will return to the *ius/ munera* conjunction later in this paper in the examination of the word hospital.

Benveniste has stressed the important relationship between the radicals *hostis*, *potis*, *hospes* and *munus* (Benveniste 1979, 79). For the moment, though, we need to focus on *ius*. *Ius* derives from the PIE *h₂yew. Senses of this radical are related to ‘straight and upright’ and to ‘vital force’ and ‘life’ (Willi, 2001, 117–146). *Lex* can be traced to *Ligare* (Lewis and Sort (1879). *Ligo* can be linked to the PIE root *leyǵ (De Vaan, 2008).

³ How does the argument presented in this paper relate to Irigaray’s work on Heidegger? Irigaray’s invitation to a different way of thinking and living the body would require some revision given that air is a viral envelope: ‘If breathing estranges me from the other, this gesture also signifies a sharing with the world that surrounds me and with the community that inhabits it’ (Irigaray 1999, 22). Breathing is certainly a relation with others, and this can be understood as a sharing, and indeed, a sharing of community. However, this sharing must also be thought as mutual infection, inter-species viral contagion and the *munus* of community. On Irigaray, Cavarero and vulnerability, see (Pulkkinen, 2020).

⁴ At the microbiological level, viral infection requires donor and recepta taxa. Taxa are composed of sequences of nucleic acid, which also structure the RNA and DNA biopolymers that make up the substance of living beings. These ‘highly conserved’ structures link our being with that of certain other species and open us to viruses (Wessner 2010, 37). Indeed, some viruses ‘such as hepatitis B may have co-evolved with humans over very long time periods’ (Woodhouse et al, 2012, 2867). The ‘best estimate of the ‘age’ of the coronavirus genera is around 10,000 years (Wertheim et al 2013).

⁵ See Ben-Dor (2013), Ben-Dor (2007), Grassi et al (2019), Hirvonen (2019), Matthews (2016), Hutchens (2012), Zartaloudis (2005), Pryor (2004), Douzinas (2002), Minkinen (1996), Kaufmann (1963). See, in particular, the understanding of juris-writing, Matthews (2014).

⁶ In Bataille’s thinking, the death of the other provokes the living being to an ‘outside of itself.’ The death of the other ‘drives’ one out of the ‘confines of the person.’ The ‘pettiness’ of life is interrupted in an ‘intensity’ of being that forces a confrontation with, well, what (Bataille 1971, 245-6)? It is perhaps not too difficult to see how Bataille works from the death of the other as the im/possibility of community and the assertion that ‘Sovereignty is NOTHING’ (Bataille 1971, 18). In Nancy’s reading of Bataille, sovereignty is thought through abandonment (Nancy, 1991, 18. Some of these themes will be picked up in the analysis of the call of conscience. However, this analysis does not set out to follow either Bataille or Nancy. But see Matthews (2021).

⁷ Simon Critchley has explicitly addressed the virus from a Heideggerian perspective: ‘Covid-19 has formed itself into the structure of reality: a disease everywhere and nowhere, imprecisely known and, as yet, untreatable. And most of us have the feeling of having been swimming in a sea of virus for many weeks now, possibly months. But perhaps beneath the trembling of fear lies a deeper anxiety, the anxiety of our mortality, our being pulled toward death.’ <https://www.nytimes.com/2020/04/11/opinion/covid-philosophy-anxiety-death.html>. Critchley’s problematic is that of the philosopher isolated in her room; grappling with themes

of anxiety and Being towards death. Like Proust's patient, the philosopher is a passive figure—alone, in bed, worrying that no one will come to help them as the night draws on.

⁸ Whilst 'the virus' refers to Coronavirus and its variants, depending on context, the word also refers to the more problematic sense of something that compromises the ontology of Dasein. In the plural, viruses refers to the different kinds of virus that are scientifically identifiable. However, it also indicates the ontological form of any particular virus capable of more or less endless replication. Viral replication is the mechanism that hastens the demise of Dasein.

⁹ This is some distance from Gadamer's notion of health as a "natural mode of human Dasein" or health as some "equilibrium" disturbed by "disease." See Gadamer (1996, 36-7).

¹⁰ Heidegger derives logos from the verb meaning to 'talk' or 'hold discourse'. This supports his translation of logos into the German word *Rede*. *Rede* is distinguished from both speech, language and idle talk. *Rede* is rendered in English as Discourse. *Rede*, as Discourse, "makes manifest" or "allows something to be seen" (Heidegger 1962, 56). As such, Discourse can be speech, but, in idle chatter, speech becomes insignificant and covers up rather than reveals the 'togetherness' that constitutes signification of the present to hand as a matter of concerned dealings (Heidegger 1962, 57-8). Discourse describes the intelligibility of the world and the given-ness of the world to interpretation (Heidegger 1962, 172, 204). It could be seen as the condition of speech and language. Heidegger's thesis concerns philosophical Discourse, and, ultimately, the revelation of Dasein's fundamental ontology through an appropriate Discourse on Being. The understanding of Discourse put forward in this essay is somewhat different. For instance, the etymologies pursued through Indo-European root words, reveal twisted networks of meaning and intelligibilities that are plural, compromised and contestable. Meaningful talk of a world given to understanding is still possible, but meaning is gleaned in practices that are closer to poetry than philosophy. Viruses present themselves to Dasein in multiple ways. They are as much Milton's "noxious worm[s]" as objects known to science (Milton 1909, 367). A philosophy of the virus, or, more precisely a fundamental ontology of the virus, presents itself as a disturbance of *Being and Time*. A disturbance from within. Indeed, it is interesting that fundamental ontology allows itself to be so easily disturbed. Whilst this theme is one of the main concerns of this paper, it can be briefly indicated at the level of Discourse in the following way. If "Dasein...is essentially determined by the potentiality for discourse" and Discourse involves speech, we can identify speech and intelligibility as always bound up with viral transmission (Heidegger 1962, 47). This argument is elaborated in the main text of the essay under the heading "Viral Being". Viruses are bound up in Dasein's articulation of the intelligibility of the world. The foundations of Discourse are fundamentally open to viral deconstruction.

¹¹ It is possible to suggest a set of semantic associations between worms and viruses. Worm derives from a PIE root, **wer*, whose constructed sense is 'to turn, to bend' (De Vaan, 2008, 665). Virus comes from the Latin word for 'poison or slime'. Its PIE root is **wisós* whose meaning is 'fluidity, slime, poison' (Adams, 2013, 634). It may be then, that the virus is a worm that turns, bends, or interlaces itself with Dasein. See also Psalm 22:6: 'I am a worm and not a man'.

¹² What remains obscure- and perhaps even frightening- is that the being of the virus has its own dark codes of signification: 'biogeochemical cycles' without consciousness (Rohwer, et al 2009, 2772). For instance, the coronavirus has a 'unique proof reading mechanism for viral RNA replication' [that allows a massive number of] mutations per site per replication (Wertheim et al 2013, 7040).

¹³ Once the virus has ‘inject [its] genomes into the host cells’ the cell is turned against itself and becomes a mechanism that spreads the virus within the system (Rohwer, et al 2009, 2772).

¹⁴ Viruses range in size from 15 to 500 nm (a nanometer is one billionth of a meter) See Cell Biology, at <http://book.bionumbers.org/how-big-are-viruses/>). It is probably the case that there is a total worldwide abundance of 10^{30} virus-like particles.

¹⁵ (<https://lrc.l.a.utexas.edu/lex/master/0413#E>)

¹⁶ See Transmission and Control of SARS-CoV-2 on Public Transport SAGE – Environmental and Modelling Group 18052020, at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/888755/4b_EMG-Transport_Overview_18502020-_S0407.pdf

¹⁷ This interpretation of the ‘they’ world owes a great deal to Nancy, but also to Glazebrook (2019).

¹⁸ See (Zarocostas, 2020, 676).

¹⁹ See <https://www.bma.org.uk/news-and-opinion/outsourced-and-undermined-the-covid-19-windfall-for-private-providers>; see also <https://actionaid.org/news/2021/pharmaceutical-companies-reaping-immoral-profits-covid-vaccines-yet-paying-low-tax-rates>; and, <https://www.theguardian.com/politics/2021/may/05/uk-government-publish-details-covid-contracts-private-healthcare-firms>

²⁰ See Wigglesworth, R. and Fletcher, L. (2020) ‘Big Hedge Funds Raise Money to Capitalise on Market Turmoil’, Financial Times, 30 March 2020; Neate, R. and Jolly, J. (2020) ‘Hedge Funds ‘Raking in Billions’ During Coronavirus Crisis’, The Guardian, 09 April 2020.

²¹ In relation to London, see <https://www.trustforlondon.org.uk/publications/impact-covid19-londons-low-paid-workers/>. More generally, see the report from the Resolution Foundation at <https://www.resolutionfoundation.org/press-releases/women-the-young-and-low-paid-workers-are-bearing-the-biggest-health-and-economic-risks-from-the-coronavirus-crisis/>

²² See (Bagus, 2020). But, see also (Block, 2020, 206–37). Block’s is certainly a ‘tentative response’ but it would be wrong to suggest that there is a single libertarian position on the epidemic. For a different perspective see (Bourgeron, 2021).

²³ Care, in this sense, is understood as ‘[m]eaningfulness’ (Heidegger, 1985, p.68). To care is to direct one’s attention to something: to the things and people that ‘one encounters’ in the world. Essential to care is ‘unrest’ (Heidegger, 1962, p.70). The ‘ego’ or the ‘myself’ is experienced through unrest because ‘[o]ne’s own world’ is always present with ‘the shared world’ (Heidegger, 1962, p.71). One is always with others. For better or for worse.

²⁴ For Nancy, sharing is a re-thinking of *Mitdasein* or Being in common. Being in common does not exist (somehow) above being- nor- is it exactly immanent to being as an essence available to Dasein. It is Dasein in its being, which does not necessarily mean that it is ‘individual being.’ This amounts to saying that Dasein ‘is’ its spaces- the very nature of Being as what there is: humans, things, the world and animals. Dasein is what appears- as ‘finitude itself’ - or – as finitude in touch within itself, meeting and encountering itself (Nancy 1991, 28). This can be related to the analysis of the call of conscience as a further working out of the insubstantial self. This analysis does not put the human being at the ‘centre’ of the order of being. If existence has meaning as singularity, or as a plurality of singularities, then the inanimate or the animal shares the phenomena of singularity with the being of men and women. There is not, then, a hierarchy of being that runs from the intelligent, through the animate to the merely material. This is because the materiality of existence runs through all being: these are the ‘concrete conditions of singularity’ (Nancy, 1991, 18).

²⁵ Derrida focuses on the *hosti/potis* radicals and follows the trace established by Benveniste (and others) to *xenos*, the stranger. The master is the “sovereign as host” (Dufourmantelle and Derrida, 2000, 55). An aporetic expression: the fundamental notion is that of the absolute duty on ‘the sovereign’ to receive the stranger. This obligation breaks with law, although one must equally calculate with rights to realise a legal form that might be welcoming for strangers (Dufourmantelle and Derrida, 2000, 25). There are parallels between this analysis and the argument in the present text. However, the understanding of the hospital put forward is somewhat different from Derrida’s notion of hospitality. It begins from a different interpretation of the *hosti/potis* radicals and moves to an articulation of solidarity rather than duty of welcome. The relationship between *munera*, *ius* and *lex* that juris-prudence hopes to bring together does share something of the “antinomic” structure that characterises the relationship between law and hospitality (Dufourmantelle and Derrida, 2000, 80/1). A more thorough analysis would also have to work on the relationship between host and hostage and dwelling/dying in Derrida’s discourse on hospitality. In a melancholic way, a search on the terms ‘Derrida’ and ‘hospital’ links to the philosopher’s obituary.

²⁶ See (Frise 2009, 51-68) for a review of the voluminous literature.

²⁷ See footnote 2 on *ius*, *leges* and *munera*.

²⁸ This approach is distinct from, but not necessarily incompatible with feminist approaches to themes of ethics and hospitality. For instance, Aristarkhova’s ‘hospitality of the maternal body’ seeks to articulate a non-essentialist reply to both Derrida and Levinas (Aristarkhova, 2012, 176). The approach to the hospital taken in this paper requires a common condition of vulnerability. This common condition requires a thinking of both natality and mortality, but this theme is outside the scope of the present paper.

²⁹ See footnote 2 on *ius* and “vital force” or “power”.

³⁰ Dasein’s Being as care and resoluteness connects with the theme of Dasein’s primordial temporality. Dasein grasps itself in time: not in time as the ‘flow’ of ‘nows’ that constitute clock time, but in a moment of vision, where the past, the present and the future ‘reveal’ the significance of Dasein’s ‘there’ (Heidegger 1962, 456, 474). *Augenblick* as the moment of vision links sight, time and the ‘as’ (Heidegger 1962 439, 465). It as if Dasein sees itself as it comes towards itself, a theme that could be related back to the call of conscience. As far as the theme about *munera* is concerned, the crucial matter is that a historical theme is reappraised in a moment of vision: Roman law duties become equipment for Dasein’s orientation to solidarity as an expression of its compromised Being

³¹ Developments within the field of care ethics are relevant to clarify the terms of the present argument. Thus, the present argument does resemble those put forward by Benner and Wrubel (1988), Olafson (1998) and Guignon (1993). Benner and Wrubel (1988), and Olafson (1998) take different approaches to ethics via the notion of *mitsein*. In distinction to Benner and Wrubel, though, there is no suggestion in the present paper that ‘care’ is ‘more basic’ than rights (Benner and Wrubel 1988, 367). The attempt to think in terms of an ontology of vulnerability must also be distinguished from Olafson’s approach to ethics as based on the recognition of the other as alter ego (Olafson 1998, 56). Finally, the presentation of conscience does not operate with Guignon’s terms. It may be that Dasein is rooted in a shared human history, and that this is essential to make sense of the call of conscience. But, the argument about the relationship between the ontology of hospital and the call of conscience is much more focused on this particular ontological ‘structure’; and, indeed, may require further arguments about how various traditions (in particular that of Roman law) are remembered and made relevant to contemporary struggles over social organisation.

³² The pandemic has revealed in a stark way the negative impacts of the ‘free’ market (King 2005, cited in Woodhouse 2012, 2805. In response, primordial thinking must engage with the fact that nurses produce more wealth than bankers. See the 2009 report of the New Economics Foundation, available at <https://neweconomics.org/2009/12/a-bit-rich>

³³ For exemplary approaches, see Mulqueen (2018) on association, Veitch (2021) on obligation and Gearey (2012) on welfare.