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## Law, play and the self in Aristotle and Vivès

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### Abstract

I wish to bring to the question of the legal subject an interpretative structure, which I imagine as follows: at the centre of this structure is a 'violent concussion of the substance of the brain'. It emanates along the radius of the 'optic nerves', engorging the ducts of the eyes with 'lachrymal humidities'; and its repercussions are communicated to the entire muscular envelope of the diaphragm. At the surface of this structure are *tears of laughter*, which are the index not of the equivalence of these affects, but of an ambivalence whose profile is articulated in a very specific polarity: these tears of laughter resemble 'Democritus heraclitising and Heraclitus democritising'.

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Michael FitzGerald

### You can't be serious, Master Janotus!

I wish to bring to the question of the legal subject an interpretative structure, which I imagine as follows: at the centre of this structure is a 'violent concussion of the substance of the brain'. It emanates along the radius of the 'optic nerves', engorging the ducts of the eyes with 'lachrymal humidities'; and its repercussions are communicated to the entire muscular envelope of the diaphragm. At the surface of this structure are *tears of laughter*, which are the index not of the equivalence of these affects,<sup>1</sup> but of an ambivalence whose profile is articulated in a very specific polarity: these tears of laughter resemble 'Democritus heraclitising and Heraclitus democritising'.

I draw this image from Rabelais (who else?): it is the reaction of Gargantua's companions to the Latin travesties of a Master of Arts, Janotus de Bragmardo, on the day of their arrival in Paris. If, after taking in the high camp of this episode, the reader returns to the opening pages of *Gargantua*, he will find the following couplet at the conclusion of the book's luminary poem:

Mieux est de ris que de larmes escripre,  
Pour ce que rire est le propre de l'homme.

[It is better to write of laughter than of tears,  
Because laughter is the property of man.]

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This notion — that there is something *properly human* about laughter — is not Rabelais' own; its ultimate source is Aristotle (*De partibus animalium*, III, x), and it remains a convention of the early 16th century physiologies with which Rabelais, an authority on Hippocrates, is intimately familiar. In later medical texts that are specifically concerned with laughter — often, again, coupled with tears, as in the *De risu et fletu* of Nicholas Jossius (1580) or the *Physiologia de risu et lacrymis* of Gocklenius the Elder (1597) — the reference to the *proprietas hominis* will likewise serve for a 'pretext', a pre-emptive defence of the contents, for those 'afraid that some may think too lightly of a book devoted to laughter' (Screech and Calder 1970: 218). Note that for Rabelais, moreover, the appeal to the status of a *proprietas* — a logical category defined by Porphyry at the end of antiquity, and exemplified precisely by human laughter — is evaluative: it introduces a 'better' into the alternative between laughter and tears, and thus into a cultural conflict that is central to early modernity, and whose patrons, for a literate elite, were the philosophers Democritus and Heraclitus.

Raised to universal intellectual significance, the cardinal attitudes of 'earnest and jest' are thus annexed to the evaluation of the human condition. Montaigne, for instance, in the chapter of his *Essais* (I.50) which he names for the two philosophers, will take up the cause of Democritus, but on the basis of a certain 'complication', or turning in on itself, of the *proprietas*: 'Nostre propre condition est autant ridicule, que risible' ['Our own peculiar condition is that we are as fit to be laughed at as able to laugh']. Fits of laughter belong here to a misanthropy that negates its object, reducing it to a quintessence of dust — a laughter, as Montaigne says, of the most consummate *disdain*, and thus negative of that *dignitas* which Renaissance discourse (following Pico's *Oratio*) had predicated of the properly human. On the other hand, it will not always be misanthropy that — to paraphrase Rabelais — 'democritises'. By the time of La Mothe le Vayer, the compassion of Montaigne's Heraclitus ('la plainte et la commiseration') has hardened into serious grievance, *chagrin*, with no less a claim to *contemptus mundi* — indeed, with the more rigorous claim, inasmuch as levity is now complacent and even cheerful in a world which

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seriousness repudiates. Laughter no longer scorns, but lightens the human condition; and as is well known, it is not derision which prevails in the melancholia of Molière's *Alceste*, but rather this 'chagrin austere et rebutant' of which La Mothe le Vayer's *Prose chagrine* is the intimate working-through, and *Le Misanthrope* the public debunking (as will be suggested, it is no accident that the stage should have a privileged function in the problematisation of these attitudes).<sup>2</sup>

In what follows, then, and in the broader project onto which this paper opens, it is a question of the interaction between 'earnest and jest', seriousness and playfulness, in early modern Europe. As well as a survey of these two cardinal attitudes in their cultural dimension, that is, in the history of ideas, this question supposes a continual reference of these attitudes back to that 'violent concussion of the substance of the brain', that complex moment of encounter, division and ambivalence, in which the identity and the proper humanity of the self are articulated. Mirth and severity would each be the profile of a certain relation to (and sentimentalisation of) this self as it surveys a world whose cross-currents of 'sinne' and 'follie' only intensify its polarisation: how am I, asked the *Greek Anthology* (9.148), to weep with Heraclitus *and* laugh with Democritus? Again, echoed the moderns, 'what if they liv'de, and shoulde behoulde this age?'<sup>3</sup>

Ultimately, my attention will be to the texts of one of the intellectual leaders of the Northern Renaissance, the exiled Catalan humanist Juan Luis Vivès (1492-1540), whose reputation, as far as it survives, centres on his practical as well as doctrinal contribution to the educational reforms of the 16th century. If I approach his work on that front, by way of a triptych of dialogues from his Latin textbook, the *Linguae Latinae Exercitatio*, this is not in order to localise the question, which would be situated, rather, at that point where the 'curriculum' is structured and informed by the concern for the self, that is, by the sum of moral and religious responsibilities in which the status of the subject is at issue. For the question in what follows is of the *limits* of the overall claim which these exigencies make upon the life of the mind; and I stress that the relevance of law here is bound up with this notion of the 'limit' and the activity of delimitation. In Vivès' text and in the

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Aristotelian source that I want to compare to it, the figure of the law is privileged to articulate the relation between the cardinal attitudes of the subject — to itself, its world and its life. I want to consider how, in early modernity, it is ‘law’ which makes the limit of these attitudes available to thought, to problematisation and programmatisation. Additionally, I want to explore how the complicity between law and seriousness — that is, the gravity of Law — is realised in the formal differences between a ‘law of play’ and the rules of particular games.

### The problem of play

Classically, the problem of the relation of ‘earnest and jest’ initially presents itself as one of style. Though it shared in the general discredit of the passions, laughter’s uniqueness to human being conducted to its representation as a spiritual privilege denied to other sentient — therefore literary prose had, in the formula *ioca seriis miscere*, accommodated the light and the playful so as to win access to the truth ‘in its droll aspect, in its gay relativity’ (Bakhtin 1984: 11). As an index of a speaker’s attitude, this judicious ‘mixture’ of earnest and jest could not but be taken up into ‘the ideal of life established by the panegyric style’ (Curtius 1953: 424): as Pliny puts it, it is not only *in studiis*, but *in vita* and according to a larger ideal of humanity, that a mean — with genuine moral significance — must be sought in this axis. Now, the analysis of this mean as a limit-condition had been undertaken by Aristotle in a chapter of the *Nicomachean Ethics*, which I later introduce for comparison with Vivès. But first of all, what must be noted is the fact that the limit is put to the test, recurrently and decisively, in a privileged figure of early modern discourse — that of the world as stage and the self as performer. Not only are the cardinal attitudes of ‘earnest and jest’ inextricably bound up with this totalising image of ‘play’; they *hinge* on its very ambivalence, on the subversive scepticism into which its moral threatens to spin off. Thus, on the one hand, Huizinga can reduce the 17th century theatrical conceit to ‘little more than an echo of the Neo-platonism that was then in vogue, with a markedly moralistic accent ... a variation on the ancient theme of the

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vanity of all things' (Huizinga 1955: 5). This 'echo', this 'accent' and this 'theme' would be of a single timbre; if there is, in the comparison of the world to a stage, an exigency to regard that world *sub specie ludi*, then the attitude motivated by this exigency is always, for Huizinga, the Ecclesiast's severe contempt. The perspective that presents life as role- and stage-play would then instil a mood of disillusionment: it would already represent a moment of rupture, a step out of play or out of step with play (*dis-in-lusio*). But on the other hand, the success of the conceit rests on its distillation of a sense of the plasticity of human nature that found candid expression in the thought of Giovanni Pico, for whom man is *ipsius plastes et factor*, his own sculptor and maker. For the later humanists, we are always already *enrolled* in a world that sets the stage for our 'self-fashioning': 'the theater pays tribute to a world that it loves — or at the least that it cannot live without — even as it exposes that world as a fiction' (Greenblatt 1980: 27). An explicitly theatrical sense of performance and improvisation thus consciously admits the fictive and the negative into the infrastructure of human experience; if, indeed, *all* is vanity, our very selves included, then at least a knowing complacency will spare us the most contemptible part, that of (to paraphrase Montaigne) the earnest fool of the farce.

This tension between 'earnest and jest' in the representation of life as role- and stage-play can perhaps best be seen in Vivès' own *Fabula de homine* (1518) — a narrative of Jupiter's creation of the universe as a spectacle for the Olympian gods, in which the 'archmime' man steals the show by his ability to freely perform the part of any other being, terrestrial or celestial (the conceptual model is Pico's *Oratio*). That anthropological truths should be expressed in the form of a fable rather than that of a treatise would be apt, because human being itself and in its selfhood is, in Vivès' risqué verdict, a play and a fable: *homo ipse ludus ac fabula est*. There is something properly human about play. What the text does, then, 'is to offer a definition of man in which the very form of the definition becomes part of the definition itself' (Cascardi 1984: 11). All the suspicions regarding the truth-value of that form (as per the classical quarrel between philosophy and poetry) must then be transposed along with it. And yet the moralist and

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pedagogue finds this transposition disconcerting; in his preface to the *Fabula* (addressed to a pupil, with all that such a relation entails in orthodoxy and responsibility) Vivès will recoil from its unbearable lightness, imposing an interpretative structure that guarantees the priority of the serious:

Its argument is ancient, because along with trifles it contains many things that are serious [*cum nugis habet permulta seria*], and therefore it can show us, if we are willing to lift up the soul itself a little higher by thought ... [that] all things in human life, except virtue, are laughable, like so many childish games [*tamquam pueriles quidam lusus*], and inanities that are wont to suddenly melt into air.

The allegory of play is here structured by two sets of data, one of which is privileged at the expense of the other. What matters would not be the theatrical and fabular form which, we will next be told, is 'true' to the human condition — that, here, is reduced to the status of the 'nugatory', a concession to ornament and figure whose effect perishes with the recognition of an *argumentum*: the text promises to reward its readers, on the condition of their willingness to uplift their thoughts. To assent is to ascend, towards things — or more exactly, towards the *very thought* of things — that are both 'serious' and 'better'. Above all, one must not merely *play*: this would be the message of a text that defines human being as play — which addresses both *dignitas* and *vanitas* to this figure.

Vivès' preface thus testifies to an unsettling tension between the *levity* that warrants its place in the text, by reference to a quality inherent to its subject-matter (the properly human); and an *elevation* expected of the reader in the name of an exclusive, 'better' truth, one that condemns a near-universal error, which it identifies in terms reserved by the tradition precisely for the 'light' and the non-serious: *lusus*, *ridicula*. The form prescribed by Vivès for the act of reading is therefore to set the reader in opposition to a text which would educe (once we overlook its recourse to histrionics, in favour of its 'argument') its own recognition as unsafe or inferior: the text is not only an admonition to the reader, it *is* itself, or is made of, the very delusion against which it admonishes. It proposes to the reader to define himself as a 'player' at

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bottom — but to rise above play.<sup>4</sup> Yet Vivès is at pains to *prescribe* this response, in a preface which stands in such marked contrast to both the tone and the sense of what follows. The very conditionality and volitionality of his instruction would seem to make the ‘right’ or ‘upright’ reading of the *Fabula* dependent on factors ulterior to the text, on an *unwillingness* to read that text on its own, potentially subversive terms. As play and fable, the *Fabula* seems to have represented for Vivès an all too obstinate remainder, a supplement dangerously eclipsing the unwritten treatise of which, he says in its first sentence, it was to be the index, the ‘auspice’.<sup>5</sup> Levity gains a place here, but a place that is strictly controlled and does not infringe upon the program of ‘virtue’, which is to say, the institution and salvation of the subject: let none dare to condemn or sport with (*ludere*) his own soul, Vivès notes elsewhere. All is vanity and mere play, then — *save the self*, the properly human.

## Aristotle and *eutrapelia*

It is the question of this ‘save the self’, of soteriology, as it is raised by the irruption of a sense of performance and improvisation into the structure of experience, that I now wish to take up. Aristotle’s relevance to this question, I have suggested, is bound up with the figure of a limit, and with the appeal to the law (*nomos* and autonomy). Indeed, the only qualification that can be made, *a priori*, to the notion of ‘seriousness’ is that it entails a *limitation* against laughter and play. But it follows from this that the two values are diametric; they are related in such a way that both their conjunction and their disjunction will be articulated at some limit or midpoint. A phenomenological analysis of such liminal, threshold-values is the form adopted by the Aristotelian ‘doctrine of the mean’; its profound merit is in explicating how — on what terms and with what stakes — a limit becomes available to thought, to problematisation and programmatisation. The discussion of *eutrapelia*, or urbane wit, in the *Nicomachean Ethics* (IV, viii) comes under the virtues of sociality, those having to do with human interaction (the others are friendship, *philia*, and frankness, *alêtheia*); in particular,

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it represents the optimal disposition with regard to the pleasure or pain to be had from an interaction that is purely recreational and diverting. The point is to outline how this optimum differs from the excessively voluptuary disposition of the buffoon (*bômolochos*), who exerts himself 'to be funny at all costs'; and from the impermeable demeanour of the dour man (*agroikos*), who takes exception to any pleasantries. I want to suggest that the significance of Aristotle's analysis can be reduced to two approaches, one 'physical' and the other 'political': a thematics of tension and torsion, and an appeal to autonomy. What emerges from this analysis is a correspondence between the limits of play, and the act of individuation or 'self-fashioning'.

On the one hand, the text is structured by the metaphors of rigor and plasticity. The one who takes exception to laughter and levity is *sklêros*, hard or stiff; although such a designation could be reduced to a figure for severity, a 'physical' quality is critical to its reconciliation with other terms of the text. In particular, it is confirmed by Aristotle's principle that 'just as the criterion of bodies is movement [*kinesis*], so it is with moral dispositions'. At the very least this 'criterion' suggests that the rigid or sclerotic *êthos* that is too-seriousness will tend to disqualify itself as an optimal value. This would be to interpret Aristotle as prescribing that 'just as bodies are *judged* [*krinetai*] by their movements, so are moral dispositions'. Accordingly, an absolute or total sclerosis of the *êthos*, if this were conceivable, could not even be judged ethically: void of criteria, it would absolve itself from the scale, and differ from its difference. The notion of this extra-scalar or extraordinary seriousness requires that this translation be qualified: the Greek word *krinein* refers not only to the act of decision, but specifically to distinction and differentiation, and to characteristics that effect distinction and difference. What Aristotle is proposing can function as a *principle of decision* only because it is primarily a *principle of individuation*: 'just as bodies are *individuated* by their movements, so are moral dispositions'. As that which, in repudiating jest, repudiates movement (one thinks of the *motoria* of Plautine comedy), seriousness is figured here as a retreat from 'character' in the sense of individual difference, or personality. If this *êthos* is characterised by a certain

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sclerosis, such a quality will nevertheless operate less as trait than as trace — marking the negation, the undifferentiation, of that which would constitute individual existence. It prefigures the rigor of mortality, or of fossilisation, in that it repudiates a certain ‘unstiffening’ (*anapausis*) which would be ‘necessary in life’, *en tōi biōi ... anankaion*.<sup>6</sup>

This insistence on *kinēsis* is continued in the figure of the *eutrapelos*, and in the etymology to which Aristotle refers it. Both *eutrapelos* (‘changeable, easily turning’) and its gloss *eutropos* (‘flexible, versatile’) — the pair corresponds to the analogy of ethics to physics — appeal to what could be designated as an ‘inflected’ movement. It would be a question here of the potential to change direction, to deviate from a fixed and inertial course. In the kinetic model, these *diversions* are described by Aristotle as ‘movements of the *ēthos*’. They would, accordingly, introduce the critical or characteristic moment of individuation; and yet they would run counter to any sense of appropriation, any assertion of the proper (the self). For inasmuch as it represents an excess over the inertia of disposition — inasmuch, that is, as it figures for an exorbitant or eccentric movement — *eutrapelia* names the potential of an *ēthos* to alight from itself, from a fossilised identity, to radically disrupt its *proper* consistency by a gesture of adaptation and improvisation (which Aristotle assigns to the category of ‘play’, *paidia*). The kinetic model thus culminates in an emphatically Protean vision; in the gloss of Jacques-Benigne Bossuet, the French anti-theatrical writer, the *eutrapelos* is the one ‘who can with great Ease turn himself into different forms and humours ... which implies the Levity and Inconstancy of the Person, the Meanness of turning Mimick’ (Bossuet 1699: 108). The very movement that individuates character draws the individual away from the (hypostasised) self. In other words: what announces itself as a thematics of torsion and tension would be complicated by the text’s own logic of individuation, and a dialectic whose terms are alteration and identity, mutability and immutability.

Aristotle’s second approach to the limitation against laughter may be viewed as seeking a provisional resolution of this dialectic, founded on an ideal of dexterity (*epidexiotēs*, referring both to the right hand

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and to an adept sensibility). The appeal to the manual, and by extension to touch, must initially signal a continuation of the earlier theme: it would be a question of the ‘handling’ of movement, and especially of the proper limits of movement. Virtue in sociality therefore presumes an implicit sensitivity (nothing as yet permits us to speak of knowledge) to excesses on the side either of tension or of torsion: the habituation of a kinaesthetic response. The ‘social sense’ suggested in this way would not add anything new thematically to a text already subscribed to a kinetic model. What is crucial, rather, is Aristotle’s collocation of the *epidexios* with the *eleutherios*, which at least situates the problems of seriousness within the context of social and political being. Yet the text should not be automatically presumed to appeal to a ‘liberality’ or ‘liberty’ that would consist in the autonomy of an individual subject; one must respect the ‘nationalist’ matrix of the values of *eleutheria/-otês*, the archaic mentality that ‘to be born of a good stock is to be free; it comes to the same thing’ (Benveniste 1973: 262). A preliminary analogy may be to the function of *generosité* in the work of Descartes and Corneille — above all for its trace of the *gens*, the ‘nation’ or natality which is marked in the Greek word by its Indo-European root, \**leudh-*. In general, the subjective moment in antiquity — both Foucault (1988: 41-3) and Arendt (1958: 41) qualify the example of aristocratic ‘distinction’ — remains conditional on the objective transcendence of the *polis*, in contrast to which private existence must appear as privation and deracination. ‘Liberty’ or ‘liberality’, in such a context, derives not from the inalienable but from the common. It is precisely in this light that Aristotle’s approach to the sensibility of the *eleutherios* is so enigmatic; the relevant passage runs:

So he will not make all [mockery]; for mockery [*skômma*] is insult, and lawgivers forbid some insulting; it should perhaps be the same with mocking. The refined and liberal man, then, will be disposed such that he is a law to himself [*nomos ôn heautôi*].

It may be asked just how general the crucial formula *nomos ôn heautôi* is intended to be. Aristotle’s concerns have been prepared by the arch-categories of pain and pleasure: and his specific object is

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*skômma*, ‘mockery’, rather than the laughable in general and in the form usually opposed to seriousness, that is, the *geloios*. Nor would *skômma* be coextensive with *paidia*; the conflict between non-seriousness and the figure of the law might seem to be, for Aristotle, a tightly confined one. However, notably, this confinement will become contentious within a Christian framework that renders worldly pleasure and pain irrelevant: Bossuet, noting Paul’s admonition against *eutrapelia* (Ephesians: 5:4), argues that the Vulgate translation, *scurrilitas*, which includes abusive ridicule, would be distortive where it is a question of the ‘idle word’ that must be accounted for on the day of judgment. The translation obscures what, for Paul and for the mainstream of the Christian tradition, would be the fundamental profanity of all verbal sporting — *urbanitas* as well as *scurrilitas*.<sup>7</sup> Conversely, nothing strictly precludes the interpretation that *skômma* is only incidental to Aristotle’s statement of the liberal vocation in the formula *nomos ôn heautôi*; nothing, that is, requires that this formula apply only with respect to scurrilous mockery. Rather, what is paramount is, on the one hand, the form taken by the *hexis* of the liberal man, which is established here by analogy to the activity of the sovereign lawgiver (*nomothetês*); and, on the other hand, the experience which provokes this intervention of thought, and which it would address — sociality (*homilia, koinônia*), the individual’s assimilation to the virtual equivalence of the crowd or ‘peer group’. This last, it will be recalled, is the domain of existence to which *eutrapelia* and its allied values, *philia* and *alêtheia*, refer. They are values produced only in an interaction with the other considered as ‘another’, as the (free-) born equal of the self. For this reason, they will tend to subvert any ethical program founded on a notion of the inalienable. It is this that makes Aristotle’s cursory formulation of such a program — his literal appeal to ‘autonomous’ moral agency, to something like the legislative direction of private conscience — so interesting. One must attempt to reconcile this figure with the context of ‘being-in-common’ (as disclosed in *eleutheria/-otês*); to suggest that a ‘subject’ is here called to institute itself in the mode of a legislative principle would be to make the appeal

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to social 'skill' and 'sensitivity' (*epidexiotês*) almost meaningless. Rather, the text must be seen to pose the problem of accommodation, of a sense of proportion between the self and the social, identity and assimilation. The liberal man's skill is one of equipoise, which provides the measure both of his installation in and distance from the group. What is proposed according to the form of self-legislation would thus be only a necessary complement to the 'experiment in a complex self' (Lanham 1976: 6),<sup>8</sup> in which the demands of personal integrity enter into a liminal exchange with the shifting and alien pressures of participation.

On the basis of Aristotle's analyses, the 'tension' or rigor of seriousness would represent 'a conservative ethical emphasis in which the key terms are those of order, stability, constancy, and integrity, as against a more existentialist emphasis that prizes growth, process, exploration, flexibility and variety of response' (Barish 1981: 117). Because this contrast was articulated at a tangible edge between the individual and the social milieu, the self and the other, the question of autonomy was taken up into this opposition. And yet the exigencies which are brought into play here will recast the Aristotelian mean in a radical preference for identity, and call for the retrenchment of those elements of heterogeneity and heteronomy which had been admitted into the paradigm. For the human self, they entail a standard of validity which rejects the mutability, the polytropy, of *eutrapelia* both for its formal instability and its adaptation to a milieu. In other words, these sketches of a moderate morality of play afford us a glimpse of those exigencies — the 'rigor' of self-sameness and the 'law' of moral authenticity — that will imbue the formulation of an *antitheatrical self* in early modernity. They are the stuff of Bossuet's remark that the 'very Art, which qualifies a Player to act so many several Parts, and put on such different disguises, was thought by *Plato* to taint Humane Conversation with a character of Levity, unsuitable to the Dignity of a Man, and directly opposite to that Sincerity required in all our Manners and Behaviour' (Bossuet 1699: 54). It is of decisive significance that Bossuet here superimposes Aristotelian analysis and Platonic critique:

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the concern with 'levity' prefigures his broader attack on social *eutrapelia*, which at the same time is semantically reconfigured to centre on the idea of simulation, 'the Meanness of turning Mimick'. The problems of acting, imitation and performance thus become focal; what is revived in the name of Plato *as well as* in the charge of 'levity' is a genuinely ontological suspicion of imitation, of play as play-acting — and in particular, of the multiplicity or polytropy of the imitative art ('so many ... such different'). What solicits both Bossuet's program of *simplicité* and the broader program of seriousness which it embodies, are the incursions of simulation and improvisation into the modern experience of the self — precisely that liberation of the potential to 'act' in the world that had been both exalted and mistrusted by Vivès in the *Fabula*. The legal form will present itself as a solution to the conflict between this exaltation and this mistrust.

### Legislating and legitimating play

We have seen that in Vivès' writing the motif of 'play' has for one of its coordinates the biblical notion of the vanity of all things — and thus expresses a moral and cultural universe shadowed by the scandal of mortality. Throughout the long haul of his work, Vivès imagines the wisdom and ways of the world not just to have been made foolish by God, as Erasmus does — more than this, as we have seen, he imagines the human achievement in its entirety *sub specie ludi*. What is 'in earnest' for us is not our condition, which is one of exile and passage, but our finality and salvation. However, having extended the empire of play right up to the limit of death, Vivès effectively universalises the question of that limit. Or in other words, there never ceases to be such a question, unto death: inasmuch as the subject lives, it is always already *in play*. In order to open the teleological and soteriological plots to *homo ludens*, then, and unable to argue (against the human condition) for a strict repudiation of levity, a refusal to 'play along', Vivès returns to the licence extended by Aristotle and Aquinas. That licence will be satisfied here as long as our 'playing along' at no point becomes an

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end in itself, as long as it is subtended by what Vivès calls the ‘memory’ of our true end, a memory of the hereafter, which is here now, in play but not compromised by its relativity. This vigil assures the disinterestedness of an entire regime of activity *known* to be ‘puerile’ and ‘ludicrous’, and it is maintained by and as law.

It is in the three dialogues of the *Exercitatio* concerned with play that Vivès gives the force of applied moral instruction to a subject that might otherwise be seen as belonging merely to the figural stratum of his writing. The colloquies in question — ‘The Boy Prince’, ‘The Card-Game’, and ‘The Laws of Play’ — amount to a sustained commentary on the accommodation, temporal and attitudinal, of play in the context of education. The terms of their rationale, however, are universal and final, and Vivès overtly intends them as a summary of the status of play in human life. The first of the three dialogues carries out this expansion of the problem beyond the concerns of the traditional *institutio principum*. Vivès presents the ‘boy prince’ of its title — the future Hapsburg Emperor Philip II — with a ‘choice of Hercules’ represented by his two senior companions, the allegorical types of Morobulus and Sophobulus, the ‘playboy’ and the sage.<sup>9</sup> The latter asks the prince to ‘make-believe’ ( *fingere* — the term reminds us that these lessons must be communicated in fiction or fable) that his life were a single, narrow plank across a dangerous river. Indicating the same river that he has earlier described as ‘even and placid’, he adds all the same that those who have fallen from the makeshift bridge have barely survived its deceptive waters. The moral of this fiction will be the value of *studium* (whose venue, for the young boy, the *puer*, will be the institution called *ludus*, ‘grammar school’ — again, serious things enter into conjunction with the boyish and the playful). Thus, the *vanae delectatiunculae lusionum* or *nugarum* are the treacherous waters which make the wayside so insecure and consuming. The function of this first dialogue in Vivès’ triptych is, then, to affirm that the relative values of earnest and jest are to be coordinated to a notion of finality and of salvation — such that they represent contrary forms of human response to these exigencies.

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And yet, at the very least, the second and third dialogues argue a revision of the structural incompatibility that would seem to pit the two attitudes in *strict* opposition. The latter, ‘The Laws of Play’, begins with the return of one ‘Scintilla’ to Valencia after his student years at the University of Paris — a homecoming which Vivès himself, having left Valencia in 1509, would never undertake.<sup>10</sup> The ‘laws’ to which it refers are given the full force of this designation; they are attributed by Scintilla to one of his remote Parisian masters, minimally represented as a universal and statutory legislator, one who has set down six formulae *in universum de lusione omni*, and *quas descriptas in tabella appenderat*. And having at first declined to recount them (because, he explains, he is possessed by a longing to see once more the homeland from which he has been so long absent), Scintilla only assents to his companions’ requests when their party reaches the *forum* and *curia* of the prefecture of Valencia — and when it is put to him here that *nusquam potest rectius leges ferre*. The accent is thus on the justification of play in terms of a rationality which is qualitatively different from that which informs the rules of this or that game; these laws are universalisable, and they are referred to the proper, ‘constitutional’ matrix of human justice at large. This rationality brings them into the orbit of Vivès’ principle of final value. They are in effect the abstraction and formalisation of a consensus whose outlines have been given, casually, around the card-table of the preceding dialogue. There, Vivès not only presents them *in situ* and *in actu*, as it were, but indicates the privilege of these ‘laws of play’ over the confusion, the plurality and the improbability of the rules *in games* (there are Spanish and French decks of playing-cards, each divided into different suits differently composed; they can be dealt from left to right as in Belgium, or right to left as in Spain — so that the game is eventually spoiled by the inexperience and the confusion of the participants).

Of the ‘laws’ themselves, some would redound to a morality of decorum, rather than to the question of play as such; thus, for instance, the second law — *cum quibus ludendum* — is directed to the contact with offensive or sacrilegious speech. Or again, the fourth — *qua*

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*sponsione* — which cautions against a shift in the game's centre of gravity towards the material, monetary incentive; but neither absolutely, nor out of a general contempt for gain. Rather, even these 'contagions' (of sacrilege and spoils, both of which are represented at the card-table) are *properly* addressed by the laws of play, because it is a question, for Vivès, of protecting the special attitude of play itself — an 'equanimity' subtended by a deferral of the interest in finality and salvation, which imparts a temporary *illusion*, though not a total *delusion*, of liberty and of gratuity — in order to justify the licence which the laws as a whole define. There is in effect a central, unitary concept of the purpose of play in life and relative to the ultimate purpose of life, which is articulated across the various details of his formulae. Thus, for instance, his rejection of purely aleatory games (as part of the third law — *quo ludo*), because they do not stimulate, and thus reinvigorate, the *animus*. The same rationale determines Vivès' cautions against impassioned language and high stakes; these introduce a factor either of anger or anxiety, deleterious to the conditions in which the forces of the *animus* can be optimised (and it is an optimum rather than a maximum of stimulation which play seeks). Most notable of all these specifications, perhaps, is that Vivès would encourage a small stake on the outcome, in order that the game not become 'fatuous' and enervated, and unfit to exercise the mind.<sup>11</sup>

The unity of Vivès' laws is thus in the management of mental stamina. Underlying them as their premise is a recognition of the finitude of the human condition, but in terms of its 'forces' — that is, in terms of a model in which human finitude supposes a *quantitative* measure. 'Play' would be an accommodation to these *vires finitae*;<sup>12</sup> its 'end' in every sense — its intent, but also its extent in what is for Vivès the decisive dimension of play, that of time — is the restitution of stamina to a threshold, at which the forces of mind and body are again adequate to their final function. The accent is on the vitiation of the human condition, and the debility of the natural faculties; whatever sovereignty the laws might devolve to the rational subject, whatever autonomy (in the Aristotelian sense) they might bring into play, the exigency they

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obey is pointedly negative. The subject they instate is one who *must relapse*, who will in time fall away from his proper course, and into diversion. Play, then, is a ‘necessary evil’; if it can still be subsumed into the Vivian natural law — ‘directed according to the rule of reason’, in Aquinas’ formula — this is in order that a limit be set to its exorbitance. Law and reason militate against the notion of ‘free play’; here, Vivès’ concept of the refractory *animus* issues in a tacit censure of Giovanni Pico’s dignification of human liberty. For Vivès, the *mira libertas* of the human genius — a more identifiable condensation of Pico’s discourse is hard to imagine — is an access to delinquency. The exercise conceded to it must therefore be rationed, and qualified by a form imparting only the ‘illusion’ of real liberty. This ‘rationing’ of leisure introduces a certain diffraction of the experience of time; the first and last of the laws dictate *quando* and *quamdiu ludendum*, circumscribing the term of an interlude. The management of the *vires* is structured, then, as a sort of ‘time-management’, and according to the necessity to use time optimally — or again, accountably. For by reducing the entire question of play to a calculus of two quanta — stamina (as a potential for serious work or thought) and time — Vivès would gesture towards a *ratio reddenda*: play must be held to account. What is to be recollected here is the centrality, to the questions of play and levity in the Christian tradition, of the biblical admonition against the ‘idle word’. The verse itself nowhere forbids ‘idleness’, but only states that men will give an account of it on the day of judgment (*reddent rationem ... in die iudicii*). Whilst most of the patristic literature passes over the reference to process, as though its outcome were made inexorable by the indictment of ‘every’ idle word, Vivès is more constructive in his commitment to a soteriology which would *take into account* both the lenten and the carnivalesque, the ‘day of judgment’ and the *obscenus dies* (on which Scintilla and his fellow students were permitted games of cards by the author of the laws). This approach is tailored to the universal significance of play as it is presented in the *Fabula*. And yet, the ‘time-managing’ subject instated here seems, in comparison to Aristotle, a creature of bourgeois modernity. Vivès has

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taken the appeal to *autonomy* in the Aristotelian text, an appeal that had been advanced from within the political horizon, and transformed it into a private principle of *economy*.

## Notes

- 1 It is Bataille, presenting this event as an access to the sovereign moment in the subject's experience, who insists on the dissolution of difference (and of the positivity of the 'happy' and the 'sad' as distinct objects of the operation of knowledge) in 'the paradox of happy tears'. A question which was for the Renaissance doctor to be explained in anatomical terms leads Bataille to posit instead a fissure in the smooth continuum of experience, promising — as though '*the impossible coming true*' — a deliverance of that experience from its subjection, that is, its constriction to the service of the subject. 'What appeared to me was not the paradoxical aspect of the equivalences ... what was most striking was the sameness of *uncalculated* reactions which, from a definite point of view, did away with the difference between the positive and the negative, extreme happiness and extreme unhappiness' (Bataille 1993: 209).
- 2 The political endgame of this repudiation and recrimination, first aimed at worldly mirth and joy, are also evident: recall that the militant faction which stoked Savonarola's 'bonfire of the vanities' in Florence was known, derisively, as the *piagnoni* (a term, cognate with Montaigne's *plainte*, that is fixed by the humanist tradition on Heraclitus, as in the *Riso de Democrito et pianto de Heraclito* of the Milanese courtier Antonio Fregoso). Here, the bitter earnest of Augustinian moralism is extended to the republican context.
- 3 The anonymous lyric from the Greek Anthology is imitated by Alciato in his *Emblematum Liber* (1521) and more loosely by Whitney in his *A Choice of Emblemes* (1586); they reverberate this sentiment that the paradox of 'Heraclitus and Democritus' — that one can weep and laugh at the same world — is all the more true of the new world of modernity. Alciato's adaptation of the Greek reads: *Plus solito humanae nunc defle incommoda vitae Heraclite: scatet pluribus illa malis. Tu rursus, si quando alias, extolle cachinnum Democrite: illa magis ludicra facta fuit. Interea haec cernens meditor, qua denique tecum fine fleam, aut tecum quomodo splene iocer*

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[Weep for the troubles of human life now more than usual, Heraclitus: it overflows with many calamities. You, on the other hand, Democritus, laugh even more, if ever you laughed: life has become more ridiculous. Meanwhile, seeing these things, I wonder: how far in the end, Heraclitus, I may weep with you, or how, Democritus, I may joke merrily with you]. The iconography of Alciato's (Figure 1) and Whitney's (Figure 2) woodblocks reflects a tradition that continues into the Baroque, in representations of the two philosophers by Dutch and Flemish painters:



Figure 1



Figure 2

- 4 These gestures amount to a deformation of what Stanley Fish has described as the 'aesthetic of the good physician', in which the authority of the text is gradually invalidated as it redirects attention 'from what is happening on the page to what is happening in the reader', whose innate competence it activates — by means of enigma and paradox — at its own expense (Fish 1972: 4). But the strategy which Fish describes is dependent on a breakthrough from 'argument' to an immense 'vision', whereas the conclusion of Vivès' fable — the conclusion that is in fact stated before the threshold of fable is crossed — is the controlled recognition of an *argumentum*.
- 5 *Libet mihi a ludis fabulisque auspicari hanc meam de homine dissertationem.*
- 6 This is the point from which Aquinas would set out in the *Summa Theologica*, II, IIae, 168. It will be noted that Aquinas reproduces Aristotle's analogy of ethics to physics, pointing out that just as the body needs rest because it is equal to a limited amount of exertion, so the soul must be

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refreshed when it is oppressed by an excess of mental effort — interestingly, he adds that this oppression is most acute in those whose souls are engaged in the work of contemplation, understanding by this a separation from sensibilia that will be echoed by Marsilio Ficino (*De vita*) in his concern for the effects of Saturn and melancholia on *studiosi* (what Burton will later call ‘miserics of scholars’). For Aquinas, however, the remedy is much closer to the cause: he proposes a ‘slackening of the tension of the reason’s study’. This limited license for recreational play, with its accent on the eventual return to serious exertion, is the solution taken up by the humanists — by Vivès, in his ‘laws of play’, and by More in defense of ‘merry tales.’ ‘And Saint Thomas saith that proper pleasant talking, which is called wittiness, is a good virtue serving to refresh the mind and make it quick and lusty to labor and study again’ (More 1965: 69).

- 7 The vitiation of *eutrapelia* on such unquestionable apostolic authority is the centrepiece of Bossuet’s answer to Aristotle; Aquinas’ support for the philosopher is moot, as he was unacquainted with the original Greek of Paul’s letters, which leaves no room for the Aristotelian value.
- 8 It is worth reproducing Lanham’s account of *homo rhetoricus*, the subject of ‘word-play’, for its similarities to the experience evoked by the humanist *dignitas* tradition including Vivès’ *Fabula*, and its opposition to the *vanitas* tradition to which Vivès owes no less allegiance: ‘He cannot be surprised ceaselessly *pushing through* language to a preexistent, divinely certified reality beyond. No such reality exists for him. He can play freely with language. For him it owes no transcendental loyalties ... The rhetorical view of life, then, begins with the centrality of language. It conceives reality as fundamentally dramatic, man as fundamentally a role-player ... *Homo rhetoricus* cannot, to sum up, be *serious*. He is not pledged to a single set of values and the cosmic orchestration they adumbrate. He is not, like the serious man, alienated from his own language. And if he relinquishes the luxury of a central self, a soul, he gains the tolerance, and usually the sense of humor, that comes from knowing he — and others — may not only *think* differently, but may *be* differently’: 4-5. For Lanham, the two avatars of the Western self (the central-serious and the social-rhetorical) exist in an ‘uneasy combination’; the purpose of the present paper, of course, is to consider how the legal vocation mediates this dual allegiance.
- 9 Here, the *moria* or *stultitia* of ‘Morobulus’ is a matter of wanton — that is,

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illegitimate — playfulness or ‘trifling’; his character is given as *‘nugari avidissimus et nugis semper assuetus’*.

- 10 His Jewish heritage made a return to the territory of the Inquisition impossible. A confessional subtext is also present in the second dialogue, where one of the adolescent participants recites for the partners of his card-table a song lately composed by their teacher Vivès ‘as he wandered along the wall of Bruges’. When these companions scoff that their tutor had sung it ‘with the voice of a goose’, but that he might now render it ‘with a swan’s voice’, he rejoins by recasting the quatrain as a crypto-elegy, setting it under the sign of mortality: ‘for the swan only sings as death urges him on’. Play too would seem to blossom under the shadow of the death’s head, where, ‘in the end’ (*denique*), it would assume a form and a consciousness that distinguishes it from the innocent amusements of youth: *Ludunt et pueri, ludunt juvenesque senesque; ingenium, gravitas cani, prudentia, ludus. Denique mortalis sola virtute remota, quid nisi nugatrix, et vana est fabula, vita* [Boys play, young and old men play; the wit, wisdom and gravity of age, all a game. In the end, what is mortal life, excepting only virtue, but a vain and trifling fable].
- 11 One of the few commentaries on Vivès’ *leges*, that of Roland Renson, quite arbitrarily omits the rule *qua sponsione* from its account of the two dialogues, even referring to them as ‘les cinq lois:’ (Renson 1982: 479). The only reason that can be proposed for this omission is Renson’s accent on the historical role of Vivès’ text as a precursor of puritan attitudes to sport, or rather of a ‘protestant play ethic’ that would privilege the physical and ascetic in recreational activities, ‘alors que les jeux folkloristes traditionnels et les passe-temps de ‘Merry old England’ (ou de l’Ancien Regime) furent stigmatisés d’illégaux’. In outline, this is in fact Vivès’ position — but he envisages that a wager is beneficial, if not necessary, to recreation and the maintenance of the work-play-work pattern.
- 12 *De Tradendis Disciplinis* III.iv (Vivès 1783).

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