

D ECONSTRUCTION **AND THE** **P** OSSIBILITY **OF J** USTICE

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Force of Law: The "Mystical Foundation of Authority"

Jacques Derrida

I

C'est ici un devoir, je dois *m'adresser* à vous en anglais. This is an obligation, I must *address* myself to you in English.

The title of this colloquium and the problem that it requires me, as you say transitively in your language, to address, have had me musing for months. Although I've been entrusted with the formidable honor of the "keynote address," I had nothing to do with the invention of this title or with the implicit formulation of the problem. "Deconstruction and the Possibility of Justice": the conjunction "and" brings together words, concepts, perhaps things that don't belong to the same category. A conjunction such as "and" dares to defy order, taxonomy, classificatory logic, no matter how it works: by analogy, distinction or opposition. An ill-tempered speaker might say: I don't see the connection, no rhetoric could bend itself to such an exercise. I'd be glad to try to speak of each of these things or these categories ("deconstruction," "possibility," "justice") and even of these syncategoremes ("and," "the," "of"), but not at all in this order, this *taxis*, this taxonomy or this syntagm.

Translated by Mary Quaintance. The author would like to thank Sam Weber for his help in the final revision of this text. Except for some footnotes added after the fact, this text corresponds to the version distributed at the colloquium on "Deconstruction and the Possibility of Justice" (October 1989, Cardozo Law School), of which Jacques Derrida read only the first part to open the session. For lack of time, Derrida was unable to conclude the elaboration of the work in progress, of which this is only a preliminary version. In addition, the second part of the lecture, the part that precisely was not read but only discussed at the same colloquium, was delivered on April 26, 1990, to open a colloquium organized by Saul Friedlander at the University of California, Los Angeles on *Nazism and the "Final Solution": Probing the Limits of Representation*.

4 / The "Mystical Foundation of Authority"

Such a speaker wouldn't merely be in a bad temper, he'd be in bad faith. And even unjust. For one could easily propose an interpretation that would do the title justice. Which is to say in this case an adequate and lucid and so rather suspicious interpretation of the title's intentions or *vouloir-dire*. This title suggests a question that itself takes the form of a suspicion; does deconstruction insure, permit, authorize the possibility of justice? Does it make justice possible, or a discourse of consequence on justice and the conditions of its possibility? Yes, certain people would reply; no, replies the other party. Do the so-called deconstructionists have anything to say about justice, anything to do with it? Why, basically, do they speak of it so little? Does it interest them, in the end? Isn't it because, as certain people suspect, deconstruction doesn't in itself permit any just action, any just discourse on justice but instead constitutes a threat to *droit*, to law or right, and ruins the condition of the very possibility of justice? Yes, certain people would reply, no, replies the other party. In this first fictive exchange one can already find equivocal slippages between law (*droit*) and justice. The "sufferance" of deconstruction, what makes it suffer and what makes those it torments suffer, is perhaps the absence of rules, of norms, and definitive criteria that would allow one to distinguish unequivocally between *droit* and justice.

That is the choice, the "either/or," "yes or no" that I detect in this title. To this extent, the title is rather violent, polemical, inquisitorial. We may fear that it contains some instrument of torture—that is, a manner of interrogation that is not the most just. Needless to say, from this point on I can offer no response, at least no reassuring response, to any questions put in this way ("either/or," "yes or no"), to either party or to either party's expectations formalized in this way.

Je dois, donc, c'est ici un devoir, m'adresser à vous en anglais. So I must, this is an obligation, address myself to you in English. *Je le dois* . . . that means several things at once.

1. *Je dois* speak English (how does one translate this "*dois*," this *devoir*? I must? I should, I ought to, I have to?) because it has been imposed on me as a sort of obligation or condition by a sort of symbolic force or law in a situation I do not control. A sort of *polemos* already concerns the appropriation of language: if, at least, I want to make myself understood, it is necessary that I speak your language, I must.

2. I must speak your language because what I shall say will thus be more *juste*, or deemed more *juste*, and be more justly appreciated, *juste* this time [in the sense of "just right,"] in the sense of an adequation between what is and what is said or thought, between what is said and what is understood, indeed between what is thought and said

or heard and understood by the majority of those who are here and who manifestly lay down the law. "*Faire la loi*" (laying down the law) is an interesting expression that we shall have more to say about later.

3. I must speak in a language that is not my own because that will be more just, in another sense of the word *juste*, in the sense of justice, a sense which, without worrying about it too much for now, we can call juridico-ethico-political: it is more just to speak the language of the majority, especially when, through hospitality, it grants a foreigner the right to speak. It's hard to say if the law we're referring to here is that of decorum, of politeness, the law of the strongest, or the equitable law of democracy. And whether it depends on justice or law (*droit*). Also, if I am to bend to this law and accept it, a certain number of conditions are necessary: for example, I must respond to an invitation and manifest my desire to speak here, something that no one apparently has constrained me to do; I must be capable, up to a certain point, of understanding the contract and the conditions of the law, that is, of at least minimally adopting, appropriating, your language, which from that point ceases, at least to this extent, to be foreign to me. You and I must understand, in more or less the same way, the translation of my text, initially written in French; this translation, however excellent it may be (and I'll take this moment to thank Mary Quaintance) necessarily remains a translation, that is to say an always possible but always imperfect compromise between two idioms.

This question of language and idiom will doubtless be at the heart of what I would like to propose for discussion tonight.

There are a certain number of idiomatic expressions in your language that have always been rather valuable to me as they have no strict equivalent in French. I'll cite at least *two* of them, before I even begin. They are not unrelated to what I'd like to try to say tonight.

A. The first is "to enforce the law," or "enforceability of the law or contract." When one translates "to enforce the law" into French, by "*appliquer la loi*," for example, one loses this direct or literal allusion to the force that comes from within to remind us that law is always an authorized force, a force that justifies itself or is justified in applying itself, even if this justification may be judged from elsewhere to be unjust or unjustifiable. Applicability, "enforceability," is not an exterior or secondary possibility that may or may not be added as a supplement to law. It is the force essentially implied in the very concept of *justice as law* (*droit*), of justice as it becomes *droit*, of the law as "*droit*" (for I want to insist right away on reserving the possibility of a *justice*, indeed of a law that not only exceeds or contradicts "law" (*droit*) but also, perhaps, has no relation to law, or maintains such a strange relation to it that it may just as well command the "*droit*"

that excludes it). The word "enforceability" reminds us that there is no such thing as law (*droit*) that doesn't imply *in itself, a priori, in the analytic structure of its concept*, the possibility of being "enforced," applied by force. There are, to be sure, laws that are not enforced, but there is no law without enforceability, and no applicability or enforceability of the law without force, whether this force be direct or indirect, physical or symbolic, exterior or interior, brutal or subtly discursive and hermeneutic, coercive or regulative, and so forth.

How are we to distinguish between this force of the law, this "force of law," as one says in English as well as in French, I believe, and the violence that one always deems unjust? What difference is there between, *on the one hand*, the force that can be just, or in any case deemed legitimate (not only an instrument in the service of law but the practice and even the realization, the essence of *droit*), and *on the other hand* the violence that one always deems unjust? What is a just force or a non-violent force? To stay with the question of idiom, let me turn here to a German word that will soon be occupying much of our attention: *Gewalt*. In English, as in French, it is often translated as "violence." The Benjamin text that I will be speaking to you about soon is entitled "*Zur Kritik der Gewalt*," translated in French as "*Critique de la violence*" and in English as "Critique of Violence." But these two translations, while not altogether *injustes* (and so not altogether violent), are very active interpretations that don't do justice to the fact that *Gewalt* also signifies, for Germans, legitimate power, authority, public force. *Gesetzgebende Gewalt* is legislative power, *geistliche Gewalt* the spiritual power of the church, *Staatsgewalt* the authority or power of the state. *Gewalt*, then, is both violence and legitimate power, justified authority. How are we to distinguish between the force of law of a legitimate power and the supposedly ordinary violence that must have established this authority and that could not itself have been authorized by any anterior legitimacy, so that, in this initial moment, it is neither legal nor illegal—or, others would quickly say, neither just nor unjust? I gave a lecture in Chicago a few days ago—which I'm deliberately leaving aside here, even though its theme is closely connected—devoted to a certain number of texts by Heidegger in which the words *Walten* and *Gewalt* play a decisive role, as one cannot simply translate them by either force or violence, especially not in a context where Heidegger will attempt to demonstrate his claim that originally, and for example for Heraclitus, *Dikē*—justice, *droit*, trial, penalty or punishment, vengeance, and so forth—is *Eris* (conflict, *Streit*, discord, *polemos* or *Kampf*), that is, it is *adikia*, injustice, as well. We could come back to this, if you wish, during the discussion, but I prefer to hold off on it for now.

Since this colloquium is devoted to deconstruction and the possibility of justice, my first thought is that in the many texts considered "deconstructive", and particularly in certain of those that I've published myself, recourse to the word "force" is quite frequent, and in strategic places I would even say decisive, but at the same time always or almost always accompanied by an explicit reserve, a guardedness. I have often called for vigilance, I have asked myself to keep in mind the risks spread by this word, whether it be the risk of an obscure, substantialist, occulto-mystic concept or the risk of giving authorization to violent, unjust, arbitrary force. I won't cite these texts. That would be self-indulgent and would take too much time, but I ask you to trust me. A first precaution against the risks of substantialism or irrationalism that I just evoked involves the differential character of force. For me, it is always a question of differential force, of difference as difference of force, of force as *différance* (*différance* is a force *diffé-rée-différente*), of the relation between force and form, between force and signification, performative force, illocutionary or perlocutionary force, of persuasive and rhetorical force, of affirmation by signature, but also and especially of all the paradoxical situations in which the greatest force and the greatest weakness strangely enough exchange places. And that is the whole history. What remains is that I've always been uncomfortable with the word force, which I've often judged to be indispensable, and I thank you for thus forcing me to try and say a little more about it today. And the same thing goes for justice. There are no doubt many reasons why the majority of texts hastily identified as "deconstructionist"—for example, mine—*seem*, I do say *seem*, not to foreground the theme of justice (as theme, precisely), or the theme of ethics or politics. Naturally this is only *apparently so*, if one considers, for example, (I will only mention these) the many texts devoted to Levinas and to the relations between "violence and metaphysics," or to the philosophy of right, Hegel's, with all its posterity in *Glas*, of which it is the principal *motif*, or the texts devoted to the drive for power and to the paradoxes of power in *Spéculer—sur Freud*, to the law, in *Devant la loi* (on Kafka's *Vor dem Gesetz*) or in *Déclaration d'Indépendance*, in *Admiration de Nelson Mandela ou les lois de la réflexion*, and in many other texts. It goes without saying that discourses on double affirmation, the gift beyond exchange and distribution, the undecidable, the incommensurable or the incalculable, or on singularity, difference and heterogeneity are also, through and through, at least obliquely discourses on justice.

Besides, it was normal, foreseeable, desirable that studies of deconstructive style should culminate in the problematic of law (*droit*), of law and justice. (I have elsewhere tried to show that the essence of law

is not prohibitive but affirmative.) Such would even be the most proper place for them, if such a thing existed. A deconstructive interrogation that starts, as was the case here, by destabilizing or complicating the opposition between *nomos* and *physis*, between *thésis* and *physis*—that is to say, the opposition between law, convention, the institution on the one hand, and nature on the other, with all the oppositions that they condition; for example, and this is only an example, that between positive law and natural law (the *différance* is the displacement of this oppositional logic), a deconstructive interrogation that starts, as this one did, by destabilizing, complicating, or bringing out the paradoxes of values like those of the proper and of property in all their registers, of the subject, and so of the responsible subject, of the subject of law (*droit*) and the subject of morality, of the juridical or moral person, of intentionality, etc., and of all that follows from these, such a deconstructive line of questioning is through and through a problematization of law and justice. A problematization of the foundations of law, morality and politics. This questioning of foundations is neither foundationalist nor anti-foundationalist. Nor does it pass up opportunities to put into question or even to exceed the possibility or the ultimate necessity of questioning, of the questioning form of thought, interrogating without assurance or prejudice the very history of the question and of its philosophical authority. For there is an authority—and so a legitimate force in the questioning form of which one might ask oneself whence it derives such great force in our tradition.

If, hypothetically, it had a proper place, which is precisely what cannot be the case, such a deconstructive "questioning" or meta-questioning would be more at home in law schools, perhaps also—this sometimes happens—in theology or architecture departments, than in philosophy departments and much more than in the literature departments where it has often been thought to belong. That is why, without knowing them well from the inside, for which I feel I am to blame, without pretending to any familiarity with them, I think that the developments in "critical legal studies" or in work by people like Stanley Fish, Barbara Herrnstein Smith, Drucilla Cornell, Sam Weber and others, which situates itself in relation to the articulation between literature and philosophy, law and politico-institutional problems, are today, from the point of view of a certain deconstruction, among the most fertile and the most necessary. They respond, it seems to me, to the most radical programs of a deconstruction that would like, in order to be consistent with itself, not to remain enclosed in purely speculative, theoretical, academic discourses but rather (with all due respect to Stanley Fish) to aspire to something more consequential, to *change* things and to intervene in an efficient and responsible, though

always, of course, very mediated way, not only in the profession but in what one calls the *cité*, the *polis* and more generally the world. Not, doubtless, to change things in the rather naive sense of calculated, deliberate and strategically controlled intervention, but in the sense of maximum intensification of a transformation in progress, in the name of neither a simple symptom nor a simple cause (other categories are required here). In an industrial and hyper-technologized society, academia is less than ever the monadic or monastic ivory tower that in any case it never was. And this is particularly true of "law schools."

I hasten to add here, briefly, the following three points:

1. This conjunction or conjuncture is no doubt inevitable between, on the one hand, a deconstruction of a style more directly philosophical or motivated by literary theory and, on the other hand, juridico-literary reflection and "critical legal studies."

2. It is certainly not by chance that this conjunction has developed in such an interesting way in this country; this is another problem—urgent and compelling—that I must leave aside for lack of time. There are no doubt profound and complicated reasons of global dimensions, I mean geo-political and not merely domestic, for the fact that this development should be first and foremost North American.

3. Above all, if it has seemed urgent to give our attention to this joint or concurrent development and to participate in it, it is just as vital that we do not confound largely heterogeneous and unequal discourses, styles and discursive contexts. The word "deconstruction" could, in certain cases, induce or encourage such a confusion. The word itself gives rise to so many misunderstandings that one wouldn't want to add to them by reducing all the styles of critical legal studies to one or by making them examples or extensions of Deconstruction with a capital "D." However unfamiliar they may be to me, I know that these efforts in critical legal studies have their history, their context, and their proper idiom; in relation to such a philosophico-deconstructive questioning they are often (we shall say for the sake of brevity) uneven, timid, approximating or schematic, not to mention belated, although their specialization and the acuity of their technical competence puts them, on the other hand, very much in advance of whatever state deconstruction finds itself in a more literary or philosophical field. Respect for contextual, academico-institutional, discursive specificities, mistrust for analogies and hasty transpositions, for confused homogenizations, seem to me to be the first imperatives the way things stand today. I hope in any case that this encounter will leave us with the memory of disparities and disputes at least as much as it leaves us with agreements, with coincidences or consensus.

I said a moment ago: it only appears that deconstruction, in its

manifestations most recognized as such, hasn't "addressed," as one says in English, the problem of justice. It only appears that way, but one must account for appearances, "keep up appearances" as Aristotle said, and that is how I'd like to employ myself here: to show why and how what is now called Deconstruction, while seeming not to "address" the problem of justice, has done nothing but address it, if only *obliquely*, unable to do so directly. *Obliquely*, as at this very moment, in which I'm preparing to demonstrate that one cannot speak *directly* about justice, thematize or objectivize justice, say "this is just" and even less "I am just," without immediately betraying justice, if not law (*droit*).¹

But I have not yet begun. I started by saying that I must address myself to you in your language and announced right away that I've always found at least two of your idiomatic expressions invaluable, indeed irreplaceable. One was "to enforce the law," which always reminds us that if justice is not necessarily law (*droit*) or the law, it cannot become justice legitimately or *de jure* except by withholding force or rather by appealing to force from its first moment, from its first word. "At the beginning of justice there was *logos*, speech or language," which is not necessarily in contradiction with another *incipit*, namely, "In the beginning there will have been force."

Pascal says it in a fragment I may return to later, one of his famous "*pensées*," as usual more difficult than it seems. It starts like this: "*Justice, force.*—Il est juste que ce qui est juste soit suivi, il est nécessaire que ce qui est le plus fort soit suivi." (*Justice, force.*—It is just that what is just be followed, it is necessary that what is strongest be followed" frag. 298, Brunschvicq edition) The beginning of this fragment is already extraordinary, at least in the rigor of its rhetoric. It says that what is just must be *followed* (followed by consequence, followed by effect, applied, *enforced*) and that what is strongest must also be followed (by consequence, effect, and so on). In other words, the common axiom is that the just and the strongest, the most just *as* or *as well as* the strongest, *must* be followed. But this "must be followed," common to the just and the strongest, is "right" ("*juste*") in one case, "necessary" in the other: "It is just that what is just be followed"—in other words, the concept or idea of the just, in the sense of justice, implies analytically and *a priori* that the just be "*sui*vi," followed up, enforced, and it is just—also in the sense of "just right"—to think this way. "It is necessary that what is strongest be enforced."

And Pascal continues: "*La justice sans la force est impuissante*" ("Justice without force is impotent")—in other words, justice isn't

justice, it is not achieved if it doesn't have the force to be "enforced;" a powerless justice is not justice, in the sense of *droit*—"la force sans la justice est tyrannique. La justice sans force est contredite, parce qu'il y a toujours des méchants; la force sans la justice est accusée. Il faut donc mettre ensemble la justice et la force; et pour cela faire que ce qui est juste soit fort, ou que ce qui est fort soit juste" ("force without justice is tyrannical. Justice without force is contradictory, as there are always the wicked; force without justice is accused of wrong. And so it is necessary to put justice and force together; and, for this, to make sure that what is just be strong, or what is strong be just.") It is difficult to decide whether the "it is necessary" in this conclusion ("And so it is necessary to put justice and force together") is an "it is necessary" prescribed by what is just in justice or by what is necessary in force. But that is a pointless hesitation since justice demands, as justice, recourse to force. The necessity of force is implied, then, in the "*juste*" in "justice."

This *pensée*, what continues and concludes it ("And so, since it was not possible to make the just strong, the strong have been made just") deserves a longer analysis than I can offer here. The principle of my analysis (or rather of my active and anything but non-violent interpretation), of the interpretation at the heart of what I will *indirectly* propose in the course of this lecture, will, notably in the case of this Pascal *pensée*, run counter to tradition and to its most obvious context. This context and the conventional interpretation that it seems to dictate runs, precisely, in a conventionalist direction toward the sort of pessimistic, relativistic and empiricist skepticism that drove Arnaud to suppress these *pensées* in the Port Royal edition, alleging that Pascal wrote them under the impression of a reading of Montaigne, who thought that laws were not in themselves just but rather were just only because they were laws. It is true that Montaigne used an interesting expression, which Pascal takes up for his own purposes and which I'd also like to reinterpret and to consider apart from its most conventional and conventionalist reading. The expression is "*fondement mystique de l'autorité*," "mystical foundation of authority." Pascal cites Montaigne without naming him when he writes in *pensée* 293: "... l'un dit que l'essence de la justice est l'autorité du législateur, l'autre la commodité du souverain, l'autre la coutume présente; et c'est le plus sûr: rien, suivant la seule raison, n'est juste de soi; tout branle avec le temps. La coutume fait toute l'équité, par cette seule raison qu'elle est reçue; c'est le fondement mystique de son autorité. Qui la ramène à son principe, l'anéantit." ("... one man says that the essence of justice is the authority of the legislator, another that it is the con-

venience of the king, another that it is current custom; and the latter is closest to the truth: simple reason tells us that nothing is just in itself; everything crumbles with time. Custom is the sole basis for equity, for the simple reason that it is received; it is the mystical foundation of its authority. Whoever traces it to its source annihilates it.")

Montaigne was in fact talking about a "mystical foundation" of the authority of laws: "Or les loix," he says, "*se maintiennent en crédit, non parce qu'elles sont justes, mais parce qu'elles sont loix: c'est le fondement mystique de leur auctorité, elles n'en ont point d'autre. . . . Quiconque leur obéit parce qu'elles sont justes, ne leur obéit pas justement par où il doit*" ("And so laws keep up their good standing, not because they are just, but because they are laws: that is the mystical foundation of their authority, they have no other. . . . Anyone who obeys them because they are just is not obeying them the way he ought to.")²

Here Montaigne is clearly distinguishing laws, that is to say *droit*, from justice. The justice of law, justice as law is not justice. Laws are not just as laws. One obeys them not because they are just but because they have authority.

Little by little I shall explain what I understand by this expression "mystical foundation of authority." It is true that Montaigne also wrote the following, which must, again, be interpreted by going beyond its simply conventional and conventionalist surface: "*notre droit même a, dit-on des fictions légitimes sur lesquelles il fonde la vérité de sa justice*"; "(even our law, it is said, has legitimate fictions on which it founds the truth of its justice)." I used these words as an epigraph to a text on *Vor dem Gesetz*. What is a legitimate fiction? What does it mean to establish the truth of justice? These are among the questions that await us. It is true that Montaigne proposed an analogy between this supplement of a legitimate fiction, that is, the fiction necessary to establish the truth of justice, and the supplement of artifice called for by a deficiency in nature, as if the absence of natural law called for the supplement of historical or positive, that is to say, fictional, law (*droit*), just as—to use Montaigne's analogy—"les femmes qui emploient des dents d'ivoire où les leurs naturelles leur manquent, et, au lieu de leur vrai teint, en forgent un de quelque matière étrangère . . ." (*Livre II, ch. XII, p. 601 Pléiade*); ("women who use ivory teeth when they're missing their real ones, and who, instead of showing their true complexion, forge one with some foreign material . . .").

Perhaps the Pascal *pensée* that, as he says, "puts together" justice and force and makes force an essential predicate of justice (by which he means "*droit*" more than justice) goes beyond a conventionalist or

utilitarian relativism, beyond a nihilism, old or new, that would make the law a "masked power," beyond the cynical moral of La Fontaine's "The Wolf and the Sheep," according to which "*La raison du plus fort est toujours la meilleure*" ("Might makes right").

The Pascalian critique, in its principle, refers us back to original sin and to the corruption of natural laws by a reason that is itself corrupt. ("*Il y a sans doute des lois naturelles; mais cette belle raison a tout corrompu*," section IV, 294; "There are, no doubt, natural laws; but this fine thing called reason has corrupted everything," and elsewhere: "*Notre justice s'anéantit devant la justice divine*," 263; "Our justice comes to nothing before divine justice." I cite these *pensées* to prepare for our reading of Benjamin.)

But if we set aside the functional mechanism of the Pascalian critique, if we dissociate it from Christian pessimism, which is not impossible, then we can find in it, as in Montaigne, the basis for a modern critical philosophy, indeed for a critique of juridical ideology, a desedimentation of the superstructures of law that both hide and reflect the economic and political interests of the dominant forces of society. This would be both possible and always useful.

But beyond its principle and its mechanism, this Pascalian *pensée* perhaps concerns a more intrinsic structure, one that a critique of juridical ideology should never overlook. The very emergence of justice and law, the founding and justifying moment that institutes law implies a performative force, which is always an interpretative force: this time not in the sense of law in the service of force, its docile instrument, servile and thus exterior to the dominant power, but rather in the sense of law that would maintain a more internal, more complex relation with what one calls force, power or violence. Justice—in the sense of *droit* (right or law)—would not simply be put in the service of a social force or power, for example an economic, political, ideological power that would exist outside or before it and which it would have to accommodate or bend to when useful. Its very moment of foundation or institution (which in any case is never a moment inscribed in the homogeneous tissue of a history, since it is ripped apart with one decision), the operation that amounts to founding, inaugurating, justifying law (*droit*), making law, would consist of a *coup de force*, of a performative and therefore interpretative violence that in itself is neither just nor unjust and that no justice and no previous law with its founding anterior moment could guarantee or contradict or invalidate. No justificatory discourse could or should insure the role of metalanguage in relation to the performativity of institutive language or to its dominant interpretation.

Here the discourse comes up against its limit: in itself, in its per-

formative power itself. It is what I here propose to call the mystical. Here a silence is walled up in the violent structure of the founding act. Walled up, walled in because silence is not exterior to language. It is in this sense that I would be tempted to interpret, beyond simple commentary, what Montaigne and Pascal call the mystical foundation of authority. One can always turn what I am doing or saying here back onto—or against—the very thing that I am saying is happening thus at the origin of every institution. I would therefore take the use of the word "mystical" in what I'd venture to call a rather Wittgensteinian direction. These texts by Montaigne and Pascal, along with the texts from the tradition to which they belong and the rather active interpretation of them that I propose, could be brought into Stanley Fish's discussion in "Force" (*Doing What Comes Naturally*) of Hart's *Concept of Law*, and several others, implicitly including Rawls, himself criticized by Hart, as well as into many debates illuminated by certain texts of Sam Weber on the agnostic and not simply intra-institutional or mono-institutional character of certain conflicts in *Institution and Interpretation*.³

Since the origin of authority, the foundation or ground, the position of the law can't by definition rest on anything but themselves, they are themselves a violence without ground. Which is not to say that they are in themselves unjust, in the sense of "illegal." They are neither legal nor illegal in their founding moment. They exceed the opposition between founded and unfounded, or between any foundationalism or anti-foundationalism. Even if the success of performatives that found law or right (for example, and this is more than an example, of a state as guarantor of a right) presupposes earlier conditions and conventions (for example in the national or international arena), the same "mystical" limit will reappear at the supposed origin of said conditions, rules or conventions, and at the origin of their dominant interpretation.

The structure I am describing here is a structure in which law (*droit*) is essentially deconstructible, whether because it is founded, constructed on interpretable and transformable textual strata (and that is the history of law [*droit*], its possible and necessary transformation, sometimes its amelioration), or because its ultimate foundation is by definition unfounded. The fact that law is deconstructible is not bad news. We may even see in this a stroke of luck for politics, for all historical progress. But the paradox that I'd like to submit for discussion is the following: it is this deconstructible structure of law (*droit*), or if you prefer of justice as *droit*, that also insures the possibility of deconstruction. Justice in itself, if such a thing exists, outside or beyond law, is not deconstructible. No more than deconstruction itself,

if such a thing exists. Deconstruction is justice. It is perhaps because law (*droit*) (which I will consistently try to distinguish from justice) is constructible, in a sense that goes beyond the opposition between convention and nature, it is perhaps insofar as it goes beyond this opposition that it is constructible and so deconstructible and, what's more, that it makes deconstruction possible, or at least the practice of a deconstruction that, fundamentally, always proceeds to questions of *droit* and to the subject of *droit*. (1) The deconstructibility of law (*droit*), of legality, legitimacy or legitimation (for example) makes deconstruction possible. (2) The undeconstructibility of justice also makes deconstruction possible, indeed is inseparable from it. (3) The result: deconstruction takes place in the interval that separates the undeconstructibility of justice from the deconstructibility of *droit* (authority, legitimacy, and so on). It is possible as an experience of the impossible, there where, even if it does not exist (or does not yet exist, or never does exist), *there is* justice. Wherever one can replace, translate, determine the x of justice, one should say: deconstruction is possible, as impossible, to the extent (there) where *there is* (undeconstructible) x, thus to the extent (there) where *there is* (the undeconstructible).

In other words, the hypothesis and propositions toward which I'm tentatively moving here call more for the subtitle: justice as the possibility of deconstruction, the structure of law (*droit*) or of the law, the foundation or the self-authorization of law (*droit*) as the possibility of the exercise of deconstruction. I'm sure this isn't altogether clear; I hope, though I'm not sure of it, that it will become a little clearer in a moment.

I've said, then, that I have not yet begun. Perhaps I'll never begin and perhaps this colloquium will have to do without a "keynote," except that I've already begun. I authorize myself—but by what right?—to multiply protocols and detours. I began by saying that I was in love with at least two of your idioms. One was the word "enforceability," the other was the transitive use of the verb "*to address*." In French, one addresses oneself to someone, one addresses a letter or a word, also a transitive use, without being sure that they will arrive at their destination, but one does not address a problem. Still less does one address someone. Tonight I have agreed by contract to address, in English, a problem, that is to go straight toward it and straight toward you, thematically and without detour, in addressing myself to you in your language. Between law or right, the rectitude of address, direction and uprightness, we should be able to find a direct line of communication and to find ourselves on the right track. Why does deconstruction have the reputation, justified or not, of treating things

obliquely, indirectly, with "quotation marks," and of always asking whether things arrive at the indicated address? Is this reputation deserved? And, deserved or not, how does one explain it?

And so we have already, in the fact that I speak another's language and break with my own, in the fact that I give myself up to the other, a singular mixture of force, *justesse* and justice.

And I am obliged, it is an obligation, to "address" in English, as you say in your language, infinite problems, infinite in their number, infinite in their history, infinite in their structure, covered by the title *Deconstruction and the Possibility of Justice*. But we already know that these problems are not infinite simply because they are infinitely numerous, nor because they are rooted in the infinity of memories and cultures (religious, philosophical, juridical, and so forth) that we shall never master. They are infinite, if we may say so, in themselves, because they require the very experience of the aporia that is not unrelated to what I just called the "mystical." When I say that they require the very experience of aporia, I mean two things. (1) As its name indicates, an experience is a traversal, something that *traverses* and travels toward a destination for which it finds the appropriate passage. The experience finds its way, its passage, it is possible. And in this sense it is impossible to have a full experience of aporia, that is, of something that does not allow passage. An aporia is a non-road. From this point of view, justice would be the experience that we are not able to experience. We shall soon encounter more than one aporia that we shall not be able to pass. But (2) I think that there is no justice without this experience, however impossible it may be, of aporia. Justice is an experience of the impossible. A will, a desire, a demand for justice whose structure wouldn't be an experience of aporia would have no chance to be what it is, namely, a call for justice. Every time that something comes to pass or turns out well, every time that we placidly apply a good rule to a particular case, to a correctly subsumed example, according to a determinant judgment, we can be sure that law (*droit*) may find itself accounted for, but certainly not justice. Law (*droit*) is not justice. Law is the element of calculation, and it is just that there be law, but justice is incalculable, it requires us to calculate with the incalculable; and aporetic experiences are the experiences, as improbable as they are necessary, of justice, that is to say of moments in which the decision between just and unjust is never insured by a rule.

And so I must *address* myself to you and "address" problems, I must do it briefly and in a foreign language. To do it briefly, I ought to do it as directly as possible, going straight ahead, without detour, without historical alibi, without obliqueness, toward you, supposedly

the primary addressees of this discourse, but at the same time toward the place of essential decision for said problems. Address—as direction, as *rectitude*—says something about *droit* (law or right); and what we must not forget when we want justice, when we want to be just, is the *rectitude* of address. *Il ne faut pas manquer d'adresse*, I might say in French, but above all *il ne faut pas manquer l'adresse*, one mustn't miss the address, one mustn't mistake the address and the address always turns out to be singular. An address is always singular, idiomatic, and justice, as law (*droit*), seems always to suppose the generality of a rule, a norm or a universal imperative. How are we to reconcile the act of justice that must always concern singularity, individuals, irreplaceable groups and lives, the other or myself *as other*, in a unique situation, with rule, norm, value or the imperative of justice which necessarily have a general form, even if this generality prescribes a singular application in each case? If I were content to apply a just rule, without a spirit of justice and without in some way inventing the rule and the example for each case, I might be protected by law (*droit*), my action corresponding to objective law, but I would not be just. I would act, Kant would say, *in conformity* with duty, but not *through* duty or *out of respect* for the law. Is it ever possible to say: an action is not only legal, but also just? A person is not only within his rights but also within justice? Such a man or woman is just, a decision is just? Is it ever possible to say: I know that I am just? Allow me another detour.

To address oneself to the other in the language of the other is, it seems, the condition of all possible justice, but apparently, in all rigor, it is not only impossible (since I cannot speak the language of the other except to the extent that I appropriate it and assimilate it according to the law of an implicit third) but even excluded by justice as law (*droit*), inasmuch as justice as right seems to imply an element of universality, the appeal to a third party who suspends the unilaterality or singularity of the idioms.

When I address myself to someone in English, it is always an ordeal for me. For my addressee, for you as well, I imagine. Rather than explain why and lose time in doing so, I begin *in medias res*, with several remarks that for me tie the agonizing gravity of this problem of language to the question of justice, of the possibility of justice.

First remark: On the one hand, for fundamental reasons, it seems just to *us* to "*rendre la justice*," as one says in French, in a given idiom, in a language in which all the "subjects" concerned are supposedly competent, that is, capable of understanding and interpreting—all the "subjects," that is, those who establish the laws, those who judge and those who are judged, witnesses in both the broad and narrow sense,

all those who are guarantors of the exercise of justice, or rather of *droit*. It is unjust to judge someone who does not understand the language in which the law is inscribed or the judgment pronounced, etc. We could give multiple dramatic examples of violent situations in which a person or group of persons is judged in an idiom they do not understand very well or at all. And however slight or subtle the difference of competence in the mastery of the idiom is here, the violence of an injustice has begun when all the members of a community do not share the same idiom throughout. Since in all rigor this ideal situation is never possible, we can perhaps already draw some inferences about what the title of our conference calls "the possibility of justice." The violence of this injustice that consists of judging those who don't understand the idiom in which one claims, as one says in French, that "*justice est faite*," ("justice is done," "made") is not just any violence, any injustice. This injustice supposes that the other, the victim of the language's injustice, is capable of a language in general, is man as a speaking animal, in the sense that we, men, give to this word language. Moreover, there was a time, not long ago and not yet over, in which "we, men" meant "we adult white male Europeans, carnivorous and capable of sacrifice."

In the space in which I'm situating these remarks or reconstituting this discourse one would not speak of injustice or violence toward an animal, even less toward a vegetable or a stone. An animal can be made to suffer, but we would never say, in a sense considered proper, that it is a wronged subject, the victim of a crime, of a murder, of a rape or a theft, of a perjury—and this is true *a fortiori*, we think, for what we call vegetable or mineral or intermediate species like the sponge. There have been, there are still, many "subjects" among mankind who are not recognized as subjects and who receive this animal treatment (this is the whole unfinished history I briefly alluded to a moment ago). What we confusedly call "animal," the living thing as living and nothing else, is not a subject of the law or of law (*droit*). The opposition between just and unjust has no meaning in this case. As for trials for animals (there have been some) or lawsuits against those who inflict certain kinds of suffering on animals (legislation in certain Western countries provides for this and speaks not only of the rights of man but also of the rights of animals in general), these are considered to be either archaisms or still marginal and rare phenomena not constitutive of our culture. In our culture, carnivorous sacrifice is fundamental, dominant, regulated by the highest industrial technology, as is biological experimentation on animals—so vital to our modernity. As I have tried to show elsewhere,⁴ carnivorous sacri-

fice is essential to the structure of subjectivity, which is also to say to the founding of the intentional subject and to the founding, if not of the law, at least of law (*droit*), the difference between the law and law (*droit*), justice and law (*droit*), justice and the law here remaining open over an abyss. I will leave these problems aside for the moment, along with the affinity between carnivorous sacrifice, at the basis of our culture and our law, and all the cannibalisms, symbolic or not, that structure intersubjectivity in nursing, love, mourning and, in truth, in all symbolic or linguistic appropriations.

If we wish to speak of injustice, of violence or of a lack of respect toward what we still so confusedly call animals—the question is more topical than ever, and so I include in it, in the name of deconstruction, a set of questions on carno-phallogocentrism—we must reconsider in its totality the metaphysico-anthropocentric axiomatic that dominates, in the West, the thought of just and unjust.

From this very first step we can already glimpse the first of its consequences, namely, that a deconstructionist approach to the boundaries that institute the human subject (preferably and paradigmatically the adult male, rather than the woman, child or animal) as the measure of the just and the unjust, does not necessarily lead to injustice, nor to the effacement of an opposition between just and unjust but may, in the name of a demand more insatiable than justice, lead to a reinterpretation of the whole apparatus of boundaries within which a history and a culture have been able to confine their criteriology. Under the hypothesis that I shall only touch lightly upon for the moment, what is currently called deconstruction would not correspond (though certain people have an interest in spreading this confusion) to a quasi-nihilistic abdication before the ethico-politico-juridical question of justice and before the opposition between just and unjust, but rather to a double movement that I will schematize as follows:

1. The sense of a responsibility without limits, and so necessarily excessive, incalculable, before memory; and so the task of recalling the history, the origin and subsequent direction, thus the limits, of concepts of justice, the law and right, of values, norms, prescriptions that have been imposed and sedimented there, from then on remaining more or less readable or presupposed. As to the legacy we have received under the name of justice, and in more than one language, the task of a historical and interpretative memory is at the heart of deconstruction, not only as philologico-etymological task or the historian's task but as responsibility in face of a heritage that is at the same time the heritage of an imperative or of a sheaf of injunctions. Deconstruction is already engaged by this infinite demand of justice, for justice,

which can take the aspect of this "mystique" I spoke of earlier. One must be *juste* with justice, and the first way to do it justice is to hear, read, interpret it, to try to understand where it comes from, what it wants of us, knowing that it does so through singular idioms (*Diké*, *Jus*, *justitia*, *justice*, *Gerechtigkeit*, to limit ourselves to European idioms which it may also be necessary to delimit in relation to others: we shall come back to this later) and also knowing that this justice always addresses itself to singularity, to the singularity of the other, despite or even because it pretends to universality. Consequently, never to yield on this point, constantly to maintain an interrogation of the origin, grounds and limits of our conceptual, theoretical or normative apparatus surrounding justice is on deconstruction's part anything but a neutralization of interest in justice, an insensitivity toward injustice. On the contrary, it hyperbolically raises the stakes of exacting justice; it is sensitivity to a sort of essential disproportion that must inscribe excess and inadequation in itself and that strives to denounce not only theoretical limits but also concrete injustices, with the most palpable effects, in the good conscience that dogmatically stops before any inherited determination of justice.

2. This responsibility toward memory is a responsibility before the very concept of responsibility that regulates the justice and appropriateness (*justesse*) of our behavior, of our theoretical, practical, ethico-political decisions. This concept of responsibility is inseparable from a whole network of connected concepts (property, intentionality, will, freedom, conscience, consciousness, self-consciousness, subject, self, person, community, decision, and so forth) and any deconstruction of this network of concepts in their given or dominant state may seem like a move toward irresponsibility at the very moment that, on the contrary, deconstruction calls for an increase in responsibility. But in the moment that an axiom's credibility (*crédit*) is suspended by deconstruction, in this structurally necessary moment, one can always believe that there is no more room for justice, neither for justice itself nor for theoretical interest directed toward the problems of justice. This moment of suspense, this period of *époché*, without which, in fact, deconstruction is not possible, is always full of anxiety, but who will claim to be just by economizing on anxiety? And this anxiety-ridden moment of suspense—which is also the interval of spacing in which transformations, indeed juridico-political revolutions take place—cannot be motivated, cannot find its movement and its impulse (an impulse which itself cannot be suspended) except in the demand for an increase in or supplement to justice, and so in the experience of an inadequation or an incalculable disproportion. For in the end, where will deconstruction find its force, its movement or its motiva-

tion if not in this always unsatisfied appeal, beyond the given determinations of what we call, in determined contexts, justice, the possibility of justice? But it is still necessary to interpret this disproportion. If I were to say that I know nothing more just than what I today call deconstruction (nothing more just, I'm not saying nothing more legal or more legitimate), I know that I wouldn't fail to surprise or shock not only the determined adversaries of said deconstruction or of what they imagine under this name but also the very people who pass for or take themselves to be its partisans or its practitioners. And so I will not say it, at least not directly and not without the precaution of several detours.

As you know, in many countries, in the past and in the present, one founding violence of the law or of the imposition of state law has consisted in imposing a language on national or ethnic minorities regrouped by the state. This was the case in France on at least two occasions, first when the Villers-Cotteret decree consolidated the unity of the monarchic state by imposing French as the juridico-administrative language and by forbidding that Latin, the language of law and of the Church, allow all the inhabitants of the kingdom to be represented in a common language, by a lawyer-interpreter, without the imposition of the particular language that French still was. It is true that Latin was already a violent imposition and that from this point of view the passage from Latin to French was only the passage from one violence to another. The second major moment of imposition was that of the French Revolution, when linguistic unification sometimes took the most repressive pedagogical turns, or in any case the most authoritarian ones. I'm not going to engage in the history of these examples. We could also find them in this country, today, where this linguistic problem is still acute and will be for a long time, precisely in this place where questions of politics, education and law (*droit*) are inseparable (and where a debate has been recently begun on "national standards" of education).

Now I am moving right along, without the least detour through historical memory toward the formal, abstract statement of several aporias, those in which, between law and justice, deconstruction finds its privileged site—or rather its privileged instability. Deconstruction is generally practiced in two ways or two styles, although it most often grafts one on to the other. One takes on the demonstrative and apparently ahistorical allure of logico-formal paradoxes. The other, more historical or more anamnestic, seems to proceed through readings of texts, meticulous interpretations and genealogies. I will devote my attention to these two practices in turn.

First I will drily, directly state, I will "address" the following apo-

rias. In fact there is only one aporia, only one potential aporetic that infinitely distributes itself. I shall only propose a few examples that will suppose, make explicit or perhaps produce a difficult and unstable distinction between justice and *droit*, between justice (infinite, incalculable, rebellious to rule and foreign to symmetry, heterogeneous and heterotropic) and the exercise of justice as law or right, legitimacy or legality, stabilizable and statutory, calculable, a system of regulated and coded prescriptions. I would be tempted, up to a certain point, to compare the concept of justice—which I'm here trying to distinguish from law—to Levinas's, just because of this infinity and because of the heteronomic relation to others, to the faces of otherness that govern me, whose infinity I cannot thematize and whose hostage I remain. In *Totalité and Infini* ("Verité et Justice," p. 62), Levinas writes: "... *la relation avec autrui—c'est à dire la justice*" ("... the relation to others—that is to say, justice")—which he defines, moreover, as "*droiture de l'accueil fait au visage*" (p. 54) ("equitable honoring of faces"). Equity (*la droiture*) is not reducible to right or law (*le droit*), of course, but the two values are not unrelated.

Levinas speaks of an infinite right: in what he calls "Jewish humanism," whose basis is not "the concept of man," but rather the other; "the extent of the right of the other" is that of "a practically infinite right"; "*l'étendue du droit d'autrui [est] un droit pratiquement infini*" ("*Un droit infini*," in *Du Sacré au Saint, Cinq Nouvelles Lectures Tal-mudiques*, pp. 17–18). Here equity is not equality, calculated proportion, equitable distribution or distributive justice but rather absolute dissymmetry. And Levinas's notion of justice might sooner be compared to the Hebrew equivalent of what we would perhaps translate as "sanctity." But since Levinas's difficult discourse would give rise to other difficult questions, I cannot be content to borrow conceptual moves without risking confusions or analogies. And so I will go no further in this direction. Everything would still be simple if this distinction between justice and *droit* were a true distinction, an opposition whose functioning was logically regulated and permitted mastery. But it turns out that *droit* claims to exercise itself in the name of justice and that justice is required to establish itself in the name of a law that must be "enforced." Deconstruction always finds itself between these two poles. Here, then, are some examples of aporias.

1. *First aporia: épokhè of the rule.*

Our common axiom is that to be just or unjust and to exercise justice, I must be free and responsible for my actions, my behavior, my thought, my decisions. We would not say of a being without freedom, or at least of one without freedom in a given act, that its decision

is just or unjust. But this freedom or this decision of the just, if it is one, must follow a law or a prescription, a rule. In this sense, in its very autonomy, in its freedom to follow or to give itself laws, it must have the power to be of the calculable or programmable order, for example as an act of fairness. But if the act simply consists of applying a rule, of enacting a program or effecting a calculation, we might say that it is legal, that it conforms to law, and perhaps, by metaphor, that it is just, but we would be wrong to say that the decision was just.

To be just, the decision of a judge, for example, must not only follow a rule of law or a general law but must also assume it, approve it, confirm its value, by a reinstituting act of interpretation, as if ultimately nothing previously existed of the law, as if the judge himself invented the law in every case. No exercise of justice as law can be just unless there is a "fresh judgment" (I borrow this English expression from Stanley Fish's article, "Force," in *Doing What Comes Naturally*). This "fresh judgment" can very well—*must* very well—conform to a preexisting law, but the reinstituting, reinventive and freely decisive interpretation, the responsible interpretation of the judge requires that his "justice" not just consist in conformity, in the conservative and reproductive activity of judgment. In short, for a decision to be just and responsible, it must, in its proper moment if there is one, be both regulated and without regulation: it must conserve the law and also destroy it or suspend it enough to have to reinvent it in each case, rejustify it, at least reinvent it in the reaffirmation and the new and free confirmation of its principle. Each case is other, each decision is different and requires an absolutely unique interpretation, which no existing, coded rule can or ought to guarantee absolutely. At least, if the rule guarantees it in no uncertain terms, so that the judge is a calculating machine, which happens, and we will not say that he is just, free and responsible. But we also won't say it if he doesn't refer to any law, to any rule or if, because he doesn't take any rule for granted beyond his own interpretation, he suspends his decision, stops short before the undecidable or if he improvises and leaves aside all rules, all principles. It follows from this paradox that there is never a moment that we can say *in the present* that a decision *is* just (that is, free and responsible), or that someone *is* a just man—even less, "*I am just*." Instead of "just," we could say legal or legitimate, in conformity with a state of law, with the rules and conventions that authorize calculation but whose founding origin only defers the problem of justice. For in the founding of law or in its institution, the same problem of justice will have been posed and violently resolved, that is to say buried, dissimulated, repressed. Here the best paradigm is the founding

of the nation-states or the institutive act of a constitution that establishes what one calls in French *l'état de droit*.

2. *Second aporia: the ghost of the undecidable.*

Justice, as law, is never exercised without a decision that *cuts*, that divides. This decision does not simply consist in its final form, for example a penal sanction, equitable or not, in the order of proportional or distributive justice. It begins, it ought to begin, by right or in principle, with the initiative of learning, reading, understanding, interpreting the rule, and even in calculating. For if calculation is calculation, the decision to calculate is not of the order of the calculable, and must not be.

The undecidable, a theme often associated with deconstruction, is not merely the oscillation between two significations or two contradictory and very determinate rules, each equally imperative (for example respect for equity and universal right but also for the always heterogeneous and unique singularity of the unsubsumable example). The undecidable is not merely the oscillation or the tension between two decisions; it is the experience of that which, though heterogeneous, foreign to the order of the calculable and the rule, is still obliged—it is of obligation that we must speak—to give itself up to the impossible decision, while taking account of law and rules. A decision that didn't go through the ordeal of the undecidable would not be a free decision, it would only be the programmable application or unfolding of a calculable process. It might be legal; it would not be just. But in the moment of suspense of the undecidable, it is not just either, for only a decision is just (in order to maintain the proposition "only a decision is just," one need not refer decision to the structure of a subject or to the propositional form of a judgment). And once the ordeal of the undecidable is past (if that is possible), the decision has again followed a rule or given itself a rule, invented it or reinvented, reaffirmed it, it is no longer *presently* just, fully just. There is apparently no moment in which a decision can be called presently and fully just: either it has not yet been made according to a rule, and nothing allows us to call it just, or it has already followed a rule—whether received, confirmed, conserved or reinvented—which in its turn is not absolutely guaranteed by anything; and, moreover, if it were guaranteed, the decision would be reduced to calculation and we couldn't call it just. That is why the ordeal of the undecidable that I just said must be gone through by any decision worthy of the name is never past or passed, it is not a surmounted or sublated (*aufgehoben*) moment in the decision. The undecidable remains caught, lodged, at least as a ghost—but an essential ghost—in every decision, in every event of decision. Its ghostliness deconstructs from within any assurance of

presence, any certitude or any supposed criteriology that would assure us of the justice of a decision, in truth of the very event of a decision. Who will ever be able to assure us that a decision as such has taken place? That it has not, through such and such a detour, followed a cause, a calculation, a rule, without even that imperceptible suspense that marks any free decision, at the moment that a rule is, or is not, applied?

The whole subjectal axiomatic of responsibility, of conscience, of intentionality, of property that governs today's dominant juridical discourse and the category of decision right down to its appeals to medical expertise is so theoretically weak and crude that I need not emphasize it here. And the effects of these limitations are massive and concrete enough that I don't have to give examples.

We can already see from this second aporia or this second form of the same aporia that the deconstruction of all presumption of a determinant certitude of a present justice itself operates on the basis of an infinite "idea of justice," infinite because it is irreducible, irreducible because owed to the other, owed to the other, before any contract, because it has come, the other's coming as the singularity that is always other. This "idea of justice" seems to be irreducible in its affirmative character, in its demand of gift without exchange, without circulation, without recognition or gratitude, without economic circularity, without calculation and without rules, without reason and without rationality. And so we can recognize in it, indeed accuse, identify a madness. And perhaps another sort of mystique. And deconstruction is mad about this kind of justice. Mad about this desire for justice. This kind of justice, which isn't law, is the very movement of deconstruction at work in law and the history of law, in political history and history itself, before it even presents itself as the discourse that the academy or modern culture labels "deconstructionism."

I would hesitate to assimilate too quickly this "idea of justice" to a regulative idea (in the Kantian sense), to a messianic promise or to other horizons of the same type. I am only speaking of a type, of this type of horizon that would have numerous competing versions. By competing I mean similar enough in appearance and always pretending to absolute privilege and irreducible singularity. The singularity of the historical place—perhaps our own, which in any case is the one I'm obscurely referring to here—allows us a glimpse of the type itself, as the origin, condition, possibility or promise of all its exemplifications (messianism of the Jewish, Christian or Islamic type, idea in the Kantian sense, eschato-teleology of the neo-Hegelian, Marxist or post-Marxist type, etc.). It also allows us to perceive and conceive the law of irreducible competition (*concurrence*), but from a brink where

vertigo threatens to seize us the moment we see nothing but examples and some of us no longer feel engaged in it; another way of saying that from this point on we always run the risk (speaking for myself, at least) of no longer being, as they say, "in the running" (*dans la course*). But not to be "in the running" on the inside track, does not mean that we can stay at the starting-line or simply be spectators—far from it. It may be the very thing that "keeps us moving," (*fait courir*) with renewed strength and speed, for example, deconstruction.

3. *Third aporia: the urgency that obstructs the horizon of knowledge.*

One of the reasons I'm keeping such a distance from all these horizons—from the Kantian regulative idea or from the messianic advent, for example, or at least from their conventional interpretation—is that they are, precisely, *horizons*. As its Greek name suggests, a horizon is both the opening and the limit that defines an infinite progress or a period of waiting.

But justice, however unrepresentable it may be, doesn't wait. It is that which must not wait. To be direct, simple and brief, let us say this: a just decision is always required *immediately*, "right away." It cannot furnish itself with infinite information and the unlimited knowledge of conditions, rules or hypothetical imperatives that could justify it. And even if it did have all that at its disposal, even if it did give itself the time, all the time and the necessary facts about the matter, the moment of *decision, as such*, always remains a finite moment of urgency and precipitation, since it must not be the consequence or the effect of this theoretical or historical knowledge, of this reflection or this deliberation, since it always marks the interruption of the juridico- or ethico- or politico-cognitive deliberation that precedes it, that *must* precede it. The instant of decision is a madness, says Kierkegaard. This is particularly true of the instant of the just decision that must rend time and defy dialectics. It is a madness. Even if time and prudence, the patience of knowledge and the mastery of conditions were hypothetically unlimited, the decision would be structurally finite, however late it came, a decision of urgency and precipitation, acting in the night of non-knowledge and non-rule. Not of the absence of rules and knowledge but of a reinstitution of rules which by definition is not preceded by any knowledge or by any guarantee as such. If we were to trust in a massive and decisive distinction between performative and constative—a problem I can't get involved in here—we would have to attribute this irreducibility of precipitate urgency, at bottom this irreducibility of thoughtlessness and unconsciousness, however intelligent it may be, to the performative structure of speech act and acts in general as acts of justice or law, whether they

be performatives that institute something or derived performatives supposing anterior conventions. A constative can be *juste* (right), in the sense of *justesse*, never in the sense of justice. But as a performative cannot be just, in the sense of justice, except by founding itself on conventions and so on other anterior performatives, buried or not, it always maintains within itself some irruptive violence, it no longer responds to the demands of theoretical rationality. Since every constative utterance itself relies, at least implicitly, on a performative structure ("I tell you that, I speak to you, I address myself to you to tell you that this is true, that things are like this, I promise you or renew my promise to you to make a sentence and to sign what I say when I say that, tell you, or try to tell you the truth," and so forth), the dimension of *justesse* or truth of the theoretico-constative utterances (in all domains, particularly in the domain of the theory of law) always thus presupposes the dimension of justice of the performative utterances, that is to say their essential precipitation, which never proceeds without a certain dissymmetry and some quality of violence. That's how I would be tempted to understand the proposition of Levinas, who, in a whole other language and following an entirely different discursive procedure, declares that "La vérité suppose la justice" ("Truth supposes justice") ("*Vérité et justice*," in *Totalité et infini* 3, p. 62). Dangerously parodying the French idiom, we could end up saying: "*La justice, y a qu'ça de vrai*." This is not without consequence, needless to say, for the status, if we still can call it that, of truth.⁵

Paradoxically, it is because of this overflowing of the performative, because of this always excessive haste of interpretation getting ahead of itself, because of this structural urgency and precipitation of justice that the latter has no horizon of expectation (regulative or messianic). But for this very reason, it *may* have an *avenir*, a "to-come," which I rigorously distinguish from the future that can always reproduce the present. Justice remains, is yet, to come, *à venir*, it has an, it is *à-venir*, the very dimension of events irreducibly to come. It will always have it, this *à-venir*, and always has. Perhaps it is for this reason that justice, insofar as it is not only a juridical or political concept, opens up for *l'avenir* the transformation; the recasting or refounding of law and politics. "Perhaps," one must always say perhaps for justice. There is an *avenir* for justice and there is no justice except to the degree that some event is possible which, as event, exceeds calculation, rules, programs, anticipations and so forth. Justice as the experience of absolute alterity is unrepresentable, but it is the chance of the event and the condition of history. No doubt an unrecognizable history, of course, for those who believe they know what they're talking about when they

use this word, whether it's a matter of social, ideological, political, juridical or some other history.

That justice exceeds law and calculation, that the unrepresentable exceeds the determinable cannot and should not serve as an alibi for staying out of juridico-political battles, within an institution or a state or between institutions or states and others. Left to itself, the incalculable and giving (*donatrice*) idea of justice is always very close to the bad, even to the worst for it can always be reappropriated by the most perverse calculation. It's always possible. And so incalculable justice *requires* us to calculate. And first, closest to what we associate with justice, namely, law, the juridical field that one cannot isolate within sure frontiers, but also in all the fields from which we cannot separate it, which intervene in it and are no longer simply fields: ethics, politics, economics, psycho-sociology, philosophy, literature, etc. Not only *must* we calculate, negotiate the relation between the calculable and the incalculable, and negotiate without the sort of rule that wouldn't have to be reinvented there where we are cast, there where we find ourselves; but we *must* take it as far as possible, beyond the place we find ourselves and beyond the already identifiable zones of morality or politics or law, beyond the distinction between national and international, public and private, and so on. This requirement does not properly belong either to justice or law. It only belongs to either of these two domains by exceeding each one in the direction of the other. Politicization, for example, is interminable even if it cannot and should not ever be total. To keep this from being a truism or a triviality, we must recognize in it the following consequence: each advance in politicization obliges one to reconsider, and so to reinterpret the very foundations of law such as they had previously been calculated or delimited. This was true for example in the Declaration of the Rights of Man, in the abolition of slavery, in all the emancipatory battles that remain and will have to remain in progress, everywhere in the world, for men and for women. Nothing seems to me less outdated than the classical emancipatory ideal. We cannot attempt to disqualify it today, whether crudely or with sophistication, at least not without treating it too lightly and forming the worst complicities. But beyond these identified territories of juridico-politicization on the grand geopolitical scale, beyond all self-serving interpretations, beyond all determined and particular reappropriations of international law, other areas must constantly open up that at first can seem like secondary or marginal areas. This marginality also signifies that a violence, indeed a terrorism and other forms of hostage-taking are at work (the examples closest to us would be found in the area of laws on the teaching and practice of languages, the legitimization of canons,

the military use of scientific research, abortion, euthanasia, problems of organ transplant, extra-uterine conception, bio-engineering, medical experimentation, the social treatment of AIDS, the macro- or micro-politics of drugs, the homeless, and so on, without forgetting, of course, the treatment of what we call animal life, animality. On this last problem, the Benjamin text that I'm coming to now shows that its author was not deaf or insensitive to it, even if his propositions on this subject remain quite obscure, if not quite traditional).

II⁶

If I have not exhausted your patience, let us now approach, in another style, the promised reading of a brief and disconcerting Benjamin text. I am speaking of *Zur Kritik der Gewalt* (1921), translated as *Critique of Violence*. I will not presume to call this text *exemplary*. We are in a realm where, in the end, there are only singular examples. Nothing is absolutely exemplary. I will not attempt to justify absolutely the choice of this text. But I could say why it is not the worst example of what might be exemplary in a relatively determined context such as ours.

1. Benjamin's analysis reflects the crisis in the European model of bourgeois, liberal, parliamentary democracy, and so the crisis in the concept of *droit* that is inseparable from it. Germany in defeat is at this time a place in which this crisis is extremely sharp, a crisis whose originality also comes from certain modern features like the right to strike, the concept of the general strike (with or without reference to Sorel). It is also the aftermath of a war and a pre-war that saw the European development and failure of pacifist discourse, anti-militarism, the critique of violence, including juridico-police violence, which will soon be repeated in the years to follow. It is also the moment in which questions of the death penalty and of the right to punish in general are painfully current. Change in the structures of public opinion, thanks to the appearance of new media powers such as radio, begins to put into question this liberal model of parliamentary discussion or deliberation in the production of laws and so forth. Such conditions motivated the thoughts of German jurists like Carl Schmitt, to mention only him. And so I was also interested by several historical indices. For example, this text, at once "mystical" (in the overdetermined sense that interests us here) and hypercritical, this text which, in certain respects, can be read as neo-messianical Jewish mysticism (*mystique*) grafted onto post-Sorelian neo-Marxism (or the reverse), upon its publication won Benjamin a letter of congratulations from

Carl Schmitt, that great conservative Catholic jurist, still a constitutionalist at the time; but you are already familiar with his strange conversion to Hitlerism in 1933 and his correspondence with Benjamin. But also with Heidegger. As for analogies between *Zur Kritik der Gewalt* and certain turns of Heideggerian thought, they are impossible to miss, especially those surrounding the motifs of *Walten* and *Gewalt*. *Zur Kritik der Gewalt* concludes with divine violence (*göttliche Gewalt*) and in the end Walter says of divine violence that we might call it *die waltende* (*Die göttliche Gewalt . . . mag die waltende heißen*): "Divine violence . . . may be called sovereign violence." ". . . *die waltende heißen*" are the last words of the text. It is this historical network of equivocal contracts that interests me in its necessity and in its very dangers. In the Western democracies of 1989, with work and a certain number of precautions, lessons can still be drawn from it.

2. Keeping in mind the thematic of our colloquium, this text seemed exemplary to me, up to a point, to the degree that it lends itself to an exercise in deconstructive reading, as I shall try to show.

3. But this deconstruction is in some way the operation or rather the very experience that this text, it seems to me, first does itself, by itself, on itself. What does this mean? Is it possible? What remains, then, of such an event? Of its auto-hetero-deconstruction? Of its just and unjust incompleteness? What is the ruin of such an event or the open wound of such a signature? And also, in what does its strength consist, strength precisely in the sense of *Gewalt*, that is, its violence, authority and legitimacy? That is one of my questions. It is a question about the possibility of deconstruction. If you will allow me to cite myself, I happened to write that "the most rigorous deconstructions have never claimed to be . . . possible. And I would say that deconstruction loses nothing from admitting that it is impossible; and also that those who would rush to delight in that admission lose nothing from having to wait. For a deconstructive operation *possibility* would rather be the danger, the danger of becoming an available set of rule-governed procedures, methods, accessible approaches. The interest of deconstruction, of such force and desire as it may have, is a certain experience of the impossible."⁷

Benjamin's demonstration concerns the question of *droit*, *recht*, right or law. It even means to inaugurate, we shall be able to say it more rigorously in a moment, a "philosophy of *droit*." And this philosophy seems to be organized around a series of distinctions that all seem interesting, provocative, necessary up to a certain point but that all, it seems to me, remain radically problematic.

First, there is the distinction between two kinds of violence in law, in relation to law (*droit*): the founding violence, the one that institutes and positions law (*die rechtsetzende Gewalt*, "law making violence") and the violence that conserves, the one that maintains, confirms, insures the permanence and enforceability of law (*die rechtserhaltende Gewalt*, "law preserving violence"). For the sake of convenience, let us continue to translate *Gewalt* as violence, but I have already mentioned the precautions this calls for. As for translating *Recht* as "law" rather than "right," as in the published version I'm using here, that is another problem that I'll leave aside for now.

Next there is the distinction between the founding violence of law termed "mythic" (implicit meaning: Greek, it seems to me) and the annihilating violence of destructive law (*Rechtsvernichtend*), which is termed "divine" (implicit meaning: Jewish, it seems to me).

Finally, there is the distinction between justice (*Gerechtigkeit*) as the principle of all divine positioning of the end (*das Prinzip aller göttlichen Zwecksetzung*, p. 198, "principle of all divine end making," p. 295) and power (*Macht*) as principle of mythical positioning of *droit* (*aller mythischen Rechtsetzung*, "of all mythical law making, *ibid.*").

In the title "*Zur Kritik der Gewalt*," "critique" doesn't simply mean negative evaluation, legitimate rejection or condemnation of violence, but judgment, evaluation, examination that provides itself with the means to judge violence. The concept of "critique," insofar as it implies decision in the form of judgment and question with regard to the right to judge, thus has an essential relation, in itself, to the sphere of law or right. Fundamentally, something like the Kantian tradition of the concept of critique. The concept of violence (*Gewalt*) permits an evaluative critique only in the sphere of law and justice (*Recht*, *Gerechtigkeit*) or the sphere of moral relations (*sittliche Verhältnisse*). There is no natural or physical violence. We can speak figuratively of violence with regard to an earthquake or even to a physical ailment. But we know that these aren't cases of a *Gewalt* able to give rise to a judgment, before some instrument of justice. The concept of violence belongs to the symbolic order of law, politics and morals. And it is only to this extent that it can give rise to a critique. Up to this point this critique was always inscribed in the space of the distinction between means and end. But, objects Benjamin, to ask ourselves if violence can be a means *with a view* toward ends (just or unjust) is to prohibit ourselves from judging violence *itself*. The criterion would then concern only the application of violence, not violence itself. We would not be able to tell if the latter, as means, is in *itself* just or not, moral or not. The critical question remains open, the

question of an evaluation and a justification of violence in itself, whether it be a simple means and whatever its end may be. This critical dimension would have been foreclosed by the jusnaturalist tradition. For defenders of natural *droit*, recourse to violent means poses no problems, since natural ends are just. Recourse to violent means is as justified, as normal as man's "right" to move his body to reach a given goal. Violence (*Gewalt*) is from this point of view a "natural product" (*Naturprodukt*). Benjamin gives several examples of this naturalization of violence by jusnaturalism:

- (a) the state founded on natural law, which Spinoza talks about in the *Theological-Political Treatise* in which the citizen, before a contract is formed by reason, exercises *de jure* a violence he disposes of *de facto*,
- (b) the ideological foundation of the Terror under the French Revolution,
- (c) the exploitations of a certain Darwinism (and this could later be applied to Nazism), etc.

But if, in opposition to jusnaturalism, the tradition of positive law is more attentive to the historical evolution of law, it also falls short of the critical questioning called for by Benjamin. Doubtless it can only consider all means to be good once they conform to a natural and ahistorical end. It prescribes that we judge means, that is to say judge their conformity to a *droit* that is in the process of being instituted, to a new (not natural) *droit* that it evaluates in terms of means, and so by the critique of means. But the two traditions share the same dogmatic presupposition, namely, that just ends can be attained by just means. "Natural law attempts, by the justness of ends (*durch die Gerechtigkeit der Zwecke*), to 'justify' (*rechtfertigen*) the means, positive law to 'guarantee' (*garantieren*) the justness of the ends through the justification (*Gerechtigkeit*) of the means." The two traditions would turn in the same circle of dogmatic presuppositions. And there is no solution for the antinomy when a contradiction emerges between just ends and justified means. Positive law would remain blind to the unconditionality of ends, natural right to the conditionality of means. Nevertheless, although he seems to dismiss both cases symmetrically, from the tradition of positive law Benjamin retains the sense of the historicity of law. Inversely, it is true that what he says further on about divine justice is not always incompatible with the theological basis of all jusnaturalisms. In any case, the Benjaminian critique of

violence claims to exceed the two traditions and no longer to arise simply from the sphere of law and the internal interpretation of the juridical institution. It belongs to what he calls in a rather singular sense a "philosophy of history" and is expressly limited to European particulars.

At its most fundamental level, European law tends to prohibit individual violence and to condemn it not because it poses a threat to this or that law but because it threatens the juridical order itself (*die Rechtsordnung*, "the legal system"). Whence the law's interest—for it does have an interest in laying itself down and conserving itself, or in representing the interest that, *justement*, it represents. Law's interest may seem "surprising," that is Benjamin's word, but at the same time it is in its nature as interest, and in this sense there is nothing surprising here at all, to pretend to exclude any individual violence threatening its order and thus to monopolize violence, in the sense of *Gewalt*, which is also to say authority. Law has an "interest in a monopoly of violence" (p. 281), (*Interesse des Rechts an der Monopolisierung der Gewalt*). This monopoly doesn't strive to protect any given just and legal ends (*Rechtszwecke*) but law itself. This seems like a tautological triviality. But isn't tautology the phenomenal structure of a certain violence in the law that lays itself down, by decreeing to be violent, this time in the sense of an outlaw, anyone who does not recognize it? Performative tautology or *a priori* synthesis, which structures any foundation of the law upon which one performatively produces the conventions that guarantee the validity of the performative, thanks to which one gives oneself the means to decide between legal and illegal violence. The expressions "tautology" and "*a priori* synthesis," and especially the word "performative" are not Benjaminian, but I'll venture to suggest that they do not betray his purposes.

The admiring fascination exerted on the people by "the figure of the great criminal," (p. 281) (*die Gestalt des "grossen" Verbrechers*), can be explained as follows: it is not someone who has committed this or that crime for which one feels a secret admiration; it is someone who, in defying the law, lays bare the violence of the legal system, the juridical order itself. One could explain in the same way the fascination exerted in France by a lawyer like Jacques Vergès who defends the most difficult causes, the most indefensible in the eyes of the majority, by practicing what he calls the "strategy of rupture," that is, the radical contestation of the given order of the law, of judicial authority and ultimately of the legitimate authority of the state that summons his clients to appear before the law. Judicial authority before which, in short, the accused appears without appearing and claims the

right to contest the order of right or law. But what order of law? The order of law in general or this order of law instituted and enforced by this state? Or order as inextricably mixed with the state in general?

The telling example would here be that of the right to strike. In class struggle, notes Benjamin, the right to strike is guaranteed to workers who are therefore, besides the state, the only legal subject (*Rechtssubjekt*) to find itself guaranteed a right to violence (*Recht auf Gewalt*) and so to share the monopoly of the state in this respect. Certain people may have thought that since the practice of the strike, this cessation of activity, this *Nicht-Handeln*, is not an action, we cannot here be speaking about violence. That is how the concession of this right by the power of the state (*Staatsgewalt*) is justified when that power cannot do otherwise. Violence would come from the employer and the strike would consist only in an abstention, a non-violent withdrawal by which the worker, suspending his relations with the management and its machines, would simply become alien to them. The man who will become Brecht's friend defines this withdrawal (*Abkehr*) as an "*Entfremdung*" ("estrangement"). He puts the word in quotation marks. But Benjamin clearly does not believe in the non-violence of the strike. The striking workers set the conditions for the resumption of work, they will not end their strike unless a list, an order of things has changed. And so there is violence against violence. In carrying the right to strike to its limit, the concept or watchword of *general strike* thus manifests its essence. The state can hardly stand this passage to the limit. It deems it abusive and claims that there was a misunderstanding, a misinterpretation of the original intention, and that *das Streikrecht* "so" *nicht gemeint gewesen sei*, "the right to strike was not 'so intended'" (p. 282). It can then condemn the general strike as illegal and, if the strike persists, we have a revolutionary situation. Such a situation is in fact the only one that allows us to conceive the homogeneity of law or right and violence, violence as the exercise of *droit* and *droit* as the exercise of violence. Violence is not exterior to the order of *droit*. It threatens it from within. Violence does not consist essentially in exerting its power or a brutal force to obtain this or that result but in threatening or destroying an order of given right and precisely, in this case, the order of state law that was to accord this right to violence, for example the right to strike. How can we interpret this contradiction? Is it only *de facto* and exterior to law? Or is it rather immanent in the law of law (*au droit du droit*)?

What the state fears (the state being law in its greatest force) is not so much crime or *brigandage*, even on the grand scale of the Mafia or heavy drug traffic, as long as they transgress the law with an eye toward particular benefits, however important they may be. The state is

afraid of fundamental, founding violence, that is, violence able to justify, to legitimate, (*begründen*, "to found," p. 283) or to transform the relations of law (*Rechtsverhältnisse*, "legal conditions"), and so to present itself as having a right to law. This violence thus belongs in advance to the order of a *droit* that remains to be transformed or founded, even if it may wound our sense of justice (*Gerechtigkeitsgefühl*). Only this violence calls for and makes possible a "critique of violence" that determines it to be something other than the natural exercise of force. For a critique of violence—that is to say, an interpretative and meaningful evaluation of it—to be possible, one must first recognize meaning in a violence that is not an accident arriving from outside law. That which threatens law already belongs to it, to the right to law (*droit*), to the law of the law (*droit*), to the origin of law (*droit*). The general strike thus furnishes a valuable guiding thread, since it exercises the conceded right to contest the order of existing law and to create a revolutionary situation in which the task will be to found a new *droit*, if not always, as we shall see in a moment, a new state. All revolutionary situations, all revolutionary discourses, on the left or on the right (and from 1921, in Germany, there were many of these that resembled each other in a troubling way, Benjamin often finding himself between the two) justify the recourse to violence by alleging the founding, in progress or to come, of a new law. As this law to come will in return legitimate, retrospectively, the violence that may offend the sense of justice, its future anterior already justifies it. The foundation of all states occurs in a situation that we can thus call revolutionary. It inaugurates a new law, it always does so in violence. Always, which is to say even when there haven't been those spectacular genocides, expulsions or deportations that so often accompany the foundation of states, great or small, old or new, right near us or far away.

In these situations said to found law (*droit*) or state, the grammatical category of the future anterior all too well resembles a modification of the present to describe the violence in progress. It consists, precisely, in feigning the presence or simple modalization of presence. Those who say "our time," while thinking "our present" in light of a future anterior present do not know very well, by definition, what they are saying. It is precisely in this ignorance that the eventness of the event consists, what we naively call its presence.⁸

These moments, supposing we can isolate them, are terrifying moments. Because of the sufferings, the crimes, the tortures that rarely fail to accompany them, no doubt, but just as much because they are in themselves, and in their very violence, uninterpretable or indecipherable. That is what I am calling "mystique." As Benjamin presents

it, this violence is certainly legible, indeed intelligible since it is not alien to law, no more than *polemos* or *eris* is alien to all the forms and significations of *dikè*. But it is, in *droit*, what suspends *droit*. It interrupts the established *droit* to found another. This moment of suspense, this *épokhè*, this founding or revolutionary moment of law is, in law, an instance of non-law. But it is also the whole history of law. *This moment always takes place and never takes place in a presence*. It is the moment in which the foundation of law remains suspended in the void or over the abyss, suspended by a pure performative act that would not have to answer to or before anyone. The supposed subject of this pure performative would no longer be before the law, or rather he would be before a law not yet determined, before the law as before a law not yet existing, a law yet to come, *encore devant et devant venir*. And the being "before the law" that Kafka talks about⁹ resembles this situation, both ordinary and terrible, of the man who cannot manage to see or above all to touch, to catch up to the law: because it is transcendent in the very measure that it is he who must found it, as yet to come, in violence. Here we "touch" without touching this extraordinary paradox: the inaccessible transcendence of the law before which and prior to which "man" stands fast only appears infinitely transcendent and thus theological to the extent that, so near him, it depends only on him, on the performative act by which he institutes it: the law is transcendent, violent and non-violent, because it depends only on who is before it—and so prior to it, on who produces it, founds it, authorizes it in an absolute performative whose presence always escapes him. The law is transcendent and theological, and so always to come, always promised, because it is immanent, finite and so already past. Every "subject" is caught up in this aporetic structure in advance.

Only the yet-to-come (*avenir*) will produce intelligibility or interpretability of this law. Beyond the letter of Benjamin's text, which I stopped following in the style of commentary a moment ago but which I am interpreting from the point of its *avenir*, one can say that the order of intelligibility depends in its turn on the established order that it serves to interpret. This readability will then be as little neutral as it is non-violent. A "successful" revolution, the "successful foundation of a state" (in somewhat the same sense that one speaks of a "felicitous performative speech act") will produce *après coup* what it was destined in advance to produce, namely, proper interpretative models to read in return, to give sense, necessity and above all legitimacy to the violence that has produced, among others, the interpretative model in question, that is, the discourse of its self-legitimation. Examples of this circle, this other hermeneutic circle, are not lacking,

near us or far from us, right here or elsewhere, whether it's a question of what happens from one neighborhood to another, one street to another in a great metropolis or from one country or one camp to another around a world war in the course of which states and nations are founded, destroyed or redesigned. This must be taken into account in order to de-limit an international law constructed on the western concept of state sovereignty and non-intervention, but also in order to think its infinite perfectibility. There are cases in which it is not known for generations if the performative of the violent founding of a state is "felicitous" or not. Here we could cite more than one example. This unreadability of violence results from the very readability of a violence that belongs to what others would call the symbolic order of law, if you like, and not to pure physics. We might be tempted to reverse this "logic" like a glove ("logic" in quotation marks, for this "unreadable" is also very much "illogical" in the order of *logos*, and this is also why I hesitate to call it "symbolic" and precipitately send it into the order of Lacanian discourse), the "logic" of this readable unreadability. In sum, it signifies a juridico-symbolic violence, a performative violence at the very heart of interpretative reading. And the example or index could be carried by metonymy back toward the conceptual generality of the essence.

We might say then that there is a possibility of general strike, a right to general strike in any interpretative reading, the right to contest established law in its strongest authority, the law of the state. One has the right to suspend legitimating authority and all its norms of reading, and to do this in the most incisive, most effective, most pertinent readings, which of course will sometimes argue with the unreadable in order to found another order of reading, another state, sometimes not; for we shall see that Benjamin distinguishes between two sorts of general strikes, some destined to replace the order of one state with another (general political strike), the other to abolish the state (general proletarian strike). In short, the two temptations of deconstruction.

For there is something of the general strike, and thus of the revolutionary situation in every reading that founds something new and that remains unreadable in regard to established canons and norms of reading, that is to say the present state of reading or of what figures the State, with a capital S, in the state of possible reading. Faced with such a general strike, we can in various cases speak of anarchism, skepticism, nihilism, depoliticization, or on the contrary of subversive overpoliticization. Today, the general strike does not need to demobilize or mobilize a spectacular number of people: it is enough to cut the electricity in a few privileged places, for example the services, public and private, of postal service and telecommunications, of radio and

television or to introduce a few efficient viruses into a well-chosen computer network or, by analogy, to introduce the equivalent of AIDS into the organs of transmission, into the hermeneutic *Gespräch*.¹⁰

Can what we are doing here resemble a general strike or a revolution, with regard to models, structures but also modes of readability of political action? Is that what deconstruction is? Is it a general strike or a strategy of rupture? Yes and no. Yes, to the extent that it assumes the right to contest, and not only theoretically, constitutional protocols, the very charter that governs reading in our culture and especially in the academy. No, at least to the extent that it is in the academy that it has been developed (and let's not forget, if we do not wish to sink into ridicule or indecency, that we are comfortably installed here on Fifth Avenue—only a few blocks away from the inferno of injustice). And besides, just as a strategy of rupture is never pure, since the lawyer or the accused has to "negotiate" it in some way before a tribunal or in the course of a hunger strike in the prison, so there is never a pure opposition between the general political strike looking to re-found another state and the general proletarian strike looking to destroy the state.

And so these Benjaminian oppositions seem to me to call more than ever for deconstruction; they deconstruct themselves, even as paradigms for deconstruction. What I am saying here is anything but conservative and anti-revolutionary. For beyond Benjamin's explicit purpose, I shall propose the interpretation according to which the very violence of the foundation or position of law (*Rechtsetzende Gewalt*) must envelop the violence of conservation (*Rechtserhaltende Gewalt*) and cannot break with it. It belongs to the structure of fundamental violence that it calls for the repetition of itself and founds what ought to be conserved, conservable, promised to heritage and tradition, to be shared. A foundation is a promise. Every position (*Setzung*) permits and promises (*permet et pro-met*), it positions *en mettant et en promettant*. And even if a promise is not kept in fact, iterability inscribes the promise as guard in the most irruptive instant of foundation. Thus it inscribes the possibility of repetition at the heart of the originary. With this, there is no more a pure foundation or pure position of law, and so a pure founding violence, than there is a purely conservative violence. Position is already iterability, a call for self-conserving repetition. Conservation in its turn refounds, so that it can conserve what it claims to found. Thus there can be no rigorous opposition between positioning and conservation, only what I will call (and Benjamin does not name it) a *différentielle contamination* between the two, with all the paradoxes that this may lead to. No rigorous distinction between a general strike and a partial strike (again, in an industrial society, we

would also lack the technical criteria for such a distinction), nor, in Sorel's sense, between a general political strike and a general proletarian strike. Deconstruction is also the idea of—and the idea adopted by necessity of—this *différentielle* contamination. It is in thinking about this *différentielle* contamination, as the contamination at the very heart of law that I single out this sentence of Benjamin's, which I hope to come back to later: there is, he says "something rotten in law" (p. 286) (*etwas Morsches im Recht*). There is something decayed or rotten in law, which condemns it or ruins it in advance. Law is condemned, ruined, in ruins, ruinous, if we can risk a sentence of death on the subject of law, especially when it's a question of the death penalty. And it is in a passage on the death penalty that Benjamin speaks of what is "rotten" in law.

If there is something of strike and the right to strike in every interpretation, there is also war and *polemos*. War is another example of this contradiction internal to law (*Recht* or *droit*). There is a *droit de la guerre* (Schmitt will complain that it is no longer recognized as the very possibility of politics). This *droit* involves the same contradiction as the *droit de grève*. Apparently subjects of this *droit* declare war in order to sanction a violence whose object seems natural (the other wants to lay hold of territory, goods, women; he wants my death, I kill him). But this warlike violence that resembles "*brigandage*" outside the law (*raubende Gewalt*, "predatory violence," p. 283) is always deployed *within* the sphere of law. It is an anomaly *within* the legal system with which it seems to break. Here the rupture of the relation is the relation. The transgression is before the law. In so-called primitive societies, where these meanings would be more clearly brought out, the peace settlement shows very well that war was not a natural phenomenon. No peace is settled without the symbolic phenomenon of a ceremonial. It recalls the fact that there was already ceremony in war. War, then, did not simply amount to a clash of two interests or of two purely physical forces. Here an important parenthesis emphasizes that, to be sure, in the pair war/peace, the peace ceremonial recalls the fact that the war was also an unnatural phenomenon; but Benjamin apparently wants to withhold a certain meaning of the word "peace" from this correlation, in particular in the Kantian concept of "perpetual peace." Here it is a question of a whole other "unmetaphorical and political" (*unmetaphorische und politische*) signification, the importance of which we may weigh in a moment. At stake is international law, where the risks of diversion or perversion for the benefit of individual interests (whether those of a state or not) require an infinite vigilance, all the more so as these risks are inscribed in its very constitution.

After the ceremony of war, the ceremony of peace signifies that the victory establishes a new law. And war, which passes for originary and archetypal (*ursprüngliche und urbildliche*, "primordial and paradigmatic," p. 283) violence in pursuit of natural ends, is in fact a violence that serves to found law or right (*rechtsetzende*, "law making"). From the moment that this positive, positional (*setzende*) and founding character of another law is recognized, modern law (*droit*) refuses the individual subject all right to violence. The people's shudder of admiration before the "great criminal" is addressed to the individual who takes upon himself, as in primitive times, the stigma of the lawmaker or the prophet. But the distinction between the two types of violence (founding and conserving) will be very difficult to trace, to found or to conserve. We are going to witness an ambiguous and laborious movement on Benjamin's part to preserve at any cost a distinction or a correlation without which his whole project could collapse. For if violence is at the origin of law, we must take the critique of this double violence ("lawmaking and law-preserving violence," p. 386) to its logical conclusion.

To discuss the conservative violence of law, Benjamin sticks to relatively modern problems, as modern as the problem of the general strike was a moment ago. Now it is a question of compulsory military service, the modern police or the abolition of the death penalty. If, during and after World War I, an impassioned critique of violence was developed, it took aim this time at the law-conserving form of violence. Militarism, a modern concept that supposes the exploitation of compulsory military service, is the forced use of force, the compelling (*Zwang*) to use force or violence (*Gewalt*) in the service of the state and its legal ends. Here military violence is legal and *conserves* the law, and thus it is more difficult to criticize than the pacifists and activists believe; Benjamin does not hide his low esteem for these declaimers. The ineffectiveness and inconsistency of anti-military pacifists results from their failure to recognize the legal and unassailable character of this violence that conserves the law.

Here we are dealing with a *double bind* or a contradiction that can be schematized as follows. On the one hand, it appears *easier* to criticize the violence that founds since it cannot be justified by any pre-existing legality and so appears savage. But on the other hand, and this reversal is the whole point of this reflection, it is *more difficult*, more illegitimate to criticize this same violence since one cannot summon it to appear before the institution of any preexisting law: it does not recognize existing law in the moment that it founds another. Between the two limits of this contradiction, there is the question of this

ungraspable revolutionary instant that belongs to no historical, temporal continuum but in which the foundation of a new law nevertheless plays, if we may say so, on something from an anterior law that it extends, radicalizes, deforms, metaphorizes or metonymizes, this figure here taking the name of war or general strike. But this figure is also a contamination. It effaces or blurs the distinction, pure and simple, between foundation and conservation. It inscribes iterability in originarity, in unicity and singularity, and it is what I will call deconstruction at work, in full negotiation: in the "things themselves" and in Benjamin's text.

As long as they do not give themselves the theoretical or philosophical means to think this co-implication of violence and law, the usual critiques remain naive and ineffectual. Benjamin does not hide his disdain for the declamations of pacifist activism and for the proclamations of "quite childish anarchism" that would like to exempt the individual from all constraints. The reference to the categorical imperative ("Act in such a way that at all times you use humanity both in your person and in the person of all others as an end, and never merely as a means," p. 285), however uncontested it may be, allows no critique of violence. Law (*droit*) in its very violence claims to recognize and defend said humanity as end, in the person of each individual. And so a purely moral critique of violence is as unjustified as it is impotent. For the same reason, we cannot provide a critique of violence in the name of liberty, of what Benjamin here calls "*gestaltlose Freiheit*," "formless freedom," that is, in short, purely formal, as empty form, following a Marxist-Hegelian vein that is far from absent throughout this meditation. These attacks against violence lack pertinence and effectiveness because they remain alien to the juridical essence of violence, to the *Rechtsordnung*, the order of law (*droit*). An effective critique must lay the blame on the body of *droit* itself, in its head and in its members, in the laws and the particular usages that law adopts under protection of its power (*Macht*). This order is such that there exists one *unique* fate or history (*nur ein einziges Schicksal*, "only one fate," p. 285). That is one of the key concepts of the text, but also one of the most obscure, whether it's a question of fate itself or of its absolute uniqueness. That which exists, which has consistency (*das Bestehende*) and that which at the same time threatens what exists (*das Drohende*) belong inviolably (*unverbrüchlich*) to the same order and this order is inviolable because it is unique. It can only be violated *in itself*. The notion of threat is important here but also difficult, for the threat doesn't come from outside. Law is both threatening and threatened by itself. This threat is neither intimidation nor

dissuasion, as pacifists, anarchists or activists believe. The law turns out to be threatening in the way fate is threatening. To reach the "deepest meaning" of the indeterminacy (*Unbestimmtheit*, "uncertainty," p. 285) of the legal threat (*der Rechtsdrohung*), it will later be necessary to meditate upon the essence of fate at the origin of this threat.

In the course of a meditation on fate, which includes along the way an analysis of the police, the death penalty, the parliamentary institution, Benjamin thus comes to distinguish between divine justice and human justice, between the divine justice that destroys law and the mythic violence that founds it.

The violence that conserves ("law-preserving violence"), this threat which is not intimidation, is a threat of *droit*. Double genitive: it both comes from and threatens *droit*. A valuable index arises here from the domain of the right to punish and the death penalty. Benjamin seems to think that the arguments against the *droit de punir* and notably against the death penalty are superficial, and not by accident. For they do not admit an axiom essential to the definition of law. Which? Well, when one tackles the death penalty, one doesn't dispute one penalty among others but law itself in its origin, in its very order. If the origin of law is a violent positioning, the latter manifests itself in the purest fashion when violence is absolute, that is to say when it touches on the right to life and to death. Here Benjamin doesn't need to invoke the great philosophical arguments that before him have justified, in the same way, the death penalty (Kant, Hegel, for example, against early opponents like Beccaria).

If the legal system fully manifests itself in the possibility of the death penalty, to abolish the penalty is not to touch upon one *dispositif* among others, it is to disavow the very principle of law. And that is to confirm, says Benjamin, that there is something "rotten" at the heart of law. The death penalty bears witness, it must bear witness, to the fact that law is a violence contrary to nature. But what today bears witness in an even more "spectral" (*gespenstliche*) way in mixing the two forms of violence (conserving and founding) is the modern institution of the police. It is this mixture (*Vermischung*) that is spectral, as if one violence haunted the other (though Benjamin doesn't put it this way in commenting on the double meaning of the word *gespenstlich*). This absence of a frontier between the two types of violence, this contamination between foundation and conservation is ignoble, it is, he says, the ignominy (*das Schmachvolle*) of the police. For today the police are no longer content to enforce the law, and thus to conserve it; they invent it, they publish ordinances, they intervene whenever the legal situation isn't clear to guarantee security. Which these

days is to say nearly all the time. The police are ignoble because in their authority "the separation of the violence that founds and the violence that conserves is suspended" (*in ihr die Trennung von rechtsetzender und rechtserhaltender Gewalt aufgehoben ist*, "in this authority the separation of lawmaking and lawpreserving is suspended," p. 286). In this *Aufhebung* that it itself is, the police invent law, they make themselves "*rechtsetzend*," "lawmaking," legislative, each time law is indeterminate enough to give them the chance. The police behave like lawmakers in modern times, not to say lawmakers of modern times. Where there are police, which is to say everywhere and even here, we can no longer discern between two types of violence, conserving and founding, and that is the ignoble, ignominious, disgusting ambiguity. The possibility, which is also to say the ineluctable necessity of the modern police force ruins, in sum, one could say deconstructs, the distinction between the two kinds of violence that nevertheless structure the discourse that Benjamin calls a new critique of violence. He would like either to found it or conserve it but in all purity he can do neither. At most, he can sign it as a spectral event. Text and signature are specters. And Benjamin knows it, so well that the event of the text *Zur Kritik der Gewalt* consists of this strange exposition: before your eyes a demonstration ruins the distinctions it proposes. It exhibits and archivizes the very movement of its implosion, leaving instead what we call a text, the ghost of a text that, itself in ruins, at once foundation and conservation, accomplishes neither and remains there, up to a certain point, for a certain amount of time, readable and unreadable, like the exemplary ruin that singularly warns us of the fate of all texts and all signatures in their relation to law, that is, necessarily, in their relation to a certain police force. Such would be (let it be said in passing) the status without statute, the statute without status of a text considered deconstructive and what remains of it. The text does not escape the law that it states. It is ruined and contaminated, it becomes the specter of itself. But about this ruin of signature, there will be more to say.

What threatens the rigor of the distinction between the two types of violence is at bottom the paradox of iterability. Iterability requires the origin to repeat itself originarily, to alter itself so as to have the value of origin, that is, to conserve itself. Right away there are police and the police legislate, not content to enforce a law that would have had no force before the police. This iterability inscribes conservation in the essential structure of foundation. This law or this general necessity is not a modern phenomenon, it has an *a priori* worth, even if Benjamin is right to give examples that are irreducibly modern in their specificity. Rigorously speaking, iterability precludes the possibility of

pure and great founders, initiators, lawmakers ("great" poets, thinkers or men of state, in the sense Heidegger will mean in 1935, following an analogous schema concerning the fatal sacrifice of these founders).

I do not see ruin as a negative thing.¹¹ First of all, it is clearly not a thing. And then I would love to write, maybe with or following Benjamin, maybe against Benjamin, a short treatise on love of ruins. What else is there to love, anyway? One cannot love a monument, a work of architecture, an institution as such except in an experience itself precarious in its fragility: it hasn't always been there, it will not always be there, it is finite. And for this very reason I love it as mortal, through its birth and its death, through the ghost or the silhouette of its ruin, of my own—which it already is or already prefigures. How can we love except in this finitude? Where else would the right to love, indeed the love of right, come from? (*D'où viendrait autrement le droit d'aimer, voire l'amour du droit?*)

Let us return to the thing itself, to the ghost, for this text is a ghost story. We can no more avoid ghost and ruin than we can elude the question of the rhetorical status of this textual event. To what figures does it turn for its exposition, for its internal explosion or its implosion? All the exemplary figures of the violence of law are singular metonymies, namely, figures without limit, unfettered possibilities of transposition and figures without figures. Let us take the example of the police, this index of a phantom-like violence because it mixes foundation with conservation and becomes all the more violent for this. Well, the police that thus capitalize on violence aren't simply the police. They do not simply consist of policemen in uniform, occasionally helmeted, armed and organized in a civil structure on a military model to whom the right to strike is refused, and so forth. By definition, the police are present or represented everywhere that there is force of law. They are present, sometimes invisible but always effective, wherever there is preservation of the social order. The police aren't just the police (today more or less than ever), they are there, the faceless figure (*figure sans figure*) of a *Dasein* coextensive with the *Dasein* of the *polis*. Benjamin recognizes it in his way, but in a double gesture that I don't think is deliberate and in any case isn't thematized. He never gives up trying to contain in a pair of concepts and to bring back down to distinctions the very thing that incessantly exceeds them and surpasses them. In this way he admits that the problem with the police is that they are a faceless figure, a violence without a form (*gestaltlos*). As such, they are ungraspable in every way (*nirgends fassbare*). In so-called civilized states the specter of its ghostly apparition is all-pervasive (*allverbreitete gespenstische Erscheinung im Leben der*

civilisierten Staaten, "all pervasive ghostly presence in the life of civilized states," p. 287). And still, this formless ungraspable figure of the police, even as it is metonymized, spectralized, and even as it installs its haunting presence everywhere, would if Benjamin had his way remain a determinable figure proper to the civilized states. He claims to know what he is speaking of when he speaks of the proper meaning of the police and tries to determine that phenomenon. It is hard to know whether he's speaking of the police of the modern state or of the state in general when he mentions the civilized state. I'm inclined toward the first hypothesis for two reasons:

1. He selects modern examples of violence, for example that of the general strike or the problem of the death penalty. Earlier on, he speaks not only of civilized states but of another "institution of the modern state," the police. It is the *modern* police, in politico-technical *modern* situations that have led to *produce* the law that they are only supposed to *enforce*.
2. While recognizing that the phantom body of the police, however invasive it may be, always remains equal to itself, he admits that its spirit (*Geist*), the spirit of the police, does less damage in absolute monarchy than it does in modern democracies where its violence degenerates. Let us stay with this point a moment. I am not sure that Benjamin worked out the *rapprochement* I'm attempting here between the words *gespenstische*, "spectral," and "*Geist*," spirit also in the sense of the ghostly double.¹² But the profound logic of this analogy seems hardly contestable to me, even if Benjamin didn't recognize it. The police become hallucinatory and spectral because they haunt everything; they are everywhere, even there where they are not, in their *Fort-Dasein* to which we can always appeal. Their presence is not present, any more than any presence is present, as Heidegger reminds us, but the presence of their spectral double knows no boundaries. And it is in keeping with the logic of *Zur Kritik der Gewalt* to note that anything having to do with the violence of *droit*—here the police themselves—is not natural but spiritual. There is a spirit, both in the sense of specter and in the sense of the life that exalts itself, through death, precisely, by means of the possibility of the death penalty, above natural and biological life. The police bear witness to this. Here I shall invoke a passage from the *Ursprung der deutschen Trauerspiel* that speaks of *Geist* as the capacity to exercise dictatorship. I thank my friend Tim Bahti for bringing this passage to my attention (but one ought to read the whole chapter, which earlier on discusses the apparition of specters [*Geisterscheinungen*, p. 273]): "Spirit (*Geist*)—so the epoch would have it—manifests itself in power (*weist sich aus in Macht*); spirit is the capacity to exercise dictatorship (*Geist*

ist das Vermögen, Diktatur auszuüben). This capacity requires a rigorous internal discipline just as much as it requires the most unscrupulous external action (*skrupelloseste Aktion*)" (p. 276). And further on it is again a question of the evil genius (*böse Geist*) of despots.

Instead of being itself and being contained within democracy, this spirit of the police, this police violence *as spirit* degenerates there. It bears witness in modern democracy to the greatest degeneracy imaginable for violence (*die denkbar grösste Entartung der Gewalt bezeugt*, "bears witness to the greatest conceivable degeneration of violence," p. 287). Why? In absolute monarchy, legislative and executive powers are united. In it violence is therefore normal, in keeping with its essence, its idea, its spirit. In democracy, on the other hand, violence is no longer accorded to the spirit of the police. Because of the supposed separation of powers, it is exercised illegitimately, especially when instead of enforcing the law the police make the law. Here Benjamin indicates the principle of an analysis of police reality in industrial democracies and their military-industrial complexes with high computer technology. In absolute monarchy, police violence, terrible as it may be, proves to be what it is and what it ought to be in its spirit, while the police violence of democracies denies its proper principle, making laws surreptitiously, clandestinely. The consequences or implications are twofold: (1) democracy is a degeneracy of *droit* and of the violence of *droit*; (2) there is not yet any democracy worthy of this name. Democracy remains to come: to engender or to regenerate. And so Benjamin's argument, which then develops into a critique of the parliamentarism of liberal democracy, is *revolutionary*, even *marxisant*, but in the two senses of the word "revolutionary," which also includes the sense "reactionary," that is, the sense of a return to the past of a purer origin. This equivocation is typical enough to have fed many revolutionary discourses on the right and the left, particularly between the two wars. A critique of "degeneracy" (*Entartung*) as critique of a parliamentarism powerless to control the police violence that substitutes itself for it, is very much a critique of violence on the basis of a "philosophy of history": a putting into archeo-teleological, indeed archeo-eschatological perspective that deciphers the history of *droit* as a decay (*Verfall*) since its origin. The analogy with Schmittian or Heideggerian schemas does not need to be spelled out. This triangle could be illustrated by a correspondence, I mean the epistolary correspondence that linked these three thinkers (Schmitt/Benjamin, Heidegger/Schmitt). And it is still a question of spirit and revolution.

The basic question would be: what about liberal and parliamentary democracy today? As means, all violence founds or preserves *droit*. Otherwise it would lose all value. There is no problematic of *droit*

without this violence of means. The result: every juridical contract, every *Rechtsvertrag* ("legal contract," p. 288) is founded on violence. There is no contract that does not have violence as both an origin (*Ursprung*) and an outcome (*Ausgang*). Here a furtive and elliptical allusion by Benjamin is decisive, as is often the case. The violence that founds or positions *droit* need not be immediately present in the contract (*nicht unmittelbar in ihm gegenwärtig zu sein*: "it need not be directly present in it as lawmaking violence," p. 288). But without being immediately present, it is replaced (*vertreten*, "represented") by the supplement of a substitute. And it is in this *différance*, in the movement that replaces presence (the immediate presence of violence identifiable as such in its *traits* and its spirit), it is in this *différentielle* representativity that originary violence is consigned to oblivion. This amnesic loss of consciousness does not happen by accident. It is the very passage from presence to representation. Such a passage forms the trajectory of decline, of institutional "degeneracy", their *Verfall* ("decay"). Benjamin had just spoken of a degeneracy (*Entartung*) of originary violence, for example, that of police violence in absolute monarchy, which is corrupted in modern democracies. Here is Benjamin deploring the *Verfall* of revolution in parliamentary spectacle: "When the consciousness of the latent presence of violence in a legal institution disappears, the institution falls into decay" (p. 288) (*schwindet das Bewußtsein von der latenten Anwesenheit der Gewalt in einem Rechtsinstitut, so verfällt es*). The first example chosen is that of the parliaments of the time. If they offer a deplorable spectacle, it is because these representative institutions forget the revolutionary violence from which they are born. In Germany in particular, they have forgotten the abortive revolution of 1919. They have lost the sense of the founding violence of *droit* that is represented in them (*Ihnen fehlt der Sinn für die rechtsetzende Gewalt, die in ihnen repräsentiert ist*, "They lack the sense that a lawmaking violence is represented by themselves," p. 288). The parliaments live in forgetfulness of the violence from which they are born. This amnesic denegation is not a psychological weakness, it is their *statut* and their structure. From this point on, instead of coming to decisions commensurable or proportional to this violence and worthy (*würdig*) of it, they practice the hypocritical politics of *compromise*. The concept of compromise, the denegation of open violence, the recourse to dissimulated violence belong to the spirit of violence, to the "mentality of violence" (*Mentalität der Gewalt*) that goes so far as to accept coercion of the adversary to avoid the worst, at the same time saying to itself with the sigh of the parliamentarian that this certainly isn't ideal, that, no doubt, this would have been better otherwise but that, pre-

cisely, one couldn't do otherwise. Parliamentarism, then, is in violence and the renunciation of the ideal. It fails to resolve political conflicts by non-violent speech, discussion, deliberation, in short by putting liberal democracy to work. In face of the "decay of parliaments" (*der Verfall der Parlamente*), Benjamin finds the critique of the Bolsheviks and the trade-unionists both pertinent (*treffende*) overall and radically destructive (*vernichtende*).

Now we must introduce a distinction that once again brings together Benjamin and one Carl Schmitt and in any case gives a more precise sense of what the historical configuration could have been in which all these different modes of thinking were inscribed (the exorbitant price Germany had to pay for defeat, the Weimar Republic, the crisis and impotence of the new parliamentarism, the failure of pacifism, the aftermath of the October revolution, conflict between the media and parliamentarism, new particulars of international law, and so forth). We just saw, in sum, that in its origin and its end, in its foundation and its conservation, *le droit* was inseparable from violence, immediate or mediate, present or represented. Does this exclude all non-violence in the elimination of conflicts, as we might placidly conclude? Not at all. Benjamin does not exclude the possibility of non-violence. But the thought of non-violence must exceed the order of public *droit*. Union without violence (*gewaltlose Einigung*, "non-violent agreement," p. 289) is possible everywhere that the culture of the heart (*die Kultur des Herzens*) gives men pure means with accord (*Übereinkunft*) in view. Does this mean we must stop at this opposition between private and public to protect a domain of non-violence? Things are far from that simple. Other conceptual divisions will delimit, in the sphere of politics itself, the relation of violence to non-violence. This would be, for example, in the tradition of Sorel or Marx, the distinction between the general *political* strike, violent since it wants to replace the state with another state (for example the one that just flashed forth in Germany) and the general *proletarian* strike, that revolution that instead of strengthening the state aims at its suppression, as it aims at the elimination of "sociologists, says Sorel, men of the world so fond of social reforms, intellectuals who have embraced the profession of thinking for the proletariat" ("sociologists, elegant amateurs of social reforms or intellectuals who have made it their profession to think for the proletariat," p. 292).

Another distinction seems even more radical and closer to what concerns the critique of violence as a means. It opposes the order of means and representation, precisely, to the order of *manifestation*. Once again it is very much a question of the violence of language, but

also of the advent of non-violence through a certain language. Does the essence of language consist in signs, considered as *means* of communication as re-presentation, or in a manifestation that no longer arises, or not yet, from communication through signs, from communication in general, that is, from the means/end structure?

Benjamin intends to prove that a non-violent elimination of conflicts is possible in the private world when it is ruled by the culture of the heart, cordial courtesy, sympathy, love of peace, trust. Dialogue (*Unterredung*, "conference"), as technique of civil agreement, would be the most profound example. But by what token can violence be considered excluded from the private or proper sphere (*eigentliche Sphäre*)? Benjamin's response may be surprising to some. The possibility of this non-violence is attested to by the fact that the lie (*die Lüge*, "lying," p. 289) is not punished, nor is deception (*Betrug*, "fraud"). Roman law and Old German law did not punish them. To consider a lie an offence is a sign of decadence (*Verfallsprozess*, "declining vitality"). Modern law loses faith in itself, it condemns deception not for moral reasons but because it fears the violence that it might lead to on the victims' part. They may in return threaten the order of *droit*. It is the same mechanism as the one at work in the concession of the right to strike. It is a matter of limiting the worst violence with another violence. What Benjamin seems to be dreaming of is an order of non-violence that withholds from the order of *droit*—and so from the right to punish the lie—not only private relations but even certain public relations as in the general proletarian strike that Sorel speaks about, which is a strike that would not attempt to re-found a state and a new *droit*; or again certain diplomatic relations in which, in a manner analogous to private relations, certain ambassadors settle conflicts peacefully and without treaties. Arbitration is non-violent in this case because it is situated beyond all order of *droit* and so beyond violence ("beyond all legal systems, and therefore beyond violence," p. 293). We shall see in a moment how this non-violence is not without affinity to pure violence.

Here Benjamin proposes an analogy that we should linger over for a moment, particularly because it brings in this enigmatic concept of fate. What would happen if a violence linked to fate (*schicksalsmäßige Gewalt*, "violence imposed by fate," p. 293) and using just means (*gerechteste*) found itself in an insoluble conflict with just (*gerechten*) ends? And in such a way that we had to envision another kind of violence that regarding these ends would be neither a justified nor an unjustified means? Neither a justified nor an unjustified means, undeniably, it would no longer even be a means but would enter into a

whole other relation with the pair means/end. Then we would be dealing with a wholly other violence that would no longer allow itself to be determined in the space opened up by the opposition means/end. The question is all the more grave in that it exceeds or displaces the initial problematic that Benjamin had up to this point constructed on the subject of violence and *droit* and that was entirely governed by the concept of means. Here it will be noticed that there are cases in which, posed in terms of means/ends, the problem of *droit* remains undecidable. This ultimate undecidability which is that of all problems of *droit* (*Unentscheidbarkeit aller Rechtsprobleme*, "ultimate insolubility of all legal problems," p. 293) is the insight of a singular and discouraging experience. Where is one to go after recognizing this ineluctable undecidability?

Such a question opens, first, upon another dimension of language, on an *au-delà* beyond mediation and so beyond language as sign in the sense of mediation, as a means with an end in view. It seems at first that there is no way out and so no hope. But at the impasse, this despair (*Aussichtslosigkeit*, "insolubility," "hopelessness") summons up decisions of thought that concern nothing less than the origin of language in its relation to the truth, destinal violence (*schicksalhafte Gewalt*, "fate-imposed violence") that puts itself above reason, then, above this violence itself, God: another, a wholly other "mystical foundation of authority." It is not, to be sure, Montaigne's or Pascal's, but we shouldn't trust too much in this distance. That is what the *Aussichtslosigkeit* of *droit* in some way opens up on, that is where the impasse of *droit* leads.

There would be an analogy between "the undecidability (*Unentscheidbarkeit*) of all the problems of *droit*" and what happens in nascent language (*in werdenden Sprachen*) in which it is impossible to make a clear, convincing, determinant decision (*Entscheidung*) between true and false, correct and incorrect (*richtig/falsch*, "right/wrong"). This is only an analogy proposed in passing. But it could be developed on the basis of other Benjamin texts on language, notably "The Task of the Translator" (1923) and especially the famous essay of 1916, five years before, "On Language in General and Human Language." Both put into question the notion that the essence of language is originally communicative, that is to say semiological, informative, representative, conventional, hence *mediatory*. It is not a means with an end in view—a thing or signified content—to which it would have to adequate itself correctly. This critique of the sign was political then as well: the conception of language as means and as sign would be "bourgeois." The 1916 text defined original sin as that fall into a language of mediate communication where words, having become

means, incite babbling (*Geschwätz*). The question of good and evil after the creation arises from this babbling. The tree of knowledge was not there to provide knowledge of good and evil but as the "*Wahrzeichen*," the sign betokening judgment (*Gericht*) borne by he who questions. "This extraordinary irony," Benjamin concludes, "is the sign by which the mythical origin of *droit* is recognized" (*das Kennzeichen des mythischen Ursprungs des Rechtes*, Bd 11, 1, p. 154).

Beyond this simple analogy, Benjamin here wants to conceive of a finality, a justice of ends that is no longer tied to the possibility of *droit*, in any case to what is always conceived of as universalizable. The universalization of *droit* is its very possibility, it is analytically inscribed in the concept of justice (*Gerechtigkeit*). But in this case what is not understood is that this universality is in contradiction with God himself, that is, with the one who decides the legitimacy of means and the justice of ends *over and above reason and even above destinal violence*. This sudden reference to God above reason and universality, beyond a sort of *Aufklärung* of law, is nothing other than a reference to the irreducible singularity of each situation. And the audacious thought, as necessary as it is perilous, of what I shall here call a sort of justice without *droit* (this is not one of Benjamin's expressions) is just as valid for the uniqueness of the individual as for the people and the language, in short, for history.

To explain this "nonmediate function of violence" (p. 294) (*Eine nicht mittelbare Funktion der Gewalt*), Benjamin again takes the example of everyday language as if it were only an analogy. In fact, it seems to me, we have here the true mechanism, and the very place of decision. Is it by chance and unrelated to such a figure of God that he speaks then of the experience of anger, an example of an immediate manifestation that has nothing to do with any means/end structure? The explosion of violence, in anger, is not a means that looks toward an end; it has no object other than to show and show itself. Let us leave the responsibility for this concept to Benjamin: the in some way disinterested, immediate and uncalculated manifestation of anger. What matters to him is a manifestation of violence that would not be a means looking toward an end. Such would be mythic violence as manifestation of the gods.

Here begins the last sequence, the most enigmatic, the most fascinating and the most profound in this text. For lack of time but not only time, I cannot claim to do it justice. I will have to content myself with stressing on the one hand the terrible ethico-political ambiguity of the text, on the other hand the exemplary instability of its status and its signature, what, finally, you will permit me to call this heart or courage (*ce coeur ou ce courage*) or a thinking that knows there is no

justesse, no justice, no responsibility except in exposing oneself to all risks, beyond certitude and good conscience.

In the Greek world, the manifestation of divine violence in its mythic form founds a *droit* rather than enforcing an existing one by distributing compensations and punishments. It is not a distributive or retributive justice, and Benjamin evokes the legendary examples of Niobe, Apollo and Artemis, Prometheus. As it is a matter of founding a new *droit*, the violence that falls upon Niobe comes from fate; and this fate can only be uncertain and ambiguous (*zweideutig*), since it is not preceded or regulated by any anterior, superior or transcendent *droit*. This founding violence is not "properly destructive" (*eigentlich zerstörend*, "actually destructive"), since, for example, it respects the mother's life in the moment it brings a bloody death to Niobe's children. But this allusion to blood spilled, as we shall see, is here a discriminating index for identifying the mythical and violent foundation of *droit* in the Greek world and distinguishes it from the divine violence of Judaism. Benjamin offers multiple examples of this ambiguity (*Zweideutigkeit*, the word returns at least four times), and even of the "demonic" ambiguity of this mythical positioning of *droit*¹³ which is in its fundamental principle a power (*Macht*), a force, a position of authority and so, as Sorel himself suggests, with Benjamin's apparent approval here, a privilege of kings, of the great or powerful: at the origin of all *droit* is a privilege (*in den Anfängen alles Recht "Vor"recht der Könige oder der Grossen, kurz der Mächtigen*: "in the beginning all right was the prerogative of the kings or the nobles—in short of the mighty," p. 296). At this originary and mythic moment, there is still no distributive justice, no chastisement or penalty, only expiation (*Sühne*, badly translated as "retribution").

To this violence of the Greek *mythos*, Benjamin opposes feature for feature the violence of God. From all points of view, he says, it is its opposite. Instead of founding *droit*, it destroys it; instead of setting limits and boundaries, it annihilates them; instead of leading to error and expiation, it causes to expiate; instead of threatening, it strikes; and above all, this is the essential point, instead of killing with blood, it kills and annihilates *without bloodshed*. Blood makes all the difference. The interpretation of this thought of blood is as troubling, despite certain dissonances, in Benjamin as it is in Rosenzweig (especially if we think of the "final solution"). Blood is the symbol of life, he says. In making blood flow, the mythological violence of *droit* is exercised in its own favor (*um ihrer selbst willen*) against life pure and simple which it causes to bleed, even as it remains precisely within the order of natural life (*das blosse Leben*). In contrast, purely divine (Judaic) violence is exercised on all life but to the profit or in favor of the

living (*über alles Leben um des Lebendigen willen*: "Mythical violence is bloody power over mere life for its own sake, divine violence pure power over all life for the sake of the living," p. 297). In other words, the mythological violence of *droit* is satisfied in itself by sacrificing the living, while divine violence sacrifices life to save the living, in favor of the living. In both cases there is sacrifice, but in the case where blood is exacted, the living is not respected. Whence Benjamin's singular conclusion, and again I leave to him responsibility for this interpretation, particularly for this interpretation of Judaism: "The first (the mythological violence of *droit*) demands (*fordert*) sacrifice, the second (divine violence) accepts it, assumes it (*nimmt sie an*). In any case, this divine violence, which will be attested to not only by religion but also in present life or in manifestations of the sacred, may annihilate goods, life, *droit*, the foundation of *droit*, and so on, but it never mounts an attack to destroy the soul of the living (*die Seele des Lebendigen*). Consequently, we have no right to conclude that divine violence leaves the field open for all human crimes. "Thou shalt not kill" remains an absolute imperative once the principle of the most destructive divine violence commands the respect of the living being, beyond *droit*, beyond judgment. It is not a "criterion of judgment" but a "guideline for the actions of persons or communities who have to wrestle with it in solitude and in exceptional cases, to take on themselves the responsibility of ignoring it. That for Benjamin is the essence of Judaism which forbids all murder, except in the singular cases of legitimate self-defense, and which sacralizes life to the point that certain thinkers extend this sacralization beyond man, to include animal and vegetable. But here we should sharpen the point of what Benjamin means by the sacrality of man, life or rather human *Dasein*. He stands up vigorously against all sacralization of life *for itself*, natural life, the simple fact of life. Commenting at length on the words of Kurt Hiller, according to which "higher even than the happiness and the justice of existence stands existence itself" (p. 298), Benjamin judges the proposition that simple *Dasein* should be higher than just *Dasein* (*als gerechtes Dasein*) to be false and ignoble, if simple *Dasein* is taken to mean the simple fact of living. And while noting that these terms "*Dasein*" and "life" remain very ambiguous, he judges the same proposition, however ambiguous it may remain, in the opposite way, as full of a powerful truth (*gewaltige Wahrheit*) if it means that man's non-being would be still more terrible than man's not-yet-being just, than the not yet attained condition of the just man, purely and simply. In other words, what makes for the worth of man, of his *Dasein* and his life, is that he contains the potential, the possibility of justice, the yet-to-come (*avenir*) of justice, the yet-to-come of his being-just, of his

having-to-be just. What is sacred in his life is not his life but the justice of his life. Even if beasts and plants were sacred, they would not be so simply for their life, says Benjamin. This critique of vitalism or biologism, if it also resembles one by a certain Heidegger and if it recalls, as I have noted elsewhere, a certain Hegel, here proceeds like the awakening of a Judaic tradition. Because of this ambiguity in the concepts of life and *Dasein*, Benjamin is both drawn to and reticent before the dogma that affirms the sacred character of life, as natural life, pure and simple. The origin of this dogma deserves inquiry, notes Benjamin, who is ready to see in it the relatively modern and nostalgic response of the West to the loss of the sacred.

Which is the ultimate and most provocative paradox of this critique of violence? The one that offers the most to think about? It is that this critique presents itself as the only "philosophy" of history (the word "philosophy" remaining in unforgettable quotation marks) that makes possible an attitude that is not merely "critical" but, in the more critical and diacritical sense of the word "critique," *krinein*, an attitude that permits us to choose (*krinein*), and so to decide and to cut decisively in history and on the subject of history. It is the only one, Benjamin says, that permits us, in respect to present time, to take a decisive position (*scheidende und entscheidende Einstellung*, "discriminating and decisive approach," pp. 299–300). All undecidability (*Unentscheidbarkeit*) is situated, blocked in, accumulated on the side of *droit*, of mythological violence, that is to say the violence that founds and conserves *droit*. But on the other hand all decidability stands on the side of the divine violence that destroys *le droit*, we could even venture to say deconstructs it. To say that all decidability is found on the side of the divine violence that destroys or deconstructs *le droit* is to say at least two things:

1. That *history* is on the side of this divine violence, and history precisely in opposition to myth. It is indeed for this reason that it's a matter of a "philosophy" of *history* and that Benjamin appeals in fact to a "new historical era" (*ein neues geschichtliches Zeitalter*, "a new historical epoch," p. 300) that should follow the end of the mythic reign, the interruption of the magic circle of the mythic forms of *droit*, the abolition of the *Staatsgewalt*, of the violence or authority of the state. This new historical era would be a new political era on the condition that politics not be tied to state control, as Schmitt for example would have it.

2. If all decidability is concentrated on the side of divine violence in the Judaic tradition, this would come to confirm and give meaning to the spectacle offered by the history of *droit* which deconstructs itself and is paralyzed in undecidability, since what Benjamin calls the "dia-

lectic of up and down" (*ein dialektisches Auf und Ab*, "dialectical rising and falling") in the founding or conserving violence of *droit* constitutes an oscillation in which the violence that conserves must constantly give itself up to the repression of hostile counter-violences (*Unterdrückung der feindlichen Gegengewalten*). But this repression—and *droit*, the juridical institution, is essentially repressive from this point of view—never ceases to weaken the founding violence that it represents. And so it destroys itself in the course of this cycle. For here Benjamin to some extent recognizes this law of iterability that insures that the founding violence is constantly represented in a conservative violence that always repeats the tradition of its origin and that ultimately keeps nothing but a foundation destined from the start to be repeated, conserved, reinstituted. Benjamin says that founding violence is "represented" (*repräsentiert*) in conservative violence.

To think at this point that we have cast light and correctly interpreted the meaning, the *vouloir-dire* of Benjamin's text, by opposing in a decidable way the decidability of divine, revolutionary, historical, anti-state, anti-juridical violence on one side and on the other the undecidability of the mythic violence of state *droit*, would still be to decide too quickly and not to understand the power of this text. For in its last lines a new act of the drama is played, or a *coup de théâtre* that I couldn't swear was not premeditated from the moment the curtain went up. What does Benjamin in fact say? First he speaks in the conditional about revolutionary violence (*revolutionäre Gewalt*): "if," beyond *droit*, violence sees its status insured as pure and immediate violence, then this will prove that revolutionary violence is possible. Then we would know, but this is a conditional clause, that it is this revolutionary violence whose name is the purest manifestation of violence among men. But why is this statement in the conditional? Is it only provisional and contingent? Not at all. For the *decision* (*Entscheidung*) on this subject, the determinant decision, the one that permits us to know or to recognize such a pure and revolutionary violence *as such*, is a *decision not accessible to man*. Here we must deal with a whole other undecidability, and I prefer to cite Benjamin's sentence *in extenso*: "But it is neither equally possible nor equally urgent for man to decide when pure violence was effected in a determined case." (*Nicht gleich möglich, noch auch gleich dringend ist aber für Menschen die Entscheidung, wann reine Gewalt in einem bestimmten Falle wirklich war*, "Less possible and also less urgent for humankind, however, is to decide when unalloyed violence has been realized in particular cases," p. 300).

This results from the fact that divine violence, which is the most just, the most historic, the most revolutionary, the most decidable or

the most deciding does not lend itself to any human determination, to any knowledge or decidable "certainty" on our part. It is never known in itself, "as such," but only in its "effects" and its effects are "incomparable," they do not lend themselves to any conceptual generalization. There is no certainty (*Gewißheit*) or determinant knowledge except in the realm of mythic violence, that is, of *droit*, that is, of the undecidable we have been talking about. "For only mythical violence, not divine, will be recognizable as such with certainty, unless it be in incomparable effects . . ." (p. 300). To be schematic, there are two violences, two competing *Gewalten*: on one side, decision (just, historical, political, and so on), justice beyond *droit* and the state, but without decidable knowledge; on the other, decidable knowledge and certainty in a realm that structurally remains that of the undecidable, of the mythic *droit* of the state. On one side the decision without decidable certainty, on the other the certainty of the undecidable but without decision. In any case, in one form or another, the undecidable is on each side, and is the violent condition of knowledge or action. But knowledge and action are always dissociated.

Questions: What one calls in the singular, if there is one and only one, deconstruction, is it the former or the latter? Something else entirely or something else again? If we trust the Benjaminian schema, is the deconstructive discourse on the undecidable more Jewish (or Judaeo-Christian-Islamic) or Greek? More religious, more mythic or more philosophical? If I do not answer questions that take this form, it is not only because I am not sure that such a thing as "Deconstruction," in the singular, exists or is possible. It is also because I think that deconstructive discourses as they present themselves in their irreducible plurality participate in an impure, contaminating, negotiated, bastard and violent way in all these filiations—let's call them Judaeo-Greek to save time—of decision and the undecidable. And then, the Jew and the Greek, that may not be exactly what Benjamin had in mind for us. And finally for what remains to come in deconstruction, I think that something else runs through its veins, perhaps without filiation, an entirely different blood or rather something entirely different from blood.¹⁴

And so in saying *adieu* or *au-revoir* to Benjamin, I nevertheless leave him the last word. I let him sign, at least if he can. It is always necessary that the other sign and it is always the other that signs last. In other words, first.

In his last lines, Benjamin, just before signing, even uses the word "bastard." That in short is the definition of the myth, and so of the founding violence of *droit*. Mythic *droit*, we could say juridical fiction,

is a violence that will have "bastardized" (*bastardierte*) the "eternal forms of pure divine violence." Myth has bastardized divine violence with *droit* (*mit dem Recht*). Misalliance, impure genealogy: not a mixture of bloods but bastardy which at its root will have created a *droit* that makes blood flow and exacts blood as payment.

And then, as soon as he has taken responsibility for this interpretation of the Greek and the Jew, Benjamin signs. He speaks in an evaluative, prescriptive, non-constative manner, as we do each time we sign. Two energetic sentences proclaim what *must* be the watchwords, what one *must* do, what one *must* reject, the evil or perversity of what must be rejected (*Verwerflich*). "But one must reject (*Verwerflich aber*) all mythical violence, the violence that founds *droit*, which we may call governing (*schaltende*) violence. One must also reject (*Verwerflich auch*) the violence that conserves *droit*, the governed violence (*die verwaltete Gewalt*) in the service of the governing." (The English translation is, as it often is, insipid: "But all mythical, lawmaking violence, which we may call executive, is pernicious. Pernicious, too, is the law-preserving, administrative violence that serves it," p. 300).

Then there are the last words, the last sentence. Like the *shophar* at night or on the brink of a prayer one no longer hears or does not yet hear. Not only does it sign, this ultimate address, and very close to the first name of Benjamin, Walter. It also names the signature, the sign and the seal, it names the name and what calls itself "*die waltende*." But who signs? It is God, the Wholly Other, as always, it is the divine violence that always will have preceded but also will have *given* all the first names: "*Die göttliche Gewalt, welche Insignium und Siegel, niemals Mittel heiliger Vollstreckung ist, mag die waltende heißen*": "Divine violence, which is the sign and seal but never the means of sacred execution, may be called sovereign violence (*die waltende heißen*)."¹⁵

Jacques Derrida

Post-scriptum

This strange text is dated. Every signature is dated, even and perhaps all the more so if it slips in among several names of God and only signs by pretending to let God himself sign. If this text is dated and signed (Walter, 1921), we have only a limited right to convoke it to bear witness either to Nazism in general (which had not yet developed as such), or to the new forms assumed there by the racism and the antisemitism that are inseparable from it, or even less to the final solution: not only because the project and the deployment of the final solution came later and even after the death of Benjamin, but because

within the history itself of Nazism the final solution is something that some might consider an ineluctable outcome and inscribed in the very premises of Nazism, if such a thing has a proper identity that can sustain this sort of utterance, while others—whether or not they are Nazis or Germans—might think that the project of a final solution is an event, indeed something entirely new within the history of Nazism and that as such it deserves an absolutely specific analysis. For all of these reasons, we would not have the right or we would have only a limited right to ask ourselves what Walter Benjamin would have thought, in the logic of this text (if it has one and only one) of both Nazism and the final solution.

And yet in a certain way I will do just that, and I will do it by going beyond my interest for this text itself, for its event and its structure, for that which it allows us to read of a configuration of Jewish and German thinking right before the rise of Nazism, as one says, of all the shared portions and all the partitions that organize such a configuration, of the vertiginous proximities, the radical reversals of pro into con on the basis of sometimes common premises. Presuming, that is, that all these problems are really separable, which I doubt. In truth, I will not ask myself what Benjamin himself thought of Nazism and antisemitism, all the more so since we have other means of doing so, other texts by him. Nor will I ask what Walter Benjamin himself would have thought of the final solution and what judgments, what interpretations he would have proposed. I will seek something else, in a modest and preliminary way. However enigmatic and overdetermined the logical matrix of this text might be, however mobile and convertible, however reversible it is, it has its own coherence. This coherence also marks a number of other texts by Benjamin, both earlier and later ones. It is by taking account of certain insistent elements in this coherent continuity that I will try out several hypotheses in order to reconstitute not some possible utterances by Benjamin but the larger aspects of the problematic and interpretive space in which his discourse on the final solution might have been inscribed.

On the one hand, he would probably have taken the final solution to be the extreme consequence of a logic of Nazism that, to take up again the concepts from our text, would have corresponded to:

1. The radicalization of evil linked to the fall into the language of communication, representation, information (and from this point of view, Nazism has indeed been the most pervasive figure of media violence and of political exploitation of the modern techniques of communicative language, of industrial language and of the language of industry, of scientific objectification to which is linked the logic of the conventional sign and of formalizing registration);

2. The totalitarian radicalization of a logic of the state (and our text is indeed a condemnation of the state, even of the revolution that replaces a state by another state, which is also valid for other totalitarianisms—and already we see prefigured the question of the *Historikerstreit*);

3. The radical but also fatal corruption of parliamentary and representative democracy through a modern police that is inseparable from it, that becomes the true legislative power and whose phantom commands the totality of the political space. From this point of view, the final solution is both a historico-political decision by the state and a decision by the police, the civil and the military police, without anyone ever being able to discern the one from the other and to assign the true responsibilities to any one decision whatsoever.

4. A radicalization and total extension of the mythical, of mythical violence, both in its sacrificial founding moment and its most conservative moment. And this mythological dimension, that is at once Greek and aestheticizing (like fascism, Nazism is mythological, Grecoid, and if it corresponds to an aestheticization of the political, it is in an aesthetics of representation), this mythological dimension also responds to a certain violence of state law, of its police and its technics, of right totally dissociated from justice, as the conceptual generality propitious to the mass structure in opposition to the consideration of singularity and uniqueness. How can one otherwise explain the institutional, even bureaucratic form, the simulacra of legalization, of juridicism, the respect for expertise and for hierarchies, in short, the whole judicial and state organization that marked the techno-industrial and scientific deployment of the "final solution"? Here a certain mythology of right was unleashed against a justice which Benjamin believed ought to be kept radically distinct from right, from natural as well as historic right, from the violence of its foundation as well as from that of its conservation. And Nazism was a conservative revolution of right.

But, on the other hand and for these very reasons, because Nazism leads logically to the final solution as to its own limit and because the mythological violence of right is its veritable system, one can only think, that is, also remember the uniqueness of the final solution from a place other than this space of the mythological violence of right. To take the measure of this event and of what links it to destiny, one would have to leave the order of right, of myth, of representation (of juridico-political representation with its tribunals of historian-judges, but also of aesthetic representation). Because what Nazism, as the final achievement of the logic of mythological violence, would have attempted to do is to exclude the other witness, to destroy the witness

of the other order, of a divine violence whose justice is irreducible to right, of a violence heterogeneous to the order both of right (be it that of human rights or of the order of representation) and of myth. In other words, one cannot think the uniqueness of an event like the final solution, as extreme point of mythic and representational violence, within its *own* system. One must try to think it beginning with its other, that is to say, starting from what it tried to exclude and to destroy, to exterminate radically, from that which haunted it at once from without and within. One must try to think it starting from the possibility of singularity, the singularity of the signature and of the name, because what the order of representation tried to exterminate was not only human lives by the millions, natural lives, but also a demand for justice; and also names: and first of all the possibility of giving, inscribing, calling and recalling the name. Not only because there was a destruction or project of destruction of the name and of the very memory of the name, of the name as memory, but also because the system of mythical violence (objectivist, representational, communicational, etc.) went all the way to its limit, in a demonic fashion, on the two sides of the limit: *at the same time*, it kept the archive of its destruction, produced simulacra of justificatory arguments, with a terrifying legal, bureaucratic, statist objectivity and paradoxically produced a system in which its logic, the logic of objectivity made possible the invalidation and therefore the effacement of testimony and of responsibilities, the neutralization of the singularity of the final solution; in short, it produced the possibility of the historiographic perversion that has been able to give rise both to the logic of revisionism (to be brief, let us say of the Faurisson type) as well as a positivist, comparatist, or relativist objectivism (like the one now linked to the *Historikerstreit*) according to which the existence of an analogous totalitarian model and of earlier exterminations (the Gulag) explains the final solution, even "normalizes" it as an act of war, a classic state response in time of war against the Jews of the world, who, speaking through the mouth of Weizman in September, 1939, would have, in sum, like a quasi-state, declared war on the Third Reich.

From this point of view, Benjamin would perhaps have judged vain and without pertinence—in any case without a pertinence commensurable to the event, any juridical trial of Nazism and of its responsibilities, any judgmental apparatus, any historiography still homogeneous with the space in which Nazism developed up to and including the final solution, any interpretation drawing on philosophical, moral, sociological, psychological or psychoanalytical concepts, and especially juridical concepts (in particular those of the philosophy of right,

whether it be that of natural law, in the Aristotelian style or the style of the *Aufklärung*). Benjamin would perhaps have judged vain and without pertinence, in any case without pertinence commensurable to the event, any historical or aesthetic objectification of the final solution that, like all objectifications, would still belong to the order of the representable and even of the determinable, of the determinant and decidable judgment. Recall what we were saying a moment ago: in the order of the bad violence of right, that is the mythological order, evil arose from a certain undecidability, from the fact that one could not distinguish between founding violence and conserving violence, because corruption was dialectical and dialectically inevitable there, even as theoretical judgment and representation were determinable or determinant there. On the contrary, as soon as one leaves this order, history begins—and the violence of divine justice—but here we humans cannot measure judgments, which is to say also decidable interpretations. This also means that the interpretation of the final solution, as of everything that constitutes the set and the delimitation of the two orders (the mythological and the divine) is not in the measure of man. No anthropology, no humanism, no discourse of man on man, even on human rights, can be proportionate to either the rupture between the mythical and the divine, or to a limit experience such as the final solution. Such a project attempts quite simply to annihilate the other of mythic violence, the other of representation: destiny, divine justice and that which can bear witness to it, in other words man insofar as he is the only being who, not having received his name from God, has received from God the power and the mission to name, to give a name to his own kind and to give a name to things. To name is not to represent, it is not to communicate by signs, that is, by means of means in view of an end, etc. In other words, the line of this interpretation would belong to that terrible and crushing condemnation of the *Aufklärung* that Benjamin had already formulated in a text of 1918 published by Scholem in 1963 honoring Adorno on his 60th birthday.

This does not mean that one must simply renounce Enlightenment and the language of communication or of representation in favor of the language of expression. In his *Moscow Diary* in 1926–27, Benjamin specifies that the polarity between the two languages and all that they command cannot be maintained and deployed in a pure state, but that "compromise" is necessary or inevitable between them. Yet this remains a compromise between two incommensurable and radically heterogeneous dimensions. It is perhaps one of the lessons that we could draw here: the fatal nature of the compromise between heterogeneous orders, which is a compromise, moreover, in the name of

the justice that would command one to obey at the same time the law of representations (*Aufklärung*, reason, objectification, comparison, explication, the taking into account of multiplicity and therefore the serialization of the unique) and the law that transcends representation and withholds the unique, all uniqueness, from its reinscription in an order of generality or of comparison.

What I find, in conclusion, the most redoubtable, indeed (perhaps, almost) intolerable in this text, even beyond the affinities it maintains with the worst (the critique of *Aufklärung*, the theory of the fall and of originary authenticity, the polarity between originary language and fallen language, the critique of representation and of parliamentary democracy, etc.), is a temptation that it would leave open, and leave open notably to the survivors or the victims of the final solution, to its past, present or potential victims. Which temptation? The temptation to think the holocaust as an uninterpretable manifestation of divine violence insofar as this divine violence would be at the same time nihilating, expiatory and bloodless, says Benjamin, a divine violence that would destroy current law through a bloodless process that strikes and causes to expiate. Here I will re-cite Benjamin: "The legend of Niobe may be confronted, as an example of this violence, with God's judgment on the company of Korah (Numbers 16: 1-35). It strikes privileged Levites, strikes them without warning, without threat, and does not stop short of annihilation. But in annihilating it also expiates, and a deep connection between the lack of bloodshed and the expiatory character of this violence is unmistakable" (p. 297). When one thinks of the gas chambers and the cremation ovens, this allusion to an extermination that would be expiatory because bloodless must cause one to shudder. One is terrified at the idea of an interpretation that would make of the holocaust an expiation and an indecipherable signature of the just and violent anger of God.

It is at that point that this text, despite all its polysemic mobility and all its resources for reversal, seems to me finally to resemble too closely, to the point of specular fascination and vertigo, the very thing against which one must act and think, do and speak, that with which one must break (perhaps, perhaps). This text, like many others by Benjamin, is still too Heideggerian, too messianico-marxist or archeo-eschatological for me. I do not know whether from this nameless thing called the final solution one can draw something which still deserves the name of a lesson. But if there were a lesson to be drawn, a unique lesson among the always singular lessons of murder, from even a single murder, from all the collective exterminations of history (because each individual murder and each collective murder is singular, thus infinite and incommensurable) the lesson that we can draw to-

day—and if we can do so then we must—is that we must think, know, represent for ourselves, formalize, judge the possible complicity between all these discourses and the worst (here the final solution). In my view, this defines a task and a responsibility the theme of which (yes, the theme) I have not been able to read in either Benjaminian "destruction" or Heideggerian "*Destruktion*." It is the thought of difference between these destructions on the one hand and a deconstructive affirmation on the other that has guided me tonight in this reading. It is this thought that the memory of the final solution seems to me to dictate.

NOTES

1. On the *oblique*, cf. my *Du droit à la philosophie* (Paris: Galilée, 1990), esp. pp. 71ff, and "Passions: An Oblique Offering," *Derrida: A Critical Reader*, David Wood, ed. (London: Blackwell, 1992).
2. On this notion of credit, see my *Given Time I: Counterfeit Money*, trans. Peggy Kamuf, forthcoming University of Chicago Press.
3. Minneapolis: University of Minnesota Press, 1987.
4. On animality, cf. my *Of Spirit: Heidegger and the Question*, trans. Geoffrey Bennington and Rachel Bowlby (Chicago: University of Chicago Press, 1989). Other references are collected in this volume. As for sacrifice, see the interview with Jean-Luc Nancy, trans. Peter T. Connor, in *Topoi*, vol. 7, no. 2.
5. And as for what consists, as St. Augustine would have said, in "making the truth," see my *Circonfession*, in Geoffrey Bennington and Jacques Derrida, *Jacques Derrida* (Paris: Le Seuil, 1991).
6. Editors' note: The following comprises the introduction to this second part of the essay when it served as a lecture delivered at the UCLA colloquium, "Nazism and the 'Final Solution'":

Rightly or wrongly, I thought that it would perhaps not be entirely inappropriate to interrogate a text by Walter Benjamin, singularly an essay written in 1921 and entitled *Zur Kritik der Gewalt* (*Critique of Violence*), at the opening of such a meeting on Nazism, the final solution, and the limits of representation, especially since my lecture is also presented (and I am greatly honored by this double hospitality) under the auspices of a center for Critical Studies and the Human Sciences. If I have therefore chosen to present a somewhat risky reading of this text by Benjamin, it is for several reasons that seem to converge here.

1. I believe this uneasy, enigmatic, terribly equivocal text is, as it were, haunted in advance (but can one say "in advance" here?) by the theme of radical destruction, extermination, total annihilation, beginning with the annihilation of the law and of right, if not of justice, and, among those rights, human rights, at least such as these are interpreted within a tradition of natural law of the Greek type or the "*Aufklärung*" type. I purposely say that this text is *haunted* by the themes of exterminating violence because first of all, as I will try to demonstrate, it is haunted by *haunting* itself, by a quasi-logic of the phantom which, because it is the more forceful one, should be substituted for an ontological logic of presence,

absence or representation. Now, I ask myself whether a community that assembles or gathers itself together in order to think what there is to be thought and gathered of this nameless thing that has been called the "final solution" does not have to show, first of all, its readiness to welcome the law of the phantom, the spectral experience and the memory of the phantom, of that which is neither dead nor living, more than dead and more than living, only surviving, the law of the most commanding memory, even though it is the most effaced and the most effaceable, but for that very reason the most demanding.

This text by Benjamin is not only signed by a thinker who is considered and considered himself to be, in a certain fashion, Jewish (and I most especially would like to talk about the enigma of this signature). *Zur Kritik der Gewalt* is also inscribed in a Judaic perspective that opposes just, divine (Jewish) violence that would destroy the law to mythical violence (of the Greek tradition) that would install and conserve the law.

2. The profound logic of this essay puts to work an interpretation of language—of the origin and the experience of language—according to which evil, that is to say lethal power, comes to language by way of, precisely, *representation*, in other words, by that dimension of language as means of communication that is re-presentative, mediating, thus technical, utilitarian, semiotic, informational—all of those powers that uproot language and cause it to decline, to fall far from or outside of its originary destination which was appellation, nomination, the giving or the appeal or presence in the name. We will ask ourselves how this thinking about the name is articulated with haunting and the logic of the specter. This essay by Benjamin, which treats thus of evil, of that evil that is coming and that comes to language through representation, is also an essay in which the concepts of responsibility and of culpability, of sacrifice, decision, solution, punishment or expiation play a major role, one which is most often associated with the value of what is demonic and "demonically ambiguous" (*dämonisch zweideutig*).

3. *Zur Kritik der Gewalt* is a critique of representation not only as perversion and fall of language, but as a political system of formal and parliamentary democracy. From that point of view, this revolutionary essay (revolutionary in a style that is at once Marxist and messianic) belongs, in 1921, to the great anti-parliamentary and anti-*"Aufklärung"* wave on which Nazism so to speak surfaced and even surfed in the 1920s and the beginning of the 1930s.

4. This very polyhedric and polysemic question of representation is posed as well from another point of view in this strange essay. Having begun by distinguishing between two sorts of violence, founding violence and conserving violence, Benjamin must concede at one moment that the one cannot be so radically heterogeneous to the other since the violence called founding violence is sometimes represented (*repräsentiert*) by the conserving violence.

For all of these reasons and according to all of these interlaced threads to which I am going to return, one can ask oneself a certain number of questions. They will be on the horizon of my reading even if I do not have the time here or the means to make them explicit. What would Benjamin have thought, or at least what thought of Benjamin is potentially formed or articulated in this essay—and can it be anticipated—on, the "final solution," its project, its *mise en oeuvre*, the experience of its victims, the judgments, trials, interpretations, narrative, explicating, literary, historical representations which have attempted to measure up to it? How would Benjamin have spoken, how would he have wished one to speak, to represent, or to forbid oneself from representing the "final solution"? How might he

have attempted to identify it, to assign places in it, origins to it, responsibilities for it (as a philosopher, a historian, judge or jurist, as moralist, man of faith, poet, filmmaker). The very singular multiplicity of the codes that converge in this text, to say nothing of other texts; the graft of the language of marxist revolution on that of messianic revolution, both of them announcing not only a new historical epoch, but also the beginning of a true history that has been rid of myth; all of this makes it difficult to propose any hypotheses about a Benjaminian discourse on the "final solution" or about a Benjaminian discourse on the possibility or impossibility of a discourse on the "final solution." A "final solution" of which it would be reckless to say, relying on the objective dates of the Wannsee conference in 1942 and Benjamin's suicide on the Franco-Spanish border in 1940, that Benjamin knew nothing about it. One will always find ways to support the hypothesis according to which Benjamin, already in 1921, was thinking about nothing else than the possibility of this final solution that would be all the more challenging to the order of representation from having perhaps arisen, in his view, from radical evil, from the fall as fall of language into representation. And if one relies on a constant logic of his discourse, many signs allow one to think that for Benjamin, after this unrepresentable thing that will have been the "final solution," not only are discourse and literature and poetry not impossible but, more originarily and more eschatologically than ever, they must offer themselves to the dictation of the return or the still promised advent of a language of names, a language or a poetics of appellation, in opposition to a language of signs, of informative or communicative representation: beyond myth and representation but not beyond the language of names. Something I tried to show elsewhere about Celan on the subject of dates and acts. At the end, after the end of a reading in the course of which the horizon of Nazism and the final solution will appear only through signs or brief flashes of expectation and will be treated only in a virtual, oblique or elliptical fashion, I will propose a few hypotheses on the ways in which this text from 1921 can today be read, after the event of Nazism and the event of the final solution.

Before proposing a reading of this singular text, before articulating some questions that concern it more strictly, I must also say a few words, in this already too lengthy introduction, about the contexts in which I began to read the essay. That context was double and I will define it as schematically as possible, while limiting myself to the aspects that may interest us here, this evening, because they will have left some traces on my reading.

1. First of all, within a three-year seminar on "philosophical nationalities and nationalisms," there was a year-long sequence subtitled *Kant, the Jew, the German* in which, while studying the varied but insistent recurrence of the reference to Kant, indeed to a certain Judaism in Kant, on the part of all those who, from Wagner and Nietzsche to Adorno, sought to respond to the question "*Was ist Deutsch?*," I became very interested in what I then called the *Judeo-German psyche*, that is, the logic of certain phenomena of a disturbing sort of specularity (*Psyché* also meaning in French a sort of mirror) that was itself reflected in some of the great German Jewish thinkers and writers of this century: Cohen, Buber, Rosenzweig, Scholem, Adorno, Arendt—and, precisely, Benjamin. I believe that a serious reflection on Nazism—and the "final solution"—cannot avoid a courageous, interminable and polyhedral analysis of the history and structure of this Judeo-German "psyche." Among other things that I cannot go into here, we studied certain analogies, which were sometimes of the most equivocal and disquieting sort, between the discourse of certain "great German" thinkers and certain "great

German Jewish" thinkers, a certain German patriotism, often a German nationalism, and sometimes even a German militarism (during and after the First World War) being not the only example, far from it, for instance in Cohen or Rosenzweig or, to some extent, in Husserl. It is in this context that certain limited but determinable affinities between Benjamin's text and some texts by Carl Schmitt, even by Heidegger, began to intrigue me. Not only because of the hostility to parliamentary democracy, even to democracy as such, or to the *Aufklärung*, not only because of a certain interpretation of the *polemos*, of war, violence and language, but also because of a thematic of "destruction" that was very widespread at the time. Although Heideggerian *Destruktion* cannot be confused with the concept of destruction that was also at the center of Benjaminian thought, one may well ask oneself what such an obsessive thematic might signify and what it is preparing or anticipating between the two wars, all the more so in that, in every case, this destruction also sought to be the condition of an authentic tradition and memory, and of the reference to an originary language.

2. Other context: On the occasion of a recent colloquium held at the Cardozo Law School of Yeshiva University of New York on the topic "Deconstruction and the Possibility of Justice," I began, after a long consideration of "Deconstruction and Justice," to examine this text by Benjamin from another point of view. I followed there precisely, and as cautiously as possible, a dismaying trajectory, one that is at the same time aporetic and productive of strange events in its very aporia, a kind of self-destruction, if not a suicide of the text, that lets no other legacy appear than the violence of its signature—but as divine signature. How to read this text with a "deconstructive" gesture that is neither, today any more than it has ever been, Heideggerian nor Benjaminian? In brief, that is the difficult and obscure question that this reading would like to risk putting forth.

7. "Psyche: Invention of the Other," trans. Catherine Porter, in *Reading de Man Reading* (Minneapolis: University of Minnesota Press, 1989), p. 36.
8. Cf. "Declarations of Independence," trans. Tom Keenan and Tom Pepper, *New Political Science*, no. 15, Summer, pp. 7–15.
9. Cf. "Before the Law," trans. Avital Ronell, in *Kafka and the Contemporary Critical Performance: Centenary Readings*, ed. Alan Udoff. (Bloomington, Ind.: Indiana University Press, 1987).
10. Cf. my "Rhétorique de la drogue," in *Autrement*, no. 106.
11. Cf. my *Mémoires d'aveugle. L'autoportrait et autres ruines* (Paris: Réunion des Musées Nationaux, 1990).
12. Cf. *Of Spirit*, op. cit., and "Philopolemology: Heidegger's Ear (Geschlecht IV)," forthcoming, Indiana University Press.
13. This "mythic" dimension of *droit* in general could no doubt be extended, according to Benjamin, to any theory of the "rights of man," at least to the extent that the latter would not proceed from what in this text is called "divine violence" (göttliche Gewalt).
14. In putting this text of Benjamin to the test of a certain deconstructive necessity, at least such as it is here determined for me now, I am anticipating a more ample and coherent work: on the relations between this deconstruction, what Benjamin calls "destruction" (*Zerstörung*) and the Heideggerian "*Destruktion*" (which I have already touched upon and to which I will return elsewhere, notably in "Philopolemology: Heidegger's Ear (Geschlecht IV)."

15. This "play" between *walten* and *Walter* does not afford any demonstration or any certainty. That, furthermore, is the paradox of its "demonstrative" force: this force results from the dissociation between the cognitive and the performative of which I spoke a moment ago (and also elsewhere), precisely in regard to the signature. But, touching on the absolute secret, this "play" is in no way ludic and gratuitous. For we also know that Benjamin was very interested, notably in *Goethe's Elective Affinities*, in the aleatory and significant coincidences of which proper names are properly the site. I would be tempted to give this hypothesis an even better chance after reading the very fine essay by Jochen Hörisch "L'ange satanique et le bonheur—Les noms de Walter Benjamin" in *Weimar: Le tournant esthétique*, G. Raullet, ed. (Paris, 1988).