FORCE OF LAW

The "Mystical Foundation of Authority"

Note: The first part of this text, "Of the Right to Justice/From Law to Justice [*Du droit à la justice*]," was read at the opening of a colloquium organized by Drucilla Cornell at the Cardozo Law School in October 1989 under the title "Deconstruction and the Possibility of Justice," which gathered philosophers, literary theorists and legal scholars (notably representatives of the movement called, in the U.S., "Critical Legal Studies"). The second part of the text, "First Name of Benjamin [*Prénom de Benjamin*]," was not read aloud, but the text itself was distributed among the participants.

On April 26, 1990, the second part of the same lecture was read at the opening of another colloquium organized at the University of California-Los Angeles by Saul Friedlander under the title "Nazism and the 'Final Solution': Probing the Limits of Representation."[2] To this second part were added a foreword and a postscript that are here reproduced. This version adds a few developments and some notes to the prior versions published in prior editions and foreign languages in the form of article or book.

1. *Translator's note:* The translation of the word *droit* into English is notoriously difficult, as this subtitle makes clear. The word carries the sense of "law" and "code of law," and the sense of "right" (as in "the philosophy of right" but also of course as in the "right to strike" or "human rights"). The word *law* has seemed here the most economical translation, even if not entirely appropriate in all instances. One should also keep in mind that this choice for translation does raise the problem of differentiating between law (*droit*) and law (*loi*). To indicate this difference, and since the word *droit* is used with much greater frequency in Derrida's text, I have included the French *loi* in brackets only when relevant. In all other cases, when the words "law" (in the singular) or "right" appear in the present translation, it is consistently as a translation of *droit*.

2. *Translator's note:* Cf. *Probing the Limits of Representation: Nazism and the "Final Solution,"* ed. Saul Friedlander (Cambridge, Mass.: Harvard University Press, 1992).

I: OF THE RIGHT TO JUSTICE/FROM LAW TO JUSTICE

C'est pour moi un devoir, je dois *m'adresser* à vous en anglais. This is for me a duty, I must *address* myself to you in English.

The title of this colloquium and the problem that I must—as you transitively say in your language—address, have had me dreaming for months. Although I have been entrusted with the formidable honor of the "keynote address," I had nothing to do with the invention of this title, nor with the implicit formulation of the problem. "Deconstruction and the Possibility of Justice": The conjunction "and" brings together words, concepts, perhaps things that do not belong to the same category. A conjunction such as *and* dares to defy order, taxonomy, and classificatory logic, no matter how it operates—by analogy, distinction or opposition. An ill-tempered speaker might say, "I do not see the connection; no rhetoric could bend itself to such an exercise. I am quite willing 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 taxonomy or this syntagm."

Such a speaker would not merely be in a bad temper, he would be in bad faith. And even unjust. For one could easily propose a just interpretation, that is to say in this case an adequate and lucid—and so rather suspicious—interpretation, of the title's intentions or of its *vouloir-dire*. This title suggests a question that itself takes the form of a suspicion: Does deconstruction ensure, permit, authorize the possibility of justice? Does it make justice possible, or a discourse of consequence on justice and on the conditions of its possibility? Yes, some would reply; no, would the other party. Do the "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, finally? Is it not, as some suspect, because deconstruction does not in itself permit any just action, any valid discourse on justice but rather constitutes a threat to law, and ruins the condition of possibility of justice? Yes, some would reply; no, replies the adversary.

With this first fictive exchange one can already find equivocal slippages between law and justice. The suffering of deconstruction, what makes it suffer and what makes suffer those who suffer from it, is perhaps the absence of rules, of norms, and definitive criteria to distinguish in an unequivocal manner between law and justice. It is therefore a matter of these concepts (normative or not) of norm, of rule or criteria. It is a matter of judging what permits judgment, of what judgment itself authorizes.

Such would be the choice, the "either/or," "yes or no" that one can suspect in this title. To this extent, the title would be virtually violent, polemical, inquisitorial. One can fear that it contains some instrument of torture, a manner of interrogation that would not be the most just. Needless to say already, I will not be able to offer

any response, at least no reassuring response, to any questions put in this way ("either/or," "yes or no"), to either of the two expectations formulated or formalized in this way.

Je dois, donc, c'est ici un devoir, m'adresser à vous en anglais. So I must, it is here a duty, address myself to you in English. *Je le dois*—this means several things at once:

1. *Je dois parler anglais* (how does one translate this "*dois*," this duty? I must? I should, I ought to, I have to?) because one has made this for me a sort of obligation or condition by a sort of symbolic force or law [*loi*] in a situation I do not control. A sort of *pólemos* already concerns the appropriation of language: if, at least, I want to make myself heard and understood, it is necessary [*il faut*] that I speak your language; *je le dois*, I have to do it.
2. I must speak your language because what I shall say will thus be more *juste*, or will be judged more *juste*, and be more justly appreciated, that is to say, this time, *juste* in the sense of *justesse*, 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 make the law [*loi*]. "Faire la loi" ("making the law") is an interesting expression about which we shall have to speak again.
3. I must speak in a language that is not my own because it will be more just, in another sense of the word *juste*, in the sense of justice, a sense which, without thinking about it too much for now, one could call *juridico-ethico-political*: it is more just to speak the language of the majority, especially when, through hospitality, it grants speech to the stranger or foreigner. We are referring here to a law [*loi*] of which it is hard to say whether it is a rule of decorum, politeness, the law of the strongest [*la loi du plus fort*], or the equitable law [*loi*] of democracy. And whether it depends on justice or on law. Still, in order for me to bend to this law [*loi*] 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; then, I must be capable, up to a certain point, of understanding the contract and the conditions of the law [*loi*]—that is to say, of at least minimally appropriating to myself your language, which then ceases, at least to this extent, to be foreign to me. It must be the case [*il faut*] that you and I understand, in more or less the same fashion, the translation of my text, initially written in French; this translation, however excellent it may be,[3] necessarily remains a translation—that is to say an always possible but always imperfect compromise between two idioms.

3. *Translator's note:* In the previous English version, Derrida here thanks the translator, Mary Quaintance.

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

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

A. The first is "to enforce the law," or "the enforceability of the law or contract." When one translates "to enforce the law" into French,—as 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. No law without force, as Immanuel Kant recalled with the greatest rigor. 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*, of justice as it becomes law, of the law as law [*de la loi en tant que droit*].

I want to insist at once to reserve the possibility of a justice, indeed of a law [*loi*] that not only exceeds or contradicts law but also, perhaps, has no relation to law, or maintains such a strange relation to it that it may just as well demand law as exclude it.

The word "enforceability" recalls us therefore to the letter. It literally reminds us that there is no law that does not imply *in itself, a priori, in the analytic structure of its concept*, the possibility of being "enforced," applied by force. Kant recalls this as early as the *Introduction to the Theory of Right* (paragraph E, which concerns law "in its strict sense, *das stricte Recht*").[4] There are, to be sure, laws [*lois*] that are not enforced, but there is no law [*loi*] without enforceability and no applicability or enforceability of the law [*loi*] without force, whether this force be direct or indirect, physical or symbolic, exterior or interior, brutal or subtly discursive—even hermeneutic—coercive or regulative, and so forth.

How to distinguish between this force of the law [*loi*], this "force of law [*force de loi*]" as one says in English as well as in French, I believe, and the violence that one always judges unjust? What difference is there between, *on the one hand*, the force

4. This exteriority distinguishes right from morality but it is insufficient to found or justify it. "This right is certainly based on each individual's awareness of his obligations within the law; but if it is to remain pure, it may not and cannot appeal to this awareness as a motive which might determine the will to act in accordance with it, and it therefore depends rather on the principle of the possibility of an external coercion which can coexist with the freedom of everyone in accordance with universal laws" (Immanuel Kant, "Introduction to the Theory of Right," trans. H. B. Nisbet, in *Political Writings* [Cambridge: Cambridge University Press, 1991], 134). On this point, I allow myself to refer the reader to *Du droit à la philosophie* (Paris: Galilée, 1990), 77ff.

that can be just, or in any case judged legitimate (not only an instrument in the service of law but the practice and even the fulfillment, the essence of law), and, *on the other hand*, the violence that one always judges unjust? What is a just force or a nonviolent force?

In order not to leave the question of idiom, I will refer 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 text by Walter Benjamin that I will be speaking about soon is entitled "Zur Kritik der Gewalt," translated in French as "Pour une critique de la violence" and in English as "Critique of Violence." But these two translations, while not altogether unjust, and so not entirely violent, are very active interpretations that do not 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 to distinguish between the force of law [*loi*] of a legitimate power and the allegedly originary violence that must have established this authority and that could not itself have authorized itself by any anterior legitimacy, so that, in this initial moment, it is neither legal nor illegal—as others would quickly say, neither just nor unjust? The words *Walten* and *Gewalt* play a decisive role in a few texts by Martin Heidegger—where one cannot simply translate them as either *force* or *violence*—and in a context, where Heidegger will try to show that, for Heraclitus, for example, *Dikē*, (justice, right, trial, penalty or punishment, vengeance, and so forth)—is *eris* (conflict, *Streit*, discord, *pólemos* or *Kampf*); that is, it is *adikia*, injustice, as well.[5]

Since this colloquium is devoted to deconstruction and the possibility of justice, I recall first that in the many texts said to be "deconstructive," and particularly in some of those that I have published myself, recourse to the word "force" is both very 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 warning [*mise en garde*]. I have often called for vigilance, I have recalled myself to it, to the risks spread by this word, whether it be the risk of an obscure, substantialist, occultomystic concept or the risk of giving authorization to violent, unjust, arbitrary force. (I will not cite these texts—it would be self-indulgent and it would waste time—but I ask you to trust me.) A first precaution against the risks of substantialism or irrationalism is to recall the differential character of force. In the texts I just evoked, it is always a matter of differential force, of difference as difference of force, of force

5. Cf. "Heidegger's Ear: Philopolemology (*Geschlecht IV*) in *Reading Heidegger*, ed. John Sallis (Bloomington: Indiana University Press, 1993).

as *différance* or force of *différance* (*différance* is a force *différée-différante*); it is always a matter of the relation between force and form, between force and signification, of "performative" force, illocutionary or perlocutionary force, of persuasive force and of rhetoric, of affirmation of signature, but also and above all, of all the paradoxical situations in which the greatest force and the greatest weakness strangely exchange places [*s'échangent étrangement*]. And that is the whole story, the whole of history. What remains is that I have always been uncomfortable with the word *force* even if I have often judged it indispensable—and so I thank you for thus pressing me to try and say a little more about it today. Indeed, the same thing goes for justice. There are no doubt many reasons why the majority of texts hastily identified as "deconstructionist" seem—I do say *seem*—not to foreground the theme of justice (as theme, precisely), nor even 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, that of 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 "To Speculate—on Freud," to the law [*loi*], in "Before the Law" (on Kafka's *Vor dem Gesetz*) or in "Declarations of Independence," in "The Laws of Reflection: Nelson Mandela, In Admiration," 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, on singularity, difference and heterogeneity are also, through and through, at least oblique discourses on justice.

Besides, it was normal, foreseeable, and desirable that studies of deconstructive style should culminate in the problematic of right, of law [*loi*] and justice. Such would even be the most proper place for them, if such a thing existed: a deconstructive questioning that starts, as has been the case, by destabilizing or complicating the opposition between *nomos* and *physis*, between *thesis* and *physis*—that is to say, the opposition between law [*loi*], convention, the institution on the one hand, and nature on the other, with all the oppositions that they condition. An example—and this is only an example—is that between positive law and natural law (*différance* is the displacement of this oppositional logic). It is a deconstructive questioning that starts—as has been the case—by destabilizing, complicating, or recalling the paradoxes of values like those of the proper and of property in all their registers, of the subject, and thus of the responsible subject, of the subject of right, the subject of law, and the subject of morality, of the juridical or moral person, of intentionality, and so forth, and of all that follows from these; Such a deconstructive questioning is through and through a questioning of law and justice, a questioning of the foundations of law, morality, and politics.

This questioning of foundations is neither foundationalist nor antifoundationalist. Sometimes it even questions, or exceeds the very possibility, the ultimate necessity, of questioning itself, of the questioning form of thought, interrogating without confidence or prejudice the very history of the question and of its philosophical authority. For there is an authority—and so, a legitimate force of 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 precisely cannot be the case, such a deconstructive questioning or metaquestioning would be more "at home" ["*chez lui*"] in law schools, perhaps also, as it does happen, in theology or architecture departments, than in philosophy and literature departments. That is why, without knowing them well from the inside, for which I feel guilty, without pretending to any familiarity with them, I judge that developments in "critical legal studies" or in such works as those of Stanley Fish, Barbara Herrstein-Smith, Drucilla Cornell, Sam Weber, and others, located at the articulation between literature, 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—contrary to what Stanley Fish suggests—to aspire to something more consequential, to *change* things and to intervene in an efficient and responsible (though always, of course, in a mediated way), not only in the profession but in what one calls the city, the *pólis*, and more generally the world. Not to change things in the no doubt 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 hypertechnologized society, academic space, 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 *three* very brief *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, juridicoliterary 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 geopolitical and not merely domestic—for the fact that this development should be first and foremost North American.
3. Above all, if it seems urgent to pay 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 confusion. The word itself gives rise to enough misunderstandings that one would not want to add to them by reducing—between themselves, first of all—the styles of critical legal studies, or by making them examples or extensions of *Deconstruction* with a capital *D*. However unfamiliar they may be to me, I know that these works in Critical Legal Studies have their own history, context, and idiom; that 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, whereas 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, and mistrust for analogies and hasty transpositions, for confused homogenizations, seem to me to be the first imperative in the current state of things. I am convinced, I hope in any case, that this encounter will leave us with the memory of differences and *différends* at least as much it leaves us with encounters, with coincidences or consensus.

Thus, it only appears that *deconstruction*, in its best-known manifestations under that name, has not "addressed," as one says in English, the problem of justice. It only appears that way, but one must account for appearances, "keep up appearances" in the sense Aristotle gave to this necessity. That is how I would like to employ myself here: to show why and how what one currently calls deconstruction, while seeming not to "address" the problem of justice, has done nothing else while unable to do so directly but only in an oblique fashion. I say *oblique*, since at this very moment I am 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.[6]

B. I have not yet begun. I believed that I ought [*j'avais cru devoir*] to start by saying that I must [*il me faut bien*] address myself to you in your language; and I announced at once that I have always judged very precious, even irreplaceable, at least two of your idiomatic expressions. One was "to enforce the law," which always

6. On the *oblique*, see my *Du droit à la philosophie*, esp. 71ff, and "Passions: An Oblique Offering" in *On the Name*, trans. David Wood (Stanford: Stanford University Press, 1995).

reminds us that if justice is not necessarily law or the law [*le droit ou la loi*], it can not become justice legitimately or *de jure* [*de droit ou en droit*] except by holding [*détenir*] force or rather by appealing to force from its first moment, from its first word. At the beginning of justice there will have been *logos*, speech or language, but this is not necessarily in contradiction with another *incipit*, which would say, "In the beginning there will have been force." What must be thought, therefore, is this exercise of force in language itself, in the most intimate of its essence, as in the movement by which it would absolutely disarm itself from itself.

Blaise Pascal says so in a fragment I may return to later, one of his famous "*pensées*," which is always more difficult than it seems. "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 right that what is just should be followed; it is necessary that what is strongest should be followed*]."[7]

The beginning of this fragment is already extraordinary, at least in the rigor of its rhetoric. It says that what is just *must* [*doit*]—and it is just—be followed: followed by consequence, followed by effect, applied, *enforced*;[8] and then 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 "just" 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 "followed," enforced,[9] and it is just—also in the sense of *justesse*—to think this way—J. D.], it is *necessary* that what is strongest be followed (enforced)."

Pascal continues, "*La justice sans la force est impuissante* [Justice without force is powerless—in other words, justice is not justice, it is not achieved if it does not have the force to be "enforced"; a powerless justice is not justice, in the sense of law—J. D.]; 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 gainsaid, because there are always offenders; force without justice is condemned. It is necessary then to combine justice and force; and for this end make what is just strong, or what is strong just]."

7. Blaise Pascal, *Pensées et opuscules*, ed. Léon Brunschvicg (Paris: Hachette, 1961), frag. 298, 470. Blaise Pascal, *Thoughts*, trans. W. F. Trotter (New York: Collier, 1910), 107. *Translator's note:* I have altered the English translation to remain closer to Derrida's phrasing.

8. *Translator's note:* The word *enforced* is in English in the text.

9. *Translator's note:* The word *enforced* is in English in the text.

It is difficult to decide or conclude whether the "it is necessary [*il faut*]" 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. One could also consider this hesitation secondary. It hovers above the surface of an "it is necessary" that is deeper, if one could say so, since justice demands, as justice, recourse to force. The necessity of force is implied, then, in the *juste* of justice.

What follows and concludes this pensée is known: "Et ainsi ne pouvant faire que ce qui est juste fût fort, on a fait que ce qui est fort fût juste [And thus being unable to make what is just strong, we have made what is strong just]." The principle of the analysis or rather of the (active and anything but nonviolent) interpretation that I will *indirectly* propose in the course of this lecture, would run, I am convinced, counter to tradition and to its most obvious context. This dominant context and the conventional interpretation that it seems to govern goes, 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, according to whom laws [*lois*] are not in themselves just but are rather just only because they are laws. It is true that Montaigne used an interesting expression, which Pascal takes up for his own purposes and which I would also like to reinterpret and retrieve from its most conventional and most conventionalist reading. The expression is "mystical foundation of authority [*fondement mystique de l'autorité*]." 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 affirms the essence of justice to be the authority of the legislator; another the interest of the sovereign; another, present custom, and this is the most sure. Nothing according to reason alone, is just in itself; all changes with time. Custom creates the whole of equity, for the simple reason that it is accepted. It is the *mystical foundation* of its *authority*. Whoever carries it back to first principles destroys it]."[10]

Montaigne was in fact speaking, these are his words, of a "mystical foundation" of the authority of laws, "Or les loix se maintiennent en credit, non parce qu'elles sont justes, mais parce qu'elles sont loix: c'est le fondement mystique de leur authorité, elles n'en ont poinct d'autre.... Quiconque leur obeyt parce qu'elles sont justes, ne leur obeyt pas justement par où il doibt [Lawes are now maintained

10. Pascal, *Pensées*, no. 294, 467/*Thoughts*, 104; emphasis added.

in credit, not because they are just, but because they are lawes. It is the mystical foundation of their authority; they have none other . . . Whosoever obeyeth them because they are just, obeyes them not justly the way as he ought]."[11]

Clearly Montaigne is here distinguishing laws [*lois*], that is to say law [*droit*], from justice. The justice of law, justice as law is not justice. Laws are not just in as much as they are laws. One does not obey them because they are just but because they have authority. The word *credit* carries all the weight of the proposition and justifies the allusion to the mystical character of authority. The authority of laws rests only on the credit that is granted them. One believes in it; that is their only foundation. This act of faith is not an ontological or rational foundation. Still one has yet to think what *believing* means [*encore faut-il penser ce que croire veut dire*].

Little by little what will be clarified—if it is possible and if it is a matter here of a value of clarity—is what one can 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: "nostre droict mesme a, dict-on, des fictions legitimes sur lesquelles il fonde la vérité de sa justice [and our law hath, as some say, certaine lawfull fictions, on which it groundeth the truth of justice]." What is a legitimate fiction? What does it mean to found the truth of justice? These are among the questions that await us. Montaigne proposed an analogy between this supplement of a legitimate fiction, that is, the fiction necessary to found 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, an addition of fictional) law just as—and that is the proximity [*rapprochement*] proposed by Montaigne—"les femmes employent des dents d'yvoire où les leurs naturelles leur manquent, et, au lieu de leur vray teint, en forgent un de quelque matiere estrangere . . . s'embellissent d'une beauté fauce et empruntée: ainsi faict la science (et nostre droict mesme, a dict-on, des fictions legitimes sur lesquelles il fonde la verité de sa justice) [Even as women, when their naturall teeth faile them, use some of yvorie, and in stead of a true beautie, or lively colour, lay-on artificiall hew . . . embellish themselves with counterfeit and borrowed beauties; so doth learning (and our law hath, as some say, certaine lawfull fictions, on which it groundeth the truth of justice)]."[12]

The Pascal pensée that "puts together" justice and force and makes force an essential predicate of justice—by which he means *droit* more than justice—perhaps goes beyond a conventionalist or utilitarian relativism, beyond a nihilism, ancient

11. Montaigne, *Essais* 3, ch. 13, "De l'expérience" (Paris: Bibliothèque de la Pléiade, 1962), 1203/*The Essayes of Montaigne*, trans. John Florio (New York: Modern Library, 1933), 970.
12. *Essais* 2, ch. 12, p. 601/*Essayes*, 482.

or modern, that would make the law [*loi*] what one sometimes calls 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 [The reason of the strongest is always the best—i.e., might makes right]."

In its principle, the Pascalian critique refers back to original sin and to the corruption of natural *laws* [*lois*] by a reason that is itself corrupt: "Il y a sans doute des lois naturelles; mais cette belle raison a tout corrompu [Doubtless there are natural laws; but good reason has corrupted all]."[13] And elsewhere, "notre justice [s'anéantit] devant la justice divine [our justice (is annihilated) before divine justice]."[14] These pensées prepare us for the reading of Benjamin.

But if one sets aside the functional mechanism of the Pascalian critique, if one dissociates this simple analysis from the presupposition of its Christian pessimism (something that is not impossible to do), then one can find in it, as in Montaigne, the premises of a *modern* critical philosophy, even 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 always be possible and sometimes useful.

But beyond its principle and its mechanism, this Pascalian pensée concerns perhaps a more intrinsic structure. A critique of juridical ideology should never neglect this structure. The very emergence of justice and law, the instituting, founding, and justifying moment of law implies a performative force, that is to say always an interpretative force and a call to faith [*un appel à la croyance*]: not in the sense, this time, that law would be *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 to what one calls force, power or violence. Justice—in the sense of *droit* (right or law)[15]—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 that it would have to accommodate or bend to when useful. Its very moment of foundation or institution, besides, is never a moment inscribed in the homogeneous fabric [*tissu*] of a story or history, since it rips it apart with one decision. Yet, the operation that amounts to founding, inaugurating, justifying law, to *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 earlier and previously founding law, no preexisting foundation, could, by definition, guarantee or contradict or invalidate. No

13. *Pensées*, no. 294, 466/*Essayes*, 101.
14. *Pensées*, no. 233, 435/*Thoughts*, 80.
15. *Translator's note*: "right or law" is in English in the text.

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 (184/E281).

Yet Benjamin clearly does not believe this argument on the nonviolence 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 judges it abusive and claims that there was a misunderstanding of the original intention, and that the right to strike was not "so" intended (*das Streitrecht 'so' nicht gemeint gewesen sei*) (184/E282). 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 and violence, violence as the exercise of law and law as the exercise of violence. Violence is not exterior to the order of law. It threatens law from within law. 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 law 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 to interpret this contradiction? Is it only *de facto* and exterior to law? Or is it rather immanent in the law of law, in the right to law [*au droit du droit*]?

What the state fears, the state being law in its greatest force, is not so much crime or robbery, even on the grand scale of the Mafia or heavy drug traffic, as long as they transgress the law [*loi*] with an eye toward particular benefits, however important they may be. (It is true that today these state-like and international institutions have a more radical status than that of crime and represent a threat with which so many states negotiate by allying themselves to it—and by submitting to it, for example, by making their own profit in money-laundering—while dissembling as fighting it by any means.) The state is afraid of *founding* violence—that is, violence able to justify, to legitimate (*begründen*), or transform the relations of law (*Rechtsverhältnisse*),[34] and so to present itself as having a right to right and to law [*comme ayant un droit au droit*]. This violence thus belongs in advance to the order of a law that remains to be transformed or founded, even if it may wound our sense of justice (*Gerechtigkeitsgefühl*) (185/E283). 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 interpretive and meaningful evaluation of it—to be possible, one must first recognize meaning

34. *Translator's note:* Jephcott: "legal conditions" (E283).

in a violence that is not an accident arriving from outside the law. That which threatens law already belongs to it, to the right to law [*au droit au droit*], to the origin of law. The general strike thus provides 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 law, 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, of a new state.[35] 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 one can thus call revolutionary. It inaugurates a new law; it always does so in violence. *Always*, which is to say even when there have not been those spectacular genocides, expulsions or deportations that so often accompany the foundation of states, great or small, old or new, right nearby or very far away.

In these situations said to found law 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 nonknowledge that the eventness of the event consists, what one naively calls its presence.[36]

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 undecipherable. This is what I am calling the "mystical." As Benjamin presents it, this violence is certainly legible, even intelligible since it is not alien to law, no more than *pólemos* or *éris* are alien to all the forms and signification of *dikē*. But it is, in law, what suspends law. It interrupts the established law to found another. This moment of suspense, this *epokhē*, this founding or revolutionary moment of law is, in law, an instance of nonlaw [*dans le droit une instance de non-droit*]. But it is also the whole history of law. *This moment always takes place and*

35. One finds the principle of an analogous argument in Carl Schmitt. Cf. *Politics of Friendship*, trans. George Collins (London: Verso, 1997), 119ff.

36. On this logic and "chrono-logic," I allow myself to refer to "Declarations of Independence," trans. Tom Keenan and Tom Pepper, in *New Political Science*, 15 (summer 1986): 7–15. Heidegger often recalls that "our own historical time" determines itself only from a future anterior. We never know at the moment, presently, what is our own historical time.

thus come to distinguish between divine justice and human justice, between the divine justice that *destroys law* and the mythic violence that *founds* it.

Law-preserving violence, this threat that is not intimidation, is a threat *of law*. Double genitive: it both comes from law and threatens law. A valuable index arises here from the domain of penalty law, the right to punish [*le droit de punir*] and the death penalty. Benjamin seems to think that the arguments against penalty law, and notably against the death penalty, are superficial, and not so by accident. For they do not admit an axiom essential to the definition of law. Which? Well, when one tackles the death penalty, one does not dispute one penalty among others but law itself in its origin, in its very order. If the origin of law is a violent positing, it 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 does not need to invoke the great philosophical arguments that before him have justified, in the same way, the death penalty (Kant and Hegel, for example, versus the first abolitionists like Cesare Beccaria).

The legal system [*l'ordre du droit*] fully manifests itself in the possibility of the death penalty. By abolishing it, one would not be touching upon one *dispositif* among others. Rather, one would be disavowing the very principle of law. Thus is confirmed that something is "rotten" at the heart of law. The death penalty must [*doit*] testify that law is a violence contrary to nature. But what today testifies to this in a manner that is even more "spectral" (*gespenstische*) (189/E286) by mixing the two forms of violence (preserving and founding) is the modern institution of the police. This is a mixture of two heterogeneous violences, "in a kind of spectral mixture (*in einer gleichsam gespenstischen Vermischung*)," as if one violence haunted the other (though Benjamin does not put it this way in commenting on the double meaning of the word *gespenstich*). Spectrality has to do with the fact that a body is never present for itself, for what it is. It appears by disappearing or by making disappear what it represents: one for the other. One never knows who one is dealing with, and that is the definition of the police, singularly of state police the limits of which are, at bottom, unlocatable [*inassignables*]. This absence of a border between the two types of violence, this contamination between foundation and preservation is ignoble; it is, he says, the ignominy (*das Schmachvolle*) of the police. Prior to being ignoble in its procedures, in the unnameable inquisition that police violence allows itself without respect for anything, the modern police force is structurally repugnant, filthy [*immonde*] in essence because of its constitutive hypocrisy. Its lack of limit does not only come from surveillance and repression technology—such as was already being developed in 1921, in a troubling manner, to the point of doubling and haunting all public and private life (what we could say today about the development of this technology!). It comes from the fact that the police are the state, that they are the specter of the state and that, in all rigor, one cannot take issue with the police without taking issue with the order of the *res publica*. For today the police are no longer content to enforce the law and thus to preserve it; the police invent the law, publish ordinances, and intervene whenever the legal situation is unclear to guarantee security—which is to say, these days, nearly all the time. The police are the force of law [*loi*], they have force of law, the power of the law. The police are ignoble because in their authority, "the separation of law-founding violence and law-preserving violence is suspended [*in ihr die Trennung von rechtsetzender und rechtserhaltender Gewalt aufgehoben ist*]" 189/E286). In the *Aufhebung* that the police signifies in itself, the police invent law; they make themselves "rechtsetzend," legislative. The police arrogate the right, arrogate the law [*elle s'arroge le droit*], each time the law is indeterminate enough to open a possibility for them. Even if they do not make the law [*loi*], the police behave like a lawmaker in modern times, if not the lawmaker of modern times. Where there are police, which is to say everywhere and even here, one can no longer discern between two types of violence—preserving and founding—and that is the ignoble, ignominious, revolting 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 these two kinds of violence that nevertheless structures the discourse that Benjamin calls a new critique of violence.

Such discourse Benjamin would like either to found or to preserve, 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 *ex-position*: before your eyes a demonstration ruins the distinctions it proposes. It exhibits and archives the very movement of its implosion, leaving in place what one calls a text, the ghost of a text that, itself in ruins, at once foundation and preservation, accomplishes neither, occurs to and reaches neither one nor the other [*n'arrive ni à l'une ni à l'autre*] 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 (alas), 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 said of deconstruction and of what remains of it. The text does not escape the law [*loi*] that it enunciates. It ruins itself and contaminates itself; it becomes the specter of itself. But of this ruin of signature, there will be more to say.

What threatens the rigor of the distinction between the two types of violence—and which Benjamin does not say, excluding it or misrecognizing it—is, at bottom, the paradox of iterability. Iterability makes it so that the origin must [*doit*] repeat

Translator" (1923) and especially the famous essay of 1916 (five years earlier, therefore, "On Language As Such and On the Language of Man"). Both put into question the notion that the essence of language is originally communicative, that is to say semiological, informative, representative, conventional, hence *mediatory*. Language is not a means with an end (a thing or signified content, even an addressee) to which it would have to make itself correctly adequate. 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 chatter (*Geschwätz*); the question of good and evil after the creation arises from this chatter. The tree of knowledge was not there to provide knowledge of good and evil but as the symptomatic sign (*Wahrzeichen*) of judgment (*Gericht*) borne by he who questions. "This immense irony," Benjamin concludes, "is the sign by which the mythical origin of law is recognized (*das Kennzeichen des mythischen Ursprungs des Rechtes*)."[43]

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 law, in any case to what is always conceived of as universalizable. The universalization of law 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, it seems to me, than a reference to the irreducible singularity of each situation. And the audacious thought, as necessary as it is perilous, of what one would here call a sort of justice without law, a justice beyond law [*une sorte de justice sans droit, une justice au-delà du droit*] (this is not one of Benjamin's expressions) is just as valid for the uniqueness of the individual as for the people and for the language, in short, for history.

To explain this "nonmediate function of violence (*eine nicht mittelbare Funktion der Gewalt*)," (196/E294) 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*, this example of a manifestation that passes as immediate, and alien to any correlation between means and end? Is it by chance that he takes the example of anger to show that, before any mediation, language is manifestation, epiphany, pure presentation? The explosion of violence, in anger, would not be a means toward an end; it would have no other aim than to

43. Benjamin, "On Language as Such," *GS* 2.1, 154; tr. E. Jephcott in *Reflections*, 328.

show and to show itself. Let us leave the responsibility for this concept to Benjamin: the manifestation of self, the in some way disinterested, immediate and uncalculated manifestation of anger. What matters to him is a violent manifestation of violence that thus shows itself and that would not be a means 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. One must underscore two of its traits: on the one hand a terrible ethico-political ambiguity, which at bottom reflects the terror that constitutes, in fact, the theme of the text; and 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 cœur ou ce courage*] of a thinking that knows there is no *justesse*, no justice, no responsibility except in exposing oneself to all risks, beyond certainty and good conscience.

In the Greek world, the manifestation of divine violence in its mythic form founds a law rather than applies, by force of force [*à force de force*], rather than "enforces,"[44] an existing law by distributing awards and punishments. It is not a distributive or retributive justice, and Benjamin evokes the legendary examples of Niobe, Apollo and Artemis, and Prometheus. As it is a matter of founding a new law, the violence that befalls Niobe comes from fate. This fate can only be uncertain and ambiguous (*zweideutig*), since it is not preceded or regulated by any anterior, superior or transcendent law. This founding violence is not "properly destructive (*eigentlich zerstörend*)," since, for example, it respects the mother's life at the moment it brings a bloody death to Niobe's children (197/E294–95). But this allusion to blood spilled is here discriminating. It seems to be the only basis for identifying the mythical and violent foundation of law in the Greek world, for distinguishing it from the divine violence in Judaism. The examples of this ambiguity (*Zweideutigkeit*) multiply, the word returns at least four times. There is thus a "demonic" ambiguity of this mythical positing of law, which is in its fundamental principle a power (*Macht*), a force, a positing 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 law is a privilege, a prerogative (*in den Anfängen alles Recht 'Vor' recht der Könige oder der Grossen, kurz der Mächtigen gewesen sei*, 198/E296). At this originary and mythical moment, there is still no distributive justice, no punishment or penalty, only "expiation" (*Sühne*) rather than "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 law, it destroys it; instead of setting limits and boundaries, it annihilates them;

44. *Translator's note*: The word *enforce* is in English in the text.

What I find, in conclusion, the most redoubtable, indeed perhaps almost unbearable 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 annihilating, expiatory and bloodless, says Benjamin, a divine violence that would destroy current law, here I re-cite Benjamin, "through a bloodless process that strikes and causes to expiate." ("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," E297).*

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, in 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. 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 that one calls the "final solution" one can draw something that still deserves the name of a lesson [enseignement]. *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 could draw today—and if we can do so then we must* [et si nous le pouvons nous le devons]*—is that we must think, know, represent for ourselves, formalize, judge the possible complicity among all these discourses and the worst (here the "final solution"). In my view, this defines a task and a responsibility the theme of which 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.*

Translated by Mary Quaintance

6

A Note on "Taking a Stand for Algeria"

What is the relation between the theological and the autobiographical? Is there a necessity, an imperative, even, that, coming from religion, would demand the telling of one's life? There is a personal dimension to many of the writings that illuminate the question of religion in Derrida's work. In "Taking a Stand for Algeria," Derrida acknowledges the temptation of testimony, "the temptation to turn a demonstration into a sensitive or pathetic testimony," and to oneself reduce what needs to be thought and said to such testimony. Derrida acknowledges the temptation of testimony and reinscribes it as dictation. It is "impossible to dissociate here the heart, the thinking, and the political position-taking," Derrida writes. This impossibility is dictated by the other, it is an invention of the other—"here," Algeria ("which in the end I know to have never really ceased inhabiting or bearing in my innermost"), and a love for Algeria, that "dictates all that I will say in a few words."

The temptation of the autobiographical cannot be disentangled from other—political—dimensions that also dictate, often in the most violent and coercive ways, the particulars of a religious tradition as it took place and takes place in Algeria. Algeria thus becomes a name for religion, for Derrida's "own" religion, the fragility of which may be revealed by paraphrasing the still "autobiographical" if impossible confession of *Monolingualism of the Other*: "I have only one religion; it is not mine." But the testimony and the autobiographical is also the writing of the name—here, *Algeria*—which in turn testifies and dictatés all that the "I" says and asks, including the question of "in the name of whom and in the name of what we speak here." If Algeria, a love for Algeria, dictates all that is said in this text by acknowledging the "temptation" of testimony, this text also becomes the occasion to reaffirm a link that was never quite severed, a link between religion and autobiography.

And yet, it is important to note that Derrida also writes here that he will "refrain" from temptation. One could therefore suggest that a different imperative is at work, another necessity of dissociation if not severing. Such an imperative is in

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 us 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 have to "negotiate" it in some way before a tribunal or in the course of a hunger strike in the prison, so too there is never a pure opposition between the general *political* strike looking to refound another state and the general *proletarian* strike looking to destroy the state.

And so these Benjaminian oppositions appear more than ever to have to be deconstructed [*paraissent donc plus que jamais à déconstruire*]; they deconstruct themselves, even as paradigms for deconstruction. What I am saying here is anything but conservative and antirevolutionary. For beyond Benjamin's explicit purpose, I shall propose the interpretation according to which the very violence of the foundation or *positing of law* (*Rechtsetzende Gewalt*) must envelop the violence of the *preservation of law* (*Rechtserhaltende Gewalt*) and cannot break with it. It belongs to the structure of fundamental violence in that it calls for the repetition of itself and founds what ought to be preserved, preservable, promised to heritage and to tradition, to partaking [*partage*]. A foundation is a promise. Every positing (*Setzung*) permits and promises, posits ahead [*permet et pro-met*]; it posits by setting and by promising [*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. Better, or worse, it is inscribed in this law [*loi*] of iterability; it stands under its law or before its law [*sous sa loi ou devant sa loi*]. Consequently [*du coup*], there is no more pure foundation or pure position of law, and so a pure founding violence, than there is a purely preserving violence. Positing is already iterability, a call for self-preserving repetition. Preservation in its turn refounds, so that it can preserve what it claims to found. Thus there can be no rigorous opposition between positing and preserving, only what I will call (and Benjamin does not name it) a *differential 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 Georges Sorel's sense, between a general *political* strike and a general *proletarian* strike. Deconstruction is also the thought *of* this differential contamination—and the thought *taken by* the necessity of this contamination.

It is in thinking about this differential contamination, as the contamination at the very heart of law that I single out this sentence of Benjamin's, to which I hope to come back later: there is, he says "something rotten in law (*etwas Morsches im Recht*)" (188/E286). There is something decayed or rotten in law, which condemns it or ruins it in advance. Law is condemned, ruined, in ruins, ruinous, if one can risk a sentence of death on the subject of law, especially when it is 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 *pólemos*. War is another example of this contradiction internal to law. There is a law of war, a right to war [*droit de la guerre*].[39] (Schmitt will complain that it is no longer recognized as the very possibility of politics.) This law involves the same contradictions as the right to strike. Apparently subjects of law declare war in order to sanction violence, the ends of which appear natural (the other wants to lay hold of territory, goods, women; he wants my death, I kill him). But this warlike violence that resembles "predatory violence (*raubende Gewalt*)" outside the law [*loi*] is always deployed *within* the sphere of law (185/E282). 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 [*loi*]. In so-called primitive societies, where these meanings would be more clearly brought out, according to Benjamin, the peace settlement shows very well that war was not a natural phenomenon. No peace is settled without the symbolic phenomenon of a ceremonial, which recalls the fact that there was already ceremony in war. War, then, did not simply amount to the 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 withdraw a certain meaning of the word *peace* from this correlation, in particular in the Kantian concept of "perpetual peace." Here it is a matter of a whole other "unmetaphorical and political (*unmetaphorische und politische*)" signification (185/E283), 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*

39. *Translator's note:* Jephcott: "military law" (E283).

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. This is not only a philologico-etymological task or the historian's task but the 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 pledged, engaged [*gagée, engagée*] by this demand for infinite justice, which can take the aspect of this "mystique" I spoke of earlier. One must [*il faut*] be *juste* with justice, and the first justice to be done is to hear it, to try to understand where it comes from, what it wants from us, knowing that it does so through singular idioms (*Dikē, Jus, justitia, justice, Gerechtigkeit*, to limit ourselves to European idioms that it may also be necessary to delimit, in relation to others—we shall come back to this later). One must know 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 a questioning of the origin, grounds and limits of our conceptual, theoretical or normative apparatus surrounding justice—this is, from the point of view of a rigorous deconstruction, anything but a neutralization of the interest in justice, an insensitivity toward injustice. On the contrary, it hyperbolically raises the stakes in the demand for justice, the sensitivity to a kind of essential disproportion that must inscribe excess and inadequation in itself. It compels 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 before memory is a responsibility before the very concept of responsibility that regulates the justice and appropriateness [*justesse*] of our behavior, of our theoretical, practical, ethicopolitical decisions. This concept of responsibility is inseparable from a whole network of connected concepts (propriety and property, intentionality, will, freedom, conscience, consciousness, self-consciousness, subject, self, person, community, decision, and so forth). All 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 the credit or credibility [*crédit*] of an axiom 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 the theoretical interest that is directed toward the problems of justice. It is a moment of suspense, this period of *epokhē*, without which there is, in fact, no possible deconstruction. It is not a simple moment: its possibility must remain structurally present to the exercise of all responsibility if such responsibility is never to abandon itself to dogmatic slumber, and therefore to deny itself. From then on, this moment overflows itself. It becomes all the more anguishing. But who will claim to be just by economizing on anguish? This anguishing moment of suspense also opens the interval of spacing in which transformations, even juridicopolitical revolutions, take place. It cannot be motivated, it cannot find its movement and its impulse (an impulse that, however, cannot itself be suspended) except in the demand for an increase or a supplement of justice, and so in the experience of an inadequation or an incalculable disproportion. For in the end, where would deconstruction find its force, its movement or its motivation if not in this always unsatisfied appeal, beyond the given determinations of what one names, in determined contexts, justice, the possibility of justice?

And yet, one must [*encore faut-il*] interpret this disproportion. If I were to say that I know nothing more just than what I call today deconstruction (nothing more just—I am not saying nothing more legal or more legitimate), I know that I would not 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 is well known, in many countries, in the past and in the present, one of the founding violences of the law [*loi*] 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 Latin, the language of law or of the Church. The decree allowed 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 carrying a violence. 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 am not going to engage in the history of these examples. One could also find others in the United States, yesterday and today; the linguistic problem is still acute there and will be for a long time, precisely in such a place where questions of politics, education, and law are inseparable.

Now let us go straight, without the least detour through historical memory, toward the formal, abstract enunciation of several aporias—those in which, between law and justice, deconstruction finds its privileged site, or rather, its privileged

und urbildliche) violence in pursuit of natural ends,[40] is in fact a violence that serves to found law (*rechtsetzende*). From the moment that this positive, positing (*setzende*) and founding character of another law is recognized, modern law refuses the individual subject all right to violence [*tout droit à la 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.

Yet the distinction between the two types of violence (founding and preserving) will be very difficult to trace, to found or to preserve. We are going to witness an ambiguous and laborious movement on Benjamin's part to save at any cost a distinction or a correlation without which his whole project could collapse. For if violence is at the origin of law, understanding demands that the critique of this double violence be brought to its logical conclusion. To discuss the law-preserving violence, Benjamin sticks to relatively modern problems, as modern as the problem of the general strike was a moment ago. Now it is a matter 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-preserving form of violence. Militarism, a modern concept that supposes the exploitation of compulsory military service, is the forced use of force, the "compulsory" use (*Zwang*) of force or violence (*Gewalt*) in the service of the state and its legal ends. Here military violence is legal and preserves the law. It is therefore more difficult to criticize than the pacifists and activists believe in their "declamations," for which Benjamin does not hide his low esteem. The ineffectiveness and inconsistency of antimilitary pacifists has to do with their failure to recognize the legal and unassailable character of this law-preserving violence.

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 preexisting legality and so appears savage. But on the other hand, and this reversal makes the whole worth of this reflection, it is *more difficult*, more illegitimate to criticize this same founding 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*, of this *exceptional decision* which belongs to no historical, temporal continuum but in which the foundation of a new law nevertheless *plays* [*joue*], if one can say so, on something from an anterior law that it extends, radicalizes, deforms, metaphorizes or metonymizes—this figure here taking the names of war or general strike. But this figure is also a contamination. It effaces or blurs the distinction,

40. *Translator's note:* Jephcott: "primordial and paradigmatic" (186/E283).

pure and simple, between foundation and preservation. It inscribes iterability in originarity, and this is what I would 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 conceive this coimplication 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," 187/E285), however uncontestable it may be, allows for no critique of violence. Law 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 would be as unjustified as impotent. For the same reason, one cannot provide a critique of violence in the name of liberty, of what Benjamin here calls "formless 'freedom'" (*gestaltlose 'Freiheit'*) that is, in sum, a purely formal freedom, an empty form, following a Marxist-Hegelian vein that is far from absent throughout this meditation (187/E285). These attacks against violence lack pertinence and effectiveness because they remain alien to the juridical essence of violence, to the "order of law." An effective critique must take issue with the body of law itself, in its head and in its members, with the laws [*lois*] and the particular usages that law adopts under the protection of its power (*Macht*). This order is such that there exists only one fate, a *unique* fate or history (*nur ein einziges Schicksal*, 187/E285). This is one of the major concepts of the text, but also one of the most obscure, whether it is 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 *within itself*. The notion of threat appears here indispensable. But it also remains difficult to delimit for the threat does not come from outside. The law [*le droit*] is both threatening and threatened by itself. This threat is neither intimidation nor dissuasion, as pacifist, anarchists or activists believe. The law shows itself to be threatening in the way fate is threatening. To reach the "deepest meaning" of the indeterminacy (*Unbestimmtheit*) of the legal threat (*der Rechtsdrohung*),[41] it will later be necessary to meditate upon the essence of fate that is 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, and the parliamentary institution, Benjamin will

41. *Translator's note:* Jephcott: "the uncertainty of the legal threat" (E285).

Walten and *Gewalt*. "Zur Kritik der Gewalt" concludes with divine violence (*göttliche Gewalt*), and in the end Walter says of divine violence that it may be named *die waltende* ("*Die göttliche Gewalt . . . mag die waltende heissen* [Divine violence . . . may be called sovereign]"). These are the last words of the text—"*die waltende heissen*"—like the discreet seal and the first name of its signature.

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.

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.

This deconstruction does not *apply itself* to such a text, however. It never applies itself to anything from the outside. It 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-heterodeconstruction? Of its just and unjust incompletion? What is the ruin of such an event or the open wound of such a signature? That is one of my questions. It is a question about the possibility of deconstruction, on its impossible possibility.[27]

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

1. There is, first, the distinction between two kinds of violence of law, in relation to law: the founding violence, the one that institutes and posits law (*die rechtsetzende Gewalt*)[28] and the violence that preserves, the one that maintains, confirms, insures the permanence and enforceability of law (*die rechtserhaltende Gewalt*).[29] For the sake of convenience, let us continue to translate *Gewalt* as "violence," but I have already mentioned the precautions this calls for. Gewalt can also mean the dominance or the sovereignty of legal power, the authorizing or authorized authority: the force of law [*loi*].
2. Next there is the distinction between the founding violence that makes law—it is named "mythic" (implicit meaning: Greek, it seems to me)—and the destructive violence that annihilates law (*Rechtsvernichtend*[30])—named "divine" (implicit meaning: Jewish, it seems to me).
3. Finally, there is the distinction between justice (*Gerechtigkeit*) as the principle of all divine positing of the end (*das Prinzip aller göttlicher Zwecksetzung*) and power (*Macht*) as principle of mythical positing of law (*aller mythischen Rechtsetzung*).[31]

27. I schematize here a theme largely developed elsewhere. Cf. for example: "the most rigorous deconstruction has never claimed to be . . . possible. And I would say that deconstruction loses nothing from admitting that it is impossible. . . . 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: that is, . . . *of the other*—the experience of the other as the invention of the impossible, in other words, as the only possible invention." "Psyche: Invention of the Other," trans. Catherine Porter, in *Reading de Man Reading* (Minneapolis: University of Minnesota Press, 1989) 36.

28. *Translator's note:* Jephcott's translation refers here to "law-making" violence.

29. *Translator's note:* Jephcott: "law-preserving" violence.

In the title "Critique of Violence," *critique* does not 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. Fundamentally, this is 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*).[32] There is no natural or physical violence. One can speak figuratively of violence with regard to an earthquake or even to a physical ailment. But one knows that these are not 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—of all forms of *authority* and of *authorization*, of claim to authority, at least. 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 oneself if violence can be a means *with a view* toward ends (just or unjust) is to prohibit oneself from judging violence *itself*. The criteriology would then concern only the application of violence, not violence *itself*. One 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 law, recourse to violence poses no problems, since natural ends are just. Recourse to violence is as justified, as normal as man's "right" to move his body to reach a given goal. Violence (*Gewalt*) is from

30. *Translator's note:* Jephcott: "law-destroying" violence.

31. *Translator's note:* Jephcott: "Justice is the principle of all divine end making, power the principle of all mythical lawmaking" (E295).

32. *Translator's note:* Jephcott: "moral issues" (E277).

violence whose justice is irreducible to law, of a violence heterogeneous to the order both of law and 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 own 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 (at the same time, therefore) it 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 homogenous 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 law, 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 law, that is, the mythological violence, evil had to do with a certain undecidability from the fact that one could not distinguish between founding violence and preserving violence, because corruption was dialectical and dialectically unavoidable 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: fate, 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 fellow [semblable] 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, and so forth. 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 sixtieth birthday.[48]

This does not mean that one must simply renounce the 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 fatality 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 [loi] that transcends representation and withholds the unique, all uniqueness, from its reinscription in an order of generality or of comparison.

48. *Translator's note:* Walter Benjamin, "On the Program of the Coming Philosophy" *GS* 2.2, 157–71, trans. Mark Ritter in *Walter Benjamin: Selected Writings*, vol. 1, ed. Marcus Bullock and Michael W. Jennings (Cambridge, Mass.: Harvard University Press, 1996), 100–10.

instead of leading to fault and expiation, it causes to expiate; instead of threatening, it strikes; above all—and this is the essential issue—instead of killing with blood, it kills and annihilates *without bloodshed.* Blood would make all the difference. The interpretation of this thought of blood is as troubling, despite certain dissonances, in Benjamin as it is in Rosenzweig. Blood is the symbol of life, Benjamin says, of mere life, life pure and simple, life as such (*das Symbol des blossen Lebens*) (199/E297). In making blood flow, the mythological violence of law is exercised for its own sake (*um ihrer selbst willen*) against mere life (*das blosse Leben*), which it causes to bleed, while remaining precisely within the order of life of the living as such [*l'ordre de la vie du vivant en tant que tel*]. In contrast, purely divine (Judaic) violence is exercised on all life but to the profit or for the sake of the living (*über alles Leben um des Lebendigen willen*). In other words, the mythological violence of law is satisfied in itself by sacrificing the living, whereas divine violence sacrifices life to save the living, for the sake 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 the responsibility for this interpretation, particularly for this interpretation of Judaism: "The first [the mythological violence of law —J. D.] demands [*fordert*] sacrifice, the second [i.e., divine violence — J. D.] accepts it, assumes it [*nimmst sie an*]." In any case, this divine violence, which would be attested to not only by religion but also in present life or in manifestations of the sacred, annihilates, perhaps, goods, life, law, the foundation of law, and so on, but it never attacks—for the purpose of destroying it—the soul of the living (*die Seele des Lebendigen*). Consequently, one has no right [*on n'a pas le droit*] to conclude from this that divine violence leaves the field open for all human crimes. "Thou shalt not kill" remains an absolute imperative once the principle of destructive divine violence commands the respect of the living being, beyond law, beyond judgment, for this imperative is followed by no judgment. It provides no criterion for judgment; one could not find in it the authority to automatically condemn any putting to death. The individual or the community must keep the "responsibility" (the condition of which being the absence of general criteria and automatic rules), must assume their decision in exceptional situations, in extraordinary or unheard-of cases (*in ungeheuren Fällen*). That, for Benjamin, is the essence of Judaism, which would explicitly refuse to condemn murder in cases of legitimate self-defense, and which, according to him, sacralizes life to the point that certain thinkers extend this sacralization beyond man to include animal and vegetable.

But one should sharpen to the utmost what Benjamin means by the sacrality of man, of life or rather of the human *Dasein.* He stands up vigorously against all sacralization of life *for itself,* natural life, the simple fact of living. Commenting at length on the words of Kurt Hiller, according to which "higher even than the happiness and the justice of existence (*Dasein*) stands existence itself" (201/E298), Benjamin judges the proposition that a simple Dasein would be higher than a just Dasein (*als gerechtes Dasein*) to be false and ignoble, if by *Dasein* one understands 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 nonbeing would be still more terrible than man's not-yet-being just, purely and simply, in unconditional fashion. In other words, what makes the worth of man, of his Dasein and of his life, is that he contains the potential, the possibility of justice, the avenir of justice, the avenir 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 for their mere life, says Benjamin. This critique of vitalism or biologism, if it also resembles one by a certain Heidegger and if it recalls some Hegel propositions, here proceeds like the awakening of a Judaic tradition. And it does so in the name of life, of the most living of life [*du plus vivant de la vie*], of the value of the life that is worth more than life (pure and simple, if such exist and that one could call natural and biological), but that is worth more than life because it is life itself, insofar as life prefers itself. It is life beyond life, life against life, but always in life and for life.[45] 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 will permit to choose (*krinein*), and so to decide and to cut in history and on the subject of history. It is the only one, Benjamin says, that permits, in respect to present time, the taking of a position, of a discriminating, deciding, and decisive position (*scheidende und entscheidende Einstellung,* 202/E299–300). All undecidability is situated, blocked in, accumulated on the side of law, of mythological

45. As paradoxical as it is in itself, as quick as it is to having to turn into its opposite, this logic is typical and recurring. Among all the affinities (surprising or not) that it can favor, let us mention once again an analogous gesture in Schmitt, a gesture that is in itself paradoxical and necessary for a thinker of politics as war: the *physical* putting to death is here a prescription that is explicitly and rigorously taken into account by Schmitt. But this putting to death would be only an opposition of life to life. There is no death [*il n'y a pas la mort*]. There is only life, its position—and its opposition to itself which is only a mode of the position to self. Cf. *Politics of Friendship,* 135, n. 18.

the epistolary correspondence that linked these three thinkers (Schmitt/Benjamin, Heidegger/Schmitt). It is still a matter of spirit and of revolution.

The question, at bottom, would be, What about liberal and parliamentary democracy today? As means, all violence founds or preserves the law. Otherwise it would renounce all value. There is no problematic of law without this violence of means, without this principle of power. Consequence: every juridical or legal contract (*Rechtsvertrag*) (190/E288) 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. As founding or positing law, instituting violence (*rechtsetzende*) does not need to be immediately or directly present in the contract (*nicht unmittelbar in ihm gegenwärtig zu sein*) (190/E288). But without being immediately present, it is replaced (*vertreten*), represented by the supplement of a substitute. The forgetting of originary violence produces itself, lodges and extends itself in this *différance*, in the movement that replaces presence (the immediate presence of violence identifiable as such in its *traits* and its spirit), in this *differantial* representativity. The loss of conscience or of consciousness does not happen by accident, nor does the amnesia that follows. It is the very passage from presence to representation. Such a passage forms the trajectory of decline, of institutional degeneration, their *Verfall*. Benjamin had just spoken of a degeneration (*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 (*schwindet das Bewusstsein von der latenten Anwesenheit der Gewalt in einem Rechtsinstitut, so verfällt es*)," (190/E288). 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 aborted revolution of 1919. They now lack the sense of the founding violence of law that is represented in them (*Ihnen fehlt der Sinn für die rechtsetzende Gewalt, die in ihnen repräsentiert ist*). The parliaments live in forgetfulness of the violence from which they are born. This amnesiac denegation does not betray a psychological weakness; it is inscribed in their statute, and in their very structure. From then on, instead of reaching decisions commensurable or proportional to this violence and worthy 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 promotes acceptance of the adversary's coercion both in order to avoid the worst and while saying, with the sigh of the parliamentarian, that this is certainly not ideal, that, no doubt, things would have been better otherwise but that, precisely, one could not do otherwise.

Parliamentarism is therefore in the violence of authority and in the renunciation of the ideal. It fails to resolve political conflicts by nonviolent speech, discussion, and deliberation—in short, by setting liberal democracy to work. In the face of the "decay of parliaments (*der Verfall der Parlamente*)," Benjamin finds the critique of the Bolshevist and the trade unionist both pertinent (*treffende*) overall and radically destructive (*vernichtende*).

We now have to introduce a distinction that once again brings Benjamin to a certain Carl Schmitt and minimally 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, competition between the media and parliamentarism, new particulars of international law, and so forth). Although the undeniable link to such conjuncture may be thin, the consequences of these discourses and of the symptoms they indicate (which they are as well) does not exhaust itself in them—far from it. Careful transpositions can make their reading ever more necessary and fruitful today. If the content of their privileged examples has somehow aged, their argumentative schemas seem today more than ever to deserve interest and discussion.

We just saw, in sum, that in its origin and its end, in its foundation and its preservation, law is inseparable from violence, immediate or mediate, present or represented. Does this exclude all non-violence in the elimination of conflicts, as one might easily be tempted to conclude? Not at all. But the thought of nonviolence must exceed the order of public law. An agreement, a union without violence (*gewaltlose Einigung*) is possible everywhere the culture of the heart (*die Kultur des Herzens*) gives men pure means with accord (*Übereinkunft*) in view (191/E289). Does this mean that one must stop at this opposition between private and public to protect a domain of non-violence? Things are far from that simple. Other conceptual partitions 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 had just flashed forth in Germany)—and the general *proletarian* strike, the revolution that instead of strengthening the state aims at its suppression—as it aims at the elimination of "sociologists, says Sorel, elegant amateurs, of social reforms or intellectuals who have made it their profession to think for the proletariat" (194/E292).

Another distinction seems even more radical and closer to a critique of violence as means. It opposes the order of means, precisely, to the order of *manifestation*. Once again it is very much a matter 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 (or not yet) has anything to do [*qui ne relève plus ou pas encore*] with communication through signs, that is to say, 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, friendship. We enter here into a realm where, since the means/ends relation is suspended, one is dealing with pure means that, as it were, exclude violence. Conflicts between men now go through objects or things (*Sachen*) and it is only in this most "realist" or most "object-ive [*chosique*]" relation that the domain of pure means—that is to say, the domain of "technology" par excellence—opens. Technology is the "most proper domain" of pure means. As technology, a technology of civil agreement, conversation (*Unterredung*) would be the "most profound example" of this "most proper domain."

Yet how does one recognize that violence is excluded from the private or proper sphere (*eigentliche Sphäre*)? Benjamin's response may be surprising. The possibility of this non-violence is attested to by the fact that the lie is not punished, nor is deception or fraud (*Betrug*). Roman law and Old German law did not punish them. This confirms at least that something of private life or of personal intention escapes the space of power, of law, of authoritarian violence. The lie is here the example of what escapes the policio-juridico-political right of inspection [*droit de regard*]. From then on, to consider a lie an offense is a sign of decadence: a decline is in process (*Verfallsprozess*) when state power seeks to control the veracity of discourses to the point of ignoring the boundaries between the proper sphere of the private and the field of the public thing [*la chose publique*]. Modern law loses confidence in itself, it condemns deception not for moral reasons but because it fears the violence that it might unleash on the victims' part. These victims may in turn threaten the order of law. 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 nonviolence that subtracts from the order of law, and so from the right to punish the lie—not only private relations but even certain public relations as in the general proletarian strike of which Sorel speaks, a strike that would not attempt to refound a state and a new law; or again, certain diplomatic relations in which, in a manner analogous to private relations, some ambassadors settle conflicts peacefully and

without treaties. Arbitration is nonviolent in this case because it is situated beyond all order of law and therefore beyond violence (195/E293). We shall see in a moment how this nonviolence is not without affinity to pure violence.

Here Benjamin proposes an analogy over which one should linger for a moment, particularly because in it intervenes this enigmatic concept of fate. What would happen if a violence linked to fate (*schicksalsmässige Gewalt*), one using just (*berechtigte*) means, found itself in an irresolvable conflict with just (*gerechten*) ends? And in such a way that one would have to envision another kind of violence, which, regarding these ends, would be neither a justified nor an unjustified means? As neither a justified nor an unjustified means, undecidably, it would no longer even be a means but would enter into a whole other relation with the pair means/end. One would then be dealing with a whole other violence, a 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 constructed up to that point on the subject of violence and of law. This problematic was entirely governed by the concept of means. Here one notices that there are cases in which, posed in terms of means/end, the problem of law remains undecidable. This ultimate *undecidability*, which is that of all problems of *law* (*Unentscheidbarkeit aller Rechtsprobleme*), 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, upon a beyond of mediation and so beyond language as sign. Sign is here understood, as always in Benjamin, in the sense of mediation, as a means toward an end. It seems at first that there is no way out, and so there is no hope. But at the end of the impasse, this despair and hopelessness (*Aussichtslosigkeit*) calls for decisions of thought that concern nothing less than the origin of language in its relation to truth, destinal violence (*schicksalhafte Gewalt*) that puts itself above reason, and 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 should not trust too much in this distance. That is what the *Aussichtslosigkeit* of law opens upon, as it were; that is where the impasse of law leads.

There would be an analogy between "the undecidability [*Unentscheidbarkeit*] of all the problems of law" 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 [*le juste et le faux*], right and wrong (*richtig/falsch*). 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

justificatory discourse could or should ensure the role of metalanguage in relation to the performativity of institutive language or to its dominant interpretation.

Discourse here meets its limit—in itself, in its very performative power. It is what I propose to call here the *mystical*. There is here a silence walled up in the violent structure of the founding act; walled up, walled in because this silence is not exterior to language. Here is the sense in which I would be tempted to interpret, beyond simple commentary, what Montaigne and Pascal call the *mystical foundation of authority*. One will always be able to return upon—or turn against—what I am doing or saying here, the very thing that I am saying is done or occurs [*cela même que je dis qui se fait*] at the origin of every institution. I would therefore take the use of the word *mystical* in a sense that I would venture to call rather Wittgensteinian. These texts by Montaigne and Pascal, along with the tradition to which they belong, like the rather active interpretation of them that I propose, could be invited to a discussion with Stanley Fish in "Force" about H. L. A. Hart's *Concept of Law*, and several others, implicitly including John Rawls, himself criticized by Hart, as well as to many debates illuminated by some texts of Sam Weber on the agnostic and not simply intra-institutional or mono-institutional character of certain conflicts in *Institution and Interpretation*.[16]

Since the origin of authority, the founding or grounding [*la fondation ou le fondement*], the positing of the law [*loi*] cannot by definition rest on anything but themselves, they are themselves a violence without ground [*sans fondement*]. This is not to say that they are in themselves unjust, in the sense of "illegal" or "illegitimate." They are neither legal nor illegal in their founding moment. They exceed the opposition between founded and unfounded, or between any foundationalism or antifoundationalism. Even if the success of performatives that found a law (for example, and this is more than an example, of a state as guarantor of a law) presupposes earlier conditions and conventions (for example, in the national and international arena), the same "mystical" limit will reemerge at the supposed origin of said conditions, rules or conventions, and at the origin of their dominant interpretation.

In the structure I am here describing here, law is essentially *deconstructible*, whether because it is founded, that is to say constructed, upon interpretable and transformable textual strata (and that is the history of law, 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. One may even find in this the political chance of all historical progress. But

16. Samuel Weber, *Institution and Interpretation* (Minneapolis: University of Minnesota Press, 1987). *Translator's note:* The references are to Stanley Fish, *Doing What Comes Naturally: Change, Rhetoric, and the Practice of Theory in Literary and Legal Studies* (Durham, N.C.: Duke University Press, 1989), in which Fish engages H. L. A. Hart, *The Concept of Law* (Oxford: Clarendon, 1961).

the paradox that I would like to submit for discussion is the following: it is this deconstructible structure of law or, if you prefer, of justice as law, that also ensures the possibility of deconstruction. Justice in itself, if such a thing exist, outside or beyond law, is not deconstructible. No more than deconstruction itself, if such a thing exist. *Deconstruction is justice.* It is perhaps because law (which I will therefore 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, better yet, that it makes deconstruction possible, or at least the exercise of a deconstruction that, fundamentally, always proceeds to questions of law and to the subject of law. Whence these three propositions:

1. The deconstructibility of law (for example) makes deconstruction possible.
2. The undeconstructibility of justice also makes deconstruction possible, indeed is inseparable from [*se confond avec*] it.
3. *Consequence*: Deconstruction takes place in the interval that separates the undeconstructibility of justice from the deconstructibility of law. Deconstruction is possible as an experience of the impossible, there where, even if it does not exist, if it is not *present*, not yet or never, *there is* justice [il y a *la justice*]. Wherever one can replace, translate, determine the *X* of justice, one would have to say: deconstruction is possible, as impossible, to the extent (there) where *there is X* (undeconstructible), thus to the extent (there) where *there is* (the undeconstructible).

In other words, the hypothesis and propositions toward which I am tentatively moving here would rather call for the subtitle: justice as the possibility of deconstruction, the structure of right or of the law [*la structure du droit ou de la loi*], the founding or the self-authorizing of law as the possibility of the exercise of deconstruction. I am sure this is not altogether clear. I hope, without being sure of it, that it will become a little clearer in a moment.

I have said, then, that I have not yet begun. Perhaps I will never begin and perhaps this colloquium will have to do without a "keynote." Yet I have 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. Even less does one address someone. Tonight, I have agreed by contract to "address," in English, a problem, that is to say, to go straight toward it and straight toward you, thematically and without detour, in addressing myself to you in your language. In between the law or right [*droit*], the rectitude of

violence, that is to say the violence that founds and preserves law. But on the other hand all decidability stands on the side of the divine violence that destroys the law, we could even venture to say, that deconstructs the law. To say that all decidability is found on the side of the divine violence that destroys or deconstructs the law is to say at least two things:

1. *History* is on the side of this divine violence, and precisely in opposition to myth. It is indeed for this reason that it is a matter of a "philosophy" of history and that Benjamin appeals in fact to a "new historical era [*ein neues geschichtliches Zeitalter*]" (202/E300) that should follow the end of the mythic reign, the interruption of the magic circle of the mythic forms of law, the abolition of the *Staatsgewalt*, of the violence, power, or authority of the state. This new historical era would be a new political era on the condition that one not link the political to the state, as Schmitt for example tends to do, to the contrary and teleologically, even if he defensively argues that he does not confuse the two.
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 law, which deconstructs itself and is paralyzed, in undecidability. What Benjamin calls, in fact, the "dialectic of up and down (*ein dialektisches Auf und Ab*)" in the founding or preserving violence of law constitutes an oscillation in which the preserving violence must constantly give itself up to the repression of hostile counterviolences (*Unterdrückung der feindlichen Gegengewalten*). But this repression—and law, the juridical institution, is essentially repressive from this point of view—never ceases to weaken the founding violence that it represents, so it destroys itself in the course of this cycle. For here Benjamin to some extent recognizes this law [*loi*] of iterability that insures that the founding violence is constantly represented in a preserving violence that always repeats the tradition of its origin and that ultimately keeps nothing but a foundation destined from the start to be repeated, preserved, reinstituted. Benjamin says that founding violence is "represented (*repräsentiert*)" in preserving violence.

To think at this point that one has 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 law, 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 could not 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 law, violence sees its status insured as pure and immediate violence, then this will prove that revolutionary violence is possible. Then one would know, but this is a conditional clause, what this revolutionary violence is whose name is the purest manifestation of violence among men (202/E300).

Yet 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 allows knowing or recognizing such a pure and revolutionary violence *as such*, is a *decision not accessible to man*. Here we must deal with a whole other undecidability. It is better to cite Benjamin's sentence *in extenso*: "Less possible and also less urgent for man, however, is 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*)" (202–3/E300).

This has to do with the essence of divine violence, of its power and of its justice. Divine violence is the most just, the most historic, the most revolutionary, the most decidable or the most deciding. Yet, as such, it 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 to say, of law, that is, of the historical undecidable. "For only mythical violence, not divine, will be recognizable as such with certainty, unless it be in incomparable effects. . . ." (E300).

To be schematic, there are two violences, two competing *Gewalten*: on one side, decision (just, historical, political, and so on), justice beyond law 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 law and of the state. On one side is 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 in the end? If one trusts the Benjaminian schema, is the deconstructive discourse on the undecidable rather Jewish (or Judeo-Christian-Islamic), or rather Greek? Rather religious, mythical, or 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 believe that deconstructive discourses, as they present themselves in their irreducible plurality, participate in an impure, contaminating, negotiated, bastard and violent fashion in all these

4. This very polyhedric and polysemic question of representation is also posed from another point of view in this strange essay. Having begun by distinguishing between two sorts of violence, founding violence and preserving 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," and necessarily repeated, in the strong sense of that word, by the preserving violence.

For all 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 or the means to make them explicit here. What would Benjamin have thought, or at least what thought of Benjamin is virtually formed or articulated in this essay (and can it be anticipated?) on the subject of the "final solution"? On its project, its setting to work, the experience of its victims, the judgments, trials, interpretations, the narrative, explicating, and literary representations which have attempted to measure up to it? How would Benjamin have spoken of it? How would he have wished one to speak, to represent, or to forbid oneself from representing the "final solution," to identify it, to assign places in it, origins to it, responsibilities for it (as a philosopher, judge or jurist, as moralist, man of faith, poet, filmmaker)? The so very singular multiplicity of the codes that converge in this text, and, to remain bound by this, 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 void of myth—all this makes it difficult to propose any hypotheses about a Benjaminian discourse on the "final solution" and about a Benjaminian discourse on the possibility or impossibility of a discourse on the "final solution," of which it would be reckless to say, relying on the objective dates of the Wannsee Conference of 1942 and Benjamin's suicide on the Franco-Spanish border in 1940, Benjamin knew anything about. The chronology of such events cannot be taken for granted. And one will always find ways to support the hypothesis according to which Benjamin, already in 1921, was thinking about nothing other than the possibility of this final solution that all the better challenges the order of representation since it would perhaps have belonged in his eyes to radical evil, to the Fall as the fall of language in representation. There are many signs that indicate, were one to trust the constant logic of his discourse, that for Benjamin, after this unrepresentable thing that the "final solution" will have been, not only are discourse and literature and poetry not impossible but more originarily and more eschatologically than ever, they would see themselves open 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.

At the end, after the end of a reading during which the horizon of Nazism and of the final solution will only appear through signs and announcing flashes, and will only be addressed in a virtual, oblique or elliptical fashion. I will propose a few hypotheses on the way in which this text of 1921 can be read today, after the advent of Nazism and the event of the "final solution."

Before proposing an interpretation of this singular text, and 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, prior even to thinking about this colloquium.

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 *during which, while studying the varied but insistent recurrence of the reference to Kant, even 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," to wit, the logic of certain phenomena of a troubling specularity ("psyche" also meaning a sort of mirror in French), a specularity 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. A serious reflection on Nazism, and on the "final solution," cannot spare a courageous, interminable and polyhedral analysis of the history and structure of this Judeo-German "psyche." Among other things that I cannot speak of here, we studied certain analogies—sometimes of the most equivocal and disquieting sort—between the discourses of some "great" German, non-Jewish thinkers and some "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) were not the only analogy, far from it, for example in Cohen or Rosenzweig, and in the converted Jew, Husserl. It is in this context that certain limited but determinate affinities between Benjamin's text and some texts by Carl Schmitt, and even by Heidegger, seem to me to deserve a serious interrogation. Not only because of the hostility to parliamentary democracy, even to democracy as such, not only because of the hostility to the Aufklärung, because of a certain interpretation of the* pólemos, *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, what it prepares or anticipates 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.*

2. Another context: On the occasion of a recent colloquium held at the Cardozo Law School of Yeshiva University in New York on "Deconstruction and the Possibility of Justice," I began, after a long consideration of the relations between 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 aporetic but also 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—as divine signature. The last words, the last sentence of this text devoted to the notion of Gewalt, *a notion that is so difficult to translate ("violence," but also "legitimate force," authorized violence, legal power, as when one speaks of* Staatsgewalt, *state power), resonate as the shofar on the evening or the eve of a prayer that is no longer or not yet heard. Not only does it sign, this ultimate address, and so close to the first name of Benjamin, Walter, but at the end of a text that strives to deconstruct and disqualify all the oppositions it has put to work in a critical fashion (notably the opposition between decidable and undecidable, between theoretical judgment and revolutionary action, between founding violence and preserving violence within mythological law which is itself opposed to the just, divine violence, etc.). At the end of a text of which there remains no content (theoretical, philosophical, or semantic), perhaps even no content that would be "translatable" outside of the singularity of its own event, outside of its own ruin, one ultimate sentence, one eschatological sentence, names the signature and the seal, names the name, and what is called and calls itself* "die waltende." *This "play" between* walten *and* Walter *cannot provide any demonstration or any certainty. Here is, besides, the paradox of its "demonstrative" force: this force has to do with the dissociation between the cognitive and the performative. But this "play" is not at all ludic. For we know, on the other hand, that Benjamin was very interested, notably in his essay on "Goethe's* Elective Affinities," *in the aleatory but significant coincidences of which proper names are properly the site.*

But who signs violence [qui signe la violence]*—will one ever know it? Is it not God, the wholly other? As always, is it not the other who signs? Is it not "divine violence" that will always have come first but also given all the first names, by giving man the sole power of naming? Here are the last words of this strange text: "Divine violence* (die göttliche Gewalt)*, which is the sign and seal* (Insignium und Siegel)*, but never the means of sacred execution, may be called sovereign* (mag die waltende heissen)*."*

How to read this text according to a "deconstructive" gesture that would not be, no more now than it has ever been, Heideggerian or Benjaminian—here is, in sum, the difficult and obscure question that this reading would like to risk.]

If I have not exhausted your patience, let us now approach, in another style, another rhythm, the promised reading of a brief and disconcerting Benjamin text. I am

speaking of "Zur Kritik der Gewalt" (1921), translated as "Critique of Violence."[26] One will not dare say that this text is *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 it is not, for all that, the worst example of what could be exemplary in a relatively determined context such as ours.

Benjamin's analysis reflects the crisis in the European model of bourgeois, liberal, parliamentary democracy, and so the crisis in the concept of law 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 prewar era that saw the European development and failure of pacifist discourse, antimilitarism, 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 the 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 [*lois*] and so forth. Such conditions motivated the thoughts of German jurists like Carl Schmitt, to mention only him—and because Benjamin had great respect for him, not hiding a debt toward him that Schmitt himself did not hesitate to recall on occasion. It is "Zur Kritik der Gewalt," moreover, that, upon its publication won Benjamin a letter of congratulations from the great conservative Catholic jurist, still a constitutionalist at the time (but one knows of his strange conversion to Hitlerism in 1933, and of his correspondence with Benjamin, with Leo Strauss and with Heidegger, among others). And so I was also interested by these few historical indices—this text, for example, at once "mystical" in the overdetermined sense that interests us here, and hypercritical, something which is far from being simply contradictory. In some of its features, it can be read as a grafting of neomessianical Jewish mysticism onto post-Sorelian neo-Marxism (or the reverse). 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

26. First published in *Archiv für Sozialwissenschaft und Sozialpolitik*, 1921; reprinted in *Gesammelte Schriften* 2, no. 1, (Frankfurt a/Main: Suhrkamp, 1977), 179–203. French translation by Maurice de Gandillac, "Pour une critique de la violence," in Walter Benjamin, *Mythe et Violence* (Paris: Denoël, 1971); reprinted in *L'homme, le language et la culture* (Paris: Denoël Gonthier, Bibliothèque Médiations, 1974). We will refer to this last edition for the translation (at times with very slight modifications but only for reasons linked to our discussion). *Translator's note:* The English translation, "Critique of Violence," is by Edmund Jephcott in Walter Benjamin, *Reflections: Essays, Aphorisms, Autobiographical Writings*, ed. Peter Demetz (New York: Schocken, 1986). Page numbers for both will hereafter be cited parenthetically in the text, with *E* signifying the English translation.

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. One cannot attempt to disqualify it today, whether crudely or with sophistication, without at least some thoughtlessness and without forming the worst complicities. It is true that it is also necessary to re-elaborate, without renouncing, the concept of emancipation, enfranchisement, or liberation while taking into account the strange structures we have been describing. But beyond these identified territories of juridico-politicization on the grand geo-political scale, beyond all self-serving misappropriations and hijackings, beyond all determined and particular reappropriations of international law, other areas must constantly open up that can at first resemble secondary or marginal areas. This marginality also signifies that a violence, even a terrorism and other forms of hostage taking are at work. The examples closest to us would be found in the area of laws [*lois*] 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, homelessness, and so on, without forgetting, of course, the treatment of what one calls animal life, the immense question of so-called animality. On this last problem, the Benjamin text that I am coming to now shows that its author was not deaf or insensitive to it, even if his propositions on this subject remain quite obscure or traditional.

II: FIRST NAME OF BENJAMIN [*PRÉNOM DE BENJAMIN*]

[Prolegomena.[25] *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 and the Final Solution. Probing the Limits of Representation." I have therefore chosen to propose a somewhat risky reading of this text by Benjamin, this for several reasons that seem to converge here.*

1. I believe this uneasy, enigmatic, terribly equivocal text is haunted in advance (but can one say "in advance" here?) by the theme of radical destruction, extermination, total annihilation, and first of all the annihilation of the law, if not of justice; and among those rights, human rights, at least such as these can be interpreted within a

25. These prolegomena were intended to introduce a second part of the text, the part that was read on April 26, 1990, at the opening of the colloquium held at the University of California-Los Angeles, "Nazism and the 'Final Solution,' Probing the Limits of Representation."

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 show, it is haunted by haunting itself, by a quasi-logic of the ghost which, because it is the more forceful one, should be substituted for an ontological logic of presence, absence or representation. Yet 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 named the "final solution" does not first of all have to show itself hospitable to the law of the ghost* [la loi du fantôme], *to the spectral experience and to the memory of the ghost, of that which is neither dead nor alive, more than dead and more than living, only surviving, hospitable to the law* [loi] *of the most imperious memory, even though it is the most effaced and the most effaceable memory, but for that very reason the most demanding.*

This text by Benjamin is not only signed by a thinker who is said and said himself to be, in a certain manner, Jewish (and it is about the enigma of this signature that I would like to talk above all); Zur Kritik der Gewalt *is also inscribed in a Judaic perspective that opposes just, divine (Jewish) violence, which would destroy the law, to mythical violence (of the Greek tradition), which would install and preserve 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 *(theme of this colloquium), that is to say, by that dimension of language that is* re-presentative, mediating, thus technological, utilitarian, semiotic, informational—*all powers that uproot language and cause it to decline, to fall far from, or outside of, its originary destination. This destination was appellation, nomination, the gift or the call of presence in the name. We will ask ourselves how this thought of the name* [cette pensée du nom] *is articulated with haunting and the logic of the specter. This essay by Benjamin, treats, therefore, of evil—of that evil that is coming and that comes to language through representation. It is also an essay in which the concepts of responsibility and of culpability, of sacrifice, decision, solution, punishment or expiation play a discreet but certainly major role, one most often associated with the equivocal value of the undecidable, of what is demonic and "demonically ambiguous."*

3. Zur Kritik der Gewalt *is not only a critique of representation as perversion and fall of language, but of representation 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 antiparliamentary and anti-"Aufklärung" wave upon which Nazism will have, as it were, surfaced and even "surfed" in the 1920s and the beginning of the 1930s. Carl Schmitt, whom Benjamin admired and with whom he maintained a correspondence, congratulated him for this essay.*

instability. Deconstruction is generally practiced in two ways or two styles, and 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 anamnesic, seems to proceed through readings of texts, meticulous interpretations and genealogies. Allow me to devote myself successively to both exercises.

First I will dryly and directly state, I will "address," the following aporias. In fact, there is only one aporetic potential 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 law, between justice (infinite, incalculable, rebellious to rule and foreign to symmetry, heterogeneous and heterotropic) on the one hand, and, on the other, the exercise of justice as law, legitimacy or legality, a stabilizable, statutory and calculable apparatus [*dispositif*], a system of regulated and coded prescriptions. I would be tempted, up to a certain point, to bring the concept of justice—which I am here trying to distinguish from law—closer to Levinas's. I would do so just because of this infinity and because of the heteronomic relation to the other [*autrui*], to the face of the other that commands me, whose infinity I cannot thematize and whose hostage I am. In *Totality and Infinity*, Levinas writes, "la relation avec autrui—c'est à dire la justice [the relation with the other—that is to, say, justice]"[18];—it is a justice he elsewhere defines as "*droiture de l'accueil fait au visage* [the straightforwardness of the welcome made to the face]."[19] Straightforwardness [*la droiture*] is not reducible to law, of course, nor to "address" nor to "direction" of which we have been speaking for a while, but the two values are not without relation, the common relation that they maintain with a certain *rectitude*.

Levinas speaks of an infinite right in what he calls "Jewish humanism," whose basis is not "the concept 'man'" but rather the other [*autrui*]: "the extent of the other's right" is "practically an infinite right."[20] Here *équité* is not equality, calculated proportion, equitable distribution or distributive justice, but rather, absolute dissymmetry. And the Levinasian notion of justice would rather come closer to the Hebrew equivalent of what we would perhaps translate as holiness [*sainteté*]. But since I would have other difficult questions about Levinas' difficult discourse, I cannot be content to borrow a conceptual trait 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 law were a true distinction, an opposition the functioning of which was logically regulated and

18. Emmanuel Levinas, *Totality and Infinity*, trans. A. Lingis (Pittsburgh: Duquesne University Press, 1969), 89.

19. Ibid., 82.

20. Emmanuel Levinas, *Nine Talmudic Readings*, trans. Annette Aronowicz (Bloomington: Indiana University Press, 1990), 98.

masterable. But it turns out that law claims to exercise itself in the name of justice and that justice demands for itself that it be established in the name of a law that must be put to work [*mis en oeuvre*] (constituted and applied) by force "enforced."[21] Deconstruction always finds itself and moves itself between these two poles.

Here, then, are some examples of aporias.

1. First Aporia: The E*pokhē* of the Rule.

Our most common axiom is that to be just or unjust, to exercise justice or to transgress it I must be free and responsible for my action, my behavior, my thought, my decision. One will not say of a being without freedom, or at least of one who is not free in a given act, that its decision is just or unjust. But this freedom or this decision of the just, if it is to be and to be said such, to be recognized as such, must follow a law [*loi*] or a prescription, a rule. In this sense, in its very autonomy, in its freedom to follow or to give itself the law [*loi*], it has to be capable of being of the calculable or programmable order, for example as an act of fairness [*équité*]. But if the act simply consists of applying a rule, of enacting a program or effecting a calculation, one will perhaps say that it is legal, that it conforms to law, and perhaps, by metaphor, that it is just, but one would be wrong to say that the *decision* was just. Simply because there was, in this case, no decision.

To be just, the decision of a judge, for example, must not only follow a rule of law or a general law [*loi*] but must also assume it, approve it, confirm its value, by a reinstituting act of interpretation, as if, at the limit, the law [*loi*] did not exist previously—as if the judge himself invented it in each case. Each exercise of justice as law can be just only if it is a "fresh judgment" (I borrow this English expression from Stanley Fish's article, "Force").[22] This new freshness, the initiality of this inaugural judgment can very well—better yet, must [*doit*] very well—conform to a preexisting law [*loi*], but the reinstituting, reinventive and freely deciding interpretation of the responsible judge requires that his "justice" not consist only in conformity, in the conservative and reproductive activity of judgment. In short, for a decision to be just and responsible, it must [*il faut*], in its proper moment, if there is one, be both regulated and without regulation, it must preserve the law [*loi*] and also destroy or suspend it enough to have [*pour devoir*] to reinvent it in each case, rejustify it, reinvent it at least 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 does guarantee it in a secure fashion, then

21. *Translator's note:* The word *enforced* is in English in the text.

22. *Translator's note:* Stanley Fish, "Force," in *Doing What Comes Naturally*, 503–24.

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 anti-Semitism 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 perhaps something that some can 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—can think that the project of a "final solution" is an event, even a new mutation 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. 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 gives us to read of a configuration of Jewish and German thinking right before the rise of Nazism, as one says, of all the partakings 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 anti-Semitism, 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 is itself coherent with that which governs a number of other texts by Benjamin, both earlier and later. 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 traits of the problematic and interpretive space in which he could perhaps have inscribed his discourse on the "final solution."

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 a multiple radicalization:

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 matriculation);*
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 by a modern police force that is inseparable from it, that becomes the true legislative power and whose ghost 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 police decision, a decision of the police, of 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 decision whatsoever.*
4. *A radicalization and total extension of the mythical, of mythical violence, both in its sacrificial founding moment and its most preserving 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), also responds to a certain violence of state law, of its police and its technology, of law 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 law was unleashed against a justice, which Benjamin believed ought to be kept radically distinct from law, from natural as well as historical law, from the violence of its foundation as well as from that of its preservation. And Nazism was a conservative revolution that was preserving this law.*

Yet, 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 law is its veritable system, one can only think, that is, also recall the uniqueness of the "final solution" from a place other than this space of the mythological violence of law. To take the measure of this event and of what links it to fate, one would have to leave the order of law, 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

filiations—let us call them Judeo-Greek to save time—of decision and the undecidable. And then, that the Jew and the Greek may not be quite what Benjamin wants us to believe. And finally for what remains to come of or from deconstruction [*pour ce que de la deconstruction reste à venir*], I believe that something else runs through its veins, perhaps without filiation, an entirely different blood or rather something else entirely than blood, be it the most fraternal blood.[46]

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 thus of the founding violence of law. Mythic law—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 law (*mit dem Recht*). Misalliance, impure genealogy: not a mixture of bloods but bastardy, which at its root will have created a law 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, nonconstative manner, as we do each time we sign. Two energetic sentences proclaim what the watchwords *must* [*doivent*] be, what one *must do* [*ce qu'il faut faire*], what one *must* [*faut*] *reject*, the evil or perversity of what is to be rejected (*Verwerflich*). "But one must reject [*Verwerflich aber*] all mythical violence, the violence that founds law, which one may call governing [*schaltende*] violence. One must also reject [*Verwerflich auch*] the violence that preserves law, the governed violence [*die verwaltete Gewalt*] in the service of the governing."

Then there are the last words, the last sentence. Like the evening *shofar*, but on the eve of a prayer one no longer hears. No longer heard or not yet heard—what is the difference?

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*.[47]

46. 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."

47. Chance of language and of the proper name, chance [*aléa*] at the juncture of the most common and the most singular, law [*loi*] of the unique fate, this "play" between *Walten* and *Walter*, this very game, here, between *this* particular Walter and what he says of *Walten*, one must [*il faut*] know that it cannot provide any knowledge, any demonstration or any certainty.

That is the paradox of its "demonstrative" force. This force has to do with the dissociation between the cognitive and the performative of which we spoke a moment ago (and elsewhere too, 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 his "Goethe's Elective Affinities," in the contingent [*aléatoire*] and significant coincidences of which proper names are properly the site. I would be tempted to give this hypothesis a new chance after the recent reading (August 1991) of the very fine essay by Jochen Hörisch, "L'ange satanique et le bonheur—Les noms de Walter Benjamin" in *Weimar: Le tournant critique*, ed. G. Raulet (Paris: Anthropos, 1988).

But who signs? It is God, the Wholly Other, as always. Divine violence will always have preceded but will also have *given* all the first names. God is the name of this pure violence—and just in essence: there is no other, there is none prior to it and before that it has to justify itself. Authority, justice, power, and violence all are one in him.

The other signs always, here is what signs perhaps this essay: essay of signature, which carries itself in its truth, to wit, that always the other signs, the wholly other, and *tout autre est tout autre*. This is what one calls God—no, what calls itself God when necessarily he/it signs in my place even when I believe I name him. God is the name of the absolute metonymy, what it names by displacing the names, the substitution and what substitutes itself in the name of this substitution. Even before the name, as soon as the first name [*dès le prénom*]: "*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, can be called sovereign violence [*die waltende heissen*]."

It can be called—sovereign. In secret. Sovereign in that it calls itself and it is called there where sovereignly it calls itself. It names itself. Sovereign is the violent power of this originary appellation. Absolute privilege, infinite prerogative. The prerogative gives the condition of all appellation. It says nothing else, it calls itself, therefore, in silence. Nothing resonates, then, but the name, the pure nomination of the name before the name. The pre-nomination of God—here is justice in its infinite power. It begins and ends at the signature.

At the most singular, the most improbable of signatures, at the sovereign. At the most secret, too: sovereign *wants to say/means* [*veut dire*], for whoever knows how to read, secret. *Veut dire*, that is to say (*heisst*) calls, invites, names, addresses, addresses itself.

For whoever can read, at once [*aussitôt*] crossing the name of the other.

For whoever receives the power [*force*] to unseal, but as such also keeping it intact, the undecipherability of a seal, the sovereign and not an other.

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

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 [*devant la loi*], or rather he would be before a law [*loi*] still undetermined, before the law as before a law still nonexisting, a law still ahead, still having to and yet to come [*une loi encore devant et devant venir*]. And the being "before the law" that Kafka talks about resembles this situation,[37] both ordinary and terrible, of the man who cannot manage to see or above all to touch, to catch up with the law [*loi*]: it is transcendent in the very measure that it is he who must found it, as yet-to-come [*comme à venir*], in violence. One "touches" here without touching on this extraordinary paradox: the inaccessible transcendence of the law [*loi*], before which and prior to which "man" stands fast, only appears infinitely transcendent and thus theological to the extent that, nearest to him, it depends only on him, on the performative act by which he institutes it: the law [*loi*] is transcendent, violent and nonviolent, 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 [*loi*] is transcendent and theological and so always to come, always promised, because it is immanent, finite, and thus already past. Every "subject" is caught up in this aporetic structure in advance.

Only the "to-come" [*avenir*] will produce the intelligibility or the interpretability of this law [*loi*]. 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 will say that the order of intelligibility depends in its turn on the established order which it serves to interpret. This readability will then be as little neutral as it is nonviolent. 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 after the fact [*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 is 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 in 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 delimit an international law constructed on the Western concept of state

37. Cf. "Before the Law," trans. Avital Ronell, in *Acts of Literature*, ed. Derek Attridge (New York: Routledge, 1992).

sovereignty and nonintervention, 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 successful ("felicitous") or not. Here we could cite more than one example. This unreadability of violence has to do with the very readability of a violence that belongs to what others would call the symbolic order of law, and not to pure physics. We might be tempted to turn around like a glove this "logic" ("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 juridicosymbolic 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.

One would then say that there is a possibility of "general strike," a right analogous to that of general strike in any interpretative reading, the right to contest established law [*le droit de contester le droit établi*] in its strongest authority, that of the state. One has the right to suspend the legitimating authority and all its norms of reading, and to do this in the most incisive [*les plus lisantes*], most effective, most pertinent readings, which of course will sometimes argue [*s'expliquent*] with the unreadable in order to found another order of reading, another state, sometimes without doing it or in order not to do it. 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 sum, the two temptations of deconstruction.

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, and depending on the case, one can 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 to a few privileged places, such as the postal service, radio and television, and other networks of centralized information; 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*.[38]

Can what we are doing here resemble a general strike or a revolution, with regard to models and structures, but also modes of readability of political action? Is

38. Cf. my "The Rhetoric of Drugs" in *Points*.

performatives supposing anterior conventions. And it is true that any current performative supposes, in order to be effective, an anterior convention. A constative can be *juste*, 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 grounding itself [*en se fondant*] in on conventions and so on other performatives, buried or not, it always maintains within itself some irruptive violence. It no longer responds to the demands of theoretical rationality. And it never did, it was never able to; of this one has an a priori and structural certainty. 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 I tell you, or try to tell you, the truth," and so forth), the dimension of *justesse* or truth of 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 is 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 presupposes justice]."[23] Dangerously parodying the French idiom, one could end up saying: "*La justice, il n'y a que ça de vrai.*"[24] This is, no need to insist, not without consequence for the status, if one can still say that, of truth, of the truth of which Saint Augustine says that it must be "made."

Paradoxically, it is because of this overflowing of the performative, because of this always excessive advance of interpretation, 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 has perhaps an *avenir*, precisely [*justement*], a "to-come" [*à-venir*] that one will have to [*qu'il faudra*] rigorously distinguish from the future. The future loses the openness, the coming of the other (who comes), without which there is no justice; and the future can always reproduce the present, announce itself or present itself as a future present in the modified form of the present. Justice remains *to come*, it remains *by coming* [*la justice reste à venir*], it *has* to come [*elle a à venir*] it *is* to-come, the to-come [*elle* est *à-venir*], it deploys the very dimension of events irreducibly to come. It will always have it, this à-venir, and will always have had it. *Perhaps* this is why justice, insofar as it is not only a

23. Levinas, *Totality and Infinity*, 90.

24. *Translator's note:* Approximating the literal, this expression could be translated as "justice alone is true" or "the only truth is justice." More idiomatically, it would be rendered "justice—that's what it's all about."

juridical or political concept, opens up to the *avenir* the transformation, the recasting or refounding [*la refondation*] of law and politics.

"Perhaps"—one must [*il faut*] 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 unpresentable, 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 are talking about when they use this word, whether its a matter of social, ideological, political, juridical or some other history.

This excess of justice over law and calculation, this overflowing of the unpresentable over the determinable, cannot and should not [*ne peut pas et ne doit pas*] serve as an alibi for staying out of juridico-political battles, within an institution or a state, between institutions or states. Abandoned 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 is always possible, and this is part of the madness of which we were speaking. An absolute assurance against this risk can only saturate or suture the opening of the call to justice, a call that is always wounded. But incalculable justice *commands* calculation. And first of all, closest to what one associates with justice, namely, law, the juridical field that one cannot isolate within sure frontiers, but also in all the fields from which one cannot separate it, which intervene in it and are no longer simply fields: the ethical, the political, the economical, the psycho-sociological, the philosophical, the literary, etc. Not only *must* one [*il faut*] calculate, negotiate the relation between the calculable and the incalculable, and negotiate without a rule that would not have to be reinvented there where we are "thrown," there where we find ourselves; but one *must* [*il faut*] do so and take it as far as possible, beyond the place we find ourselves and beyond the already identifiable zones of morality, politics, or law, beyond the distinctions between national and international, public and private, and so on. The order of this *il faut* does not *properly* belong either to justice or to law. It only belongs to either realm by exceeding each one in the direction of the other—which means that, in their very heterogeneity, these two orders are undissociable: *de facto* and *de jure* [*en fait et en droit*]. 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, one 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 French Declaration of the Rights of Man, in the

On the one hand, for fundamental reasons, it seems to us just to *rendre la justice*, as one says in French, in a given idiom, in a language in which all the "subjects" concerned are supposed competent, that is to say, capable of understanding and interpreting; all the "subjects," so to say, are those who establish the laws [*lois*], 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 law. It is unjust to judge someone who does not understand his rights, nor the language in which the law [*loi*] is inscribed or the judgment pronounced, and so on. We could give multiple dramatic examples of situations of violence in which a person or group of persons assumed to fall under the law [*loi*] are judged in an idiom they do not understand, not very well or not at all. And however slight or subtle the difference of competence in the mastery of the idiom would be here, the violence of an injustice has begun when all the members [*partenaires*] of a community do not share, through and through, the same idiom. Since, in all rigor, this ideal situation is never possible, one can 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 do not 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, which supposes all the others, supposes that the other, the victim of the injustice of language, if one may say so, 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 am 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 one would never say, in a sense said to be 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*, one thinks, for what one calls vegetable or mineral or intermediate species like the sponge. There have been, there are still, many "subjects" among humankind who are not recognized as subjects and who receive this animal treatment (this is the whole unfinished story and history I briefly alluded to a moment ago). What one confusedly calls "animal," the living thing as living and nothing more, is not a subject of the law or of right [*de la loi ou du droit*]. The opposition between just and unjust has no meaning as far as it is concerned. Whether it is a matter of trials of 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 the animal in general), these are 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,[17] carnivorous sacrifice is essential to the structure of subjectivity, which is to say to the founding of the intentional subject as well and to the founding, if not of the law [*loi*], at least of right [*droit*], the difference between law and right [*la loi et le droit*], justice and right, justice and law [*loi*], 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 the animal—the question is more current than ever (and so I include in it, in the name of deconstruction, a set of questions on carnophallogocentrism)—one must [*il faut*] reconsider in its totality the metaphysico-anthropocentric axiomatic that dominates, in the West, the thought of the just and the unjust.

From this very first step, one can already glimpse a first consequence: by deconstructing the partitions that institute the human subject (preferably and paradigmatically the adult male, rather than the woman, child, or animal) at the measure of the just and the unjust, one does not necessarily lead toward injustice, nor to the effacement of an opposition between just and unjust but, in the name of a demand more insatiable than justice, leads perhaps to a reinterpretation of the whole apparatus of limits within which a history and a culture have been able to confine their criteriology. Under the hypothesis that I am superficially considering for the moment, what is currently called deconstruction would not at all 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 would 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 the sense, thus the limits, of concepts of justice, law [*loi*] and right [*droit*], of values, norms, prescriptions that have been imposed and sedimented there, from then

17. On animality, cf. my *Of Spirit: Heidegger and the Question*, trans. F. Bennington and R. Bowlby (Chicago: University of Chicago Press, 1989). As for sacrifice and carnivorous culture, see my "'Eating Well,' or the Calculation of the Subject," trans. Peter Connor and Avital Ronell, in Jacques Derrida, *Points . . . : Interviews, 1974–1994*.

suffice to testify, in truth to prove, that no critical or criteriological rigor, no knowledge, are accessible on this subject.

This second aporia—this second form of the same aporia—already confirms this: if there is a deconstruction of all presumption to a determining certainty of a present justice, it itself operates on the basis of an "idea of justice" that is infinite, infinite because irreducible, irreducible because owed to the other—owed to the other, before any contract, because it has *come*, it is a *coming* [*parce qu'elle est* venue], the coming of the other as always other singularity. Invincible to all skepticism, as one can say by speaking in the manner of Pascal, this "idea of justice" seems indestructible 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 theoretical rationality, in the sense of regulating mastery. And so, one can recognize in it, even accuse in it a madness, and perhaps another kind of mysticism [*une autre sorte de mystique*]. And deconstruction is mad about and from such justice, mad about and from this desire for justice. Such justice, which is not law, is the very movement of deconstruction at work in law and in the history of law, in political history and history itself, even before it presents itself as the discourse that the academy or the culture of our time labels deconstructionism.

I would hesitate to assimilate too quickly this "idea of justice" to a regulative idea in the Kantian sense, to whatever content of a messianic promise (I say *content* and not form, for any messianic form, any messianicity, is never absent from a promise, whatever promise it is) or to other horizons of the same *type*. And I am only speaking of a *type*, of the type of horizon the kinds [*espèces*] of which would be numerous and competing—that is to say similar enough in appearance and always pretending to absolute privilege and to irreducible singularity. The singularity of the historical place—perhaps our own; in any case the one I am obscurely referring to here—allows us a glimpse of the type itself, as the origin, condition, possibility or promise of all its exemplifications (messianism or determinate messianic figures of the Jewish, Christian or Islamic type, idea in the Kantian sense, eschato-teleology of the neo-Hegelian type, Marxist or post-Marxist, etc.). It also allows us to perceive and conceive a law [*loi*] of irreducible competition [*concurrence*], but from an edge [*un bord*] where vertigo threatens to seize us the moment we see nothing but examples and some of us no longer feel engaged in competition; this is another way of saying that from this point on we always run the risk (speaking for myself, at least) of no longer being, as one says, "in the running [*dans la course*]." But not to be "in the running" on the inside track does not mean that one can stay at the starting line or simply be a spectator—far from it. It may be the very thing that, as one also says, "keeps us moving [*fait courir*]" stronger and faster—for example, deconstruction.

3. Third Aporia: The Urgency That Obstructs the Horizon of Knowledge.

One of the reasons I am keeping such a distance from all these horizons—from the Kantian regulative idea or from the messianic advent, for example, at least in 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 either an infinite progress or a waiting and awaiting.

Yet justice, however unpresentable it remains, does not 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, as quickly as possible. It cannot provide itself with the 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 all the necessary knowledge about the matter, well then, the moment of *decision as such*, what must be just, *must* [*il faut*] always remains a finite moment of urgency and precipitation; it must [*doit*] not be the consequence or the effect of this theoretical or historical knowledge, of this reflection or this deliberation, since the decision always marks the interruption of the juridico-, ethico-, or politico-cognitive deliberation that precedes it, that *must* [doit] 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; a madness because such decision is both hyper-active and suffered [*sur-active et subie*], it preserves something passive, even unconscious, as if the deciding one was free only by letting himself be affected by his own decision and as if it came to him from the other. The consequences of such heteronomy seem redoubtable but it would be unjust to evade its necessity. 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 nonknowledge and nonrule. Not of the absence of rules and knowledge but of a reinstitution of rules that by definition is not preceded by any knowledge or by any guarantee as such. If one were to trust in a massive and decisive distinction between performative and constative—a problem I cannot get involved in here—one would have to attribute this irreducibility of precipitate urgency, this inherent irreducibility of thoughtlessness and unconsciousness, however intelligent it may be, to the performative structure of "speech acts" and acts in general as acts of justice or of law, whether they be performatives that institute something or derived

address, direction and straightforwardness [*droiture*], one should find a direct line of communication and find oneself on the right track. Why does deconstruction have the reputation, justified or not, of treating things *obliquely*, indirectly, in indirect style, with so many "quotation marks," and while 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 the language of the other and break with mine, in the fact that I give myself up to the other, a singular mixture of force, *justesse* and justice. And I must, it is a duty, "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 became 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 one may say so, *in themselves*, because they require the very experience of the aporia that is not unrelated to what we just called the *mystical*.

By saying that they even require the *experience of aporia*, one can understand two things that are already quite complicated:

1. As its name indicates, an *experience* is a traversal, something that traverses and travels toward a destination for which it finds a passage. The experience finds its way, its passage, it is possible. Yet, in this sense there cannot be a full experience of aporia, that is, of something that does not allow passage. *Aporia* is a nonpath. From this point of view, justice would be the experience of what we are unable to experience. We shall soon encounter more than one aporia that we shall not be able to pass.
2. But I believe 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 the structure of which would not be an experience of aporia, would have no chance to be what it is—namely, a just *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, law perhaps and sometimes finds itself accounted for, but one can be sure that justice does not.

Law is not justice. Law is the element of calculation, and it is just that there be law, but justice is incalculable, it demands that one 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 oblique proceeding [*démarche oblique*], on the one hand toward you, supposedly the primary addressees of this discourse, but at the same time and on the other hand toward the essential place of decision for said problems. Address, like direction, like *rectitude*, says something about law [*droit*] and about what one must not miss when one wants justice, when one wants to be just—it is the *rectitude* of address. *Il ne faut pas manquer d'adresse*, one must not lack address or skill, one might say in French, but, above all, *il ne faut pas manquer l'adresse*, one must not miss the address, one must not mistake the address. But the address always turns out to be singular. An address is always singular, idiomatic, and justice, as law, seems always to suppose the generality of a rule, a norm or a universal imperative. How to reconcile the act of justice that must always concern singularity, individuals, groups, irreplaceable existences, the other or myself *as* other, in a unique situation, with rule, norm, value, or the imperative of justice that 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 and each time inventing the rule and the example, I might be sheltered from criticism, under the protection of law, my action conforming 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 [*loi*]. Is it ever possible to say that an action is not only legal, but just? A person is not only within his rights [*dans son droit*] but within justice? That such a person is just, a decision is just? Is it ever possible to say, "I know that I am just"? I would want to show that such confidence is essentially impossible, other than in the figure of good conscience and mystification. But allow me yet another detour.

To address oneself to the other in the language of the other is both the condition of all possible justice, it seems, but, in all rigor, it appears 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 [*loi*] of an implicit third) but even excluded by justice as law, inasmuch as justice as law 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 a test and an ordeal for me and for my addressee, for you as well, I imagine. Rather than explain to you why and lose time in doing so, I begin in medias res, with several remarks that for me tie the anguishing gravity of this problem of language to the question of justice, of the possibility of justice.

itself originarily, must alter itself to count *as origin*, that is to say, to preserve itself. Right away there is the police and the police legislates, not content to enforce a law [*loi*] that would have had no force before the police. This iterability inscribes preservation in the essential structure of foundation. This law [*loi*] or this general necessity is certainly not reducible to a modern phenomenon; it has an a priori worth, even if one understands that Benjamin gives examples that are irreducibly modern in their specificity, and explicitly targets the police of the "modern state." 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).

Ruin is not a negative thing. First, it is obviously not a thing. One could write, maybe with or following Benjamin, maybe against Benjamin, a short treatise on the 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 has not always been there, it will not always be there, it is finite. And for this very reason one loves it as mortal, through its birth and its death, through one's own birth and death [*à travers sa naissance et sa mort*], through the ghost or the silhouette of its ruin, one's own ruin [*sa ruine*]—which it already is, therefore, or already prefigures. How can one love otherwise than in this finitude? Where else would the right to love, even the love of law, come from [*d'où viendrait autrement le droit d'aimer, voire l'amour du droit*]?

Let us return to the thing itself—that is to say, to the ghost; for this text tells a ghost story, a history of ghosts. 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 face or figure [*figures sans figure*]. Let us take the example of the police, this index of a ghostly violence because it mixes foundation with preservation and becomes all the more violent for this. Well, the police that thus capitalize on violence are not 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 there is force of law [*loi*]. They are present, sometimes invisible but always effective, wherever there is preservation of the social order. The police are not only the police (today more or less than ever), they are there [*elle est là*], the figure without face or figure of a *Dasein* coextensive with the *Dasein* of the *polis*.

Benjamin recognizes this in his way, but in a double gesture that I do not think is deliberate and in any case is not 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 overflows them. In this way he admits that the ill or evil [*le mal*] with the police is that it is a figure without face or figure, a violence that is formless (*gestaltlos*). As such, the police is nowhere graspable (*nirgends fassbare*). In so-called civilized states the specter of its ghostly apparition is all pervasive (*allverbreitete gespenstische Erscheinung im Leben der zivilisierten Staaten* 189/E287). And still, as this formless ungraspable figure of the police, even as it metonymizes itself—*spectralizes itself*—as the police everywhere become, in society, the very element of haunting, the milieu of spectrality, Benjamin would still want for it to remain a determinable and proper figure to the civilized states. He claims to know what he is speaking of when he speaks of the police in the proper sense, and would want to determine the phenomenon. It is difficult to know whether he is speaking of the police of the modern state or of the state in general when he mentions the civilized state. I would be inclined toward the first hypothesis for two reasons:

1. Benjamin 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 force, in *modern* politico-technical situations, that has been led to make the law it is only supposed to enforce.
2. While recognizing that the ghostly body of the police, however invasive it may be, always remains equal to itself, Benjamin admits that its spirit (*Geist*), the spirit of the police, police spirit, does less damage in absolute monarchy than in modern democracies where its violence degenerates. Would this be only, as we may be tempted to think today, because modern technologies of communication, of surveillance and interception of communication, ensure the police absolute ubiquity, saturating public and private space, pushing to its limit the coextensivity of the political and the police domain [*la coextensivité du politique et du policier*]? Would it be because democracies cannot protect the citizen against police violence unless they enter this logic of *policio-political coextensivity [co-extensivité politico-policière]*, that is to say by confirming the police essence [*l'essence policière*] of the public thing (police of police, institutions of the type "informatique et liberté," monopolization by the state of technologies of protection of private life secrecy, as the federal government and its police forces are currently suggesting to American citizens while also offering to

this point of view a "natural product [*Naturprodukt*]" (180/E278). Benjamin gives several examples of this naturalization of violence by *jusnaturalism*:

1. The state founded on natural law, which Spinoza talks about in the *Theologico-Political Treatise* in which the citizen, before a contract is formed by reason, exercises *de jure* a violence he disposes of *de facto*.
2. The ideological foundation of the Terror under the French Revolution, and
3. The exploitations of a certain Darwinism, and so on.

Yet if, at the opposite end from 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 one judge means, that is to say judge their conformity to a law that is in the process of being instituted, to a new (consequently not natural) law that it evaluates in terms of means. It does not exclude, therefore, a 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 the 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" (180/E278). 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 law 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, as it is by Schmitt always, to the given of European law.

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 [*loi*] but because it threatens the juridical order itself (*die Rechtsordnung*).[33] Whence the law's interest, for it does have an interest in laying itself down and preserving itself, or in representing the interest that, *justement*, it represents. To speak of law's interest may seem "surprising" (Benjamin's word), but at the same time it is normal, it is in the nature of its own interest, to pretend to exclude any individual violence threatening

33. *Translator's note:* Jephcott: "the legal system" (E280).

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 (*Interesse des Rechts an der Monopolisierung der Gewalt*)" (183/E281). This monopoly does not strive to protect any given just and legal ends (*Rechtszwecke*) but law itself.

This seems like a tautological triviality. Yet is not tautology the phenomenal structure of a certain violence of the law that lays itself down, by decreeing to be violent, this time in the sense of outlaw [*hors-la-loi*], anything that does not recognize it? Performative tautology or a priori synthesis, which structures any founding [*fondation*] of the law [*loi*] upon which one performatively produces the conventions (or the "credit" of which we spoke earlier) 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, *a priori synthesis*, and especially the word *performative* are not Benjaminian, but I dare believe that they do not betray his purposes.

The admiring fascination exerted on the people by "the figure of the 'great' criminal (*die Gestalt des 'grossen' Verbrechers*)" (183/E281), 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 [*loi*], lays bare the violence of 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 unsustainable causes by practicing what he calls the "strategy of rupture"—that is, the radical contestation of the given order of the law [*loi*], of judicial authority and ultimately of the legitimate authority of the state that summons his clients to appear before the law [*loi*]. Judicial authority before which, in short, the accused appears without appearing [*comparaît alors sans comparaître*], appears only to testify (without testifying) of his opposition to the law [*loi*] that summons him to appear. By the voice of his lawyer, the accused claims the right to contest the order of law—sometimes the identification of the victims. But what order of law? The order of law in general, or this order of law instituted and set to work ("enforced") by the power of this state? Or order as inextricably mixed with the state in general?

The discriminating example here would 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. Some could have thought that since the practice of the strike, this cessation of activity, this "nonaction" (*Nicht-Handeln*), is not an action (184/E281). 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 nonviolent withdrawal by which the worker, suspending his relations with the management and

the judge is a calculating machine.) This is something that happens sometimes; it happens always in part and according to a parasitizing that cannot be reduced by the mechanics or the technology introduced by the necessary iterability of judgments. To this very extent, however, one will not say of the judge that he is purely just, free, and responsible. But one will also not say this if he does not refer to any law, to any rule, or if, because he does not take any rule for granted beyond his/its interpretation, he suspends his decision, stops at the undecidable or yet improvises outside of all rules, all principles. It follows from this paradox that at no time can one say *presently* that a decision is just, purely just (that is to say, free and responsible), or that someone *is* just, and even less, "*I am* just." Instead of *just* one can say *legal* or *legitimate*, in conformity with a law, with rules and conventions that authorize calculation, but with a law of which the founding origin [*l'origine fondatrice*] only defers the problem of justice. For in the founding [*au fondement*] 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 [*fondation*] 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 Haunting of the Undecidable.

No justice is exercised, no justice is rendered, no justice becomes effective nor does it determine itself in the form of law, without a decision that cuts and divides [*une décision qui tranche*]. This decision of justice 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 [*en droit*] or in principle, in the initiative that amounts to learning, reading, understanding, interpreting the rule, and even calculating. For if calculation is calculation, the *decision to calculate* is not of the order of the calculable, and it must not be so [*et ne doit pas l'être*].

One often associates the theme of undecidability with deconstruction. Yet, the undecidable 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. Undecidable—this is the experience of that which, though foreign and heterogeneous to the order of the calculable and the rule, must [*doit*] nonetheless—it is of *duty* [*devoir*] that one must speak—deliver itself over to the impossible decision while taking account of law and rules. A decision that would not go through the test and ordeal of the undecidable would not be a free decision; it would only be the programmable application or the continuous unfolding of a calculable process. It might perhaps 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. In a way, and at the risk of shocking, one could even say that a subject can never decide anything [*un sujet ne peut jamais rien décider*]: a subject is even that to *which* a decision cannot come or happen [*arriver*] otherwise than as a marginal accident that does not affect the essential identity and the substantial presence-to-self that make a subject what it is—if the choice of the word *subject* is not arbitrary, at least, and if one trusts in what is in fact always required, in our culture, of a subject.

Once the test and ordeal of the undecidable has passed (if that is possible, but this possibility is not pure, it is never like an other possibility: the memory of the undecidability must keep a living trace that forever marks a decision as such), the decision has again followed a rule, a given, invented or reinvented, and reaffirmed rule: it is no longer *presently* just, *fully* just. At no moment, it seems, can a decision be said to be presently and fully just: either it has not yet been made according to a rule, and nothing allows one to call it just, or it has already followed a rule—whether given, received, confirmed, preserved or reinvented—which, in its turn, nothing guarantees absolutely; and, moreover, if it were guaranteed, the decision would have turn back into calculation and one could not call it just. That is why the test and ordeal of the undecidable, of which I have just said it must be gone through by any decision worthy of this name, is never past or passed [*passée ou dépassée*], it is not a surmounted or sublated [*relevé*] (*aufgehoben*) moment in the decision. The undecidable remains caught, lodged, as a ghost at least, but an essential ghost, in every decision, in every event of decision. Its ghostliness [*sa fantomaticité*] deconstructs from within all assurance of presence, all certainty or all alleged criteriology assuring us of the justice of a decision, in truth of the very event of a decision. Who will ever be able to assure and ensure 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 and suspension [*suspens*] that freely decides to apply—or not—a rule?

A subjectal axiomatic of responsibility, of conscience, of intentionality, of property and propriety, governs today's dominant juridical discourse; it also governs the category of decision right down to its appeals to medical expertise. Yet this axiomatic is fragile and theoretically crude, something I need not emphasize here. The effects of these limitations affect more than all decisionism (naive or sophisticated); they are concrete and massive enough to dispense here with examples. The obscure dogmatism that marks the discourses on the responsibility of an accused [*prévenu*], his mental state, the passionate character, premeditated or not, of a crime, the incredible depositions of witnesses and "experts" on this subject, would

produce the necessary electronic chips; they would then decide the moment when the security of the state would require the interception of private exchanges, or authorize, for example, the installation of invisible microphones, the use of directional microphones, the intrusion into computerized networks or, more simply, the practice, so common in France, of good old phone taps)? Is this the contradiction of which Benjamin thought? The internal degeneration of the democratic principle inevitably corrupted by the principle of police power, intended, in principle, to protect the former but uncontrollable in its essence, in the process of its becoming technologically autonomous?

Let us stay with this point for a moment. I am not sure that Benjamin intended the *rapprochement* I am attempting here between the words *gespenstische*, spectral, and *Geist*, spirit, in the sense of the ghostly double. But this analogy hardly seems contestable even if Benjamin did not 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*, upon which one can always call. Their presence is not present, any more than any presence is present, as Heidegger reminds us, and the presence of their ghostly double knows no boundaries. They conform to the logic of "Zur Kritik der Gewalt" to note that anything that touches on the violence of law—here the police force itself—is not natural but spiritual. There is a spirit, both in the sense of specter and in the sense of the life that rises, through death, precisely, through the possibility of the death penalty, above natural or "biological" life. The police testify to this. Here I shall invoke a "thesis" defended by the *Ursprung des deutschen Trauerspiel* regarding the manifestation of spirit that shows itself to the outside under the form of *power*. The faculty of this power (*Vermögen*) determines itself in actuality as the *faculty* to exercise *dictatorship*. *Spirit is dictatorship*. Reciprocally, dictatorship, which is the essence of power as violence (*Gewalt*), is of spiritual essence. The fundamental spiritualism of such an affirmation resonates with what grants the authority (legitimized or legitimizing) or the violence of power to an instituting decision that, by definition, does not have to justify its sovereignty before any preexisting law [*loi*] and only calls upon a "mysticism," only utters itself as a series of orders, edicts and prescriptive dictations or dictatory performatives. "Spirit (*Geist*)—such was the thesis of the age—shows itself in power (*weist sich aus in Macht*); spirit is the capacity to exercise dictatorship, (*Geist ist das Vermögen, Diktatur auszuüben*). This capacity requires both a strict inner discipline and the most unscrupulous external action (*skrupelloseste Aktion*)."[42]

42. Walter Benjamin, *Ursprung des deutschen Trauerspiels*, *GS* 1.1, 276; trans. by John Osborne as *The Origin of German Tragic Drama* (London: Verso, 1977), 98. I thank Tim Bahti for having directed me to this passage. The same chapter discusses earlier the apparition of specters [*Geisterscheinungen*] 273/"ghost-scenes" E94). And further it is again a question of the evil genius (*böse Geist*) of despots, and of the becoming-ghost [*devenir-revenant*] of the dead.

Instead of being itself and being contained within democracy, this spirit of the police, this police spirit, this police violence *as spirit*, degenerates there. It testifies in modern democracy to the greatest thinkable degeneration of violence (*die denkbar grösste Entartung der Gewalt bezeugt*, 190/E287). The degeneration of democratic *power* (and the word *power* would often be the most appropriate to translate *Gewalt*, the internal force or violence of its authority) would have no other name than the police. Why? In absolute monarchy, legislative and executive powers are united. In it violence is therefore normal, conforming to its essence, its idea, its spirit. In democracy, on the contrary, violence is no longer accorded nor granted to the spirit of the police. Because of the presumed separation of powers, it is exercised illegitimately, especially when instead of enforcing the law, it makes the law. Benjamin here indicates at least 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, shows itself as what it is and as what it ought to be in its spirit, whereas the police violence of democracies denies its own principle, making laws surreptitiously, clandestinely.

The consequences or implications are twofold:

1. Democracy would be a degeneration of law, of the violence, the authority and the power of law.
2. There is not yet any democracy worthy of this name. Democracy remains to come: to engender or to regenerate.

Benjamin's discourse, which then develops into a critique of the parliamentarism of liberal democracy, is therefore *revolutionary*, even tending toward Marxism [*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 "degeneration" (*Entartung*) as critique of a parliamentarism powerless to control the police violence that substitutes itself for it, is indeed 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 law as a decline or decay (*Verfall*) since the origin. The analogy with Schmittian or Heideggerian schemas does not need to be emphasized. This triangle would have to be illustrated by a correspondence, I mean