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ACTS OF RELIGION

JACQUES DERRIDA

Edited and with an Introduction by
GIL ANIDJAR

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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*],"¹ 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*]³—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

as *différance* or force of *différance* (*différance* is a force *différée-différente*); 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.

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

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 Herrnstein-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 the 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*]⁸—and it is just—be followed: followed by consequence, followed by effect, applied, *enforced*;⁹ 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 lois se maintiennent en credit, non parce qu'elles sont justes, mais parce qu'elles sont lois: c'est le fondement mystique de leur autorité, elles n'en ont point d'autre. . . . Quiconque leur obeyt parce qu'elles sont justes, ne leur obeyt pas justement par où il doit [Laws 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 verité 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’ivoire 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 yvoire, 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

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

11. Montaigne, *Essays* 3, ch. 13, “De l’expérience” (Paris: Bibliothèque de la Pléiade, 1962), 1203/*The Essays of Montaigne*, trans. John Florio (New York: Modern Library, 1933), 970.

12. *Essays* 2, ch. 12, p. 601/*Essays*, 482.

13. *Pensées*, no. 294, 466/*Essays*, 101.

14. *Pensées*, no. 233, 435/*Thoughts*, 80.

15. *Translator’s note*: “right or law” is in English in the text.

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 anti-foundationalism. 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

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

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).

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 because they are infinitely numerous, nor because they are rooted in the infinity of memories and cultures (religious, philosophical, juridical, and so forth) that we shall never master. They are infinite, if 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.

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 con-

stitutive 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*.

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, ethico-political 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

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 anamnestic, 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

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 *Epokhē* 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

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.

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.

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 (naïve 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

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 [*concurrency*], 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 unrepresentable 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

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 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

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 unrepresentable, but it is the chance of the event and the condition of history. No doubt an unrecognizable history, of course, for those who believe they know what they 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 unrepresentable 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

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."

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.