

**The Ethics of Interpretation:
Toward Critique Without Judgment**

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Jacques Derrida delivered the first part of his essay, published in the *Cardozo Law Review* under the title “Force of Law: The ‘Mystical Foundation of Authority,’” at a colloquium on “Deconstruction and the Possibility of Justice,” held at the Cardozo Law School in 1989. Derrida begins his keynote address in what we might call his “signature” style by questioning the title under which he has been called to speak. He suggests that this title, “Deconstruction and the Possibility of Justice,” implies a series of questions that themselves take the form of a suspicion:

Does deconstruction insure, permit, authorize the possibility of justice? Does it make justice possible, or a discourse of consequence on justice and the conditions of its possibility? ... Do the so-called deconstructionists have anything to say about justice, anything to do with it? Why, basically, do they speak of it so little? Does it interest them in the end? Isn't it because, as certain people suspect, deconstruction doesn't itself permit any just action, any just discourse on justice but instead constitutes a threat to *droit*, to law or right, and ruins the very possibility of justice? (*FL* 921-3)¹

For Derrida, these are the “yes or no” questions, the “either/or” choice, implied by the topic that he has been asked to address but which he himself

has had no part in formulating. To the extent that these imagined questions appear to force a choice, Derrida suggests that “the title is rather violent, polemical, inquisitorial” and “not the most just” (*FL* 923). Derrida responds by saying he can offer no response (or at least, no reassuring response) to any questions put this way. However, it will be toward answering these felt accusations that Derrida will devote most of his energy in this keynote address. Before long he will have asserted not only that deconstruction is *concerned* with justice, but that it constitutes justice itself [“Deconstruction is justice” (*FL* 945)].

In the second part of his essay, delivered in 1990 to open a colloquium on *Nazism and the ‘Final Solution’: Probing the Limits of Representation*, Derrida devotes himself to the reading of a text which he suggests “lends itself to an exercise in deconstructive reading” (*FL* 979). That text is Walter Benjamin’s “Critique of Violence.” This essay, which Derrida characterizes as “brief and disconcerting,” is Benjamin’s historico-philosophical [Benjamin’s term] analysis of law and justice and the function of violence in relation to these categories. By bringing a reading of Benjamin’s text into his own analysis of law and justice, Derrida necessarily takes up a position in relation to Benjamin; this position can only be described as ambivalent. While Derrida both follows alongside and carries with him Benjamin’s text throughout his own essay, frequently inhabiting Benjamin’s ideas by speaking them in his own words, Derrida also displays a powerful desire to distinguish himself from Benjamin. He distances himself at times through the very act of quoting, by refusing to take responsibility for Benjamin’s words and explicitly placing that responsibility with Benjamin [“let us leave the responsibility for this concept to Benjamin...” (*FL* 1025), “and again I leave to him responsibility for this interpretation...” (*FL* 1027)]. At the end of his discussion, despite the fact that Derrida’s own analysis has drawn from and built upon Benjamin’s text throughout, Derrida seeks finally to distinguish himself by positing an absolute opposition between Benjamin’s “destruction” on the one hand and his own “deconstructive affirmation” on the other.

How do we understand the relationship between Derrida and Benjamin’s texts? To ask this question is to ask about the relationship between interpreter and interpreted, and it is to inquire into the responsibilities of the interpreter in relation to the text s/he interprets. What are the ethics of interpretation? This is the question I want to ask in relation to Derrida’s text, but it is already apparent that to ask this question is to ask at least two things of this text: on the one hand it is to attempt to understand and assess Derrida’s own argument concerning the ethics of deconstruction as an interpretive practice. On the other hand it is to question the justness of Derrida’s deconstructive reading of Benjamin. To put it simply: Derrida argues

that deconstruction *is* justice; is Derrida's own interpretation of Benjamin just?

To begin to answer the second of these questions, let us return to Derrida's critique of Benjamin. Why does Derrida ultimately break with Benjamin's text, and in what way does he accomplish this disassociation? Derrida hints throughout his talk that he is uncomfortable with Benjamin's text. He introduces the second part of his essay with the suggestion that Benjamin's text belongs "to the great anti-parliamentary and anti-'Aufklärung' wave on which Nazism so to speak surfaced and even surfed in the '20s and the beginning of the '30s" (FL 975). Derrida refers numerous times throughout his text to "certain limited but determinable affinities between Benjamin's text and some texts by Carl Schmitt" (FL 977). But it is not until the very last paragraph that Derrida states explicitly what these affinities mean for him. He concludes that Benjamin's text "despite all its polysemic mobility and all its resources for reversal, seems to [him] finally to resemble too closely, to the point of specular fascination and vertigo, the very thing against which one must act and think, do and speak, that with which one must break" (FL 1045). Derrida follows his proclamation immediately with a doubt, expressed in the form of a parenthetical "(perhaps, perhaps)," but nevertheless his judgment remains: Benjamin's text, in these final moments, becomes the very thing against which Derrida wants to act and speak, despite his acknowledged fascination with the text, and despite the fact that he has followed Benjamin's text throughout his own discussion.

Having passed his own judgment, Derrida concludes his essay with a widespread call for the need to judge:

We must think, know, represent for ourselves, formalize, *judge* the possible complicity between [Benjamin's discourse] and the worst (here the final solution). In my view, this defines a task and the responsibility the theme of which (yes the theme) I have not been able to read in either Benjaminian "destruction" or Heideggerian "*Destruktion*." It is the thought of difference between these destructions on the one hand and a deconstructive affirmation on the other that has guided me tonight in this reading. (FL 1045, my emphasis)

Derrida concludes with a call for the need to judge, but has his own judgment been just? And furthermore, is judgment truly the task of interpretation? What is the relationship between judgment and critique?

Derrida offers one account of this relationship in his description of Benjamin's critique:

In the title *Zur Kritik der Gewalt*, "critique" doesn't simply mean negative evaluation, legitimate rejection or condemnation of violence, but

judgment, evaluation, examination that provides itself with the means to judge violence. The concept of “critique,” insofar as it implies decision in the form of judgment and question with regard to the right to judge, thus has an essential relation, in itself, to the sphere of law or right. (*FL* 983)

For Benjamin, according to Derrida, critique implies judgment, but it does not necessarily mean negative evaluation or condemnation. Most importantly, if critique does entail decision in the form of judgment, it also implies the questioning of the *right to judge*. Derrida ultimately condemns Benjamin’s text by stressing its complicity – its participation, involvement, and collusion – with the discourse of Nazism and the final solution. But does Derrida have the *right* to pass this judgment?

Derrida himself suggests that he does not. Given the fact that Benjamin’s text was written in 1921 before the rise of Nazism, and given Benjamin’s own suicide in 1940 at the border between France and Spain in direct response to the threat of the Nazis, Derrida acknowledges that “we would *not have the right* or we would have only a limited right” (*FL* 1040, my italics), to ask what Benjamin might have thought of Nazism and the final solution based on his “Critique of Violence.” Yet immediately following this recognition, Derrida asserts that, “in a certain way [he] will do just that” (*FL* 1040).

Why? What motivates this judgment that Derrida acknowledges he has no right to make? As I will attempt to make clear in this essay, it is a certain fear. Derrida begins his conclusion by asserting that he finds something about Benjamin’s text “intolerable.” Even more than its supposed affinities with “the worst,” what Derrida finds intolerable is a particular *temptation* that Benjamin’s text inspires: “the temptation to think the holocaust as an uninterpretable manifestation of divine violence insofar as this divine violence would be at the same time nihilating, expiatory and bloodless ... a divine violence that would destroy current law through a bloodless process that strikes and causes to expiate” (*FL* 1044). Derrida writes: “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” (*FL* 1045). It is clearly Derrida himself who is frightened. But of *whose* interpretation is he afraid? Is it not his *own* interpretation of Benjamin’s text. It is certainly not Benjamin’s interpretation of the holocaust – it could not be. Has Derrida truly resisted the “temptation” that he identifies, or has he rather *already* been seduced? And if so, is Benjamin’s text solely responsible for this? Isn’t it possible that the complicity that Derrida fears most of all is his own – his own interpretation, his own implication in Benjamin’s text through the centrality of Benjamin’s text to his own? Interpretation is always

relational. The interpreter can never be fully separated from, is always intimately bound up with, the object of interpretation. Derrida's final words concern his desire to mark the "difference between these destructions on the one hand and a deconstructive affirmation on the other." Yet it is precisely the co-implication of Derrida and Benjamin's texts that I intend to chart here. In exploring this relationship, I will also be inquiring into the nature of justice, the justness of interpretation, and the relationship of judgment to both.

In the first part of his paper, Derrida seeks to account for the "mystical foundation of authority" – a phrase he takes from Pascal who borrows it from Montaigne – through recourse to his notion of the performative. According to Derrida, law and justice emerge together through a performative force: "The very emergence of justice and law, the founding and justifying moment that institutes law implies a performative force, which is always an interpretative force" (FL 941). This founding moment is a *coup de force* that "in itself is neither just nor unjust and that no justice and no previous law with its founding anterior moment could guarantee or contradict or invalidate" (FL 943). Justice and law thus emerge together through a performative tautology, each being called upon to validate the other while both remaining groundless. This groundlessness is the mystical foundation of their authority.

Lest we fall into dismay at the seeming pessimism of this groundlessness, Derrida hastens to point out that this structure makes law "essentially deconstructible," and that this is "not bad news" (FL 943). Derrida then immediately submits a paradox for discussion:

It is the deconstructible structure of law (*droit*), or if you prefer of justice as *droit*, that also insures the possibility of deconstruction. Justice, if such a thing exists, outside or beyond law, is not deconstructible. No more than deconstruction itself, if such a thing exists. Deconstruction is justice. It is perhaps because law (*droit*) (which I will consistently try to distinguish from justice) is constructible ... and so deconstructible ... that it makes deconstruction possible, or at least the practice of a deconstruction that, fundamentally, always leads to questions of *droit*. (FL 945)

There are several things happening at once in this paragraph. In the first place, it is here that Derrida pronounces that "deconstruction is justice." Justice and deconstruction come together for Derrida by virtue of the fact that neither is deconstructible. Being *not* deconstructible, both are distinct from law, which *is* deconstructible. However, the paradox is that while deconstruction (and presumably justice) is distinct from law, it is law that *in-*

*sure*s its possibility. Already we can begin to see how Derrida will argue for a concept of justice that is distinct from law and yet whose possibility resides within law.

This will be a continuous tension in Derrida's text: wanting on the one hand to hold on to the possibility of a justice that exceeds any given law and is never reducible to law, and wanting on the other hand to locate that justice within law. From the beginning of his text, Derrida has told us that he *wants* to reserve the possibility of a justice distinct from law – "I want to insist right away on reserving the possibility of a justice, indeed of a law that not only exceeds or contradicts 'law' (*droit*) but also, perhaps has no relation to law" (*FL* 925). However, he has also made clear that this distinction is impossible to maintain: "the 'sufferance' of deconstruction, what makes it suffer and what makes those it torments suffer, is perhaps the absence of rules and definitive criteria that would allow one to distinguish unequivocally between *droit* and justice" (*FL* 923). Justice and law emerge together for Derrida through a performative *coup de force*, and no matter how one might try to distinguish them, one is always confronted with the mystical limit of their origin.

However, this does not mean that justice, as distinct from law, does not exist for Derrida. Rather, it exists *there* in the mystical, in the impossible experience of that aporia. This is where justice resides for Derrida: "Justice is an experience of the impossible" (*FL* 947). Deconstruction, because it aims at that aporia, is also associated with an experience of the impossible for Derrida: "The interest of deconstruction, of such force and desire as it may have, is a certain experience of the impossible" (*FL* 981). And hence, justice and deconstruction come together for Derrida in their very impossibility, and paradoxically, in their very necessity, for "there is no justice without this experience, however impossible it may be, of aporia" (*FL* 947).

The experience of aporia is associated with the moment of decision for Derrida. Thus we can see that for him, justice is connected to judgment from the very beginning. The possibility of justice, as distinct from law, resides within this aporia, but to the extent that Derrida agrees with Pascal that "justice without force is contradictory," it is necessary, in order for justice to be realized, that a decision or judgment – the performative founding of a law – be passed. Thus, although Derrida wants to hold onto an idea of justice that is distinct from law, the two remain intertwined and implicated in each other. This paradox will become more clear as we explore Derrida's explication of the aporia that is at the foundation of both law and justice.

Derrida provides three ways of thinking about this aporia. He begins his first example by arguing that justice requires freedom: we would never consider a decision just if we didn't feel that the person deciding had the

freedom to choose otherwise. In other words, a decision that follows a rule or law by rote might be *legal* but we would not call it *just* unless we felt that the decision maker (Derrida uses the figure of a judge) had not only followed the rules, but had carefully considered the uniqueness of this situation and applied a “fresh judgment” as it were. At the same time, we wouldn’t consider a judge’s decision just if it simply cast aside all consideration of rule and law. Thus, “for a decision to be just and responsible, it must, in its proper moment if there is one, be both regulated and without regulation: it must conserve the law and also destroy it or suspend it enough to have to reinvent it in each case, rejustify it, at least reinvent it in the reaffirmation and the new and free confirmation of its principle” (FL 961).

Derrida’s second paradox is this: Any decision that is free will not be calculable; it will not merely conform to a program or rule. However, even though it is not calculable – and therefore its outcome cannot be guaranteed or confirmed in advance by a code or law – a decision *must* still be made, for to throw up one’s hands and decide that it is undecidable would also be unjust: “Only a decision is just” (FL 963). Therefore, “that which, though heterogeneous, foreign to the order of the calculable and the rule, is still obliged – it is of obligation that we must speak – to give itself up to the impossible decision” (FL 963). The moment of suspension – the moment that must exist outside of law before reconfirming law – is described by Derrida as the “ordeal of the undecidable.” Any just decision must pass through this ordeal: to never inhabit it would be to simply apply a rule, but to remain within it would also be to fail to be just. As a moment that must be passed through, the ordeal of the undecidable is marked by something that Derrida has already alluded to with regard to the performative founding of law: this moment, he has told us, “is never a moment inscribed in the homogenous tissue of a history, since it is ripped apart with one decision” (FL 941).

What we find, then, is that we are always just before or just after the *just* decision:

There is apparently no moment in which a decision can be called presently and fully just: either it has not yet been made according to a rule, and nothing allows us to call it just, or it has already followed a rule – whether received, confirmed, conserved or reinvented – which in its turn is not absolutely guaranteed by anything, and moreover, if it were guaranteed, the decision would be reduced to calculation and we wouldn’t call it just. (FL 963)

The “ordeal of the undecidable” falls out of time. It is a moment which *must*

be passed through for the just decision to take place, yet it is “never past or passed” (FL 965). As that which is never passed, it remains a constitutive part of any just decision, but it remains as that which is never present.

At this point, Derrida suggests that we can begin to see that the deconstruction of the certitude of present justice, rather than being a rejection of the notion of justice or an undermining of its possibility, is in fact motivated by an infinite “idea of justice”:

Infinite because irreducible, irreducible because owed to the other, owed to the other, before any contract, because it has come, the other’s coming as the singularity that is always other. This “idea of justice” seems to me to be irreducible in its affirmative character, in its demand of gift without exchange, without circulation, without recognition or gratitude, without economic circularity, without calculation and without rules, without reason and without rationality. (FL 965)

This moment is a somewhat surprising one within Derrida’s text. The tone is noticeably different. Until now, Derrida’s discussion of justice has focused entirely on the moment of judgment, on the impossible moment of decision from whence law emerges. But, here he says that deconstruction is “mad about” this other kind of justice – a justice that is entirely free of contracts and economic circularity, of calculations and rules. Despite the seeming incompatibility of this notion of justice with law, Derrida will immediately seek to find *this* kind of justice in the law, in the workings of deconstruction within the law: “This kind of justice, which isn’t law, is the very movement of deconstruction at work *in* law and the history of law, in political history and history itself, before it even presents itself as the discourse that the academy or modern culture labels “deconstructionism” (FL 965). Here, once again, it is clear that Derrida wants to hold onto an idea of justice that is distinct from law and yet to locate this justice – and deconstruction itself which is the manifestation of this justice – *within* law rather than outside of it. Furthermore, Derrida means to show that deconstruction itself has the status of an eternal, universal law (as in the sense of “Newton’s Law”).

Having conjured this notion of an infinite idea of justice, Derrida hastens to add that he “would hesitate to assimilate too quickly this ‘idea of justice’ ... to a messianic promise” (FL 965). Derrida is concerned about associating his notion of justice with the messianic advent – which he characterizes as a horizon defined by “an infinite progress or a period of waiting” (FL 967) – precisely because justice is “that which must not wait” (FL 967). Consequently, because a just decision is always required *immediately*, “it cannot furnish itself with infinite information and the unlimited knowledge of

conditions, rules or hypothetical imperatives that could justify it" (*FL* 967). And so there is always violence in the making of a just decision – and the moment of its making is neither just nor unjust – in the same way that there is always violence in the performative founding of law. For Derrida, the two are the same: "For in the founding of law or in its institution, the same problem of justice will have been posed and violently resolved" (*FL* 963).

If Derrida is in love with the idea of an infinite justice that exceeds calculation, why does his discussion of justice centre on decision-making? Why does judgment become a crucial component of justice for Derrida? Again, I propose that it is a certain fear: "Left to itself, the incalculable and giving (*donatrice*) idea of justice is always very close to the bad, even to the worst for it can always be reappropriated by the most perverse calculation. It's always possible. And so incalculable justice requires us to calculate" (*FL* 971). It is the fear that incalculable justice might be very close to the bad that motivates Derrida to judge.

Keeping Derrida's arguments in the first part of his essay in mind, let us now turn to the second part of his essay in which Derrida discusses Benjamin's "Critique of Violence." I have claimed that Derrida has an ambivalent relationship to Benjamin's text and that this ambivalence comes about because, despite certain affinities between Derrida's and Benjamin's understandings of law and justice, Benjamin's text arouses a particular fear in Derrida. I would like now to propose, based on the reading of Derrida's text that I have just laid out, that Derrida's fear arises precisely from the undecidability of Benjamin's text. This undecidability leads Derrida to fear that Benjamin's text might easily be appropriated by "the worst," and it is for this reason that Derrida ultimately passes judgment on Benjamin's text. At the same time, I will suggest that Benjamin's text remains utterly compelling to Derrida precisely because of its undecidability, for reasons that I will now explore.

Derrida is clearly obsessed with the ways in which Benjamin's text seems to come very close to "the worst." As I have already indicated, Derrida refers repeatedly to relationships between Benjamin, Heidegger, and Carl Schmitt. Derrida notes within the first few pages of his lecture, that Benjamin's essay "upon its publication won Benjamin a letter of congratulations from Carl Schmitt, that great conservative Catholic jurist, still a constitutionalist at the time; but you are already familiar with his strange conversion to Hitlerism in 1933 and his correspondence with Benjamin. But also with Heidegger" (*FL* 979). Derrida acknowledges that "it is this historical network of equivocal contracts that interests [him] in its very necessity and in its very dangers" (*FL* 979). Yet, although Derrida suggests that "lessons can still be drawn from it" (*FL* 979), he never actually analyzes this histori-

cal network during his talk. He never provides a reading of Schmitt's letter or an historical argument suggesting that Benjamin's essay was indeed taken up by the Nazis as justification for the "final solution." Derrida simply *states* these affinities and then allows them to haunt his reading of Benjamin's text as though they require no further support. At one stage, Derrida even claims that "the analogy with Schmittian or Heideggerian schemas does not need to be spelled out. This triangle could be illustrated by a correspondence, I mean an epistolary correspondence that linked these three thinkers (Schmitt/Benjamin, Heidegger/Schmitt)" (*FL* 1015) – as though the historical fact of their letters effects a necessary and obvious argument by itself. A similar logic of historical contiguity presumes to justify various unsupported parenthetical asides that endeavour, simply through their proximal placing, to effect analogies between Benjamin's text and the worst. The most egregious example of this occurs when Derrida, speaking about Benjamin's notion of divine violence as annihilation without bloodshed, suggests that it is troubling, "(especially if we think of the 'final solution')." More troubling is the way in which the final solution is used here as a mere parenthetical aside, without explication, in order to pass judgment on Benjamin's text. Clearly, Derrida's relationship to Benjamin's text is complicated – he is simultaneously fascinated and disturbed – by the fact that Derrida interprets Benjamin's text to have close affinities to fascism.

Another point of fascination for Derrida is the way in which Benjamin's text seems to deconstruct itself: "this deconstruction is in some way the operation or rather the very experience that this text, it seems to me, first does itself, by itself, on itself" (*FL* 981). If Benjamin's text produces an experience of deconstruction, and if deconstruction is an experience of the impossible (which is also the experience of justice), then it would seem that part of the desire that Benjamin's text holds for Derrida is that it comes very close to offering an experience of justice, even as it comes very close to the worst. This interpretation is in keeping with Derrida's own argument because, for him, the possibility of justice resides in this very contradiction. As a text that deconstructs itself, Benjamin's essay is described by Derrida as being "in ruins" (*FL* 1007). It is here that Derrida expresses most demonstratively his own ambivalence toward Benjamin's text. He writes: "I do not see ruin as a negative thing. First of all it is clearly not a thing. And then I would love to write, maybe with or following Benjamin, maybe against Benjamin, a short treatise on love of ruins. What else is there to love anyway?" (*FL* 1009). Derrida loves the ruins of Benjamin's text, but he can't decide whether he is with Benjamin, following him, or against him.

The fact that Benjamin's text deconstructs itself will not dissuade Derrida from deconstructing it himself. Derrida suggests that Benjamin's text is

organized around a series of distinctions. As he outlines them, there is first, “the distinction between two kinds of violence in law, in relation to law (*droit*): the founding violence ... and the violence that conserves” (FL 981). Next, there is the distinction between the violence that founds law (mythic or legal violence) and the violence that destroys law (divine violence). Finally, “there is the distinction between justice as the principle of all divine positioning of the end, and power as principle of all mythical positioning of *droit*” (FL 983). From this schematic outline, we can already see that for Benjamin, justice is distinct from law: it exists outside of law as that which destroys law.

Given Derrida’s argument in the first part of his essay, we can anticipate that this distinction, which radically separates justice from law, will pose a problem for Derrida, who wants to find justice within law. In order to maintain his own argument in the face of Benjamin’s text, Derrida needs to show that the distinction Benjamin proposes between legal violence and divine violence cannot be maintained. However, Derrida makes a rather astonishing mistake. He proceeds to deconstruct a *different* opposition: Derrida deconstructs the opposition between founding violence and conserving violence. He claims that he is undermining a “laborious movement on Benjamin’s part to preserve at any cost a distinction or a correlation without which his whole project could collapse” (FL 1001). Yet, the distinction that Derrida undermines, between lawmaking and law-preserving violence, is *not* the distinction that Benjamin labours to make.

For Benjamin, lawmaking and law-preserving violence are simply two components of legal violence; they have nothing to do with divine violence. It is true that Benjamin generally refers to them as two separate qualities, but he sees them both as *functions* of legal (mythic) violence. He refers to “a duality in the function of violence” where, “if that first function of violence is called the lawmaking function, this second will be called the law-preserving function” (CV 284).² Furthermore, Benjamin is concerned with providing a “critique of *both* lawmaking and law-preserving violence” (CV 286, my emphasis). Thus, Derrida’s own laborious movement to show how lawmaking violence “must envelop the violence of conservation and cannot break with it” (FL 997) does not refute the opposition that most concerns Benjamin between legal violence and divine violence, because Derrida only addresses the question of legal violence.

What interests me most about this apparent mistake, however, is that it is precisely when Derrida seems to be arguing against Benjamin that the similarities between their arguments emerge most powerfully. What we discover is that Derrida’s notion of the performative founding of law is entirely compatible with Benjamin’s notion of legal violence. One could devote an

entire article to marking this relationship, but let me just point out a few similarities: both see the founding of law as occurring through a violent force (for Derrida the mystical, for Benjamin the mythic). For both theorists, violence is inherent to law ["all violence as a means, even in the most favourable case, is implicated in the problematic nature of law itself" (CV 287). "Violence is not exterior to *droit*. It threatens it from within" (FL 989)]. As such, violence always threatens to erupt from within law and thus to challenge law with the founding of a new law ["The state, however, fears this violence simply for its lawmaking character" (CV 283)].

If both discourses recognize the potential for a law-threatening violence to erupt within law, how are they different? One difference lies in how each author interprets this insight. For Derrida, the potential for violence to erupt within law is good news because it means that revolution is possible. Derrida suggests that deconstruction itself may be a kind of revolution (FL 995). Of course, this good news is mediated by the danger that remains due to the fact that *all* revolutionary discourses on the left *and* the right come about through the same performative founding:

All revolutionary situations, all revolutionary discourses, on the left or on the right ... justify the recourse to violence by alleging the founding, in progress or to come, of a new law. As this law to come will in return legitimate, retrospectively, the violence that may offend the sense of justice, its future anterior already justifies it. The foundation of all states occurs in a situation that we can thus call revolutionary. It inaugurates a new law, it always does so in violence. (FL 991)

Derrida is concerned about the possibility that revolution can go both ways in the same way that he worries about the possibility that the undecidable is always in danger of being appropriated by "the worst." Because, let us remember, that it is from out of the undecidable, from out of that aporia within law, that revolutions come for Derrida: "This moment of suspense, this *épokhé*, this founding or revolutionary moment of law is, in law, an instance of non-law. [The question of this instance of non-law is one to which I will return, but for now, I want to focus on the next sentence in the passage]. But *it is also the whole history of law*" (FL 991, my emphasis).

Here it becomes clear why the potential for law-founding violence to erupt within law is not interpreted in the same way by Benjamin and Derrida. For it is precisely the "whole history of law" that Benjamin wants to imagine moving beyond. He writes: "The critique of violence is the philosophy of its history – the 'philosophy' of its history, because only the idea of its development makes possible a critical, discriminating, and decisive approach to its temporal data" (CV 299-300). Benjamin and Derrida both rec-

ognize the potential for violence to erupt from within law and found a new law, but Benjamin is not interested in this kind of revolution. The revolution that Benjamin wants to imagine is *not* one that would found a new law. The “whole history of law” that Derrida describes is the same history that Benjamin wants to think a way out of. And he makes this clear in the extraordinary passage that follows the one I have just quoted:

A gaze directed only at what is close at hand can at most perceive a dialectical rising and falling in the lawmaking and law-preserving formations of violence. The law governing their oscillation rests on the circumstance that all law-preserving violence, in its duration, indirectly weakens the lawmaking violence represented by it, through the suppression of hostile counter violence ... This lasts until either new forces or those earlier suppressed triumph over the hitherto lawmaking violence and thus found a new law, destined in its turn to decay. On the breaking of this cycle maintained by mythical forms of law, on the suspension of law with all the forces on which it depends as they depend on it, finally therefore on the abolition of state power, a new historical epoch is founded (CV 300).

This passage reads, in the light of Derrida’s essay, as though it could have been written for, addressed directly to, Derrida. And Derrida even acknowledges this to a certain degree: “here Benjamin to some extent recognizes this law of iterability that insures that the founding violence is always represented in a conservative violence that always repeats the tradition of its origin and that ultimately keeps nothing but a foundation destined from the start to be repeated, conserved, reinstated” (FL 1033). Derrida recognizes that in many ways, he and Benjamin are describing the same history of law, but whereas Benjamin wants to imagine a world beyond this law, for Derrida the law is inescapable.

Nevertheless, Derrida is seduced by the idea of a justice that exists outside the law and so too by Benjamin’s notion of divine violence. Thus, Derrida endeavours in a strange, ambivalent way to show that what Benjamin sees as coming from outside the law, divine violence, is actually internal to the law. He does this by remarking that the violence that erupts from within law is “uninterpretable” and “indecipherable” (FL 991). (Remember that the mystical foundation of authority emerges in the tense of the future-anterior, which is always illegible in the present). Derrida contrasts this observation with the fact that, “As Benjamin presents it, this violence is certainly legible, indeed intelligible since it is not alien to law” (FL 991). Derrida seems to suggest that Benjamin attributes readability to that which is unreadable and hence *mislocates* the unintelligible. For Benjamin

associates the unintelligible with the divine; he tells us that the divine is that which can never be recognized with certainty (CV 300). Derrida seems to want to find what Benjamin looks for outside of law – in the divine – in the unintelligible instance of non-law within law.

Let me conclude now by returning to the question of the undecidability of Benjamin's text. I have suggested that part of the allure and fear that Benjamin's text has for Derrida lies in its undecidability. By this I have meant several things. For one, I have meant the way in which Derrida is unable to decide how he feels about Benjamin's text. By this I am not referring to whether or not Derrida "knows how he really feels," but rather the fact that Derrida expresses himself as being in a state of ambivalence about Benjamin's text. As Derrida turns to the final pages of Benjamin's essay, he once again surrenders to his own ambivalence:

Here begins the last sequence, the most enigmatic, the most fascinating and the most profound in this text. For lack of time but not only time, I cannot claim to do it justice. I will have to content myself with stressing on the one hand the terrible ethico-political ambiguity of the text, on the other hand the exemplary instability of its status and its signature, what finally, you will permit me to call this heart or courage (*ce coeur ou ce courage*) of a thinking that knows there is no *justesse*, no justice, no responsibility except in exposing oneself to all risks, beyond certitude and good conscience (FL 1025).

Unable to assimilate the contradictions of this enigmatic text, Derrida "contents" himself by doing two opposing things at once: on the one hand, criticizing the text's undecidability, its "terrible ethico-political ambiguity"; on the other, expressing admiration for the heart and courage of a text that allows itself to remain within the undecidable, exposing itself to all of the risks that reside there.

Benjamin's text, then, is undecidable insofar as Derrida cannot decide how he feels about it, but he cannot decide because the text itself is paradoxical. Near the end of his analysis, Derrida asks: "Which is the ultimate and most provocative paradox of this critique of violence?" (FL 1031). He answers that it is Benjamin's claim that his critique is the only one that "makes possible a critical, discriminating, and *decisive* approach" to history (CV 299-300, my emphasis). This claim is paradoxical because, in Benjamin's final analysis, Derrida finds that "the *decision* (*Entscheidung*) on this subject, the determinant decision, the one that permits us to know or to recognize such a pure and revolutionary violence *as such*, is a *decision not accessible to man*" (FL 1033, Derrida's italics).

And thus we arrive at the third way in which Benjamin's text is unde-

cidable. For Benjamin ends with a caution *against deciding*: “Less possible and also less urgent for humankind, however, is to decide when unalloyed violence has been realized in particular cases” (CV 300). This is ultimately the greatest challenge of Benjamin’s text: the admonition not to judge, to remain undecided, and therefore, to allow the text to be unsettling, to remain unsettled. But Derrida cannot accept to remain within this undecidability. He asks at the end of his long discussion what deconstruction’s relationship to Benjamin’s text might be: is deconstruction more mythic (Greek) or more divine (Jewish)? He answers that it is both: “deconstructive discourses as they present themselves in their irreducible plurality participate in an impure, contaminating, negotiated, bastard and violent way in all these filiations – let’s call them Judaeo-Greek to save time – of decision and the undecidable” (FL 1035). Derrida wants decision *and* the undecidable. He desires the undecidable but he still wants to decide. And in the end, he does. In the end, despite everything that Benjamin’s text has given him, Derrida passes judgment and cuts his ties. But as he himself has told us, these knots are not so easy to sever, because “the undecidable remains caught, lodged, at least as a ghost – but an essential ghost – in every decision, in every event of decision. Its ghostliness deconstructs from within any assurance of presence, any certitude or any supposed criteriology that would assure us of the justice of a decision” (FL 965). And so, as Derrida claims of Benjamin’s essay, Derrida’s text “does not escape the law that it states” (FL 1007). Derrida ultimately condemns Benjamin’s text, but Benjamin’s essay remains within Derrida’s, its very undecidability casting the greatest doubt upon the justice of Derrida’s judgment.

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NOTES

¹ All references to Derrida’s essay, referred to parenthetically in the text as *FL*, are to “Force of Law: The ‘Mystical Foundation of Authority’,” *Cardozo Law Review* 11 (1989-1990), 920-1046.

² All references to Benjamin’s essay, referred to parenthetically in the text as *CV*, are to “Critique of Violence,” trans. Edmund Jephcott, in *Reflections*, ed Peter Demetz (New York: Schocken, 1978), 277-300.