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READING DERRIDA'S "FORCE OF LAW: 'THE MYSTICAL FOUNDATION OF AUTHORITY' "

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Abstract. *This essay is an attempt at an explication de texte: a reading session on Part I of Derrida's "Force of Law: 'The Mystical Foundation of Authority'". An explication - that is, an unfolding by means of an interruptive reading that breaks into the text at certain places; a supplementary reading that interprets and mediates¹ by means of insertions and prostheses so as to provide a secure footing (precisely by means of footnotes) for a somewhat better understanding, knowing already, however, that there can never be a steady ground or foundation and even less a secure one - that is, an irresponsible one².*

Part I of Derrida's "Force of Law: 'The Mystical Foundation of Authority'" was delivered (both read and distributed) at the colloquium "Deconstruction and the Possibility of Justice" and it is certainly this event that provides the contextual framework, the parergon³, for Derrida's text. In fact, Derrida addresses this context, as described

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¹ "We are all mediators, translators." ("An Interview with Derrida" in Derrida and Difference, [p. 71]).

² The word "secure" derives from Latin se ("without") and cura ("care"): "without care", "careless", "without responsibility", "irresponsible". (Perhaps it is not totally unrelated to recall Heidegger's rendering of this etymology and his account of "security" in "What Are Poets for?", just a few pages following the discussion on groundless ground - fill - and a few pages preceding the notorious "Language is the precinct [templum], that is, the house of Being". Perhaps even more relevant is Heidegger's account of care in Being and Time where it appears as an ontological structure of Dasein.)

³ In his book *The Truth in Painting* Derrida introduces the term parergon - in Greek, "that which surrounds the work (of art), that is to say, the frame". In the essay "Restitution in the Truth in Pointing (fill)" of the same book, playing upon a simple observation of a (pair of) shoe(s), Derrida introduces a term "(inter)lacing". Movement of a lace or lacing movement is that from inside to outside, from outside to inside, from under to over, from over to under, etc. By a law of stricture (which is hard and flexible at one and the same time) lacing gathers a shoe together: it ties it to one's ankle yet still allowing enough flexibility for comfortable movement.

(outlined, framed) by its very title, by questioning its rather "violent", "polemical", "inquisitorial" character: it intrusively asks the questions of whether deconstruction permits or denies any just action, any discourse about justice; whether it constitutes a threat to law and ruins the very possibility of justice; and, further, whether it can provide definite criteria for unequivocally distinguishing between law and justice. This aspect of the context elicits a refusal on Derrida's part to answer any questions and expectations formalized in this way ("either/or", "yes or no"). However, this does not prevent him from responding to the task by still writing (about)⁴ "deconstruction", "responsibility", "justice", or even affirming that: "Deconstruction is justice" (p. 14).

Derrida wrote his text in French and it was later translated so as to be read on English. This gives him an occasion to remark on the question of translation (which is seen as an active and in no way non-violent or just interpretation). As a way of beginning - that is, of remarking a beginning that has always already begun - Derrida cites one English idiom for which, being an idiom, there is no strict equivalent in French. The idiom is "to enforce the law" or "enforceability of law or contract". This idiomatic expression, writes Derrida, reminds us that "... there is no such thing as law (*droit*) that does not imply in itself, in the analytic structure of its concept, the possibility of being 'enforced', applied by force" (p. 6).

Moving ahead, Derrida next asks how are we to distinguish this force of law and the violence that one deems unjust? What difference is there between the force that can be just (or at least legitimate) and the unjust violence? And, further, "How are we to distinguish between the force of law of a legitimate power and the supposedly originary violence that must have established this authority and could not itself have been authorized by any anterior legitimacy so that, in this initial moment, it is neither legal nor illegal - or, others would quickly say, neither just nor unjust?" (p. 6)⁵.

In order to address these questions, to respond to them, Derrida gives his interpretation of one of Pascal's *pensées* in which Pascal puts justice and force together, making force an essential predicate of justice (justice as *droit*). This interpretation,

The figure of trajectory of the lace, "a structure by alternate and reversible passage from inside to outside, from under to over" (p. 321), articulates the structure of the frame. Frame "... cuts out but also sews back together. By an invisible lace, which pierces the canvas (as the *pointure* 'pierces the paper'), passes into it and then out of it in order to sew it back onto its *milieu*, onto its internal and external worlds" (p. 304). The structure of the limit (the structure of the double limit, internal and external, the double edge) Derrida calls *parergon*. The *parergonal* structure is constitutive of every (con)text. It is the very interplay of "opposites": inside and outside, intrinsic and extrinsic, subject and other, intelligible and sensible, thought and unthought, text and context, etc.

⁴ In order to emphasize Derrida's "refusal", I parenthesize "about" because, grammatically speaking, as a proposition it requires an object and this is precisely - namely, objectivization, installing into presence - what Derrida avoids. Later in the essay Derrida points out that "... one cannot speak directly [but, instead, only obliquely about justice, thematize or objectivize justice, say 'this is just' and even less 'I am just', without immediately betraying justice if not law (*droit*)" (p. 10), [my emphasis].

⁵ Here, digressively, staying within the question of idiom, Derrida points out that a German word *Gewalt*, in English as in French normally translated as "violence", in addition to "violence" also signifies "power", "legitimate power", "authority". Derrida also, only briefly, refers to another text of his where he examines Heidegger's uses of *Walten* and *Gewalt* in his interpretations (of Heraclitus, for example) according to which, originally, *Dike* - justice, *droit*, trial penalty or punishment, vengeance - is *Eris* (conflict, *Streit*, discord, *polemos* or *Kampf*), that is, it is *adikia*, injustice, as well.

however, in a way "decontextualizes"⁶ Pascal's *pensée*: it dissociates it from its "real" context of Christian pessimism conventional interpretations characterized by a sort of "pessimistic, relativistic and empiricist skepticism". This interpretation, rather than addressing the traditional context, addresses the intrinsic structure of law and justice (justice as *droit*) as described or "put together" by Pascal. In fact, the interpretation concerns the very moment of "putting together", of (e)merging of justice and law. This founding moment, writes Derrida, implies a performative force which is always an interpretive force: "Its very moment of foundation or institution (which in any case is never a moment inscribed in the homogenous tissue of history, since it is ripped apart by one decision), the operation that amounts to founding, inauguration, justifying law (*droit*), making law, would consist of a *coup de force*, of a performative and therefore interpretive violence that in itself is neither just nor unjust and that no justice and no previous law with its founding anterior moment could guarantee or contradict or invalidate" (p. 13), [my emphasis]. It is here, Derrida asserts, that any justificatory discourse pretending to the role of metalanguage in relation to performativity of institutive language faces a silence - that is, a mystical limit; (evoking Montaigne and Pascal, this is how Derrida proposes to interpret what they call the "mystical foundation of authority" of laws). Since the origin of authority, the foundation or ground, the position of law cannot rest on anything but themselves, they are themselves violence without ground. But this is not to say that they are in themselves unjust, in the sense of illegal. They are neither legal nor illegal in their founding moment for they exceed the opposition between founded and unfounded.

Derrida continues by recapitulating and proposing a "paradox":

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

⁶ What I cite here as "decontextualization" is precisely an example of deconstruction of the very (traditional) notion of context. In his essay "Signature Event context" Derrida demonstrates that a context is never absolutely determinable or limited, its determination is never saturated. Examining the iterative structure of writing, Derrida writes: "A written sign, in the usual sense of the word, is therefore a mark which remains, which is not exhausted in the present of its inscription, and which can give rise to an iteration both in the absence of and beyond the presence of the empirically determined subject who, in given context, has emitted or produced it... [B]y the same token, a written sign carries with it a force of breaking with its context, that is, the set of presences which organize the moment of its inscription" (*Margins of Philosophy*, [p. 317]).

constructible and so deconstructible and, what's more, that it makes deconstruction possible, or at least the practice of a deconstruction that, fundamentally, always proceeds to questions of droit and to the subject of droit. (1) The deconstructibility of law (droit), of legality, legitimacy or legitimation (for example) makes deconstruction possible. (2) The undeconstructibility of justice also makes deconstruction possible, indeed is inseparable from it. (3) The result: deconstruction takes place in the interval that separates the undeconstructibility of justice from the deconstructibility of droit (authority, legitimacy, and so on). It is possible as an experience of the impossible, there where, even if it does not exist (or does not yet exist, or never does exist), there is justice. Whether one can replace, translate, determine the x of justice, one should say: deconstruction is possible, as impossible, to the extent (there) where there is (the undeconstructible) (pp. 14-15)⁷.

It is this rather difficult passage, announcing the distinction between justice and law that leads to Derrida's (direct) addressing of the problem concerning the possibility of justice - that is, the possibility that is possible as an experience of the impossible, of the aporia⁸.

It would be simple if the distinction between justice (the "idea of justice" as incalculable, heterogeneous) and law (justice as droit, as a system of coded and regulated prescriptions, statutory, stabilizable, etc.) were a true distinction - that is, a logically regulated opposition. Law claims to exercise itself in the name of justice if justice is required to establish itself in the name of law that must be "enforced". This distinction is rather difficult and unstable; it, in fact, assumes the logical form of contradiction - that is,

⁷ A few pages later Derrida elaborates on the task of deconstruction which is seen as a double movement:

(1) The sense of responsibility without limit which consists on constantly maintaining an interrogation of the origin, grounds and limits our conceptual, theoretical or normative apparatus surrounding justice: "One must be juste with justice and the first way to do so is to hear read, interpret it, to try to understand where it comes from, what it wants of us, knowing that it does so through singular idioms (Dike, Jus, justitia, justice, Gerechtigkeit, to limit ourselves to European idioms which it may also be necessary to delimit in relation to others...) and also knowing that this justice always addresses itself to singularity" (p. 20). (On the question of responsibility Derrida writes in The Other Heading: "For perhaps responsibility consists in making of the name be recalled, of the memory of the name, of the idiomatic limit, a chance that is an opening of identity to its very future" [p. 35].).

(2) "The responsibility toward memory is a responsibility before the very concept of responsibility that regulates the justice and appropriateness (justness) of our behavior, of our theoretical, practical, ethico-political decisions. The concept of responsibility is inseparable from a whole network of connected concepts (property, intentionality, will, freedom, conscience, consciousness, self-consciousness, subject, self, person, community, decision, and so forth) and any deconstruction of this network of concepts in their given or dominant state may seem like a move toward irresponsibility at the very moment that, on the contrary, deconstruction calls for an increase in responsibility" (p. 20).

⁸ In The Other Heading Derrida writes: I will even venture to say that ethics, politics, and responsibility, if there are any, will only ever have begun with the experience and experiment of the aporia. When the path is clear and given, when a certain knowledge opens up the way in advance, the decision is already made, it might as well be said that there is none to make: irresponsibly, and in good conscience, one simply applies or implements a program. Perhaps, and this would be the objection, one never escapes the program. In that case, one must acknowledge this and stop talking with authority about moral or political responsibility. The condition of possibility of this thing called responsibility is a certain experience and experiment of the the possibility of the impossible: the testing of the aporia from which one may invent only possible invention, the impossible invention" (p. 41).

of an aporia.

There is, Derrida writes, only one aporia that infinitely distributes itself producing infinite examples. concerning the aporetic experience of the possibility of justice, Derrida chooses to deal with three examples.

(1) First aporia: epokhe of the rule.

It is commonly assumed that in order to be just or unjust and to exercise justice, one must be free and responsible for one's actions, thoughts, decisions. But this freedom of one's decisions must follow a law, a rule. However, if the decision simply consists in applying the rule, we might say that the decision conforms to law, that it is legal, but we would be wrong to say that the decision is just.

To be just, the decision of the judge, for example, must not only follow a rule of law but must also assume it, approve it, by a "reinstating act of interpretation", as if nothing previously existed of the law, as if the judge himself invented the law in every case. "In short, for a decision to be just and responsible, it must, in its proper moment if there is one, be both regulated and without regulation: it must conserve the law and also destroy or suspend it enough to have to reinvent it in the reaffirmation and the new and free confirmation of its principle" (p. 23). From this paradox it follows that there is never a moment that we can say in the present that a decision is just; each new decision can only further defer the problem of justice.

(2) Second aporia: the ghost of the undecidable.

Just decision never consists simply in its final form. It begins with learning, understanding, interpreting the rules, and even with calculating - that is, with deciding between two undecidables, two singular and heterogeneous rules. Every decision must go through the "ordeal of the undecidable" and once it is reached it has again followed a rule, invented and reinvented it, and thus it is no longer presently just. "There is apparently no moment in which a decision can be presently and fully just: either it has not yet been made according to a rule, and nothing allows it to be called just, or it has already followed a rule - whether received, confirmed, conserved or reinvented - which in its turn is not absolutely guaranteed by anything; and, moreover, if it were guaranteed, the decision would be reduced to calculation and we couldn't call it just" (p. 24).

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

Just decision is always required immediately. It must not wait in order to gain infinite information, the unlimited knowledge of conditions and rules that justify it. Every decision is structurally finite - a decision of urgency and precipitation defying knowledge, conditions and rules. "The instant of decision is madness", says Kierkegaard⁹. This is particularly true of the instant of the just decision that must rend time and defy dialectics¹⁰.

⁹ Also cited as an epigraph to Derrida's essay "Cogito and the History of Madness" in Writing and Difference.

¹⁰ Going back to the second aporia we read:

"That is why the ordeal of the undecidable that I just said must be gone through by any decision worthy of its name is never past or passed, it is not a surmounted or sublated (aufgehoben) moment in the decision. The

Justice is never (self-) present. However, Derrida asserts, it may have an avenir, a "to-come", which Derrida rigorously distinguishes from the future that can always reproduce the present. "Justice remains, is yet to come, à-venir, it has an, it is à-venir, the very dimension of events irreducibly to come. It will always have it, this à-venir, and always has. Perhaps it is for this reason that justice, insofar as it is not a juridical or political concept, opens up for l'avenir, the transformation, the recasting or refounding of law and politics. 'Perhaps', one must always say perhaps for justice" (p. 27).

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ČITANJE DERIDINOG DELA "SILA ZAKONA: 'MISTIČNI TEMELJ AUTORITETA' "

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Ovaj esej predstavlja pokušaj eksplikacije teksta: čitanje prvog dela Deridnog dela "Sila zakona: 'mistični temelj autoriteta' ". Eksplikacija - to jest otkrivanje teksta metodom isprekidanog čitanja kojom se ulazi u tekst na pojedinim mestima; jedno dopunsko čitanje koje interpretira ili posreduje pomoću ubačenih elemenata tako da bi se obezbedila solidna osnova /upravo pomoću fusnota/ za nešto bolje razumevanje, znajući unapred, međutim, da nikada ne može postojati stabilna osnova, a još manje sigurna, to jest, neodgovorna.

undecidable remains caught, lodged, at least as a ghost - but an essential ghost - in every decision, in every event of decision. Its ghostliness deconstructs from within any assurance of presence, any certitude or any supposed criteriology that would assure us of the justice of a decision, in truth of the very event of a decision" (pp. 24-25) .