P-ISSN 2233-3746 / E-ISSN 2720-782X
https://doi.org/10.60131/jlaw.2.2023.7692

Zhiron Khujadze*

Kafka, Benjamin, Derrida: On Violence, Law and Justice**

The present text is the second part of the article published in the previous issue of the journal. If in the initial section Kafka's parable "Before the Law" was considered from the philosophical thinking of Walter Benjamin, on the one hand, from Talmudic categories, and on the other hand, from the perspective of the violent nature of law, in the subsequent section the parable will be deconstructed by Derrida, on the one hand, through a quasi-psychoanalytical reading and utilizing Freudian concepts, and on the other hand, by investigating the relationship between law and justice as the aporetic experience between the universal and the singular.

***Key Words**: Derrida, Kafka, Benjamin, Freud, Before the Law, Literature, Law, Justice, Deconstruction, Aporia.*

1. Introduction

Kafka's parable "Before the Law" is a legend rich in interpretative possibilities. The text encourages us to interpret it, yet no *elucidation* can be fully *legal, legitimate, just, or non-violent.* While the initial part of the article explored the relationship between Kafka and Benjamin, the latter part shifts its focus to Kafka and Derrida.

Derrida's critique of Western philosophy centers on the thinking within the *metaphysics of presence. Presence,* as the central and founding principle that defines language as an expression of existing, *unfairly* excludes the possibility of being/non-being *distinct* from it. Metaphysics establishes binary oppositions such as that between life/death, speech/writing, nature/culture, sanity/madness, legality/illegality, where the former represents the *presence*, that is, the foundation, and the latter signifies a *deviation* from the presence. Derrida endeavours to *deconstruct* this mode of thinking, aims to read texts *justly*.

In the first part, Derrida, through a *fair* reading of Kafka's parable, illustrates that the founding act of a social institution diverges from the structure of legality/illegality and from the conventional boundaries of an event, while in the second part, he expounds on law and justice in the context of the relationship between the general and the unique, and discusses the possibility of *just decision* within the aporetic experience that binds the two together.

---

* Phd student of Ivane Javakhishvili Tbilisi State University Faculty of Law, Research Fellow at Tinatin Tsereteli Institute of State and Law, Assistant at Legal Methods Department, TSU Faculty of Law. https://orcid.org/0009-0001-0076-0451.

** The following text is the second part (the end) of the article published in the previous issue of the journal. See: *Khujadze Zh.,* Kafka, Benjamin, Derrida: On Law, Violence and Justice, Journal of Law № 1, 2023, 85-97.

2. Derrida and Kafka: Law without History and Justice as Deconstruction

2.1. The Founding of Law: An Event Where Nothing Happens

Numerous authors have indeed examined Kafka's parable, however, of paramount significance is Jacques Derrida's lecture "Before the Law" delivered in London in 1982, where he poses a crucial question of under what jurisdiction and by whose authority does the text belong to literature.[1] Derrida's address extends beyond the realm of literature, placing a greater emphasis on the law – whether it be moral, political, natural, legal, or of another kind – that establishes something, prohibits or permits, excludes or includes, denies or affirms. To determine whether a text possesses literary or non-literary essence, it must be brought before the law, however, Kafka's parable is itself "Before the Law", that is, it already covers the chief question.

Derrida centers his attention on Kant's Second Critique (*Critique of Practical Reason*), asserting that the law (pure morality), while having categorical authority, is without history or genesis. The law (the law of laws) cannot be the story and cannot give rise to it, and if someone tells the *story* about the law, it can concern only the modes of its revelation. Since the parable does not specify the nature of the law in question, we should envision it as the law of the laws: the law as such, as the origin of countless other laws, as the first, as preceding all other laws, that is, before the law. In Kafka's parable the countryman tries to penetrate the law by the authority of the story (or through it?), struggles to fulfill his aim, cannot enter into a relation with it, cannot make it present, because the place and the origin of the law, essential knowledge for its approach, remain indeterminate. It is not historical, recognizable, or temporal. Being untraceable to a source, embarking on a journey to its abode or origin proves impossible. The relationship with the law and the fulfillment of the imperative "you must", should be apprehended as if devoid of history, or at least as if no longer hinged on its historical demonstration.[2]

However, Derrida in his analysis of the parable goes beyond Kant's moral law, employs a quasi-psychoanalytical approach rooted in Freud's ideas. In *Totem and Taboo* Freud explores the origin of moral prohibitions by observing the totemic system within primitive societies, names the categorical imperatives in Kant's sense, which were initiated by the "event", namely the murder of the primeval father by his sons who had an ambivalent emotional attitude towards him, on the one hand, they hated him because perceived as an obstacle in the pursuit of power and satisfaction of sexual demands, and on the other hand, they also loved and admired him. They wanted to take the father's place, to monopoly power and control over the tribe's females. However, when they satisfied their hate by father's removal and carried out their wish for identification with him, their animosity waned, replaced by tender emotions that eventually transformed into remorse. A sense of guilt was formed and the dead father became stronger than the living had been. As a result, the brothers condemned what their father forbade them in his presence. The brothers declared the killing of the father substitute, the totem, not allowed and thus condemned the murder. The two fundamental taboos of totemism, which

1 *Derrida J.,* Before the Law, in: Acts of Literature, *Attridge D. (ed.),* New York, London, 1992, 181-220.
2 Ibid, 191-192.

originated from the sense of guilt of the son and correspond with the two repressed wishes, are prohibition of murder and incest. Within primitive people sexual intercourse and marriage between members of the same clan are not allowed, which represents the exogamy associated with the totem. A totem usually is an animal that is considered sacred, although there is a tradition when at feast times the clan kills its totem and then bewails the murdered animal, but after this mourning there follows joy, therefore, a holiday is a solemn violation of the prohibition and loud gaiety is a part of it. A totem animal is a substitute for the father whose killing is forbidden, but it still causes contradictory, changing feelings – both grief and a festive mood. Freud associates the origin of morality with these two prohibitions. Yet, they stem from distinct needs. The first, the sparing of the totem animal rests upon emotional values, the other, the repression of sexual desires had a strong practical foundation. Though the brothers united to overcome the father, however, each became the other's rival in the struggle for women, so in the condition of impossibility of identifying a definitive "sole master", it was necessary for peaceful coexistence to make this concession.[3]

The murder of the father led to his eternal life. A failed crime begets a moral reaction, so morality emerges from a useless crime whose intended purpose remains unfulfilled since the *murder* failed to achieve its objective. However, as Derrida observes: "in fact, it inaugurates nothing since repentance and morality had to be possible *before* the crime."[4] Freud envisioned an event he believed was the origin of morality, however, this "story" is constructed on "as if", that is, it is not a story but a quasi-event that both demands and annuls narrative. Since the dead father wields more power than a living one, logically, he would have been more dead in life than *post mortem*, therefore, the murder of the father does not qualify as an event in the conventional sense, nor as the origin of moral laws. It is the fictive narrativity, that is, the simulacrum of narration and not merely the narration of an imaginary history. It is "as if", an event without event, a pure event where nothing truly transpires, for no one could have been present at the place of its "happening". Yet, precisely this nature renders it the origin of both literature and law – a story told, a rumor spread, without author or end, yet inevitable and unforgettable:

"Nothing new happens and yet this nothing new would instate the law, the two fundamental prohibitions of totemism, namely murder and incest. However, this pure and purely presumed event nevertheless marks an invisible rent in history. It resembles a fiction, a myth, or a fable, and its relation is so structured that all questions as to Freud's intentions are at once inevitable and pointless ("Did he believe in it or not? did he maintain that it came down to a real and historical murder?" and so on)."[5]

A few remarks regarding Freud: Derrida brings attention to Freud's concept of repression, closely tied to the notion of upright position or elevation. Assuming an upright position, drawing oneself up serves to create a distance between a person's nose and sexual zones – anal or genital. Freud observes that just as we turn our heads and noses away in moments of disgust, the preconscious similarly shies away from the memory, which is repression. The uprightness, distance, purity are what

3 *Freud S.,* Totem and Taboo, *Brill A.A. (trans.),* London, 1919, ch.4.5.
4 *Derrida J.,* Before the Law, in: Acts of Literature, *Attridge D. (ed.),* New York, London, 1992, 198.
5 Ibid, 199.

repression produces as the foundation of morality.[6] This *elevated state* is exemplified in the figure of the doorman who addresses the countryman as great lords do and ascends in stature as the narrative unfolds, while the countryman's height diminishes. Another observation: Although Derrida does not refer explicitly to Freud's *Beyond the Pleasure Principle*, a parallel can be drawn between the instinct of self-preservation i.e. conservative drives and the doorkeeper who safeguards life, protecting the countryman from his desire for death until it arrives "naturally". Absolute pleasure, the union with the law of laws that is death, is deferred by the guardian. Indeed, the doorkeeper does not declare that the man from the country will never access the law, he does not impose an absolute prohibition, instead there is a postponement, a delay.[7] It is impossible to enter into a relation with the law as a prohibited place, just as attaining full cognizance of death within life is. The relation with the law itself is possible through interactions with its representatives, its guardians, and death is not a direct experience but something to come, deferred before coming, always distant, and thus always close as inevitable. The guard ensures that the man does not have direct contact with the death, which is impossible, yet this very impossibility necessitates protection and avoidance. The doorkeeper indeed functions as the guardian of life, but he also serves the death by preparing the man for his expiry.

The law remains unfathomable and inaccessible. The doorman guards nothing (the death is nothing?). It is impenetrable even when presents or promises itself. When it comes to confronting law face to face "the story becomes the impossible story of the impossible. The story of prohibition is a prohibited story."[8] It does not declare "I am" as long as it "is not". it is an ought. It says "you ought to" and this "ought" does not derive from an "is". An ought holds the connection only with another ought, and so endlessly.

The man from the country stands before the lowest of the doorkeepers. Hierarchically inferior, however, is the first. The first who establishes the initial connection with the man. The doorkeeper deliberately refrains from specifying the number of guards, implying that they are innumerable and that the hierarchy has no ultimate endpoint. We can draw parallels to Hans Kelsen's legal philosophy. Kelsen asserts that because the law operates as a hierarchical system of norms, it is essential that the "basic norm" be presupposed by the juristic mind, that citizens ought to obey the prescriptions of the historically first constitution. What's intriguing is that later Kelsen characterizes the basic norm as a genuine fiction. He invents a story as if there is a basic norm that does not end the chain of authorization at historically first constitution, that is, at the factual level. This "as if" (*Als Ob*) is prompted by the influence of Hans Vaihinger's fictionalism. Even Kant's categorical imperative relies on a similar construct: "Act *as if* the maxim of your action were by your will to turn into a universal law of nature." The term "as if" generates a quasi-event, indicating a non-existent history, time and place, which even a pure positivist like Kelsen found necessary to justify his theory.[9]

---

6 Ibid, 193-194.

7 *De Ville J.,* Jacques Derrida: Law as Absolute Hospitality, *Goodrich P., Seymour D. (eds.),* Abingdon, 2011, 88-90.

8 *Derrida J.,* Before the Law, in: Acts of Literature, *Attridge D. (ed.),* New York, London, 1992, 200.

9 See: *Khujadze Zh.,* Hans Kelsen's Basic Norm: Transition from the Transcendental-Logical Condition to a Fiction, Journal of Law № 2, 2022, 5-17.

In the parable we read that the man stoops to peer through the gateway of the law. So is the law positioned low, beneath, or down? Who or what is the law? *das Gesetz* is neither male nor female, neither masculine nor feminine, it recognizes no sexual and grammatical gender, and we remain uncertain of its identity. When we use the expression "to lay down the law", does it imply that the law is positioned down or below? When we use the terms like "sitting judge" or "court sitting" we are indeed referring to a seated position. Could this suggest that the law is in a seated posture, making it challenging to stand in front of it? to be before it?[10]

"Not now" – the doorkeeper tells the man. Is the man early or is he late? His arrival is already belated. The man's coming is inevitably tardy, for he has been always awaited, but his responsibility extends beyond those who awaited him. He bears responsibility for the future, for the potentiality forever slipping through his grasp. He shoulders the weight of what he did not commit but was imposed upon him by the fiction. He carries the burden of the primal father's murder and this primordial guilt will shadow him throughout his life. In *The Trial* Josef K. himself propels the process, comes and goes, legitimizes the endless cycle of process renewal. The court wants nothing from him, when he comes it receives him, when he goes it lets him go. Yet Josef K. is always anxious. As a "Freudian neurotic" he has a problem with himself, or rather with a haunting sense of guilt within himself.

In *Being and Time* Heidegger brings up the concept of primordial Being-guilty which is the existential condition for the possibility of the "morally" good and "morally" bad. This concept cannot be defined by morality, instead morality already presupposes it.[11] Derrida links this originary Being-guilty (*Schuldigsein*) with the act of Being responsible, Being forewarned, of having to answer-for before any debt, any fault, any determined law, that is, beyond any knowledge and any consciousness.[12]

Entry into the law *is deferred* by the very nature of the law. The secret is nothing and this nothing should remain secret. The doorkeeper guards nothing. There is nothing before the law, no story. The doorkeeper closes the door, ends the "story" and something is ended that had never begun or we didn't hear of its beginning. The man meets his end. He cannot arrive at arriving and cannot end at ending. The text, being unique, reveals only about itself and nothing more. The text is an endless *différance*, an inaccessible one that lasts until the death of the man. We cannot *touch* the text, nor change it, for it is singular much like the law destined solely for the man. Literature is impossible without an absolutely singular creation that also converges with the universal. The man failed to comprehend that an entrance was for the one, it was singular, for he erroneously assumed that it should have been universal. As Derrida concludes: "He had difficulty with literature."[13]

Freud's text can be seen as "literature". It narrates an event that signifies "nothing else", thus marking the inception of "nothing". It exclusively speaks about itself. Each text establishes its own rules and exists before the laws emerged in another, potentially more authoritative texts that are

---

10 *Derrida J.,* Before the Law, in: Acts of Literature, *Attridge D. (ed.),* New York, London, 1992, 207.

11 *Heidegger M.,* Being and Time, *Macquarrie J., Robinson E. (trans.),* Oxford & Cambridge, 1962, 332.

12 *Derrida J.,* The Post Card: From Socrates to Freud and Beyond, *Bass A. (trans.),* Chicago & London, 1987, 264, fn.10.

13 *Derrida J.,* Before the Law, in: Acts of Literature, *Attridge D. (ed.),* New York, London, 1992, 213.

protected by more powerful guardians (authors, publishers, critics, academics, librarians, lawyers, etc.) Being *before the law* doesn't entail a direct encounter with the law itself, but rather with its representatives and guardians, such as interpreters, enforcers, or executors. It is true that the formal imposition of legal order on literary works by juridical and political institutions took hold in the late 17th century, still, *literariness* outpaces this. Literariness transcends boundaries, masters laws, and plays on the horizon of difference where singularity and universality intersect in a fictional moment.

2.2. Law and Justice: Aporia of Calculable and Incalculable

Pierre Legrand in an essay (2019) provocatively titled "Jacques Derrida Never Wrote about Law" delves into the English translation of Derrida's works and expresses suspicion that the terms *droit* or *loi* used by Derrida may not perfectly align with the Anglophone concept of *law*. The irreducible indefinetiness of the language renders an exact equivalence across languages unattainable. That is why Derrida introduces the concept of *transformation* instead of translation. To underscore Derrida's deep affinity for the French language, Legrand recalls an interview Derrida gave to Le Monde in August 2004, just a few months before his passing (at a time when Derrida was already aware of his terminal illness), where he openly expresses his abiding love for the French language – language that preceded the realization of his own presence before himself. In short, in Legrand's view, Derrida was a French scholar, who spoke French, wrote in French, and lived in France, whose understanding of law should have been rooted in French legal culture steeped in positivism and distinctly removed from the legal thought prevailing in common law systems.[14]

Translating Derrida's English translation into Georgian and then providing commentary, analysis, or criticism takes on a parabolic nature. The dual transformation, the quest for traces inscribed by the text, prompts us to ponder if there exists something beyond the text itself? ("*Il n'y a pas de hors-texte*" – how should one translate this *hors-texte?* is it outside the text or outside-text? There is nothing outside the text, or there is no outside-text?).

In October 1989, the colloquium "Deconstruction and the Possibility of Justice" took place at Cardozo Law School, where Derrida delivered the first part of the text "Force of Law: 'The Mystical Foundation of Authority'"[15] in English. The Second part was read at the colloquium at the University of California in April 1990, titled "Nazism and 'The Final Solution': Probing the Limits of Representation". The complete version of the text was published in Cardozo Law Review, with the French original on the left-hand pages and the English translation on the right-hand.

It is intriguing how the translator, Mary Quaintance, seems to "rebel" against Derrida himself. In her translation of the text, she prioritizes the spoken word over the written version, occasionally disregards the author's instructions, alters sentence meanings, and at times retains easily translatable words in French. Similarly, just as Derrida deviates from the agreement to speak in English, commencing with the first words in French ("*C'est ici un devoir ...*"), the translator also breaches the

---

14 *Legrand P.,* Jacques Derrida Never Wrote about Law, in: Administering Interpretation: Derrida, Agamben and the Political Theology of law, *Goodrich P., Rosenfeld M. (eds.),* 2019, 105-109.

15 *Derrida J.,* Force of Law: "Mystical Foundation of Authority", in: Deconstruction and the Possibility of Justice, *Quaintance M. (trans.), Cornell D., Rosenfeld M., Gray Carlson D. (eds.),* London, 1992, 1-67.

contract with the author. She translates not only the essay in an abstract sense but Derrida himself, along with his behavior and moral stance.[16] Consequently, the translation of the translation can be seen as a rebellion against rebellion. This rebellion is not aimed at a particular author but at language as an instrument, at the inherent impossibility of achieving precise translation.

"Force of Law" is a text that endeavors to deconstruct the Western political tradition from Plato's Republic to the Holocaust. Deconstruction not as abolition or dismantling, but as a genealogical, historical analysis of the evolutionary path, different stratum under (or through) the influence of which concepts were formed, changed, legitimized, extended, canceled, assimilated, differed, etc. Derrida addresses critics who accuse him of advocating the impossibility of rational grounding and justification, an allegation they attribute to Derrida's proximity to the philosophical and political *Dezisionismus* of Martin Heidegger and Carl Schmitt. However, Derrida's analysis differs from Heidegger's or Schmitt's *Destruktion*. He does not reject the entire tradition in which the author himself operates and from which he evaluates events, but rather the violent mechanisms established by the tradition, which lack a reasonable or inevitable basis, and instead are adopted as a result of an arbitrary and groundless *decision*. Thus, Derrida initiates the discourse with a sense of reluctance, being obliged to speak in the language of the "other" and on a topic he did not choose. This is his obligation, governed by the rules of the Cardozo Law School, or more broadly, by the hegemony of the United States, hence, the English language. As John McCormick points out, this alludes to the first book of Plato's *Republic*, where Socrates, under "friendly coercion", is compelled to discuss justice. In Socratic dialogue passionate disorder is introduced by the rhetorician Thrasymachus who asserts that justice is the dominion of the powerful, of the strong. Critics of deconstruction insist that Derrida should provide resolutions for ethical-political issues and propose feasible, programmatic approaches. Derrida retraces the trial of Socrates, where he stands accused of nihilism and indecisiveness, for not embracing the narrative of enlightenment which posits the existence of clearly emancipatory institutions.[17]

In the first part of the text Derrida discusses the relationship between law and justice, their inherently distinct and non-inclusive nature, and the violent moment characteristic of law, while in the subsequent section he conducts an analysis of Benjamin's essay "Critique of Violence". The moment of founding violence (Unlike Benjamin, Derrida does not rigidly separate lawmaking violence from law-preserving, since the founding violence is constantly echoed in conservative violence that always reiterates the tradition of its origin, thus, ultimately *keeps* a foundation destined to be repeated continuously), which is demanded for the inauguration of a new law or a new state and which accompanies the revolutionary actions, Derrida calls uninterpretable, undecipherable, and consequently, mystical. A successful revolution "justifies violence" only retrospectively, after it has been executed, therefore, self-legitimizes itself based on an interpretative model designed to assess an already established outcome. This happens in the future anterior (*futur antérieur*) and never in the present. Performative violence lacks a tangible basis, its origin is confined to itself. It cannot find

---

16 *Jacobson A.J.,* Authority: An Hommage to Jacques Derrida and Mary Quaintance, Cardozo Law Review, Vol. 27, № 2, 2005, 791-795.

17 *McCormick J.P.,* Derrida on Law: Or, Poststructuralism Gets Serious, Political Theory, Vol. 29, № 3, 2001, 395-398.

grounding in any legal act as it precedes the law. A revolutionary act defies categorization as either legal or illegal, for it rejects the very law that deems it *illegal*, and, in turn, establishes a new law that, at the moment of its execution, could offer no pronouncement on its validity simply because it had not yet been instituted as law. For law to manifest in history, it requires an act *before the law, prior to the rule*, that is, it requires a performative act.[18]

Derrida adopts the term "performative" from the British philosopher of language John Austin who in speech act theory distinguishes between two forms of linguistic activity: constative and performative. The former pertains to utterances that can be evaluated in terms of truth and falsity, while in the case of the latter the speech act establishes, produces, or transforms an event and it occurs as the doing of an action that eludes assessment in terms of truth. An illustration of the constative is the sentence: "The sun rises in the east", whereas an example of the performative is when someone in the act of getting married says "I agree". These words don't merely describe but effect change. Acts of this nature encompass promising, forgiving, betting, apologizing, and others. While the success of a constative statement hinges on its agreement with truth, a performative statement also has conditions for its efficacy, namely, conventions. For instance, the phrase "I agree" holds no weight if one's status during the wedding ceremony is not defined as either the groom or the bride. These conventions grant authority to performatives.[19] However, in the realm of law, Derrida posits that reaching the point of origin, the convention that empowers law without leaning solely on itself, proves to be an insurmountable challenge. Each attempt or inquiry in this direction merely propels us one step backward, leaving the question unresolved of the origin of these conventions which serve as *success conditions* for legal authority. This is the *mystical* threshold that is insuperable. The violence that institutes authority ultimately operates within a cycle of self-legitimation.[20]

Derrida here invokes Kafka's parable, asserting that the law is transcendent in the sense that it has to be *founded* by the man as something yet to come with violence. However, it is important to note that this "to come" should not be interpreted conventionally. Here "to come" is not what we can imagine, predict, or envision in the present, but rather a realm beyond knowledge and information. The inaccessible transcendence of the law before which man finds himself takes on a theological essence to the extent that the law depends only on man, on the performative act by which he inaugurates it: "the law is transcendent, violent and non-violent, because it depends only on who is

---

18 *Derrida J.,* Force of Law: "Mystical Foundation of Authority", in: Deconstruction and the Possibility of Justice, *Quaintance M. (trans.), Cornell D., Rosenfeld M., Gray Carlson D. (eds.),* London, 1992, 35-37, 55.

19 See: *Austin J.L.,* How to Do Things with Words, Oxford, 1962, 1-11. In "Declarations of Independence" Derrida poses the question of who signs the declarative act which founds an institution. Such an act is performative, it does what it says it does. The Declaration of Independence is signed by the representatives of the people, that is, the signature is executed in the name of the people. However, the question arises: are the people already liberated and proclaiming freedom already attained, or do they achieve freedom the moment the declaration is signed? Derrida answers that before the declaration these people as an entity did not exist, that is, the signature gives birth to the signer. The representation only truly assumes its representative nature after the act of signing, essentially existing in the future present tense. See: *Derrida J.,* Declarations of Independence, New Political Science, Vol. 7, Iss. 1, 1986, 7-15.

20 *Derrida J.,* Force of Law: "Mystical Foundation of Authority", in: Deconstruction and the Possibility of Justice, *Quaintance M. (trans.), Cornell D., Rosenfeld M., Gray Carlson D. (eds.),* London, 1992, 14.

before it – and so prior to it, on who produces it, founds it, authorizes it in an absolute performative whose presence always escapes him. The law is transcendent and theological, and so always to come, always promised, because it is immanent, finite and so already past."[21]

At the outset of the initial section Derrida highlights the English idiomatic expression "to enforce the law" which, when translated into French as "*appliquer la loi",* loses this allusion to the force. Similarly, in Georgian, *„კანონის აღსრულება"* fails to convey that law inherently embodies authorized *force*. The force of law justifies itself through its application, through its forced execution. The ability to be enforced is an inherent aspect of law, just as the use of force is:

"The word "enforceability" reminds us that there is no such thing as law (*droit*) that doesn't imply *in itself, a priori, in the analytic structure of its concept*, the possibility of being "enforced," applied by force. There are, to be sure, laws that are not enforced, but there is no law without enforceability, and no applicability or enforceability of the law without force, whether this force be direct or indirect, physical or symbolic, exterior or interior, brutal or subtly discursive and hermeneutic, coercive or regulative, and so forth."[22]

How do we discern between the force of law and the violence that appears unjust? In other words, how do we differentiate legitimate force from unjust violence, or a just exercise of power from its opposite? What form of violence precedes the emergence of legitimate power, the very violence required to establish it, and yet cannot itself be authorized by any anterior legitimacy? Therefore, in this initial moment, it is neither legal nor illegal, founded nor unfounded, as it transcends such dichotomies. Derrida makes a crucial distinction between law and justice, invoking Pascal and Montaigne. Pascal quotes Montaigne, mentioning the "mystical foundation of authority" in which Montaigne implies that laws deserve obedience not because they are just, but simply because they are laws. Laws gain their binding authority by referring to themselves. The violent structure of the founding act encompasses performative, i.e. interpretative violence, which is a precondition for the establishment of any institution. The "mystical" aspect lies in the fact that the origin of power, authority, is self-derived; it is violence without justification.[23]

Because the law is founded, constructed on interpretable and transformable textual strata, therefore, it can be deconstructed. However, justice, in its essence, remains impervious to deconstruction. Derrida asserts: "Deconstruction is justice", signifying the crucial moment when it becomes necessary and yet impossible *to reconcile* the deconstructibility of law, legality, legitimacy, or legitimation with the undeconstructibility of justice. Deconstruction is the possibility of experiencing the impossible. It is at this moment when the concept of aporia (Greek *a-poros a-not, poros – passage*) comes into play, which in ancient philosophy means an irresoluble impasse. Justice is an experience of aporia. When we presume that the law has been correctly applied and enforced, we should not equate it with the fulfillment of justice, for law is not justice. If the law is an element of

---

21 Ibid, 36.

22 Ibid, 6. The term "force" encompasses meanings of coercion and violence, much like the word "Gewalt" used by Benjamin, which signifies force, violence, coercion, power, and authority.

23 Ibid, 10-14. Derrida takes the use of the word "mystical" in the Wittgensteinian direction. In *Tractatus Logico-Philosophicus* Wittgenstein says: "There is indeed the inexpressible. This shows itself; it is the mystical." *Wittgenstein L.,* Tractatus Logico-Philosophicus, *Ogden C.K. (trans.),* London, 1922, 6.522.

calculation, the justice is incalculable, however, the aporetic experience is that this incalculable still demands calculation, uncountable demands counting, unproportionable demands proportioning, as some form of *decision* is more *just* than *no decision* at all. Consequently, the distinction between law and justice lies in the disparity between generality and uniqueness. The general can be subjected to calculation, whereas the unique resists such treatment. Given that the individual to whom something *is addressed* is always unique, idiomatic, singular, and justice as law (rather than justice in itself) seems to suppose the generality of a norm, then: "How are we to reconcile the act of justice that must always concern singularity, individuals, irreplaceable groups and lives, the other or myself *as* other, in a unique situation, with rule, norm, value or the imperative of justice which necessarily have a general form, even if this generality prescribes a singular application in each case?"[24]

Derrida outlines three aporias concerning the relationship between law and justice. First: for an act to be deemed just or unjust, one must possess the freedom and responsibility for his own actions, thoughts, and decisions. However, a just decision must always adhere to a rule, it must always operate within a calculable and programmable order (pure improvisation cannot constitute *a decision*). Nonetheless, if the act merely entails the application of a rule, the enactment of a program, or the execution of a calculation, it might be deemed legal, but it would be erroneous to assert that the decision was just. This is because, for a decision to be truly just, it requires, for instance, that a judge not only follows a rule of law but also, on each occasion, re-adopt, re-affirm, re-confirm its value by a reinstituting act of interpretation, as if, ultimately, nothing of the law existed beforehand, as if the judge, in each case, were inventing the law afresh. Hence, the novel decision must simultaneously align with the law (with its general nature) and deviate from it. Each new decision is inherently unique, demanding diverse interpretations. The judge must institute the law, freshly re-establish, "re-invent" it. However, this endeavor should always maintain a connection with the law and its principles, as "pure interpretation" does not constitute a decision.[25]

---

[24] Ibid, 17. Derrida, when discussing the "other" as singular, references Emmanuel Levinas, acknowledging a certain affinity with his ideas. He quotes a passage from Levinas's book *Totality and Infinity*, concerning the relation to others as justice. Levinas delves into the relationship between the same and the other. On the one hand, he provides a critical evaluation of Husserl's philosophical framework wherein the other is experienced by me not through his direct ownness, but through the mediation of intentionality, that is, through the phenomenological reduction in self-closure. On the other hand, Levinas engages in a critical appraisal of Heidegger's philosophy. Heidegger posits that being-with-others constitutes an inauthentic mode of existence. Being-a-whole for Dasein is existential isolation that must be manifested in being-towards-death. The all-encompassing presence, the impossibility of non-being, and the reduction to sameness represent elements of ontological totality that must be overcome, and Levinas identifies this moment in the face of the other that is an image of absolute alterity, a completely uncomprehended phenomenon of other's ownness into myself, an inexhaustible, absolute responsibility for the other. Levinas ponders the problematics of language and observes that the rejection of synchrony signifies the point at which language presents itself not merely as an utterance of being, but also as the responsibility for the other, which makes necessary the saying and the said as a response. This response is infinite, for in its transcendence it is infinitely other, ruptures ontological finitude. See: *Nakhutsrishvili L.,* Ontology and Ethics in Emmanuel Levinas' Philosophy, Tbilisi, 2011, 3-52 (in Georgian).

[25] *Derrida J.,* Force of Law: "Mystical Foundation of Authority", in: Deconstruction and the Possibility of Justice, *Quaintance M. (trans.), Cornell D., Rosenfeld M., Gray Carlson D. (eds.),* London, 1992, 22-23.

Second: Justice is undecidability, or perhaps more precisely, the responsibility of deciding the undecided, that is, the possibility of the impossible, an extraordinary experience. A decision that has not undergone the ordeal of the "undecidable" would merely fall within the realm of the calculable or programmable, and thus cannot be rightfully labeled as just. However, the decision to calculate doesn't pertain to the calculable domain. In this sense, a decision is never fully or *presently* just, as contemporaneity fails: if a decision has not yet been made in accordance with the rule, it cannot be deemed just, and if it follows the rule transformed, confirmed, reinvented, we still cannot call it just, as this fresh interpretation is not absolutely guaranteed by anything, and any such guarantee would reduce the decision to a mere calculation. Ultimately, every decision remains not completed, it is never "passed" or past. In the words of Derrida, it is the infinite idea of justice:

"… infinite because it is irreducible, irreducible because owed to the other, owed to the other, before any contract, because it has come, the other's coming as the singularity that is always other. This "idea of justice" seems to be irreducible in its affirmative character, in its demand of gift without exchange, without circulation, without recognition or gratitude, without economic circularity, without calculation and without rules, without reason and without rationality. And so we can recognize in it, indeed accuse, identify a madness. And perhaps another sort of mystique. And deconstruction is mad about this kind of justice."[26]

[26] Ibid, 25. To grasp Derrida's concept of justice as madness, it is essential to revisit his work "Cogito and the History of Madness" (1963), where he engages with Foucault's *History of Madness*. Derrida suggests that madness lacks a distinct historical foundation or a moment of differentiation from reason, as Foucault posits, has in mind the classical age, specifically the 17th and 18th centuries (1650-1800). Derrida argues that language and sentence, as forms of order, as the exclusion of madness, inherently signify rationality and meaning, thus represent different being than madness is. We should seek this moment in "act of force" which gives rise to historicity and language in general. The exclusion of madness occurs simultaneously with the emergence of historicity. The Greek logos already constitutes the break with madness. Madness, however, is not entirely divorced from sanity (similar to the relationship between justice and law). Derrida, like Foucault (who identifies the first philosophical assessment of madness in Descartes' *Meditations*), delves into Descartes' *Meditations* and argues that Descartes' bringing of evil genius who casts doubt even on truths that escape natural doubt, such as mathematics, signifies a departure from both the rational and the irrational, marks a moment of "total madness" where the distinction between reason and unreason becomes impossible (madness is not an appearance of total error – i.e. I think even if I'm mad) for which I bear no responsible because it is "inflicted upon me by the other". This moment serves as the zero point where meaning and non-meaning intersect. Derrida emphasizes that madness is not external to philosophy. At the moment of cogito's founding, clarity has not yet fully materialized, here madness and sanity are not yet differentiated (This moment eludes Foucault's understanding, as he attempts to establish differences in historical moments and determined structures). In Descartes' philosophy, God serves as the guarantor of the cogito, protecting him from "madness." The act of expressing thought, transferring it into language, articulating it whether to oneself or to another, is already considered non-madness. In cases of insanity, it would be impossible to articulate one's thoughts either to oneself or to others using "reasonable" language. Justice is madness because it transcends the realm of the rational, reaching a point of intersection where law, as an order, must extend beyond its confines and be shared with incalculable. See: *Derrida J.,* Cogito and the History of Madness, in: Writing and Difference, *Bass A. (trans.),* Chicago, 1978, 31-63. Also see: *De Ville J.,* Jacques Derrida: Law as Absolute Hospitality, *Goodrich P., Seymour D. (eds.),* Abingdon, 2011, 95-107. When it comes to the concept of a gift without return, exchange, or reciprocity, Derrida engages with the insights of Marcel Mauss, a renowned French sociologist and anthropologist, who consideres the notion of gift within archaic societies. According to Mauss, a key element of a gift is an

Third: the urgency of justice. Justice does not and cannot wait, a just decision is always required immediately. It cannot be lost in infinite information and in the rules or hypothetical imperatives that could justify it. Even with ample time and the right knowledge, the moment of *decision* remains a finite moment of urgency. It cannot simply be an outcome of theoretical or historical knowledge, as it constantly ruptures the preceding knowledge. This "rupture" is urgently required. And the instant of decision is madness, as Kierkegaard says. Justice is to come (*à venir*). Its time is never arrived, and the moment of its decision is never passed. We should always say "perhaps" for justice. It is always a possibility, the possibility of an event that exceeds rules, calculation. However, as Derrida observes, and this is a crucial moment for the text to break away from the nihilistic grounds, undecidability is not an alibi for staying out of juridical-political battles (this infinite idea of justice is always *very close* to the worst, depraved calculation, that is, the risk of its name being appropriated and distorted is great). The Declaration of the Rights of Man and the abolition of slavery are remarkable milestones, representing substantial progress.[27] Derrida mentions the movement "Critical Legal Studies" whose proponents seek to infuse a deconstructive approach into legal discourse. Instead of purely speculative, theoretical, academic understanding, they aspire to change things in life, in the *polis*, in the world, and this should be so.[28]

A just decision cannot be "past" or "passed", because it is recursive, elusive, all over again and always disputes the "justness" of the decision. Justice and deconstruction share a spectral nature. In *Specters of Marx*, Derrida explores Shakespeare's *Hamlet*, in which the past appears as a ghost to the present to rectify a fault, a crime. The right only emerges after the crime (original sin) for which the *succeeding* generation bears responsibility. It is always for the second generation, always late, and

obligation. The gift is the subject of circular exchange and it is circumscribed by economic self-interest. Giving alms to the poor, sharing food and drink are categorized as "obligatory gifts" mandated by the gods to further bestow prosperity upon the givers. Furthermore, the gift is seen as a mechanism for averting conflict (even "exogamy", when women of one tribe are "gifted" to another, is considered a form of present-giving), thus it serves a practical purpose. Mauss contends that in modern societies the understanding, implementation, and application of the concept of justice, which is rooted in the notion of obligation, is a substitute for "gift". Derrida, however, disputes Mauss's assessment of exchangeability and reversibility and observes that the act of returning something leads to the annulment of the gift (Like Mauss, Derrida discusses *potlach* which departs from the conventional understanding of "gift" because at this time what happens is the extreme, madly destruction and consumption of the gift without the motive of giving and expecting a return). A gift can only exist when, consciously or unconsciously, there is no intention of debt, reciprocity, contract, or exchange. Once a gift appears as a "gift", it essentially annuls, destroys itself. Thus, a gift only retains its true essence when it is not acknowledged as a gift by the donator or the donatee. If one gives with "the intention of giving", he is doomed to self-praise, so by developing this feeling, he returns the gift to himself. Therefore, if we want to commit an act of giving that breaks away from this system of reciprocal exchange, we should resort to "absolute forgetting". Absolute forgetting is not a psychoanalytic category, for example – repression, insofar as it does not retain the concept of the gift, not even in the unconscious. See: *Derrida J.,* Given Time: I. Counterfeit Money, *Kamuf P. (trans.),* Chicago and London, 1992, 10-17, 24-27, 37-48. Also see: *De Ville J.,* Jacques Derrida: Law as Absolute Hospitality, *Goodrich P., Seymour D. (eds.),* Abingdon, 2011, 122-126.

[27] *Derrida J.,* Force of Law: "Mystical Foundation of Authority", in: Deconstruction and the Possibility of Justice, *Quaintance M. (trans.), Cornell D., Rosenfeld M., Gray Carlson D. (eds.),* London, 1992, 26-28.

[28] Ibid, 8-9.

therefore, destined for inheritance. Hamlet, who wasn't a witness to the initial crime and can only reconstruct what has already been "committed", is burdened with the task of *setting it right* after the apparition of the ghost. In Hamlet's phrase: "The time is out of joint: O cursed spite, That ever I was born to set it right!" (Act I, Scene V), the words "The time is out of joint" signify the disruption of the usual, historical flow of time, representing the pivotal moment of possibility for justice. This rupture, this disadjustement separates law (which is identical to the usual flow, order) from justice, as the foreseeability of the law is destabilized, rendering it incapable of programmatic implementation. This rupture creates a space for the relation to the *other*, the recognition of the other as singular, that defies generalization, conventional flow and calculation. Disjuncture of the time presents a possibility to deconstruct time, history, and its laws.[29]

Kafka's countryman might align with the classical natural law theory – he might be the one who assesses the legal force of the law based on the demands of justice and contends that justice, unlike the law, is not before, that is, in front of, but rather resides within the law. This view suggests that if justice is to be attributed to anything, it inherently dwells within the essence of that thing. It embodies a religious or philosophical concept, rather than a political one, for political, legal, and economic justice are influenced by temporal and spatial considerations, arising from calculations and evaluations. Perhaps, when the man thinks that law should be accessible at all times and to everyone, he means a just law, and the guardian knows the distinction between law and justice, yet acknowledges that discussions about the coming of justice are met not with a categorical "no" but rather with expressions like "not now" or "perhaps".

In the parable we glimpse the essence of justice in that mystical moment where a narrative unfolds of a radiance that streams inextinguishably from the gateway of the Law. The man, shrouded in darkness and robbed of sight, yet feels (or sees?) this light. We discern a likeness between deciding the undecidable and seeing the unseen. The light in the dark embodies a contradiction, a "madness" intrinsic to justice, one that justice requires. This requirement finds fulfillment at the end of life, yet it is realized not consciously, but through the gleam, by not understanding, because the arrival of justice eludes *clear* perception. This happens when the old man has regressed into a child, or when he meets the mystical conditions – he is blind who sees and an old who becomes childish.

3. Conclusion

Kafka's parable "The Knock at the Manor Gate" recounts the tale of a townsman whose sister knocks on the gate (or merely threatenes it with her hand), and as a result, his brother is taken to the village inn, where the judge is already waiting for him, greets the man with the words: "I'm really sorry for this man." The room resembles a prison cell, in the middle of which stands something that looks half a *pallet*, half an *operation table*. The parable concludes with the man's words: "Could I endure any other air than prison air now? That is the great question, or rather it would be if I still had any prospect of release."[30]

[29] *Derrida J.,* Specters of Marx, *Kamuf P. (trans.),* New York and London, 1994, 21-26.
[30] *Kafka F.,* The Great Wall of China and Other Pieces, *Muir W., Muir E. (trans.),* London, 1946, 125-126.

Perhaps *this* townsman and *that* countryman are brothers. The *mystical* story of the townsman commences within the village, while the countryman lingers at the city's outskirts, awaiting permission to enter the law. Their destinies appear to have diverged – one confined, the other at liberty. Yet, they ultimately meet the same *ending*. The *closing* of both narratives remains ambiguous, violent and open to diverse interpretations. Both texts stand as singular entities, yet we can still assert a kinship between them, that these two men are brothers. This *assertion*, however, is far from assured. Similarly, the law, fable, myth, or tale is not guaranteed by anything.

A pallet or an operation table? Now one, now the other, or rather, ***as you like it.***

Bibliography:

1. *Austin J.L.,* How to Do Things with Words, Oxford, 1962, 1-11.
2. *Derrida J.,* Before the Law, in: Acts of Literature, *Attridge D. (ed.),* New York, London, 1992, 181-220.
3. *Derrida J.,* Cogito and the History of Madness, in: Writing and Difference, *Bass A. (trans.),* Chicago, 1978, 31-63.
4. *Derrida J.,* Declarations of Independence, New Political Science, Vol. 7, Iss. 1, 1986, 7-15.
5. *Derrida J.,* Force of Law: "Mystical Foundation of Authority", in: Deconstruction and the Possibility of Justice, *Quaintance M. (trans.), Cornell D., Rosenfeld M., Gray Carlson D. (eds.),* London, 1992, 1-67.
6. *Derrida J.,* Given Time: I. Counterfeit Money, *Kamuf P. (trans.),* Chicago and London, 1992, 10-17, 24-27, 37-48.
7. *Derrida J.,* Specters of Marx, *Kamuf P. (trans.),* New York and London, 1994, 21-26.
8. *Derrida J.,* The Post Card: From Socrates to Freud and Beyond, *Bass A. (trans.),* Chicago & London, 1987, 264.
9. *De Ville J.,* Jacques Derrida: Law as Absolute Hospitality, *Goodrich P., Seymour D. (eds.),* Abingdon, 2011, 88-90, 95-107, 122-126.
10. *Freud S.,* Totem and Taboo, *Brill A.A. (trans.),* London, 1919, ch.4.5.
11. *Jacobson A.J.,* Authority: An Hommage to Jacques Derrida and Mary Quaintance, Cardozo Law Review, Vol. 27, № 2, 2005, 791-795.
12. *Heidegger M.,* Being and Time, *Macquarrie J., Robinson E. (trans.),* Oxford & Cambridge, 1962, 332.
13. *Kafka F.,* The Knock at the Manor Gate, in: The Great Wall of China and Other Pieces, *Muir W., Muir E. (trans.),* London, 1946, 125-126.
14. *Khujadze Zh.,* Hans Kelsen's Basic Norm: Transition from the Transcendental-Logical Condition to a Fiction, Journal of Law № 2, 2022, 5-17.
15. *Legrand P.,* Jacques Derrida Never Wrote about Law, in: Administering Interpretation: Derrida, Agamben and the Political Theology of law, *Goodrich P., Rosenfeld M. (eds.),* 2019, 105-109.
16. *McCormick J.P.,* Derrida on Law: Or, Poststructuralism Gets Serious, Political Theory, Vol. 29, № 3, 2001, 395-398.
17. *Wittgenstein L.,* Tractatus Logico-Philosophicus, *Ogden C.K. (trans.),* London, 1922, 6.522.
18. *Nakhutsrishvili L.,* Ontology and Ethics in Emmanuel Levinas' Philosophy, Tbilisi, 2011, 3-52 (in Georgian).