

DERRIDA AND LAW

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Derrida and Law ?

the who-s ...

... reading Derrida... reading ...

... time

fields or abstraction

reading, talking, the *lecture*,

& Derrida's endless play

Deconstruction

Between history and style

Différance

Law, Genre and Before

Law's Force

The contradictory aspect of the term [deconstruction] is naturally intentional: *deconstruction*, is at once “destruction” and “construction”. The thing seems impossible; however, familiar examples of simultaneous “destruction-construction” are not lacking. The simplest is without a doubt that of cutting up (*découpage*), or of re-cutting up. When we “cut up” an electoral constituency to redefine its borders, when we cut a piece of cloth to make another one, we accomplish simultaneously the destruction of the old piece and the construction of the new one.

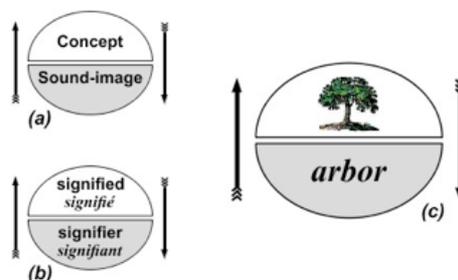
Deconstruction could thus be first defined as the application of this logic of the “constituting cutting up” to the reading and the interpretation of philosophical and literary texts (but also ... juridical, political, administrative, etc.). It is the idea, finally simple and natural, that the sense of a text always results from an intervention. Reading, it is cutting up. Showing this new cutting up, it is writing. *Deconstruction* is thus not a theory, but a practice of reading (and thus of writing) through structuring cutting-ups.

Charles Ramond, *Le Vocabulaire de Jacques Derrida*

If it seems to us in principle impossible to separate, through interpretation or commentary, the signified from the signifier, and thus to destroy writing by the writing that is yet reading, we nevertheless believe that this impossibility is historically articulated. It does not limit attempts at deciphering in the same way, to the same degree, and according to the same rules. Here we must take into account the history of the text in general. When we speak of the writer and of the encompassing power of the lan-

guage to which he is subject, we are not only thinking of the writer in literature. The philosopher, the chronicler, the theoretician in general, and at the limit everyone writing, is thus taken by surprise. But, in each case, the person writing is inscribed in a determined textual system. Even if there is never a pure signified, there are different relationships as to that which, from the signifier, is presented as the irreducible stratum of the signified. For example, the philosophical text, although it is in fact always written, includes, precisely as its philosophical specificity, the project of effacing itself in the face of the signified content which it transports and in general teaches. Reading should be aware of this project, even if, in the last analysis, it intends to expose the project's failure. The entire history of texts, and within it the history of literary forms in the West, should be studied from this point of view. With the exception of a thrust or a point of resistance which has only been very lately recognized as such, literary writing has, almost always and almost everywhere, according to some fashions and across very diverse ages, lent itself to this transcendent reading, in that search for the signified which we here put in question, not to annul it but to understand it within a system to which such a reading is blind. Philosophical literature is only one example within this history but it is among the most significant. And it interests us particularly in Rousseau's case.

Jacques Derrida, *Of Grammatology*



The Sign (Saussure)

It can thus be seen that deconstruction is a form of what has long been called a *critique*. A critique of any theoretical system is not an examination of its flaws or imperfections. It is not a set of criticisms designed to make the system better. It is an analysis that focuses on the grounds of that system's possibility. The critique reads backwards from what seems natural, obvious, self-evident, or universal, in order to show that these things have their history, their reasons for being the way they are, their effects on what follows from them, and that the starting point is not a (natural) given but a (cultural) construct, usually blind to itself. For example, Copernicus can be said to have written a critique of the Ptolemeic conception of the universe. But the idea that the earth goes around the sun is not an *improvement* of the idea that the sun goes around the earth. It is a shift in perspective which literally makes the ground move. It is a deconstruction of the validity of the commonsense perception of the obvious. In the same way, Marx's critique of political economy is not an improvement in it but a demonstration that the theory which starts with the commodity as the basic unit of economy is blind to what *produces* the commodity—namely, labor. Every theory starts somewhere; every critique exposes what that starting point conceals, and thereby displaces all the ideas that follow from it. The critique does not ask "what does this statement *mean*?" but "where is it being made from? What does it presuppose? Are its presuppositions compatible with, independent of, and anterior to the statement that seems to follow from them, or do they already follow from it, contradict it, or stand in a relation of mutual dependence such that neither can exist without positing that the other is prior to it?"

Barbara Johnson, "Translator's Introduction",
in Jacques Derrida, *Dissemination*

Some of the mechanisms of this signifying frustration include:

1. *Syntax*. Derrida's grammar is often "unspeakable"—i.e., it conforms to the laws of writing but not necessarily to the cadences of speech. Ambiguity is rampant. Parentheses go on for pages. A sentence beginning on p. 319 does not end until p. 323, having embraced two pages of *Un Coup de dés* and a long quotation from Robert Greer Cohn. Punctuation arrests without necessarily clarifying.

2. *Allusions*. The pluralization of writing's references and voices often entails the mobilization of unnamed sources and addressees. All references to castration, lack, talking truth, and letters not reaching their destination, for example, are part of Derrida's ongoing critique of the writings of Jacques Lacan.

3. *Fading in and out*. The beginnings and endings of these essays are often the most mystifying parts. Sometimes, as in the description of Plato working after hours in his pharmacy, they are also cryptically literary, almost lyrical. It is as though the borderlines of the text had to be made to bear the mark of the silence—and the pathos—that lie beyond its fringes, as if the text had first and last to more actively disconnect itself from the logos toward which it still aspires.

4. *Multiple coherences*. The unit of coherence here is not necessarily the sentence, the word, the paragraph, or even the essay. Different threads of *Dissemination* are woven together through the bindings of grammar (the future perfect), "theme" (stones, columns, folds, caves, beds, textiles, seeds, etc.), letters (*or, d, i*), anagrammatical plays (graft/graph, semen/semantics, *lit/lire*), etc.

5. *Nonbinary logic*. In its deconstruction of the either/or logic of noncontradiction that underlies Western metaphysics, Derrida's writing attempts to elaborate an "other" logic.

Barbara Johnson, "Translator's Introduction",
in Jacques Derrida, *Dissemination* (xvi-xvii)

Différance, one would first think, must not be so different from “difference” — and one would be right: *différance* is the “fact of differing”, that is, we could say, difference considered not under its static, but its dynamic aspect, difference in the process of establishing itself, and not just already established. There would thus be no particular difficulty. Derrida, however, will go on to hold that this small difference between “différence” and “*différance*”, inasmuch its function is to designate a process, and not a thing that we could figure out or present, complete [*finir*] or define, makes precisely manifest the inoperative character of this foundation of rationality that is the act of distinguishing — as if the recourse to *différance* had precisely the function to introduce a bit of a play, of shaking, of drifting, of imbalance, at the heart of many of the powerful devices of the “setting to reason” that constitute philosophy.

... “To differ” is just as much “delaying” or “temporising” (for instance, when we speak of “differing” a purchase, or a decision) as it is “to not be the same”, with at times the nuance of a divergence, of an opposition, of a dispute [*différend*] (for instance, when we say that our point of view “differs” from that of someone else). *Différance*, holding thus the middle ground between differences of time (lateness, delay, temporisation) and of space (non-identity, non-coincidence, numerical distinction, *différend*), as it held it “between” speech and writing (forcing us to spell it while pronouncing it), and “between” activity and passivity (the ending “*ance*” indicating not always an activity), draws finally, under the traits of a “concept” of the indistinction, a figure of the anti-conceptuality, that is, an example of resistance to definition, to analysis and distinction.

A thesis on being and sense, *différance* enunciates thus that “presence” and “meaning” are only “effects” of a movement more originary than them. It is the Mother of concepts and of words. Whence, certainly, its remarkable heuristic fecundity, due to its paradoxical, or even perhaps contradictory nature. It will first speak of economy in all its forms: What is indeed investment, if not the *différance* of profit? Education, if not the *différance* of judgment? The law of the City, if not the *différance* of the natural law? Sens, if not the *différance* of presence? And morality, if not the *différance* of pleasure? The names of *différance* will thus be [in Derrida’s works] “reserve”, “guard”, “capital”, “principle of reality”, but also and immediately, “measure”, “calculation”, “reason” and “mastery”, thus “subject”, “father”, “all-power”, “seriousness”, “fecundity”, “origin”... But *différance* would designate just as well the contrary of economy: as *différance*, precisely, it would be the capital from which one never receives any interest, the failure of the calculation of pleasures (life as *différance* of death, *Eros* as *Thanatos* differed, that is, as *différance* of *Thanatos*), and it would carry the names of “expense”, “dissemination” (preferably infertile), “trace”, “mark”, “margin”, “loss”, “remainder”, “play”, but also “bastard”, as well as “preface”, “title”, “inscription [*exergue*]”, “genre”, “copyright”, “frame”, “signature” (so many *différences* of a text or an oeuvre): of all that, even though “differed” will be never seized again because *différance* will (and it always was) without a term.

Charles Ramond, *Le Vocabulaire de Jacques Derrida*

What I shall try to convey to you now will not be called by its generic or modal name. I shall not say this drama, this epic, this novel, this novella or this *récit*, certainly not this *récit*. All of these generic or modal names would be equally valid or equally invalid for something which is not even quite a book, but which was published in 1973 in the editorial form of a small volume of thirty-two pages. It bears the title *La Folie du jour* (approximately: The Madness of the Day). The author's name: Maurice Blanchot. In order to speak about it, I shall call this thing *La Folie du jour*, its given name which it bears legally and which gives us the right, as of its publication date, to identify and classify it in our copyright records at the Bibliothèque Nationale. One could fashion a non-finite number of readings from *La Folie du jour*. I have attempted a few myself, and shall do so again elsewhere, from another point of view. The *topos* of view, sight, blindness, *point of view* is, moreover, inscribed and traversed in *La Folie du jour* according to a sort of permanent revolution that engenders and virtually brings to the light of day points of view, twists, versions and reversions of which the sum remains necessarily uncountable and the account, impossible. The deductions, rationalizations, and warnings that I must inevitably propose will arise, then, from an act of unjustifiable violence. A brutal and mercilessly depleting selectivity will obtrude upon me, upon us, in the name of a law that *La Folie du jour* has, in its turn, already reviewed, and with the foresight that a certain kind of police brutality is perhaps an inevitable accomplice to our concern for professional competence.

What will I ask of *La Folie du jour*? To answer, to testify, to say what it has to say with respect to the law of mode or the law of genre, and more precisely, with respect to the law of the *récit*, which, as we have just been reminded, is a mode and not a genre.

Jacques Derrida, "The Law of Genre" (1980)

p. 213

The question of the literary genre is not a formal one: it covers the motif of the law in general, of generation in the natural and symbolic senses, of birth in the natural and symbolic senses, of the generation difference, sexual difference between the feminine and masculine genre/gender, of the hymen between the two, of a relationless relation between the two, of an identity and difference between the feminine and masculine.

p. 221

Now the feminine, or generally affirmative gender/genre, is also the genre of this figure of law, not of its representatives, but of the law herself who, throughout an account, forms a couple with me, with the "I" of the narrative voice.

The law is in the feminine.

She is not a woman (it is only a figure, a "silhouette," and not a representative of the law) but she, *la loi*, is in the feminine, declined in the feminine; but not only as a grammatical gender/genre in my language (elsewhere Blanchot brought this genre into play for speech [*la parole*] and for thought [*la pensée*]). No, she is described as a "female element," which does not signify a female person. And the affirmative "I," the narrative voice, who has brought forth the representatives of the law to the light of day, claims to find the law seductive—sexually seductive.

Before the Law stands a doorkeeper. To this doorkeeper there comes a countryman and prays for admittance to the Law. But the doorkeeper says that he cannot grant admittance at the moment. The man thinks it over and then asks if he will be allowed in later. "It is possible," says the doorkeeper, "but not at the moment." Since the gate stands open, as usual, and the doorkeeper steps to one side, the man stoops to peer through the gateway into the interior. Observing that, the doorkeeper laughs and says: "If you are so drawn to it, just try to go in despite my veto. But take note: I am powerful. And I am only the least of the doorkeepers. From hall to hall there is one doorkeeper after another, each more powerful than the last. The third doorkeeper is already so terrible that even I cannot bear to look at him." These are difficulties the countryman has not expected; the Law, he thinks, should surely be accessible at all times and to everyone, but as he now takes a closer look at the doorkeeper in his fur coat, with his big sharp nose and long, thin, black Tartar beard, he decides that it is better to wait until he gets permission to enter. The doorkeeper gives him a stool and lets him sit down at one side of the door. There he sits for days and years. He makes many attempts to be admitted, and wearies the doorkeeper by his importunity. The doorkeeper frequently has little interviews with him, asking him questions about his home and many other things, but the questions are put indifferently, as great lords put them, and always finish with the statement that he cannot be let in yet. The man, who has furnished himself with many things for his journey, sacrifices all he has, however valuable, to bribe the doorkeeper. That official accepts everything, but always with the remark: "I am only taking it to keep you from thinking you have omitted anything." During these many years the man fixes his attention almost continuously on the doorkeeper. He forgets the other doorkeepers, and this first one seems to him the sole obstacle preventing access to the Law. He curses his bad luck, in his early years boldly and loudly, later, as he grows old, he only grumbles to himself. He becomes childish, and since in his years-long contemplation of the doorkeeper he has come to know even the fleas in his fur collar, he begs the fleas as well to help him and to change the doorkeeper's mind. At length his eyesight begins to fail, and he does not know whether the world is really darker or whether his eyes are only deceiving him. Yet in his darkness he is now aware of a radiance that streams inextinguishably from the gateway of the Law. Now he has not very long to live. Before he dies, all his experiences in these long years gather themselves in his head to one point, a question he has not yet asked the doorkeeper. He waves him nearer, since he can no longer raise his stiffening body. The doorkeeper has to bend low towards him, for the difference in height between them has altered much to the countryman's disadvantage. "What do you want to know now?" asks the doorkeeper. "You are insatiable." "Everyone strives to reach the Law," says the man, "so how does it happen that for all these many years no one but myself has ever begged for admittance?" The doorkeeper recognizes that the man has reached his end, and to let his failing senses catch the words roars in his ear: "No one else could ever be admitted here, since this gate was made only for you. I am now going to shut it."¹

Franz Kafka, "Before the Law"
in Jacques Derrida, "Before the Law" (1982)

Given his situation, the man from the country does not know the law which is always the city's law, the law of cities and edifices protected by gates and boundaries, of spaces shut by doors. He is therefore astonished by the doorkeeper of the law, a man of the town, and he stares at him. "These are difficulties the countryman has not expected; the Law, he thinks, should surely be accessible at all times and to everyone,

Jacques Derrida, "Before the Law"

p. 195

Did the man from the country wish to enter the law or merely the place where law is safeguarded? We cannot tell, and perhaps there is no genuine choice, since the law figures itself as a kind of place, a *topos* and a taking place. At all events, the man from the country, who is also a man existing *before the law*,¹³ as nature exists before the city, does not want to stay before the law, in the situation of the doorkeeper. The latter also stands *before the law*. This may mean that he respects it: to stand or appear before the law is to submit to it and respect it, the more so as respect keeps one at a distance, *on the other side*, forbidding contact or penetration. But this could mean that, standing before the law, the doorkeeper enforces respect for it. In charge of surveillance, he does guard duty *before the law* by turning his back to it, without facing up to it, as it were, and thus not "in front" of it; he is a sentry guarding the entry to the edifice and holding at a respectful distance visitors who *present themselves* before the castle. The inscription "before the law" is therefore divided once more: according to its textual place, it was in a certain sense twofold already, as title or *incipit*. It further redoubles itself in what it says or describes: namely, a division of territory and an absolute opposition in the situation with regard to the law. The two characters in the story, the doorkeeper and the man from the country, are both before the law, but since in order to speak they face each other, their position "before the law" is an opposition. One of them, the doorkeeper, turns his back on the law and yet stands before it (*Vor dem Gesetz steht ein Türhüter*). The man from the country, on the other hand, is also before the law but in a contrary position, insofar as one can suppose that, being ready to enter, he faces it. The two protagonists are both attendant before the law but in opposition to one another, being on either side of a line of inversion whose mark in the text is precisely the separation of the title from the narrative body.

p. 200

His resolution of nonresolution brings the story into being and sustains it. Yet permission had never been denied him: it had merely been delayed, adjourned, deferred.¹⁴ It is all a question of time, and it is the time of the story; however, time itself does not appear until this adjournment of the presentation, until the law of delay or the advance of the law, according to the anachrony of the relation.

p. 202

These possibilities give the text the power to *make the law*, beginning with its own. However, this is on condition that the text itself can appear *before the law* of another, more powerful text protected by more powerful guardians. Indeed, the text (for example the so-called “literary” text and particularly this story by Kafka) before which we the readers appear as before the law, this text protected by its guardians (author, publisher, critics, academics, archivists, librarians, lawyers, and so on) cannot establish law unless a more powerful system of laws (“a more powerful guardian”) guarantees it, in particular the set of laws and social conventions that legitimates all these things.

p. 214

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

There are a certain number of idiomatic expressions in your language that have always been rather valuable to me as they have no strict equivalent in French. I'll cite at least *two* of them, before I even begin, two that are not unrelated to what I'd like to try to say tonight.

A. The first is "to enforce the law," or "enforceability of the law or contract."

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.

Jacques Derrida, "Force of Law" (1990)

p. 925-27

Since the origin of authority, the foundation or ground, the position of the law can't by definition rest on anything but themselves, they are themselves a violence without ground. Which 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. They exceed the opposition between founded and unfounded, or between any foundationalism or anti-foundationalism. Even if the success of performatives that found law or right (for example, and this is more than an example, of a state as guarantor of a right) presupposes earlier conditions and conventions (for example in the national or international arena), the same "mystical" limit will reappear at the supposed origin of said conditions, rules or conventions, and at the origin of their dominant interpretation.

p. 943

Justice is an experience of the impossible.

A will, a desire, a demand for justice whose structure wouldn't be an experience of *aporia* would have no chance to be what it is, namely, a call for justice. Every time that something comes to pass or turns out well, every time that we placidly apply a good rule to a particular case, to a correctly subsumed example, according to a determinant judgment, we can be sure that law (*droit*) may find itself accounted for, but certainly not justice. Law (*droit*) is not justice. Law is the element of calculation, and it is just that there be law, but justice is incalculable, it requires us to calculate with the incalculable; and aporetic experiences are the experiences, as improbable as they are necessary, of justice, that is to say of moments in which the decision between just and unjust is never insured by a rule.

p. 947

Everything would still be simple if this distinction between justice and *droit* were a true distinction, an opposition whose functioning was logically regulated and permitted mastery. But it turns out that *droit* claims to exercise itself in the name of justice and that justice is required to establish itself in the name of a

law that must be "enforced." Deconstruction always finds itself between these two poles. Here, then, are some examples of *aporias*:

1. *First aporia: épokhè and rule.*

Our common axiom is that to be just or unjust and to exercise justice, I must be free and responsible for my actions, my behavior, my thought, my decisions. We would not say of a being without freedom, or at least of one without freedom in a given act, that its decision is just or unjust. But this freedom or this decision of the just, if it is one, must follow a law or a prescription, a rule. In this sense, in its very autonomy, in its freedom to follow or to give itself laws, it must have the power to be of the calculable or programmable order, for example as an act of fairness. But if the act simply consists of applying a rule, of enacting a program or effecting a calculation, we might say that it is legal, that it conforms to law, and perhaps, by metaphor, that it is just, but we would be wrong to say that the decision was just.

p. 959-61

2. *Second aporia: the ghost of the undecidable*

Justice, as law, is never exercised without a decision that *cuts*, that divides. This decision does not simply consist in its final form, for example a penal sanction, equitable or not, in the order of proportional or distributive justice. It begins, it ought to begin, by right or in principle, with the initiative of learning, reading, understanding, interpreting the rule, and even in calculating. For if calculation is calculation, the decision to calculate is not of the order of the calculable, and must not be.

p. 963

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

One of the reasons I'm keeping such a distance from all these horizons—from the Kantian regulative idea or from the messianic advent, for example, or at least from their conventional interpretation—is that they are, precisely, *horizons*. As its Greek name suggests, a horizon is both the opening and the limit that defines an infinite progress or a period of waiting.

But justice, however unrepresentable it may be, doesn't wait. It is that which must not wait. To be direct, simple and brief, let us say this: a just decision is always required immediately, "right away." It cannot furnish itself with infinite information and the unlimited knowledge of conditions, rules or hypothetical imperatives that could justify it. And even if it did have all that at its disposal, even if it did give itself the time, all the time and all the necessary facts about the matter, the moment of *decision, as such*, always remains a finite moment of urgency and precipitation, since it must not be the consequence or the effect of this theoretical or historical knowledge, of this reflection or this deliberation, since it always marks the interruption of the juridico- or ethico- or politico-cognitive deliberation that precedes it, that must precede it. The instant of decision is a madness, says Kierkegaard.

p. 967

OVERTURE

law, différance of justice?

costs of this concession?

the abyss of law's foundations:

how do you act/move/perform through a Law that must necessarily

reaffirm its power in order to function ?

beyond Derrida:

India's laws, India's justice(s)

across their historical influences

unity and coherence of law in India ?