Fictions of Justice

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My ambition is to examine implications of the deconstructive approach in rethinking politics in general and relationship between Law and Justice in particular. One can ask: does deconstruction have any political implications despite the widespread assumption that Derrida has so consistently, skilfully and, perhaps, deliberately avoided the topics of politics? What sort of political thought remains possible once one has deconstructed all the traditional bases of political reflection? Is it possible to rethink the political from a Derridian standpoint? Is it possible to articulate a deconstructive politics? One could say, of course, that there is already a politics implicit in his work. According to Derrida, there is something political in the very project of attempting to fix the content of utterances. Thus one could »extract« the following a guideline »extracted« from *Limited Inc.*

»This is inevitable; one cannot do anything, least of all speak without determining (in a manner that is not only theoretical but practical and performative) a context. Such experience is always political because it implies, insofar as it involves determination, a certain type of non-«natural« relationship to others ... non-natural relations of power that by essence are mobile and founded upon complex conventional structures«.[1]

Once this general and a priori structure has been recognised, he adds,

»the question can be raised, not whether a politics is implied (it always is), but which politics is implied in ... a /given/ practice of contextualization. This you can then go on to analyse, but you cannot suspect it, much less denounce it, expect on the basis of another contextual determination every bit as political. In short, I do not believe that any neutrality is possible here«.[2]

It is along those lines that I wish to address the following question: why should it be necessary to rethink, to re-thematise the relationship between justice and law, and what have this questioning to do with democracy? My first, provi-

[1] J. Derrida, *Limited Inc.*, Evanstone: Northwestern University Press, 1989, p. 136.
[2] *Ibid.*, p. 147.

sional answer to this question is to say that the awareness of the gap, or the conflict, antagonism even between law and justice is constitutive of democracy.

I will start my questioning by quoting Lefort's thesis according to which democracy is characterised by the »dissolution of the markers of certainty«. For Lefort, as you may know, a democratic society is »a society in which power, law and knowledge are exposed to a radical indetermination, a society that has become a theatre of an uncontrollable adventure, so that what is instituted never becomes established, the known remains undetermined by the unknown, the present proves to be undefinable.«[3] Following this line of argument, we need to examine various implications that the thesis of the impossibility of any ultimate foundation or final legitimation may have for one of the key constituents of democratic society, »the rule of law«.

Because this issue concerning the groundlessness of »the rule of law« is all the more acute today. With the collapse of real socialism, it seems that the model of liberal democracy has been imposed as the only possible articulation of the contemporary political and social. As the »new world order«, it is claimed to be the final victory of the democratic invention. Yet this globalisation of liberal democracy is accompanied by something that could be called the negation of democracy, its dark side. In this Europe of human rights, a war rages; nationalism, racism and antidemocratic populism are spreading. How are we to conceptualise these negative and pathological phenomena with respect to the victory of »democratic culture«? Is this a historic regression, caused by circumstances, and thus something marginal in relation to the universal model of democracy, an exception to the rule? Or is it a return of the foreclosed which subverts the universal democratic culture as such? In the light of this questioning, democracy appears to be a precarious, »weak« order demanding to address the following question: what is, in fact, so problematic about democracy that its very foundations can continuously be questioned? According to Lefort, as pointed out earlier, democracy is characterised by a radical lack which Lefort conceptualise as the empty place of power. The structural necessity of the empty place of power is grounded in the paradoxical nature of the legitimating instance of the power. In democracy, the role of the sovereign is played by the People.

The People in the role of the sovereign is a problematic, divided entity. On the one hand the People is a symbolic entity which legitimises the power. On the other hand, the people is also conceived as a collection of those who are subjected to the power. As a non-totalisable collection of atomised individuals

[3] Cf. Cl. Lefort, *The Political Forms of Modern Society,* Oxford, 1986, p. 305.

it, no doubt, exists. As a symbolic authority, it clearly does not exist, or, rather, it exists only as a »fiction«. The place of power remains by necessity – that is, as a consequence of this division – empty. It is a place that no-one, no representative of the people can claim as his own, nor can legitimately occupy. Any attempt to incarnate this absent, impossible entity, the symbolic people, leads therefore into totalitarianism.This irreducible gap between the People as a Symbolic entity and the people as a non-totalizable, non-substantial entity is constitutive of democracy. It is because of this insurmountable division that democracy must be conceived as an ethico-political dilemma. It is because of its radical openness that democracy is always facing a threat of a fall into its opposite: a non-democracy, and totalitarianism. Once it is admitted that democracy is an »eternally« open question – due to the this paradox of the self-legislator who is at the same time his own subject – we need to rethematise the precarious status of the Law and its relationship to its own specific, constitutive, I would add, outside.

What is at stake here is precisely the question of what is this Other of Law, this non-Law, if Law in democracy is posited as all encompassing universal, as an instance which nothing escapes. And vice versa: what is this Nothing which, as we shall see shortly, constitutively escapes the Law? What is this Nothing which, by evading the Law, renders the Law incomplete? In an attempt to examine the precarious nature of democracy in its relation to Law, I will address the proper object of my inquiry, namely the dilemma of the incompleteness of the Law. My objective is to show how the modernist project on the one hand and the postmodernist on the other – two major endeavours of our time – situate themselves with respect to the dilemma of Law and to suggest a possible solution to the problem. In the first part of my presentation I will focus on the modernist conception of justice as elaborated in Rawls's *A Theory of Justice* and indicate those points at which this conception turns into its opposite. In the second part, I will present the postmodernist critique of modernist approach. I will then elaborate on some problematic implication of the postmodernist conception of justice as exemplified by Lyotard's *The Differend.* In the third part I will focus on the antagonistic relationship between modernist and postmodernist approach as actualisation, or realisation of the antagonism between law and justice, and suggest a possible rethematisation of this relationship.

1.

The modernist and postmodernist conception of the opposition between law and justice can be thematised, as I pointed out earlier, in terms of a radical rupture or a differend, to use Lyotard's own term. This differend between the

two theoretical approaches, I argue, needs to be reappraised in the light of an internal blockage, impossibility, or aporia of the Law itself. The thesis that I wish to defend here is precisely that this theoretical differend »stages« the differend that always already exists between law and justice. The theoretical differend, I argue, enunciates the truth of the relationship between law and justice, that is, the impossibility of bringing together two heterogeneous logics: on the one hand the symbolic, universalistic logic which characterises the Law, and on the other hand the logic of the real, as always singular (particular), contingent logic which is, in my view, constitutive of Justice.

My basic point is that despite the fact that this impasse characterises the rapport or rather non-rapport between law and justice, there is nevertheless a way out of it. And this possible way out of the impasse concerns, in my view, not only democracy »to come« *(à venir),* as Derrida puts it, but also the possibility of (radical) changes in present-day more or less democratic societies.

In order to suggest a possible solution to this problem, I will draw on Derrida's recasting of the relationship between the law and justice. In »Force of Law: The 'Mystical Foundation of Authority'«, the lecture that Derrida delivered as the keynote speaker in the conference consacrated to *Deconstruction and the possibility of justice* at the Cardoza School of Law in 1989, the issue that I wish to address here, namely the antagonistic relationship between law and justice is articulated as »the absence of rules, of norms, and definitive criteria that would allow one to distinguish unequivocally between *droit* (law) and justice.« [4]

I believe that both, Rawls and Lyotard, would accept this formulation of the problem. It could constitute their provisional meeting point. They would agree also that the central question of the contemporary theorising about ethics, politics and law is the question of how to produce a discourse on justice, law and politics when one no longer relies on pre-existing rules, in other words, when the norms for deciding the norms, rules and laws become themselves a problem. What characterises contemporary democratic societies and theorising about them is precisely a rupture with the idea of totalizing unity and the idea of subject as self-legislator on the one hand and awareness of the immanence of norms, rules and criteria on the other. Rawls and Lyotard would agree, I believe, that, in an age that can no longer rely on any »given« criteria, the problematic of the law and justice cannot be inscribed in the horizon of the

[4] Cf. J. Derrida, »Force of Law: 'Mystical Foundation of Authority'«, in *Deconstruction and the Possibility of Justice,* (eds., J. Cornell, M. Rosenfeld, D.G. Carlson, Routledge, London, New York 1992, p. 4.

Good. So we could say that for Rawls and for Lyotard the Good in the sense of the Law of Law, the Other of Law, the instance in which the Law is grounded, does not exist. In short, both would agree that there can be no foundationalist grounding of any given system of legal rules and norms in the Law of Law. Yet, from this provisional agreement they proceed in completely opposite directions. As pointed out earlier, Rawls's starting point is the assumption that the Good in the role of the foundation is lost. According to his view, the Good we know of exists only as a multitude of particular, conflicting conceptions of the Good that render any consensus impossible. For Rawls, any form of political justification appropriate to present-day societies must acknowledge that there can be no general agreement on one vision of the Good, and that a plurality of opposing and incommensurable conceptions must be taken as given. Thus, for Rawls, the Good in the role of the foundation and guarantee is at best irrelevant and at worst a regression to the premodern.

What is problematic about Rawlsian position is that, while admitting the lack of the Good as the Law of Law (in the traditional sense of transcendence: God, Nature, Reason, etc.), Rawls represses it at the same time. Rawls rightly rejects the Law of Law, grounded in the Good. Yet he establishes as its replacement, as its substitute the self-grounded Law.

Lyotard on the other hand, while agreeing with modernists that the Good does not exist, nevertheless rejects the proposed solution, that is, the ideal of self-grounding Law. For Lyotard, the very idea of a self-grounding and, as a consequence, of a self-legislation is an illusion. Contrary to this idea of the self-grounding Law, the Law of Law is »present« only in its absolute absence. The Law of Law, in other words, is an instance whose role is precisely to repress and dissimulate an initial fragmentation due to the loss of the Good. The central difference between Rawlsian and Lyotardian approach, I will suggest, lies however in their divergent opinions on the way the loss of the Good relate to justice. Ralws's conception of justice can be considered as an attempt to fix, to localise, and to neutralise the dissensus, fragmentation and contingency which characterise the contemporary political and social. The guideline of his theorising can be formulated as follows: how is social unity to be understood in the face of seemingly limitless diversity? His answer is to separate the formal question of justice from the substantive, material question of the Good. The unity of social and) political order is not to be found in the Good, that is, in a finite set of shared values, ideals, aims, etc. The Good cannot produce an »overlapping consensus«, to use Rawls« expression. On the contrary, given its conflicting interpretations, it can only lead to violent conflicts and antagonisms. Which is why justice is conceived as a normative ideal presented as a universable set of rules and procedures, recognisable and acceptable by all.

This conception of justice is underpinned, as is well known, by the conviction that all conceptions of truth or justice are commensurable. That is, »able to be brought under a set of rules which will tell us how rational agreement can be reached on what would settle the issue on every point where statements seem to conflict.«[5] In short, the conception of justice, desired by Rawls, is purely regulative: that is to say, a conception of justice which can be acknowledged by all as »a common point of view from which their claims may be adjudicated,« as Rawls puts it.[6]

2.

However, it is precisely this association of justice with (rational) consensus that Lyotard denies. The modernist conception of justice is, according to Lyotard, questionable to the extent that it is grounded in an assumption of the subject who is also legislator. Yet this division of the subject is dissimulated by the interchangeability of the addressee and author of the Law.

The very idea that the roles of the addressee and author of the Law are interchangeable is inspired by a certain ideal of communication which identifies, assimilates the speaker and the hearer. For Lyotard, on the contrary, »to place oneself in the position of enunciator of the universal prescription« [7] is clearly an illusion. Yet it is a dangerous illusion because it wrongs the Other. And to the extent that the idea of a consensus is an »absolute injustice«, as Lyotard puts it,[8] he defends an »idea of justice that is not linked to that of consensus«.[9]

Lyotard's ambition is to analyse those situations where social interaction cannot be experienced as an exchange between two equal partners, where the position of the other remains irreducibly other. This irreducible gap between the two positions testifies, according to Lyotard, to the fact that the Social itself is fragmented, dispersed into a multiplicity of incommensurable »language games«. Postmodern society is a society characterised by »an absence of unity, and absence of totality«.[10] It is therefore a society without a set of stable criteria which would guide politics or its appraisal.

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[5] Cf. R. Rorty, *Philosophy and the Mirror of Nature,* Oxford, Blackwell, 1980, p. 316.

[6] Cf. J. Rawls, *A Theory of Justice,* Cambridge, Mass. Harvard University Press 1971, p. 6.

[7] Cf. J.F. Lyotard, *The Postmodern Condition,* Minneapolis: University of Minnesota Press, 1984, p. 60.

[8] *Ibid.*

[9] *Ibid.,* p. 66.

[10] J.F. Lyotard, J.L. Thébaud, *Just Gaming,* Minneapolis: University of Minnesota Press, 1985, p. 94.

Postmodern conception of justice could be therefore a conception which remains faithful to the heterogeneity and incommensurability of language games. It is a conception that preserves the »agonistic aspect of society«.[11]

Once it is admitted that there is no privileged, unifying discourse, we are faced with a situation in which a general theory of justice does not apply. In other words, the Social characterised by the absence of unity and impossibility of totalisation demands, according to Lyotard, a new conception of Justice. This conception of justice cannot be founded on the category of the autonomous subject, an entity which can place itself in a position outside an endlessly changing discourses, and there assume a perspective from which the whole chaotic field of discourses might be assessed and dominated.

One of the premises of Lyotard's conception of justice is precisely to reject this idea of the self, freed from the risk of exposure and destabilization. On the contrary, according to Lyotard, the starting point of any theorising about justice is to insist on the impossibility of autonomy and equivalence, in short, to insist on the dissolution of the self within a complex texture of social relations. Social relations and discourses which constitute them cannot be mastered, dominated by the subject because they not only precede him but make its constitution, positioning possible. The heterogeneity and incommensurability of language games on the one hand and the dissolution of the self on the other demands a re-thematisation of justice. Justice, according to this view, can only be local, multiple, and provisional. It is subject to contestation and change, allowing no generalisation of (universal) rules or principles. Once the heterogeneity and incommensurability of language games is admitted, we are faced with a situation where conflicting claims cannot be settled by referring to a common rule or criteria, for they do not and cannot exist. In short, we are faced with a situation in which one must judge without criteria, as Lyotard puts it.[12]

In *Just Gaming* Lyotard illustrates this point by using as an exempla Aristotle's judge who has no criteria to guide his judgement. According to Lyotard, the problem of judgement is precisely the problem of having to make a good judgement without resorting to already existing rules. It should be noted, however, that Lyotard's point is the invention of rules rather than the absence of rules.

Lyotardian idea of a plurality of justices and a »justice of multiplicities« lays the basis for a different, postmodernist, politics. This political strategy is claimed to do justice to plurality, heterogeneity and incommensurability of

[11] *Ibid.*, p. 16.
[12] *Ibid.*

language games. There is only one principle that operates in politics adjusted to »justice of multiplicities«: one must accept the assumption that the Social is grounded in a radical, insurmountable dissension. In other words, challenging, contestation and putting into question must always be allowed or else we are faced with totalitarian terror rather than not justice. Also no one language game can mediate between competing language games, nor can specific principles or rules settle disputes.

Lyotard's main point, however, is that the modernist idea of justice is not only inadequate. It is absolute injustice. It is injustice to the extent that the unanimity, rationality, and sameness, that is, the constituents of the modernist idea of justice, are produced by the process of exclusion, marginalisation and suppression of the heterogeneous and differences. Denouncing this active subordination of plurality to a set of universal principles, Lyotard advocates for a »vengeance« against the conception, according to which, justice is subsumed under the universalistic form of Law.

On its way to the »right answer«, to use Dworkin's expression, justice identified with the universal law inevitably excludes and marginalises cases which cannot be accommodated within its own framework. It is precisely this aspiration to the universalisation, a crucial characteristics of the modernist conception of justice and the rule of law, which, according to Lyotard, generates cases of unresolvable differends, that is, cases of a radical injustice or a wrong *(le tort)*.The issue of differend is introduced by way of postulating that there is a necessary redundancy of genres of phrases which is suppressed by the limited number of idioms that can survive. This superfluity causes an agonistic »selection«, if I may say so, which allows only a fewer stronger variants to survive and suppress a great number of weaker ones. These become victims unable to express the violence they have suffered.

Lyotard's ambition is to put forward the notion of the differend, that is, the notion of activating and bearing witness to conflict, as a political strategy. At issue here is not the question of how differences are to be resolved, but rather the question of whether they can be articulated, *»phrased«*. The difficulty lies in the fact that one can only perceive the harmless kind of conflict which Lyotard calls »litige« *(litigation)*. In this case, it is possible to find an idiom which can solve the conflict because it covers both parties and provides a »rule of adjudication« *(a regle du jugement)*. A »differend«, by contrast, is a conflict which for structural reasons cannot be resolved equitably. In this case, there is no idiom applicable to both parties. A case of differend between two parties »takes place,« says Lyotard, »when the 'regulation' of the conflict which

opposes them is done in the idiom of one of the parties, while the injustice suffered by the other is not signified in that idiom.«[13]

The crucial question is what implications can one draw from Lyotard's attempt to »rephrase« the political in terms of the justice of multiplicities which, in turn, is grounded in the notion of a differend?

In order to assess Lyotard's contribution to contemporary political theorising it should be noted that his emphasis on dissensus is no doubt a valuable contribution. He attempts to account for the antagonistic, conflicting nature of the political. His concept of the differend points to the need to articulate differences between competing political positions. In addition, the concept denounces some of the ways and strategies used by the mainstream political though in practices in their attempt to disregard and, ultimately, to suppress the heterogeneous.

Yet the initial openness to the otherness of the other, to differences, and the insistence on the incommensurability of multiples discourses, although in itself indisputable, may lead to problematic consequences. The fundamental undecidability with respect to the question of which side engaged in a conflict is right, when no criteria available are acceptable for both sides, may lead to a conclusion not only that all political and social demands are legitimate, but also that the outcome depends on the capability of the stronger to impose his/her vision of the just on the weaker or defeated side.

Many commentators objected to Lyotard's conception of justice because it is grounded in a position of a self-conscious equivocation with respect to conflicting demands and discourses. Such a position is considered disastrous since it does not allow for the distinction between true and illusory consensus, a just and unjust society, a good and a bad action. This inability to draw a line of demarcation between what can and what cannot be tolerated, which characterises the position of cynicism as well as the position of indifference, undermines, according to their view, the very foundations of democracy.

This critique, although pointing to some of the problematic features of Lyotard's conception of justice, is questionable to the extent that its starting point is the normative view. And it is for that reason that they seeks the original sin in Lyotard's conception of the incommensurability of language games and, as a consequence, in a radically antagonistic nature of discourses which constitute the Social and the political, that is to say, precisely in those theorisation which constitute Lyotard's main contribution to the teorising of political.

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[13] J. F.Lyotard, *The Differend,* Manchester University Press, Manchester, 1988, p. 12.

However, the very possibility of the subversion of an initial openness and tolerance in its opposite requires a radical reappraisal of Lyotard's conception of justice as well as his critique of the relationship between law and justice. While modernist privileging of the universal law, as Lyotard rightly points out, wrongs justice conceived as always only contingent, singular, and particular; Lyotard's own view, which starts with the rejection of the universalistic law as totalitarian, by privileging the justice of multiplicities, the incommensurability of various visions of the just, may lead, in the last instance, to the destruction of the very idea of justice.

What is at stake here is precisely the relation between the initial incommensurability of all claims and, as a consequence, a radical undecidability with respect to the legitimacy and justifiability of those claims to justice. This question is, in my view, more than justified since the only conclusion one can draw from the radical incommensurability, which denies the very possibility of a rule or criteria for decision and judgement, is that all claims to justice are legitimate.

Yet, if politics and legal adjudication involve a decision-making, the question arises of how to ground and account for a decision-making that does not refer to common, universal criteria and rules. Is not this suspension of decision ethically irresponsible and politically harmful, as critics of postmodernism repeatedly point out?

3.

So far I have tried to confront modernist and postmodernist conception of justice. Now I would like to examine some of the consequences of their antagonistic relationship. This relationship generates – as has been pointed out – a differed, an unresolvable conflict. I have started this presentation with the thesis that the differend between the two theoretical approaches is but a repetition, an actualisation of the original differend which constitutes the relationship between law and justice. In an attempt to explain the relationship between the Rawlsian and Lyotardian conception of justice, the Lacanian formula of communication may be of some help. According to this formula, the speaker receives from the addressee his own message, yet in its inverted, that is, true meaning. Thus it could be said that both modernist and postmodernist conceptions return to the other its own lack. The postmodernist critique rightly calls attention to the fact that the universality of law, as such, is contaminated with the particularity of the place of its enunciation. On the other hand, the modernist critique of postmodernist conception could show that the very idea of incommensurability of justices, the insistence on the absolute heterogeneity

of justice in relation to the law, on an absolute undecidability as to which side in a conflict is right, paradoxically turns into its opposite: a universalised injustice, or in other words, radical evil. Thus we could say that the two approaches share something in common: their unwillingness to bear responsibility for the aporia of the relationship between law and justice. While it is true that Lyotard is at least sensitive to this aporia – as opposed to Rawls who does not perceive it at all. However, Lyotard's failing lies in the fact that, for him, the aporia is to be conceived as the solution to the problem of the incommensurability between law and justice. As a consequence, law and justice are substantivated and fixed in their mutual exteriority and exclusivity.

My ambition is, on the contrary, to thematise this irreducible gap between law and justice which, I believe, is constitutive of both. How is their mutual heterogeneity, irreducibility to be conceptualised? Is there a possibility of their reconciliation? Here, I think, Derrida's approach may be of help. Despite the fact that Derrida himself was accused of avoiding the discussion of political and ethical questions, I believe that his deconstructive reading of law and justice suggests a way out of this impasse. One may, of course, doubt if Derrida is capable of providing such a solution given the fact that he privileges responsibility (political, ethical, legal) over mere decision-making, which is understood as choosing between alternatives. Moreover, according to Derrida, what characterises responsibility is precisely its undecidability, to the extent that one could say that a responsible answer to the aporia of decision is its constant deferring to the future, in short, its suspension. Derrida, for example, points out that »there can be no moral or political responsibility without this passage by way of the undecidable«.[14] What, then, one could ask, could count as a responsible attitude toward the universality of law on the one hand and the singularity and heterogeneity of justice on the other? In other words, is it possible to avoid traps of both the modernist and postmodernist conception of justice? Against both modernists, who subsume justice under the universal law, and against postmodernists who, on the contrary, insist on the multiplicity of justices while denying the universal law, Derrida seems to insist on a paradoxical subjection to both: law and justice. According to Derrida, one needs to obey universal rules, while at the same time, one must respect the contingency and particularity of justice.

So how are we to conceptualise this »impossible« reconciliation of both law and justice? One could say that Derrida attempts to achieve an impossible »synthesis« of both positions, modernist and postmodernist. In other words, it seems as if Derrida accepts to a certain degree a modernist conception of law

[14] J. Derrida, *Limited Inc.*, p. 116.

since he admits that the law, in contrast to justice, can be accounted for in terms of a good rule applied to a particular case. As to justice, it seems as if Derrida follows a postmodernist line of argument: justice, for Derrida, involves singularity and contingency. It concerns the »otherness of the Other« in a unique situation, irreducible to principles of duty, rights, or universal law. In short, justice is incalculable by definition. It is incalculable because it entails moments in which the decision between just and unjust cannot be insured by a rule. Thus one could say that justice is the experience of incommensurability, of the impossible, of the undecidable, of the aporia, as Derrida puts it.

Yet the difficulty about this position is that in order to be faithful to incalculable justice one needs, paradoxically, to calculate, to obey the calculable law. And vice versa: even in those instances where the singular case of the »other« is to be applied to the universalisable law of the »same«, there remains a trace of undecidable which Derrida identifies with justice. He writes:

»The undecidable is not merely the oscillation or tension between two decisions, it is the experience of that which, though heterogeneous, foreign to the order of the calculable and the rule, is still obliged ... to give itself up to the impossible decision while taking account of law and rules. A decision that didn't go through ordeal of the undecidable would not be a free decision, it would only be the programmable application or unfolding of a calculable process. It might be legal, it would not be just«.[15]

The undecidability of justice is therefore that which subverts the legal and political decisions' claims to certainty and legitimacy. No decision is unconditionally decidable. No decision is ever totally pure, wholly present to itself. No decision is wholly subsumed under rules, since an element of incalculable singularity always contaminates it. On the other hand, there is never a completely, absolutely just decision, since some element of rule determination is always present. In short, all decisions are to some degree impure.

Yet there is another aspect of the opposition between law and justice. According to Derrida, the law is always deconstructible. Justice, on the other hand, is immune to deconstruction. In fact, justice is identified with deconstruction. Now, how can we account for this divide between law and justice with respect to deconstruction? In terms of Lacanian theory, the gap between law and justice could be rephrased as the gap between the Symbolic and the Real. Thus it could be said that justice – being always singular, but repetitive, inert, returning to the same place – in a relation to the universal law presents an insurmountable limit, a transcendence which renders the law incomplete. On

[15] J. Derrida, »Force of Law: The 'Mystical Foundation of Authority'«, p. 24.

the other hand, the paradox of justice could be described as follows: justice – while referring to the singularity and heterogeneity of the other, appeals to a rule. In so far Derrida is right in saying that it is just that law exists, but this does not mean that the law can be identified with justice. If justice could be reduced to a mere application of the law, than justice, in the true sense of the word, would simply disappear.

How are we to conceptualise the relationship between justice and law? In order to link them together we may try to do so by bringing into play the concept of *repetition.* While it is easy to grasp the repetitive character of the law. After all, the essence of law consists in a repetitive application of the same universal form to various singular cases of violation of law. But it seems difficult if not impossible to conceptualise justice, as always singular, contingent, etc. in terms of repetition. Yet I will try to do so.

What constitutes the law as universal is precisely a repetition of a signifier, a trait in relation to which different cases of violation are reduced as violation of a particular norm or rule. Justice, I argue, as only ever singular, contingent, etc. is precisely that which does not allow for a repetition. Thus the rendering of justice cannot be reduced to a mere application of rules to the extent that it is conceived as radically unique. And this impossibility of »taming« justice and subsuming it to the law, and vice versa, this impossibility of the law to integrate justice, this repetitive failure of law to encompass justice is what I call a traumatic encounter of the Real. Thus Derrida's »call for justice«, »a desire for justice« which is not law, but deconstruction *in actu* of law and politics presents itself as the Real which emerges in the field of universal Law and disrupts it.

Is there a solution to the aporia of Law and justice? We shall look for it in the direction already indicated by Derrida. Yet what is crucial in this suggested solution is the fact that it is grounded on three instances of »blindness« or suppression.

Firstly, the suspension or the *epokhé* of the rule. A judge must found his/her decision on a rule, yet the act of just decision is never a result of a simple application of a rule. His/her decision is conceived as a just decision only if it is perceived as an act which posits its own rule. A just decision therefore must presuppose a rule and, at the same time, its suspension.

Secondly, in order to be a decision (just or unjust) we must blind ourselves to the radical undecidability in which all decisions are grounded. Although there is no moment in which a decision is fully present and just, as Derrida puts it, since a decision either has not been made according to a rule – thus we cannot call it neither just nor unjust – or it follows an established rule which means

that a decision is reduced to calculation and cannot therefore be called just. However, in order to be a decision we must blind ourselves to this irreducible gap between calculation and a decision which follows no rules. In other words, we must pretend as if the moment of a decision is a coincidence of an invention of a rule and its following.

Thirdly, a decision is accomplished in haste, in urgency. A just decision, as Derrida puts it, is called immediately, it cannot wait. This haste, this urgency which leads to a suspension of knowledge about facts and situation, a suspension of a rule suggests that a decision is acting »in the night of non-knowledge and non-rule«,[16] as Derrida puts it justifying in this way his quotation from Kierkegaard who identifies a moment of decision with madness.To put it differently, even it we believe that we behave and decide according to a rule, the decision is, in the final instance, a jump into the unknown, into an abyss.

Thus the paradox of the relationship between justice and law could be formulated as follows: we know that law as such is not and cannot be just. However, if we accept that and behave according to this knowledge, we will have lost not only justice, but also law. Law is namely conceived as an instance that appeals to justice which means that a law that does not refer to justice is simply not a law. It is therefore in some way necessary to blind ourselves to this knowledge. In other words, we must blindly believe that justice can be rendered only by respecting laws. In Derrida's terms: even if justice cannot be reduced to rule-governed activity we must respect rules. We must respect them because in the very undecidability of justice on the one hand and groundlessness of law on the other lies the danger that the right to do justice can be usurped by bad legislators.

[16] *Op. cit.*, p. 24.