

Forgiving the Unforgivable

On Violence, Power, and the Possibility of Justice



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*In the path of righteousness is life,
and in the pathway thereof there is no death.*

PROVERBS 12:28

*One should not be surprised if an unfathomable crime begets
as it were inexhaustible meditation.*

VLADIMIR JANKÉLÉVITCH

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Introduction

Forgiveness and our Abrahamic Heritage

Repent therefore of this wickedness of yours, and pray to the Lord, if possible, the intent of your heart may be forgiven you.

ACTS 8:22¹

Can crimes against humanity be forgiven? Even more, *should* crimes against humanity be forgiven? We are asking not only for the essence of forgiveness (What does it mean to forgive? Who is to forgive? What calls for forgiveness?), but also, and most importantly, for its relation to crimes against humanity, that is, with seemingly *inexpiable* and *unforgivable* crimes. Thus the question for the possibility of pardoning crimes against humanity is also a question for the limits of our pardon: When confronted with crimes against humanity, namely, with extreme violence, with ‘radical evil’, with ‘the worst’, is forgiving a morally appropriate act? Where are we to find the *measure* for such an exceptional act? May it be that forgiveness -the most gratuitous of acts- depends nevertheless on repentance and atonement or rather on restoration and reconciliation? Does forgiveness make punishment unnecessary? And what relation is there, if any, between forgiveness and forgetfulness? Are *inexpiable* crimes also *unforgettable* crimes?

Various difficulties arise when trying to answer this series of questions. In the first place, there is a highly equivocal use of the term ‘forgiveness’ in contemporary political and ethical debate. Forgiveness has come to be confounded, most of the time in a calculated fashion, with related notions: excuse, amnesty, regret, prescription, acquittal, compassion, mercy, or reconciliation, just to name a few. In this view forgiveness is regarded just as another political concept among others, which aim would be to restore peace, bring

¹ All Bible quotations follow the Revised Standard Version.

reconciliation, amend past injuries, or put the wrong behind by the wiping clean of the slate. The point here is that *as a political phenomenon*, forgiveness enters an economy of exchange, where debt and payment are traded in order to overcome wrongdoing, resentment, and guilt. The result is that this spurious economy of the gift of forgiveness ends up trivializing the extraordinary act of the forgiver. By equating forgiveness with processes such as reconciliation or amnesty, it becomes part of the political domain, from which it is completely alien in virtue of its very essence. In the political realm, forgiveness is transformed into a *means* among others that could be used in order to achieve certain *ends*. In contemporary geopolitics forgiveness has become *instrumental* in the quest for peace and reconciliation.

As Derrida clearly advances in *On Forgiveness*,² this equivocal view of forgiveness is explained by the fact that concepts such as amnesty, condonation, or prescription fall under the domain of *judicial law* – a law from which “forgiveness must in principle remain heterogeneous and irreducible.” (OF 27) In contradistinction with current geopolitics, Derrida claims that “forgiveness is not, it *should not be*, normal, normative, normalizing. It *should* remain exceptional and extraordinary, in the face of the impossible: as if it interrupted the ordinary course of historical temporality.” (OF 32) In other words, there cannot be a *politics of forgiveness* – forgiveness must remain beyond the order of law and politics if it is to be true forgiveness. Nevertheless, it is also true that forgiveness must take place in historical temporality. For forgiveness is eminently an *act*, an *experience*. Hence it cannot remain as a mere ‘purity of thought’ and must step into history if it is to change the law or to inflect politics. However exceptional and extraordinary it might be, forgiveness must be nurtured into a political possibility. In this double injunction between a forgiveness that *must* remain pure in order to be worthy of its own nature, and a forgiveness that *must* become part of the messiness of history and politics, the space for a “‘hyperbolic’ ethical vision of forgiveness” is opened (OF 51). My claim is that this ‘hyperbolic ethical vision’ of forgiveness can only make sense against a transcendent horizon that cannot be but Abrahamic (in fact, against such a horizon of sense forgiveness ceases to be so

‘hyperbolic’). Forgiveness becomes aporetic only once it is thought of as if we were able to step outside the Abrahamic horizon of sense where it naturally resides.³ Only this horizon can make the exceptionality and singularity of forgiveness, meaningful.

This brings me to the second reason why such a question as if crimes against humanity can be forgiven, poses so many difficulties to thought. Because, strictly speaking, forgiveness cannot be thought of from a certain *outside* of the Abrahamic archive. The language with which we speak of forgiveness today is a clear symptom of this. As Derrida and Vattimo notice, an ‘Abrahamic language’ has become the universal idiom of law, of politics, of the economy, or of diplomacy. This language is at the same time the agent and symptom of its own internationalization (somewhere else Derrida has called this process *globalatinisation*⁴). According to this view, Roman Christianity overdetermines all language of law, of politics, of history in such a manner that it is impossible for us to think

² Jacques Derrida, *On Cosmopolitanism and Forgiveness* (New York: Routledge, 2001). This work is hereafter cited parenthetically in the text as OF.

³ Why is this horizon of sense ‘Abrahamic’ and not ‘Jewish’, ‘Christian’, ‘Islamic’, ‘Judeo-Christian’, or just ‘biblical’, or even ‘monotheistic’? I think that the term ‘Abrahamic’ is more telling in this context because it does not exclude any of the other possibilities, but rather integrates them. It is no secret that Abraham plays a central role for all the ‘religions of the book’. But, of course, this role can be interpreted in several ways, some of which might even violently oppose each other. The Abraham of the Abrahamic archive of which I will be speaking of in the following pages, is a certain Abraham whom is put to the test by God in more than one occasion. This Abraham is that certain Abraham whom was told by the Lord to leave his country, and his kindred, and his father’s house, to go unto a land that the Lord would show him. This Abraham sets out to the desert driven by the *promise* of arriving to the great nation of the blessed (Genesis 12:1-2). But this Abraham is not only asked to *sacrifice* his homeland for the sake of a covenant; he is also asked to go up Mount Moriah and sacrifice his only son, Isaac (Genesis 22). As the exemplary figure of sacrifice out of faith in a promise, this Abraham is also the figure of a certain *messianism*. The Abrahamic archive is thus a certain horizon of sense where justice is meaningful as a promise to be fulfilled in an eschatological figure. But not only this, because this Abraham is also that one who prays God not to destroy Sodom and Gomorrah so that He will not destroy the righteous with the wicked (Genesis 18:23). So Abraham is also a figure of *justice* and *mercy*. Which means that for our Abraham justice is not to come at any price. Despite the fact that he is pushed into the desert, he does not become resentful, but has enough love to care about Sodom and Gomorrah, where not even fifty righteous could be found.

All of this, the leaving of one’s own homeland, the faith in a covenant, the sacrifice for a promise, the justice to come, and the trust in a merciful justice, can be to some extent either ‘Christian’, ‘Jew’, or ‘Islamic’. However I am not interested in specific religious contents that could be found within any given (monotheistic) religion of the book. My interest refers to a general schema that structures and gives form to the different concrete, historical (monotheistic) religions. This schema is that of a religion without religion(s), and which I think confers sense to the experience of forgiveness. The following pages are an attempt to somehow clarify this position, which, of course, has an immense debt with deconstruction and the thought of Jacques Derrida, and in a manner less evident, but equally strong, with the philosophy of Walter Benjamin.

⁴ Jacques Derrida, “Faith and Knowledge: The Two Sources of ‘Religion’ at the Limits of Reason Alone,” in *Religion*, ed. Jacques Derrida and Gianni Vattimo (Cambridge: Polity Press, 1998), 29.

in non-Christian terms at all (OF 28-32).⁵ This process has reached a point where even communities whose dominant religion is not one of the ‘religions of the book’ have also incorporated this Abrahamic language into their pleas for forgiveness (take the examples of Japan or Korea). So, paradoxically, when the entire geopolitics of the West appears to be more secular than ever, its language betrays a ‘religious’ tradition that was thought to be ‘overcome’. There is a Christian frame of reference inherent to the entire project of Modernity that has been systematically eclipsed *as an explicit frame of reference*, so that the question of how exactly we have been held by Christianity remains rather obscure.⁶

This affects our analysis in at least two ways. First, it is clear then that our exploration of the notion of forgiveness must address directly the theological/religious tradition that permeates and makes all our practices of forgiving possible. Secondly, this same exploration must take into account the fact that the Abrahamic ‘archive’ plays an active role in the definition of the concept of ‘crimes against humanity’. For instance, underlying this concept one can find a certain idea of the ‘sacredness of the human’ at play. This special kind of sacredness “finds its meaning in the Abrahamic memory of the religions of the Book, and in a Jewish but above all Christian interpretation of the ‘neighbor’ or the fellow man’.” (OF 31): “The commandments, ‘You shall not commit adultery, You shall not kill, You shall not steal, You shall not covet,’ and any other commandment, are summed up in this sentence, ‘You shall love your neighbor as yourself.’” (Romans 13:9) Under a Christian interpretation of the fellow man, the closest other, crimes against humanity would be “crimes against the human essence or, if you will, against the ‘hominity’ of human beings in general.”⁷ There is something about human existence that makes it sacred *as mere existence*. Therefore, any crime that would attempt against this very existence becomes almost a heretic act, an act of profanation – human life is inviolable, and any violence exerted on it, cannot be but a *metaphysical* crime, a crime

⁵ Cf. Gianni Vattimo, “The Trace of the Trace,” in *Religion*, ed. Jacques Derrida and Gianni Vattimo (Cambridge: Polity Press, 1998), 87-90.

⁶ Cf. Jean-Luc Nancy, “The Deconstruction of Christianity.” in *Religion and Media*, ed. Hent de Vries and Samuel Weber (Stanford: Stanford University Press, 2001), 111-114.

⁷ Vladimir Jankélévitch, “Should We Pardon Them?” *Critical Inquiry* 22 (1996): 552-572, 555. This work is hereafter cited parenthetically in the text as P.

thereby *imprescriptible* (P 556).⁸ As in the case of the notion of forgiveness, the idea of crimes against humanity is only possible on the basis of a transcendental (Abrahamic-Christian) horizon of sense, where it is meaningful to separate, to *discriminate* crimes against the being of humanity, against the ‘beingness of the being’ (as Jankélévitch names it), from the rest of possible offenses and injuries (consider here the case of crimes against property or the problem of animal rights, for example).

As it is well known, the concept of crimes against humanity was born after the Holocaust, more exactly after the Nuremberg trials and the posterior Geneva Convention in 1949. With these acts of justice raised a certain consensus that totalitarian phenomena of the twentieth century, and in particular the Holocaust, exhibit something uniquely terrible. According to Jankélévitch, the unique horror of the Shoah consisted in that it was “doctrinally founded, philosophically explained, methodically prepared, and systematically perpetrated by the most pedantic dogmatists that ever existed. It fulfills an intention to exterminate that was long and deliberately matured.” (P 564) This ‘new’ type of crime called for a proper definition, this extreme and calculated violence seemed to exceed all existing laws and theories of justice. In order to repair this ‘shortage’ of the law, the concept of ‘crimes against humanity’ was invented. The basic idea behind the new concept was that “when an act denies the essence of a human being as human being, the statutory limitations that in the name of morality would lead one to absolve that act itself contradict morality.” (P 556) In brief, crimes against humanity are *imprescriptible* – the penalties against them cannot lapse; they must be judged and punished without regard to limits of time or space. As it was famously said during the Nuremberg trials, those guilty of this kind of crimes must be persecuted to the ends of the earth.

Now, the problem that we must address here, and which constitutes the third point we would like to consider in relation to our inquiry, is that a call for pardon in the case of crimes against humanity becomes contradictory and even absurd. “To forgive a crime against humanity would be a new crime against the human species.” (P 556) Forgiveness thus, in these cases at least, seems to be beside the point and even immoral in itself. One

⁸ By *imprescriptible* Jankélévitch means (and I follow his definition throughout this paper) that the penalties

might be tempted to think that after the horror of the Holocaust the mere idea of forgiveness has turned into a sort of anachronism. But the fact is that since the judicial concept of crimes against humanity was sanctioned we are attending a proliferation of scenes of repentance or of demanding apologies never seen before. We are witnessing a ‘globalization’ of forgiveness that could indeed be understood as a process of Christianization of contemporary geopolitics. This globalization (*globalatinisation*) of forgiveness resembles “an immense scene of confession in progress, thus a virtually Christian convulsion-conversion-confession, a process of Christianization which has no more need for the Christian church.” (OF 31) Of course, this international scene of confession and repentance can only be played by means of a more or less conscious adoption of an Abrahamic kind of language, without regard to existing religious boundaries. To illustrate this process of globalization/Christianization would be enough to call to mind China’s demand for an apology from the United States for the NATO bombing of the Chinese Embassy in Belgrade, or the fact that North Korea has demanded that Japan apologizes and pays for its past colonial domination. What I want to bring to the fore here is that, although one could have expected that the proclamation of the imprescriptibility of crimes against humanity would have had the result of ruling out any kind of demands or offerings of forgiveness, what has really happened is that the notion of forgiveness has become somewhat ‘fashionable’, *especially* there where crimes against humanity are concerned.

Furthermore, and this is the fourth point I want to briefly present in these introductory pages, the globalization of forgiveness evinces that politics and justice (and history) are being resignified in terms of guilt, victimization, and above all, reparation and apology, even in non-Western civilizations. This is a very complex problem – it is the problem of *memory*, or in other words, of the relation between forgiving and forgetting. As Wendy Brown asks, “once guilt is established and a measure of victimization secured by an apology or by material compensation, is the historical event presumed to be concluded,

sealed as past, ‘healed,’ or brought to ‘closure’?”⁹ Under the obscure light of crimes against humanity this possibility is unacceptable. When confronted with crimes so horrid one cannot but keep remembering. There cannot be any definitive closure for atrocities that harmed the humanity of humankind in such a blatant manner. In the name of the victims we must not cease to remember. Again, it is Jankélévitch who reminds us of this eternal responsibility: “These innumerable dead, these massacred, these tortured, these trampled, these offended, are *our business*. If we ceased to think of them, we would complete their extermination, and they would be definitively annihilated. The dead depend entirely on our loyalty.” (P 171) We owe the victims the commemoration of the past – we ought to defend the past against forgetfulness and denial. Thus contemporary geopolitics cannot afford to equate forgiveness with forgetfulness. To remember is our duty. But in order to make this claim plausible, we have to accept that “the past only *is* through memory, and while this does not abolish the ontological inviolability and irreversibility of pastness, it does mean that the event in its very originality is open to alteration and mutation.”¹⁰ It is precisely because the past is ontologically inviolable and irreversible that memory has everything to do with justice. Memory has the power to make of the past ‘an outrage upon the present’, thus leaving it open to remembering and re-narration. Our historical consciousness is a moral and political consciousness that should help us to understand why oneself or others made errors, thus opening up the possibility for forgiveness, because, after all, what sense would it make to forgive that which has been already cast into oblivion?

It is commonly said that only the victim can forgive. But the painful truth in the case of crimes against humanity is that their victims, more often than not, do not survive at all to be able to proffer pardon. But this does not cancel the possibility of forgiving in their name, while remaining faithful to our responsibility of remembering them endlessly. Memory endows us with the power and the responsibility to forgive, because the dead, *these* dead in particular, are never completely dead. Quite the opposite, they are always here, with us, haunting our lives, claiming for justice and remembrance. The ontological

⁹ Wendy Brown, “Futures. Specters and Angels: Benjamin and Derrida,” in *Politics out of History* (Princeton: Princeton University Press, 2001), 140.

¹⁰ John Milbank, *Being Reconciled: Ontology and Pardon* (New York: Routledge, 2003), 53.

status of memory is that of the ghost, of the specter – its mode of existence is the haunting. The specters of the victims haunt us in an inescapable call for justice. So there cannot be any remembering without a justice that does not “recognize in its principle the respect for those others who are no longer or for those others who are not yet *there*, presently living, whether they are already dead or not yet born.”¹¹ If forgiveness is to be possible, then it must reckon with these living specters by carrying justice beyond mere present life. Of course, it is again our Abrahamic heritage that makes this logic of the specter meaningful. The concept of crimes against humanity recognizes, albeit in a tacit fashion, not only the sacredness of human life, but also the *immortality* of our essence, of our ‘soul’. Forgetting the victims would amount to deny our immortality – we must remember and judge these crimes because the specters of the massacred, the tortured, the trampled, the offended, will always survive in memory, and it is up to us to make of it a *just* memory. Making amendments with the past implies that there may be an eschatological future awaiting us, when eternal justice will summon up every soul. And *then* we would like to be able to say ‘I am just’ before any law, before every responsibility, and above all, before His gaze.

Crimes against humanity would be there to remind us of our wickedness, and to remind us of our duty of remembering those innumerable dead, massacred, tortured, trampled, and offended. The memory of this horrid crimes ceaselessly cry unto us that our shame and guilt does not fade away with time, and that human history still has to repent and forgive itself, so that the thought of our heart may be finally forgiven.

This is *not* a paper on Colombia. How could it be? I confess it to my shame: my knowledge of my own history is too partial and hesitant altogether. (I guess that says something...) Therefore, all explicit considerations of Colombian reality are reduced to mere digressions – that is all I can do for now.

¹¹ Jacques Derrida, *Specters of Marx: The State of the Debt, the Work of Mourning, and the New International* (London: Routledge, 1994), xix.

Part One

Violence and Justice

*Entscheidet doch über Berechtigung von Mittel und Gerechtigkeit von Zwecken
niemals die Vernunft, sondern schicksalhafte Gewalt über jene, über diese aber
Gott.*

WALTER BENJAMIN. "Zur Kritik der Gewalt."

Crimes against humanity are crimes of the most extreme violence. They are the way in which the worst enters the world. They are radically evil.¹² The concept of 'crimes against humanity' was born with the intention of eradicating this kind of violence from the face the earth. This birth has a place and a date: Geneva, 1949. Since this date we all know that, (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular, humiliating and degrading treatment; and (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples, are all crimes against humanity. Hence, they should be judged independently of place or time: there are no statutory limitations that could lead to an absolution of crimes against humanity. Since these crimes are absolutely *imprescriptible*,

¹² I borrow the concept of 'radical evil' from a recent philosophical position that suggests that the unprecedented evil of the twentieth century cannot be regarded as privative (contrary to traditional Greek, Jewish, and Christian thought where evil was denied any positivity, and seen only as the privation of being itself), but as the positive will toward destruction and the cold infliction of suffering. The methodically prepared, and systematically perpetrated annihilation of human life of the last century suggests that evil can be pursued for its own sake, that is, as an end in itself. Evil, therefore, would be a pure act of perversity without ground. The development of this theory is traced from the first use of the term by Immanuel Kant in his essay *Religion Within the Bounds of Mere Reason*, through Schelling, to Heidegger. Among the many theoreticians who defend this view of evil are Hannah Arendt, Joan Copjec, Slavoj Žižek, and Jean-Luc Nancy, and to some extent, Jacques Derrida (especially in "Faith and Knowledge: The Two Sources of 'Religion' at the Limits of Reason Alone").

the perpetrators must be persecuted to the ends of the earth. But also to the ends of history. Because time has no hold on these crimes. As Jankélévitch clearly said in reference to the Holocaust, “the time that dulls all things, the time that uses up sorrow as it erodes mountains, the time that favors pardon and forgetfulness, the time that consoles, settling and healing time, does not diminish in the least the colossal slaughter; on the contrary, it never ceases to revive its horror.” (P 556) History therefore cannot absolve us. On the contrary, since 1949 we live with the disturbing certainty that we all are, in some way or another, guilty of crimes against humanity.

This is why it should not be surprising that we are living amidst a scene of global confession, where everyone appears as being culpable to some degree of attempting against human life. It looks as if modern geopolitics cannot do without a certain degree of victimization and offering of apologies, up to a point where it is becoming almost impossible to find anyone who could be safely considered as innocent of this type of crimes:

In asking forgiveness, Derrida says, of all the crimes of the past against humanity, there would no longer be an innocent person on earth – and therefore no one in the position to judge or arbitrate. We are all heir, at least, to persons and events marked, in an essential, interior, ineffaceable fashion, by crimes against humanity. (OF 29)

Of course this does not mean that all of us are direct perpetrators of crimes against the essence of humankind. But in a way, the consequence of the sanction of this judicial figure is that most of us are guilty by way of omission: “Everyone is more or less guilty of nonassistance toward a people threatened with death.” (P 570) But this alone is not enough to explain the current scene of confession and guilt. Faults of omission do not seem to carry with them culpable feelings strong enough to lead us to ask forgiveness, even more when the deeds occurred before our own existence. The crimes perpetrated during the Crusades can make us feel indignation, even sorrow, but guilt is something different (‘I was not there, why should I feel guilty?’). Guilt of nonassistance does not seem to be reason enough to explain the explosion of acts of ‘forgiveness’ in present geopolitics. The inexhaustible repertoire of crimes against humanity that plague human history through and through could be a necessary condition for the emergence of this international scene of confession and

repentance. But all the history of human atrocities certainly is not sufficient to explain why these scenes of victimization did not emerge earlier, but just *today*. Furthermore, by making all of us culpable, the concept of crimes against humanity risks undermining its own significance as a result of its dissemination of guilt: “If everyone is guilty, no one is guilty.” (P 563) If we all are victims and perpetrators, how are we to gain a standpoint from where we would be able to put a halt on violence by judging the perpetrators? In brief, if everyone is guilty, is justice still possible?

I think it is necessary to examine in detail the idea of violence that underlies the concept of crimes against humanity in order to answer these questions. We said that the horrid character of this sort of crimes comes from the calculated fashion in which they seek to destroy the ‘hominity’ of humanity. Violence here achieves a disturbing positivity; it is the terrifying manifestation of ‘radical evil’, of the worst. Not violence for its own sake, but violence as a *means* for the most atrocious of ends: the systematic annihilation of human dignity and existence. So we need to understand exactly how violence functions and how we can be able to judge a sort of crime of which all of us appear to be culpable. To elaborate on these questions I have chosen a text written by Walter Benjamin in 1921: *Zur Kritik der Gewalt*. There are various reasons why I chose this work as the starting point of my analysis. First of all, Benjamin is among the finest and most acute interpreters of our Abrahamic heritage, especially of its Judaic roots. This makes him ideal for dealing with the phenomenon of violence, because he struggles to maintain the religious horizon against which it becomes more visible. In fact, this is to me the most thought-provoking side of this brief, enigmatic, and often misunderstood text. The essay appears at first to be a confused collection of reflections on law, violence, language, and religion. It states a set of problems and sketches their solution in a rather obscure manner. At a first reading it appears to be incomplete, or at least as a draft that still needs more work. However, I believe this not to be the case. The coherence of the essay stems in part from its rhetoric. The fact that the text seems to explode, to erase at the end all of its theses is not fortuitous. In fact, Benjamin shows us that it cannot be otherwise. The concept of violence is so problematic that a true critique of it has to end by destroying itself. But Benjamin does not stop there; he is not

content with only showing us the limits of the concept – he offers a way out of these limits. He does it in a profoundly religious language because it is the only one that could take us outside the aporias of violence. In other words, what interests me most in relation to this essay is the fact that it is a perfect example of what Derrida has called, “the becoming-theological of all discourse.”¹³ Indeed, Benjamin’s reflections seem to flow inevitably into the sphere of ‘the theological’ or ‘the religious’, by an inner logic that proceeds from the very essence or ‘analytic structure’ of violence itself.

Critique of Violence is not a theological work, nor is it an analysis of violence in the name of religion. It is a philosophical essay that cannot help ending up speaking in terms from our Abrahamic lore. In this manner it exemplifies how this archive permeates all the spheres of thought and existence. To make this more explicit I recur to Derrida’s reading of this text in *Force of Law: The ‘Mystical Foundation of Authority’*. I would like to meddle in the discussion between these two texts in order to emphasize why a certain interpretation of them must be avoided. Contrary to what might be a first impression, neither Benjamin nor Derrida think that justice is impossible. Or if it is in fact impossible, it is so in a different manner for each of them. However, I propose that the structure of this impossibility would have the same appearance in both cases: justice, whether possible or impossible (or possible thanks to its impossibility), it is so because, “justice remains, is yet, to come, *à venir*, it has an, it is *à venir*, the very dimension of events irreducibly to come.”¹⁴ If crimes against humanity are to be punished, we must first achieve a morally valid standpoint from where to judge them. Precisely because crimes against humanity make us all guilty, we must ask ourselves how morality can still be possible. Or, as Levinas puts it, we must ask, “whether we are not *duped* by morality.”¹⁵ Are morality and justice only a deception? This question must find a response before any attempt can be made to decide if crimes against humanity could be forgiven.

¹³ Jacques Derrida, “How to Avoid Speaking: Denials,” in *Languages of the Unsayable: The Play of Negativity in Literature and Literary Theory*, ed. Sanford Budick and Wolfgang Iser (Stanford: Stanford University Press, 1996), 6.

¹⁴ Jacques Derrida, “Force of Law: The ‘Mystical Foundation of Authority’,” *Cardozo Law Review* 11 (1990): 919-1045, 969. This work is hereafter cited parenthetically in the text as FL.

¹⁵ Emmanuel Levinas, *Totality and Infinity: An Essay on Exteriority* (The Hague: Duquesne University Press, 1969), 21 (my emphasis).

An Ambiguous Moral Light

Let us start by reconstructing the main points of Benjamin's *Critique of Violence*. From the very first line we are told that, "the task of a critique of violence can be summarized as that of expounding its relation to law and justice."¹⁶ Given that any cause can only become violent when it enters into the sphere of moral relations, and since the notions of law and justice define this sphere in its turn, a critique of violence cannot do without directly addressing the problem of violence *as a legal phenomenon*. In order to achieve this, Benjamin starts his analysis from the 'hypothetical basis' of legal positivism, "because it undertakes a fundamental distinction between kinds of violence independently of cases of their application" (CV 237).¹⁷ According to this distinction, violence can be either 'sanctioned' or 'unsanctioned', depending on whether or not it originates from declared and historically acknowledged authority. In this manner, then, the positive theory of law tries to distinguish between these two kinds of violence by considering them as means, independently of the ends to be secured by them. The justness of these ends is taken for granted when violence is sanctioned by the rule of law, or more exactly, positive law 'guarantees' the justness of the ends through the justification of the means (CV 237). The consequence is that the distinction between these two different kinds of violence -i.e. sanctioned and unsanctioned violence- is in fact a distinction between 'legal ends' to be pursued within the law and 'natural ends' to be pursued irrespective of it (CV 238).

Understood in this manner, says Derrida,

the concept of violence, permits an evaluative critique only in the sphere of law and justice (*Recht, Gerechtigkeit*) or the sphere of moral relations (*sittliche*

¹⁶ Walter Benjamin, "Critique of Violence," in *Reflections: Essays, Aphorisms, Autobiographical Writings*, ed. Peter Demetz (New York: Harcourt, 1978), 236. This work is hereafter cited parenthetically in the text as CV. Translations of Benjamin's text render 'violence' as equivalent to the German noun 'die Gewalt', but in order to fully appreciate Benjamin's arguments it is necessary to keep in mind that the German term has a broader meaning which relates it to the notions of force, coercion, power, or even legal violence.

¹⁷ Before drawing attention to the thesis of positive law, Benjamin has discarded the alternative of natural law (which sees violence just as a 'product of nature') as a valid sphere of analysis to determine if "violence, *as a principle*, could be a moral means even to just ends." (CV 236, my emphasis) On the contrary, Benjamin affirms that natural law inevitably leads to the most unjust abuses of power, because it "attempts, by the justness of the ends, to 'justify' the means" (CV 237), and in consequence, to apply the latter as violently as possible if the 'naturally justified ends' are in some way thought to be in peril.

Verhältnisse). There is no natural or physical violence ... the concept of violence belongs to the symbolic order of law, politics and morals. And it is only to this extent that it can give rise to a critique. (FL 983)

In other words, such a critique of violence is only possible as an *evaluative* critique, that is, as a critique that will only seek to *measure* to what extent specific means are just for specific ends. It is in this sense that a critique of violence is always already trapped inside the economics of the symbolic sphere of law, politics, and morality. The only way in which we can address violence ‘as such’ (that is, violence *outside* the ‘symbolic order of law’) is to conceive the critique of violence as hyper- or meta- critique, i.e., as *critique of critique*. Hence the title “Zur Kritik der Gewalt”: “Towards a Critique of Violence”. This provisional title employs the rhetoric of the task to show all the aporias and competing discourses that a critique of violence would have to reconcile, if not to overcome. Thus, a critique of violence inside the realm of moral relations will necessarily stumble against the impossibility of a mere *evaluative* critique of *Gewalt*. For an evaluative critique of violence is destined to dwell forever in the relations of exchange between means and ends. And its result is that violence permeates every human (moral) relation. So the true question of a critique of violence goes beyond the assessment of the justness of means by becoming the question of whether there could be something like a ‘nonviolent moral relation’. In Benjamin’s words: “since, however, every conceivable solution to human problems ... remains impossible if violence is totally excluded in principle, the question necessarily arises as to what kinds of violence exist other than all those envisaged by legal theory.” (CV 247) This means that the hypothetical basis of legal theory (or ‘positive theory of law’) must be left behind, because

if the criterion established by positive law to assess the legality of violence can be analyzed with regard to its meaning, then the sphere of its application must be criticized with regard to its *value* [Wert]. *For this critique a standpoint outside legal philosophy but also natural law must be found.* (CV 238, my emphasis)

Benjamin wants to go beyond the simple assessment of the legality of some certain violent means, which will be nothing but asking if the means stand the evaluation of law. (Here the question can be posed: Is this particular act of violence justifiable so that the legality of the ends is still guaranteed?) Benjamin is quick to assert that such a critique is not radical enough. The meaning of the distinction between sanctioned and unsanctioned violence

must be explained and justified. The sphere of application of legal criteria must also be criticized, and now we are no longer facing a question of *legality*, but one of *morality*, of the *value* (*Wert*) of the very sphere of law's applicability. (The question here is: Where are the legitimizing fundamentals of law to be found?) From where comes its discerning power that enables it to draw the line between 'good' and 'wrong'? Or more radically, what is the meaning of this distinction, and of the fact that it is only possible inside the boundaries of legality? This, for Benjamin, is a question that can only be furnished by a "philosophico-historical view of law." (CV 238)

But we are going too fast. At this point it is necessary to take some steps back and reconsider in further detail the results of a critique of violence that uses legal theory as its hypothetical basis. We must first go back to the distinctions between sanctioned and unsanctioned violence and between legal and natural ends. As Benjamin pointed out, the modern state, "tries to erect, in all areas where individual ends [namely, natural ends] could be usefully pursued by violence, legal ends that can be realized only by legal power." A consequence of this is that "law sees violence in the hands of individuals as a danger undermining the legal system." (CV 238) Even when this violence is not directed against the state itself, the use of unsanctioned violent means by individuals (or by groups alike) could end up in the creation of a domain of public power independent of the historically acknowledged authority. Violence exercised outside law would create its own judicial rule, thereby defying the state's authority to enforce the law on its subjects. In short, the real threat comes from the 'lawmaking' [*rechtsetzend*] character of this violence. The response of the state to unsanctioned force is clearly ambiguous: "the state acknowledges a violence whose ends, as natural ends, it sometimes regards with indifference but in a crisis confronts inimically." (CV 240) Benjamin uses the legal recognition of the workers' right to strike as an example. In conferring this right, the state permits the workers to resist submission to their employers, but in doing so it can threaten its own existence. For it is obvious that this right, when exercised under the figure of a 'revolutionary general strike', transforms itself into a serious threat for the stability of the state, who can then recur to exceptional legal measures (for example, the proclamation of martial law), in order to restore 'law and

order'. So, in the face of lawmaking-unsanctioned violence, the state replies with law-preserving violence [*rechtserhaltend Gewalt*].

Here we find another distinction of violence within the positive theory of law. At first sight this distinction appears to be at the base of the other two we have explored so far, because it seems to support an analytical structure of rather powerful capacity of explanation: It is necessary that some primordial violence, a lawmaking violence must be exerted so that a legal order can be founded – it is necessary that the law be enforced so that it can be posited as law. As positive law is *not natural*, it needs some supplementary force to become part of the world, to *found* a world, to *enforce* itself on the world. Once this has happened (in an instant impossible to determine because it lies outside the historical epoch that it founds), law-preserving violence becomes indispensable for preserving this legal order, by assuring that the 'justness' of the ends posited by law is observed. 'Police violence', as Benjamin also called it, is needed to preserve the legitimacy of that 'first' and 'original' enforcing of law. Things, however, are not this simple – Benjamin's critique shows that the distinction between these two kinds of violence (together with the other two we have analyzed here) is impossible to maintain:

- A. Lawmaking violence is arbitrary, or more precisely, impossible to judge by any standards. In consequence it lacks every inner authority, except the one coming from its violent aspect. Nevertheless, in opposition to what one may conclude from this lack of inner authority, "it is *more difficult*, more illegitimate to criticize this same violence since one cannot summon it to appear before the institution of any pre-existing law: it does not recognize existing law in the moment that it founds another." (FL 1001) Law has to live with a lack of incontestable moral foundations lying at its very heart. The authority by which lawmaking violence enforced law is dramatically weakened by the arbitrariness inherent in every foundation act. Not recognizing any previously existing law can be due to the fact that that other law has proved to be obsolete by fallen into decay and becoming an anachronism. But this is still some kind of recognition, when in fact (*de facto*) lawmaking violence enforces law as *the* law – lawmaking violence presents itself as *fate-imposed*

violence, and hence, the law enforced by itself is to be thought of as unquestionable because coming from *the one and only* law. There cannot be another rule of law – fate can only speak with one voice. By presenting itself as fate-imposed violence, lawmaking violence makes possible its self-legitimizing discourse. Law-preserving violence makes sure that this discourse goes unquestioned by *repeating* the original enforcing act. Wherever the self-legitimizing discourse is put into question, law-preserving violence (with the face of the Police, of militarism, of paramilitarism...) reinstates, repeats the act of enforcing the law so that its authority is re-imposed each time with greater violence. This blurring of the distinction between these two kinds of violence leads us to the second reason that evinces the limits of an evaluative critique of violence within the realm of positive law:

- B. As we have seen, law-preserving violence resembles lawmaking violence whenever it seeks to protect the legal order. But the other way around is also true: lawmaking violence is in itself law-preserving because of the absence of foundations for its enforcing – its own legality is always doubtful, undecidable. And this incalculability of the justness of law haunts it even before its own enforcing. The moment of enforcing a new law, the birth of every law has to be at the same time law-preserving violently in order for this law to be able to become Law, and in doing so, forecloses the space for any other possible legal order to be conceived.

This is why a rigorous critique of violence inside (any) legal order, at the end has to destroy the distinction that was taken as the inevitable corollary of its hypothetical basis. The *contamination* that both kinds of violence irremediably exert on each other demonstrates that the distinction between sanctioned and unsanctioned violence is untenable, because this contamination is inherent in the inescapable ruse that lies at the very origin of law.

In the search for the definitive repression and final forgetting of this swindle, law exerts violence on itself; indeed, the violence that threatens legality does not only come from the outside, i.e. from ‘unsanctioned force’, but also, and most importantly, from the very core, the very origin of the structure of law. “That which threatens law already belongs to it, to the right of law (*droit*), to the origin of law (*droit*).” (FL 989) What Derrida

advances with these words is not something that has gone unnoticed for Benjamin. He clearly sustains that, “all the violence as a means [that is to say within the logic of positive law], even in the most favorable case, is implicated in the problematic of law [*Problematik des Rechts*] itself.” (CV 243) And for what has been said up to this point, law appears in such an ‘ambiguous moral light’ [*zweideutiger sittlicher Beleuchtung*] that the results of a critique that is limited to the realm of mere *application* of legal codes, seems by all means, absolutely insufficient, if not completely unsuccessful. This critique is doomed to failure because it suffers of the same contamination of the object that is being criticized. The implausibility of this first critical apparatus leads Benjamin to raise the question of a more radical critique: critique has to become hyper critique;¹⁸ it has to acquire a new language not pertaining to law (perhaps not even to philosophy, nor to reason). A further step is necessary; we need to leave the realm of means and ends, namely of *mediated* violence, and try to find if it is possible to think the possibility of the existence of a non-violent violence, of an *immediate function of violence* [*eine nicht mittelbare Funktion der Gewalt*] that knows nothing of any sort of ends. But first we must understand exactly the manner in which mediated violence functions (that is, the economics of this sort of violence), so that we will be able to foresee a way out of it, and the possibility of a non-violent violence, that is, of justice.

The Economics of Violence and the Culture of the Heart

Lets return then, for a brief moment to the untenable, and hence discarded distinction between lawmaking and law-preserving violence. We must notice that this distinction was discarded because the critical task found it unsuitable for a truthful critique of violence; not because it was *false* in itself. On the contrary, the violent dynamics that Benjamin’s critique found inside this equivocal and unstable distinction are the expression of a certain economics of violence. This is important for us because this economy can be regarded as the expression in the *everydayness* of the violence out of which law lives. Understanding

¹⁸ Cf. Rodolphe Gasché, “On Critique, Hypercriticism, and Deconstruction: The Case of Benjamin,” *Cardozo Law Review* 13 (1991): 1115-1132, 1117 ff.

the logic of this economy can help us to foresee a way of halting the endless exchange of violence, so that justice will be again possible, although necessarily outside law.

For reasons explained before, Benjamin thinks that “law’s interest in a monopoly of violence vis-à-vis individuals is explained not by the intention of preserving legal ends but, rather, by the intention of preserving the law itself.” (CV 239) This intromission of the legal order in even the most seemingly ‘private’ and ‘individual’ affairs is explained by the functioning of law-preserving violence in its attempt to maintain the rule of law. As we have seen, law cannot help feeling threatened by every possible act of not-yet-sanctioned violence. Therefore, the need for enforcing the law becomes increasingly urgent wherever and whenever it may be needed, even *before* this enforcing is effectively asked for – “law-preserving violence is a threatening violence” (CV 242); it exerts vengeance on those who dare question law’s fate-imposed ends. And that is exactly what the economics of violence consists of: looking for someone, anyone to blame for my own suffering. The enforcing of law brings with it a never-ending search for culpable agents of the suffering that law exerts on itself. The state looks insatiably for somebody to accuse – anywhere. This is why private affairs have to become part of the sphere of law’s applicability: transgressions of the legal code have to be made possible in every human activity for law to be enforced everywhere, hence achieving an all-pervading presence. The enforcing of law opens an *economy of violence* where justice becomes a matter of *offsetting* violence, *hopefully* with a *lesser* violence but *factually* with an ever-increasing violence. At the end, at its most brutal moment, law-preserving violence ends up turning law on itself, namely, on the same institutions that were created to protect it. Jean-Luc Marion dubs this economy of violence as a certain ‘logic of evil’, and demonstrates its dangers:

The more a political power perverts its actions in an infinite vengeance, the more it has to end up exerting violence upon itself: the tyrant distrusts himself; State Police is surveyed by other Police corps; the party is regularly depurated...¹⁹

Within the legal order the relations between individuals will resemble this logic where suffering is exchanged for more, but ‘legal’ suffering, because these relations are no longer regulated by the “culture of the heart” [*Kultur des Herzens*]. (CV 245) As Benjamin

¹⁹ Jean-Luc Marion, *Prolegómenos a la caridad* (Madrid: Caparrós Editores, 1993), 26.

describes it, the “legal system tries to erect, in all areas where individual ends could be usefully pursued by violence, legal ends that can be realized only by legal power.” (CV 238) The individual is not to take law in his own hands; no conflict should be susceptible of being solved without the direct intervention of law, lest its authority will be undermined. Law has to present itself as *indispensable* for any kind of conflict to be solved. The consequence of this infiltration of law throughout the whole of human life is paradoxical: the more inescapable the rule of law is, the less *responsible* the individual becomes. Legal and judicial institutions act as avengers in the name of the individual. Even the possibility of forgiveness is monopolized by the state under the ‘right of mercy’. Hence the responsibility of the person toward the others is now delegated on the authority and justness of the law. The legal institutions, the very agents of (legal) vengeance exonerate me from my essential responsibility towards the others, breaking the moral proximity that makes every ethics possible.²⁰ Thus I am no longer obliged to an other that by his/her very presence would demand me to be worthy of the occasion (of every occasion), because law, by seeking to regulate affairs between individuals, makes this other *anonymous, virtual*: his otherness is equaled to that of every possible other. The Other becomes faceless, making it all too easy for me to ignore his demands of justice, and even to exert on him violence just for the sake of legality. The logic of evil, then, becomes not a means but an end in itself:²¹ state violence for the sake of the state’s survival. Hence, the ever-present possibility of the worst takes the form of my unconditional responsibility towards the other being delegated on the ideological and totalitarian institutions of a law gone astray in the (its) logic of self-preserving vengeance. The undecidability of the origin of law, and its consequent meddling all across human affairs makes it possible that the worst could be exerted in the name of

²⁰ Cf. Marion, *Prolegómenos*, 32 ff. Following Levinas, it can be said that this moral proximity is what makes possible for the other to take me as a hostage, henceforth making ethics possible at all: *Responsabilité obsédante, responsabilité qui est une obsession, car autrui m’assiège, au point qu’il met en question mon pour-moi, mon en-soi, qu’il me fait otage. Et cette in condition d’otage est la condition sans laquelle on ne pourrait jamais dire un simple «Après vous, Monsieur»*. [Obsessive responsibility, responsibility that is an obsession because the other haunts me to the point that it questions my ‘for myself’, my ‘in itself’; the other takes me as a hostage. And this unconditional state of being hostage is the condition without which it could never be said a simple ‘After you, sir.’] Emmanuel Levinas, *Dieu, la Mort et le Temps* (Paris: Éditions Grasset & Fasquelle, 1993), 156.

²¹ Marion, *Prolegómenos*, 31.

law. Even the very notion of crimes against humanity, which seeks to protect the life of the population, can be overlooked by the state if it feels threatened by other states or by its own population.²² From now on, my responsibility towards the Other is taken from me, at the price of my own existence being constantly threatened by the imminent and fatal possibility of being signaled as guilty of an (for me) indeterminate offence. In this picture, the modern state protects my existence while bringing on the terror of state violence – the law infiltrates into and seeks to rule our most private conflicts.

Needless to say that we are describing extreme conditions – useless to remember that this is not fiction.²³ When facing the surd logic of this violent economy one cannot but ask if it could be stopped, if there is a possible way out of it. The question in Benjamin's words is: "Is any nonviolent resolution of conflicts [*gewaltlose Beilegung von Konflikten*] possible?" (CV 244) Is the logic of evil susceptible of being interrupted? Is it possible to put a halt to it? For both, Benjamin and Marion, the answer will be affirmative, although in (somewhat) different ways. According to the latter, "the only way of not perpetuating evil would consist in not trying, at whatever the cost, to get rid of it; therefore not risking the possibility of involving another person in such an action. To keep suffering for oneself ... to cope with it."²⁴ To accept the arbitrariness of legal violence and to abstain from reproducing it – abstaining from participating in the economy of violence. But Marion

²² Michel Foucault describes this same structure as the relation between bio- and thanatopolitics: "[The state] wields its power over living beings as living beings, and its politics, therefore, has to be a biopolitics. Since the population is nothing more than what the state takes care of for its own sake, of course, the state is entitled to slaughter it, if necessary. So the reverse of biopolitics is thanatopolitics." Michel Foucault, "The Political Technology of Individuals," in *Power: Essential Works of Foucault, 1954-1984. Vol. III*, ed. James Faubion (London: The Penguin Press, 1994), 417.

²³ Human history is plentiful of examples of State terror acting in the name of the law in order to defend and preserve the individual's life, rights, integrity... The last century saw a new development in this long history of infamy (as Borges has called it): "What makes of the 20th century an infernal reason is precisely that the violence, the terror, and the annihilation pretend for the very first time to be innocent, or better yet, they pretend to virtuously play a painful moral role." Marion, *Prolegómenos*, 48. This ambiguity is what puzzles Benjamin, and its analysis gives the principal moving force to his argumentative logic in *Zur Kritik der Gewalt*. It is telling that Benjamin affirms that his critique of violence is circumscribed to 'contemporary European conditions' (although one can without a doubt claim that his critique surpasses this narrow historical scope). Since this text was written in the shadow of the new fascists totalitarianisms, and since "the critique of violence is the philosophy of its history" (CV 251), one should not be surprised to find Benjamin speaking about these specific European conditions (militarism, general strike, police violence...); nevertheless, it must be remembered that this philosophy at the end claims for the foundation of a 'new historical epoch', once these conditions are overthrown.

thinks that “the universal and silent fellow man, the defenseless neighbor without reply, evil without any counter-evil, does not belong to this world: *only God will give him to the world.*”²⁵ In other words, within the rational coherence of law’s economy of violence, there is no way out: every violence will inevitably ask for a counter-violence – the symbolic order of legality does not offer any way of escaping it; not even private life offers any more refuge from law’s all-pervading power. The breaking of this logic seems possible (only) as a *promise*. A critique of legal violence and its evil logic asks for, at the last resort, a *leap of faith*, a *leap of discourse*, even a *leap of rationality* – a leap into theology, into the religious. If we desire to escape the suffocating boredom of the violence of law, we have no other choice but to restore the inner *à venir* of law: law as a promise, but not as a promise of justice ‘as such’ (as Derrida seems to propose). For Marion it is the very promise of a *redeemer*: no one else but the Son of God can withhold the otherwise unbreakable logic of evil. Only *He* can overcome vengeance’s tenacity.

If we turn now to Benjamin’s text and try to respond to this same question, the answer seems much less dramatic, at least at first sight. So then, we ask again: ‘Is any nonviolent resolution of conflict possible?’

Without doubt. The relationships among private persons are full of examples of this. Nonviolent agreement is possible wherever the culture of the heart [*die Kultur des Herzens*] allows the use of unalloyed means of agreement. Legal and illegal means of every kind that are all the same violent may be confronted with nonviolent ones as unalloyed means. Courtesy, sympathy, peacebleness, trust [*Herzenshöflichkeit, Neigung, Friedensliebe, Vertrauen*], and whatever else might here be mentioned are their subjective preconditions. (CV 244)

Courtesy, sympathy, peacebleness, trust... precisely all the *subjective preconditions* that are being taken from *private persons*, in order to make of them a public, legal matter. As we described before, *Die Kultur des Herzens* -which has nothing to do with some sort of immanent ‘moral sense’- is becoming more and more contaminated by the decay (*Verfall*) that affects legal institutions unconscious of the latent, haunting presence of violence at their very heart. As Benjamin very well notices, the objective manifestations (*objektive Erscheinung*) of these subjective preconditions,

²⁴ Marion, *Prolegómenos*, 21.

²⁵ *Ibid.*, 26 (my emphasis).

[are] determined by the law ... that says unalloyed means are never those of direct solutions but always those of indirect solutions. They therefore never apply directly to the resolution of conflicts between man and man, but apply only to matters concerning objects [*Sachen*]. The sphere of nonviolent means opens up in the realm of human conflicts relating to goods. For this reason, technique in the broadest sense of the word is their most particular area. (CV 244)

Law's direct solutions are not to be considered as a valid alternative for the resolution of conflicts because these solutions entail an avoidance of the regulation of the rule of law. The possibility of finding direct solutions mean that there is still a space where violence manifests itself in not-yet-sanctioned ways, hence threatening law's monopoly of the use of force. Law can only present as unalloyed means that which has already been justified by the legal order. This means that these ends can only be pursued under the guidance of law, that is, in an indirect manner. The result of this increasing monopoly of force, of this control over the authority for justifying means, and of the regulation of the way in which ends must be pursued, is that the immediacy, the proximity that Levinas finds in the origin of the relations between man and man, has been relegated by the rationality of violence to the realm of 'technique' *in the broadest sense of the word*.

Indeed, here we are not talking about technique as the means to control the 'objective world' in order to make it more productive and profitable; we are just referring to those activities that entail a certain know-how in their realization. Benjamin uses the example of the conference [*Unterredung*] as a "technique of civil agreement" [*Technik ziviler Übereinkunft*]. (CV 244) With this example Benjamin seeks to discover "a sphere of human agreement that is nonviolent to the extent that is wholly inaccessible to violence: the proper sphere of 'understanding', language [*die eigentliche Sphäre der »Verständigung«, die Sprache*]." (CV 245) Some pages further on, Benjamin gives us another example of a 'technique' where it could be expected that nonviolent resolution of conflicts is to be found: *diplomacy*. It appears that diplomacy's methods of conflict resolution are (or at least *used to be*) "beyond all legal systems and therefore beyond violence. [L]ike the intercourse of private persons, that of diplomats has engendered its own forms and virtues, which were not always mere formalities, even though they have become so." (CV 247) The very exercise of diplomacy has produced its own ways of agreement, which in their turn, are 'applied' without any (rational) mediation, without any (rational) calculation.

The importance of these examples goes beyond that of showing hypothetical spheres of human life where nonviolent resolution of conflicts is possible. In both of these spheres -conference and diplomacy- immediate solving of affairs *was* possible, although each time it becomes more difficult to find direct terms of agreement, due to the interference of legality in them. Law thrives on the formalization of these techniques; the know-how that has been produced by their mere practice is now formalized in the form of *codes*. So, diplomacy has decayed into ‘mere formalities’, and in the case of language, of understanding, *lying*, which was until recently not legally sanctioned, has become prohibited under the legal figure of *fraud*. The formalization of these techniques, in principle remote from the scope of law’s applicability, respond to the latter’s need for regulating all conflict between individuals or between institutions or even among nations. The law understands that if something ‘goes wrong’ with the exercise of such techniques, an outburst of unregulated violence can menace the stability of the legal system. This explains the necessity for law to intervene in all sorts of human affairs by presenting its indirect means of solution as a *natural* means of agreement. *Every* possible conflict *must* be resolved under the guidance of law’s all-embracing methods, because they are the *natural* and at the same time *legal* way for exerting the violence inherent to every solution of conflicts.

Divine Violence

Once we have encountered this tendency of positive law to naturalize itself we must reconsider the distinction between mediate and immediate violence (i.e. pure and impure *Gewalt*), because indirect legal methods are *not* pure, despite (and precisely because of) the ideological discourse that supports them. We must now draw the urgent consequences of a hyper critique of violence and its evil logic. For this I would like to cite the following passage from Derrida’s *Force of Law*:

It belongs to the structure of fundamental violence that it calls for the repetition of itself and founds what ought to be conserved, conservable, promised to heritage and tradition, to be shared. A foundation is a promise ... Position is already iterability, a call for self-conserving repetition. Conservation in its turn refounds, so that it can conserve what it claims to found. Thus there can be no rigorous opposition between

positioning and conservation, only what I will call (and Benjamin does not name it) a *différentielle* contamination between the two. (FL 997)

We have already stressed the fact that the essential contamination between lawmaking and law-preserving violence calls for another critical criterion that gives us the chance for a radical critique of violence – we must address violence ‘as such’; namely, outside the boundaries of law, where it could find a manifestation not subjected to the economy of means and ends. Now, returning to an argument discussed before, the *différentielle* contamination of which Derrida speaks, *forces* us to go from a mere evaluative critique to a hyper critique of violence that will allow us to establish a critical standpoint outside positive legal philosophy and natural law. For Benjamin this is an urgent step to take because a critique of violence, far from being the same as a critique of legality, is “the philosophy of its history – the ‘philosophy’ of *this* history because only the idea of its development makes possible a critical, discriminating, and decisive approach to its temporal data.” (CV 251, my emphasis) An analysis of the history of violence has to conclude that the discourse that presents a *de facto* situation as being founded *de jure*, or a traditional privilege as a *natural* superiority, is an ideological one.²⁶ A (meta) critique of violence is urgent because “when the consciousness of the latent presence of violence in a legal institution disappears,” says Benjamin, “the institution falls into decay [*Verfall*].” (CV 244) A (meta) critique of violence must be a philosophy of the history of violence and its institutions. Or in other words, Derrida’s words:

[Benjamin’s] critique presents itself as the only ‘philosophy’ of history ... that makes possible an attitude that is not merely ‘critical’ but, in the more critical and diacritical sense of the word ‘critique’, *krinein*, an attitude that permits us to choose (*krinein*), and so to decide and to cut decisively in history and on the subject of history. It is the only one, Benjamin says, that permits us, in respect to present time, to take a decisive position ... all decidability stands on the side of the divine violence that destroys *le droit*, we could even venture to say deconstructs it. (FL 1031)

But why is precisely ‘divine violence’ the one destined to destroy *le droit*? And in what sense is a critique of violence a ‘philosophy of its history’? Which is the discursive logic involved in these conclusions?

²⁶ Cf. Vincent Descombes, *Modern French Philosophy* (Cambridge: Cambridge University Press, 2001), 136-145.

The answer comes from (the sheer possibility of) the distinction between *mythic* and *divine* violence. The analysis of this distinction we have been delaying for too long now, but it is only at this point that we can grasp its full relevance. We need to find a sort of nonviolent violence, a violence that acts without the intervention of any legal code, a violence that is in intimate and inseparable relation to its effects, but not as an act related to its causes; in one word: violence *not* as a means. Benjamin readily finds this type of violence in ‘everyday experience’:

The nonmediate function of violence at issue here is illustrated by everyday experience. As regards man, he is impelled by anger, for example, to the most visible outbursts of a violence that is not related as a means to a preconceived end. It is not a means but a *manifestation*. Moreover, this violence has thoroughly objective manifestations in which it can be subjected to criticism. These are to be found, most significantly, above all in *myth*. (CV 248, my emphasis)

This allusion to ‘everyday experiences’ has different intentions than those of the analysis of ‘civil techniques of agreement’ already discussed. What is important for Benjamin at this point is the *immediacy* of the *manifestation* of violence that still can be found in sudden outbursts of anger, in which the individual does not have ‘preconceived ends’. It becomes pure and simple anger in open and direct manifestation. According to Benjamin this sudden unexpected *Gewalt* can be objectively manifested in the realm of *myth* – pure violence can be *mythic* violence. In order to understand this idea we have to take into account that “mythic violence in its archetypal form is a mere manifestation [*bloße Manifestation*] of the gods. Not a means to their ends, scarcely a manifestation of their will, but primarily a manifestation of their existence.” (CV 248) So, in principle, there is no need for myth to justify the violence that is proper to it: this violence comes from, testifies to the existence of ‘the gods’, and therefore is not to be contested. It is the gods’ will; it is *fate* what justifies this violence. This is why it can be *immediate*; it does not need any supplement to secure its justness. And as that, as fate-imposed violence, myth can be (deceivably) understood as a ‘mere manifestation of gods’ existence’ – as *fate*. Mythic violence is incontestable violence because it is the voice of destiny.

But despite this apparent immediacy and pureness of mythic violence, the same logic of contamination that previously rendered the distinction between lawmaking and law-preserving violence untenable, also corrupts the fate-imposed character of myth:

If this immediate violence in mythic manifestations proves closely related, indeed identical, to lawmaking violence, it reflects a problematic light on lawmaking violence, insofar as the latter was characterized above ... as merely a mediate violence. At the same time this connection promises to provide further illumination of fate, which in all cases underlies legal violence, and to conclude in broad outline the critique of the latter. For the function of violence in lawmaking is twofold [*zwiefach*], in the sense that lawmaking pursues as its end, with violence as the means, *what* is to be established as law, but at the moment of instatement does not dismiss violence; rather, at this very moment of lawmaking, it specifically establishes as law not an end unalloyed by violence but one necessarily and intimately bound to it, under the title of power [*Macht*]. (CV 248)

It turns out, then, that mythic violence is not that immediate because it *does* need a supplement: that of *power*. Only by the use of *power* can myth pretend to *naturalize* the (legal) order that it has violently founded. And this naturalization asks for an ideological discourse that legitimates the groundlessness of the system and its violent origin. Therefore we can sustain that mythic violence is, at bottom, nothing else but the violence of ideology. The ‘immediacy’ of mythic violence has been revealed by Benjamin’s hyper critique as an equivalent to that ‘immediacy’ of lawmaking violence, namely, a *false* immediacy, one that can only survive on the repression of the ruse that lies at the origin of myth and law: Law needs myth to legitimize its authority; myth needs law to justify its origin. The consequence is that mythic violence is just the *mimicry* of pure violence. This is a serious issue because “by mimicking the (unmediated) immediacy of pure violence in its own mythic show of that immediacy, mythical violence does great violence to pure violence, and also to the potential justice that depends on the latter.”²⁷ The false immediacy of mythic law prevents us from seeing the possibility of genuine unmediated violence opening up the space for justice. Hyper critique of violence enables us to foresee that finally, *only* divine violence can be a nonviolent manifestation of *Gewalt*, because it is the only violence that can exist outside the violent legal system. Justice can only be possible if divine violence is to enter and manifest itself in the world by disrupting the legal system.²⁸

²⁷ Tom McCall, “Momentary Violence,” in *Walter Benjamin: Theoretical Questions*, ed. David S. Ferris (Stanford: Stanford University Press, 1996), 196.

²⁸ In this sense divine violence does not represent for Benjamin “a critical horizon against which human violence can be understood,” as Brian Britt suggests in *Walter Benjamin and the Bible* (New York: The Continuum Publishing Company, 1996), 100. Divine and human violence are so radically distinct that one cannot be compared to the other. And even if they could be compared, the comparison would soon appear as

Mythical violence is the paradigm and the *condition of possibility* of every mediated, impure violence; it is the very origin of the endless ‘law of oscillation’ [*Schwankungsgesetz*] between lawmaking and law-preserving violence that is the very essence of law, and that sends it into a unstoppable process of decay [*Verfall*] (CV 251). This is the enormous paradox of mythical law: by enforcing itself upon the world it makes possible the difference between violence and nonviolence. The question for a nonviolent resolution of conflicts can only be posited in virtue of the violent nature of law. But then the possibility of a nonviolent kind of violence can only be found *outside* law. Law is the condition of possibility for a possible difference between violence and nonviolence to be thought of at all, but at the same time it is the condition of possibility for the impossibility of nonviolence to manifest itself inside law. Therefore, if, as we have already said, there is no such thing as ‘natural violence’, and mythical violence has proved to be just another form of instrumental violence where nonviolent violence is unthinkable, all we have left then is the essential structure of justice *as a promise* (*à venir*) that remains intact, notwithstanding the ideological discourses of mythical law – the promise of divine justice, the promise of a redeemer that will cut into the relentless logic of evil and vengeance exerted by mythical violence against anyone who dares to contest the legal order. Justice must remain as a promise as long as the conditions proper of mythical law are not changed radically, and this change can only be exerted by divine violence in the figure of the Redeemer.

Benjamin presents the essential opposition between mythic and divine violence in the following manner:

Just as in all spheres God opposes myth, mythic violence is confronted by the divine. And the latter constitutes its antithesis in all respects. If mythic violence is lawmaking, divine violence is law-destroying; if the former sets boundaries, the latter boundlessly destroys them; if mythic violence brings at once guilt and retribution, divine power only expiates [*entsühnend*]; if the former threatens, the latter strikes; if the former is bloody, the latter is lethal without spilling blood ... Mythic violence is bloody power [*Blutgewalt*] over mere life for its own sake; divine violence is pure power over all life for the sake of the living. The first demands sacrifice; the second accepts it (CV 249, 50).

useless, because against divine violence, all human violence will always appear as a ‘bastardization’ (CV 252) of it. Rather than a ‘critical horizon’, divine violence is important for Benjamin as actual *manifestation*.

As tempting as these words may be for ‘messianic’ or ‘mystical’ readings, we think that it is not inevitable to interpret them in such ways; at least not in their ‘common’ meanings. Here we would like to stick to the idea of the mystical held by Derrida, according to which the mystical takes place when “the discourse comes up against its limit: in itself, in its performative power itself.” (FL 943) We have said enough about the experience of coming against its own limit as it is experienced by law and its mythical discourse; now it is time to examine the possibility of describing that place where justice would be possible, even if it is to be located *outside* or even *beyond* the limits of instrumental power as it is exerted by law. If the mystical happens there where discourses come up against their own limits, we *must* at any rate try to surpass these limits and outline the place where divine violence and justice could be thought. This requires that we understand that, even though justice has the structure of a promise, of that which is yet to come, we must take on the responsibility of creating the conditions for this promise to be fulfilled here and now. These conditions demand, first of all, a halting of the logic of evil, a stepping outside the ‘bad infinity’ of endless vengeance. We must ponder on the possibility of an “annihilation without relapse into the annihilated, an annihilation without remainder, without the annihilated that can haunt it”²⁹ if the promise of justice is to be fulfilled. We must be able to cope with the suffering and stop its economy of endless circulation. Divine violence must be regarded *not* as a means:

How would it be, therefore if all the violence imposed by fate, using justified means, were of itself in irreconcilable conflict with just ends, and if at the same time a different kind of violence arose that certainly could be either the justified or the unjustified means to those ends but was not related to them as means at all but in some different way? (CV 247)

Of course, what Benjamin presents as a rhetorical hypothesis, is in fact the idea that has been leading his thought from the beginning. For the notion of ‘divine violence’ enables him to give an affirmative answer to this question. Here is exactly where the most difficult part of Benjamin’s critique of violence lies, because here (rational) thought is always walking along the edge of the abyss of the ineffable, of the unthinkable; thought finds itself

²⁹ Alexander García, “The Violence of Destruction,” in *Walter Benjamin: Theoretical Questions*, ed. David S. Ferris (Stanford: Stanford University Press, 1996), 170.

here struggling to speak about that which is in principle impossible to think of: violence that is not violent because it annihilates without leaving victims behind – justice outside law.

Which then is that other relation that violence can have with justified ends? How does a completely pure violence reveal itself? We believe that the answer is to be found in the last line of *Towards a Critique of Violence*: “Divine violence, which is the sign [*Insignum*] and seal [*Siegel*] but never the means of sacred dispatch, may be called sovereign [*waltende*] violence.” (CV 252) As *sign* and *seal* of sacred dispatch, we are told, is the only way in which we can apprehend divine violence. As Derrida defines it, the seal “figures the figuration of the unfigurable itself.”³⁰ That is, a seal stands for something that is no longer there (or that maybe was never there). The imprinting of a seal is the trace of the actual means by which it was imprinted. The figure of the seal stands for the figure of something that we cannot directly observe anymore. That is why only through the *seal* of divine violence can we speak about it, namely, through the *secret manifestations* of God’s dispatch. These manifestations *seal* God’s promise of justice. According to Benjamin, these secret manifestations are defined

not by miracles directly performed by God but by the expiating moment in them that strikes without bloodshed [*durch jene Momente des unblutigen, schlagenden, entsühnenden Vollzuges*], and, finally, by the absence of all lawmaking. (CV 250)

Immediately after these words Benjamin adds: “To this extent it is justifiable to call this violence, too, annihilating [*vernichtend*]; but it is so only relatively, with regards to goods, right, life, and suchlike, never absolutely, with regard to the soul of the living.” (CV 250)

These are words to be read carefully because in them lies the response to all those who might consider divine violence to confer on men lethal power against one another. At a first reading, statements such as ‘divine violence is law-destroying’ or ‘divine violence boundlessly destroys every boundary’ will seem to open the door for the worst (*le pire*) to enter the world by annihilating the ‘protecting’ order of legality, thus leading to complete chaos. Apparently what Benjamin seems to be claiming is a sort of ‘formless freedom’

³⁰ Derrida, *How to Avoid Speaking*, 50.

[*gestaltlose 'Freiheit'*] of overtly anarchistic features.³¹ But this is clearly not the case because when every legality is destroyed, and the possibility of the worst (*le pire*), of 'taking the law in my own hands' seems to be all that is left, "the question 'May I kill?' meets its irreducible answer in the commandment 'Thou shall not kill'." (CV 250) After the annihilation of *le droit* is accomplished by the manifestation of divine violence, there still stands the figure of the *commandment* to act as a guide for human actions. We must not forget that while "mythic violence is bloody power over mere life for its own sake; divine violence is pure power over all life for the sake of the living. The first demands sacrifice; the second accepts it." (CV 249) Divine violence annihilates so that the sacred existence of the living is ensured; so that the soul of the living remains unharmed by any sort of mythical violence exerted in the name of law – divine violence enforces itself on all life so that human life could be preserved. Since "blood is the symbol of mere life [*Blut ist das Symbol des bloßen Lebens*]" (CV 250), and commandments prevent blood from being spilled just for the sake of the living, divine violence can accept the sacrifice of mere life. Because that is what is important for divine violence: preserving and defending the *soul* of the living; not just *mere* life, but *human* life – not the mere life of human kind but a human kind of life.

What makes for the worth of man, of his *Dasein* and his life, is that he contains the potential, the possibility of justice, the yet-to-come [*avenir*] of justice, the yet-to-come of his being-just, of his having-to-be-just. What is sacred in his life is not his life but the justice of his life. (FL 1029)

³¹ Nothing can be farther from Benjamin's thought than the "declamations of activists and pacifists" because their harangues "coincide with the critic of all legal violence – that is, with the critique of legal or executive power – and cannot be performed by any lesser program." A radical critique of violence is far less easy than this, "unless one is prepared to proclaim a quite childish anarchism" that refuses to acknowledge "any constraint towards persons by declaring, 'What pleases is permitted.'" Pure anarchism "excludes reflection on the moral and historical spheres, and thereby on any meaning of action, and beyond this on any meaning in reality itself, which cannot be constituted if 'action' is removed from its sphere." (CV 241) Action must take place in a meaningful context, and it's impossible to establish this context where absolutely no stable norms are to be found. The seemingly radical critic of legal violence done by anarchism is incapable of proposing an order beyond that one of legality, because every norm or principle of action is seen as a threat and a coercion of the individual's 'freedom.' Benjamin, on the other hand, is looking for a (theological) normativity that would rise after the fall of the legal system: "all attacks that are made merely in the name of a formless 'freedom' without being able to specify this higher order of freedom remain impotent." (CV 242)

So, blood does all the difference because blood *could* be spilled in the name of human life – mere life is not sacred (see FL 1027s.) The ‘soul of the living’ is more than its mere existence.

It turns out then that we did not *need* the concept of ‘crimes against humanity’. Ever since we were given the gift of the commandments we have always already known that human blood should not be spilled. Something must be rotten in law if it needs the supplement of the judicial concept of crimes against humanity. Far from making us feel relieved and secure, the notion of crimes against humanity should make us suspicious. This judicial concept cannot escape the ‘ambiguous moral light’ that irradiates from the law that sanctioned it. It surely does look like another example of over-legalization, namely, of the intrusion of law in our ‘culture of the heart’, which has always urged us to respect human life. Maybe law is not really protecting us from an extreme violence that would come from individuals or communities who have stepped *outside* of legality. Rather, law is protecting itself from a violence that resembles too much that first violence which gave birth to it. My feeling is that the true difference between crimes against humanity and this original violence is that the latter was (and still is) *victorious*. If this were true, sanctioning crimes against humanity would be just a new device used by the State to organize amnesia in order to hide the violence of its foundation. This new judicial concept may just be part of “the celebration and sublimation of the grand beginnings.” (OF 57) Perhaps the modern state, when sanctioning crimes against humanity is acting out of a certain ‘bad conscience’, from a certain awareness of its own violent past, driven by a guilt that may not find forgiveness. Maybe we have never *needed* the idea of crimes against humanity to remind us that “in the path of righteousness is life; and in the pathway thereof there is no death.” (Proverbs 12:28)

Outside Law: The Seal of a Promise – Exodus 31-34

My son, do not forget my teaching, but let your heart keep my commandments; for length of days and years of life and abundant welfare will they give you. Let not loyalty and faithfulness forsake you; bind them about your neck, write them on the tablet of your heart. So you will find favor and good repute in the sight of God and man. Trust in the Lord with all your heart, and do not rely on your own insight. In all your ways acknowledge him, and he will make straight your paths.

PROVERBS 3:1-6

Blood makes all the difference. But not because any violence which abstains from spilling blood is to be considered pure; but because blood *could* be spilled if the individual was capable of embracing the full responsibility of his deed, namely, of acting in opposition to the commandment. Blood makes all the difference because a commandment is *not* a law, *nor* a rule, *nor* a criterion of judgment; a commandment exists “as a guideline [*Richtschnur*] for the actions of persons or communities who have to wrestle with it in solitude and, in exceptional cases, to take on themselves the responsibility of ignoring it.”³² Furthermore, “no judgment of the deed can be derived from the commandment. And so neither the divine judgment nor the grounds for this judgment can be known in advance.” (CV 250) The relation of the deed with the commandment is incommensurable; it is not one of mere application and obedience, for the terrifying possibility of ignoring it will always haunt us. In radical contrast with law, commandments cannot end up creating a *technique of morals* because they aim to do justice to every *particular* case. What a commandment brings to light is that generalization is incompatible with and contradicts the nature of justice because, “ends that in one situation are just, universally acceptable, and valid are so in no other situation, no matter how similar the situations may be in other respects.” (CV 247) This means that it is no longer possible to base or deduce a moral decision on previously taken decisions. Every time we are to struggle in solitude, and as if it was the very first time, with the possibility of the worst – justice is *incalculable*.³³

³² The word ‘proposition’ is in close relation to the concept of ‘commandment’: “Moses uses the word ‘*d’varim*’ to describe the ‘ten *d’varim*,’ usually translated as ‘ten commandments.’ Moses does not call them ‘commandments,’ – ‘*mistvot*’ – a word he reserves for other matters. In order to reveal the Hebrew text as well as possible in English, I translate ‘*d’varim*’ as ‘propositions.’” Arthur Jacobson, “The Idolatry of Rules: Writing Law According to Moses, With Reference to Other Jurisprudences,” *Cardozo Law Review* 11 (1990): 1079-1132, 1079. Although the term ‘proposition’ would perfectly suit my argumentation, I prefer to maintain the traditional translation of ‘*d’varim*’ by ‘commandment’ because it resonates with a theological echo that I would like to preserve. Hence, when the text of Jacobson is from here on quoted, it should be understood that wherever the word ‘commandment’ appears, it is replacing the actual term used in the original, namely, ‘proposition.’

³³ It could be asked with all due reason if this structure is not the same as the one of self-reflexive moral principles, or even that one of the categorical imperative (“act in such a way that at all times you use humanity both in your person and in the person of all others as an end, and never merely as a means,” according to Benjamin’s paraphrase). There are various reasons to reject this similarity, among others the following:

1. As Benjamin explains, positive law, “*if conscious of its roots*, will certainly claim to acknowledge and promote the interest of mankind in the person of each individual.” (CV 241, my emphasis) In other words,

For Derrida “justice would be the experience that we are not able to experience. Justice is an experience of the impossible ... justice is incalculable, it requires us to calculate with the incalculable.” (FL 947) Which means that “for a decision to be just and responsible, it must, in its proper moment if there is one, be both regulated and without regulation” (FL 961) This is precisely why law will forever be struggling with a *différentielle* contamination that implies that “one cannot speak *directly* about justice, thematize or objectivize justice, say ‘this is just’ and even less ‘I am just’, without immediately betraying justice, if not law (*droit*).” (FL 935) But for Derrida the crucial point is that this contamination, this undecidability is lived with much more intensity if we are to consider the case of divine violence:

positive law will claim that the legal system that it has founded, has as its most eminent *end* to preserve the life and welfare of the individual. This self-presentation of positive law we have sufficiently criticized. Commandments, on the other hand, make explicit in their very formulation that the person should be respected for its own sake, without the need for any kind of self-justification: “Thou shall not kill.”

2. The categorical imperative is *autonomous*; commandments accept and stress their *heteronomy*, in fact, their mandatory power comes precisely from this said heteronomy: they are seals of divine justice. They are not to be obeyed because Reason has encountered them in an act of self-reflection, thus appearing as the moral (reasonable) way to act, but they must be obeyed out of an act of faith in the divine source from where they emanate.

3. One might doubt whether “it is permissible to use, or allow to be used, oneself or another in any respect as a means. Very good grounds for such a doubt could be adduced.” (CV 252) We think that this enigmatic footnote in Benjamin’s text (in fact he does not adduce any of these ‘good grounds’) can be interpreted as the possibility of using oneself or another person as a means, if that specific action was aiming to bring the kingdom of God down to earth. This violence exerted on us or on another person will be divine violence if it had as its end the preservation of the living by enforcing His coming. We realize that using the terms ‘means’ and ‘ends’ in this context is rather problematic since we have stated that divine violence is violence not as a means. Nevertheless, that commandments acknowledge the possibility of acting against them *seems* to recognize the possibility of using a person as a means, especially if the intention, the end would be that of securing human existence over mere life. In other words, commandments, in contradistinction with positive law and the categorical imperative, confer on us the possibility of *sacrifice* and *martyrdom*.

4. Commandments, in contrast with the categorical imperative are *as a matter of fact*, written in the grammatical form of the *imperative*. This exhortation juts out the absolute present in which commandments are to be obeyed: “The imperative of the commandment makes no provision for the future; it can only conceive the immediacy of obedience. If it were to think of a future or an Ever, it would be, not a commandment nor order, but law.” Franz Rosenzweig, *The Star of Redemption* (London: Routledge & Kegan Paul, 1971), 177. Commandments are concerned with the eternal instant of obedience, hence, in applying a commandment the individual cannot be sure if his deed can be considered at *all times* and in *every circumstance* as a universal principle of action. The figure of commandments lives in this uncertainty; its dignity comes from it. Its time is an inordinate present – a present that takes responsibility for the redemption of the past and the enforcement of the arrival of the Kingdom of God. Despite the evident preliminary aspect of these remarks, we think that they set the direction in which a more elaborated distinction between self-reflexive moral principles and commandments would follow.

This results from the fact that divine violence, which is the most just, the most historic, the most revolutionary, the most decidable or the most deciding does not lend itself to any human determination, to any knowledge or decidable 'certainty' on our part. It is never known in itself, 'as such', but only in its 'effects' and its effects are 'incomparable,' they do not lend themselves to any conceptual generalization. There is no certainty (*Gewißheit*) or determinant knowledge except in the realm of mythic violence, that is, *droit*, that is, of the historical decidable. (FL 1033)

I think that this essential aporia of violence comes from the fact that the certainty we can hope for in the sphere of divine violence is of a radically distinct nature of the certainty of law and the 'historical decidable'. What perturbs Derrida is the fact that divine violence does not seem to yield any way of assessing the justness of its manifestations because, "its effects are 'incomparable,' they do not lend themselves to any conceptual generalization." (FL 1033) Divine violence can bring justice as well as the worst, and it is impossible to decide whether its manifestations are just or not.³⁴ Even more, it is not even possible for man to decide when divine, pure, nonmediate violence has taken place: "Less possible and also less urgent for humankind, however, is to decide when unalloyed violence has been realized in particular cases ... because the expiatory power of violence is invisible to men." (CV 252) Nevertheless, I would like to propose in this respect that commandments, understood as the figure or the seal of divine justice, make the divine will visible to us and open the possibility for the restoration of the essential responsibility of every man towards the others and therefore, the possibility of saying again 'this is just' with (religious) certainty. This certainty is not guaranteed by a recognized system of laws but by a powerful faith in that one could be able to say 'I am just' *if this very moment were to be the last*. I would like to call it a *certainty of the heart*: "Trust in the Lord with all your heart; and do not rely on your own insight." (Proverbs 3:5) Even though Derrida declares that "the *decision* (*Entscheidung*) on this subject ... is a *decision not accessible to man*" (FL 1033), I think that a certain interpretation of God's gift of the commandments to Moses can shed some light on the possibility of a justice that finds itself abandoned, deserted, and absolutely heterogeneous to law. For commandments remind us of the *à venir* of justice, of

³⁴ Derrida even suggests that the ambiguity of Benjamin's text would allow for a reading in which the final solution could be interpreted as an act of divine violence. See the 'Post-scriptum' to *Force of Law*, 1040-1045.

the always already past promise of justice.³⁵ Because this promise is always already past, commandments ask from us to live every moment as the last one -namely, as eternal-, and in consequence to be able to say ‘I am just’ before any law, and especially, before the redeemer’s gaze.

‘This is just’; ‘I am just’: If this were to be the last day, we would like to pronounce these words without hesitation. After divine violence has struck with all its force, men should still (or must it be said *finally*?) be able to utter such words under His gaze. For not anarchy, but divine justice is the result of the ‘breaking of the cycle maintained by mythic forms of law’ and the ‘abolition of state power.’ And if after “the suspension of law with all the forces on which it depends as they depend on it,” (CV 251) only God’s commandments remain there to serve as a guideline for the actions of persons and communities, then there must be some kind of knowledge of these commandments on behalf of the individual, so that he or she can say with faithful certainty, ‘I am just.’ And so, commandments must be *written* for the people to read and learn. God’s law is *not* natural law for it needs to be written. More precisely: it must be *rewritten* – twice.

Moses, while writing the “Five Books,” (also known as the “Pentateuch” or more tellingly, the “Books of Law” – the Torah) addresses God in at least two different ways:

[Moses] calls God ‘Elohim’ – ‘Ruler’ – when he wishes to refer to God as an author – the all-knowing, powerful creator of the world’s narrative ... He calls God ‘Yahweh,’ when he wishes to refer to Him as a character interacting with other characters in the world created, and therefore ruled, by Elohim ... Yahweh is God’s character defining itself through past interactions and committed to change, through further interactions. Yahweh is ‘friend.’ Where Elohim rules, Yahweh interacts. Man approaches Elohim as a child approaches a parent, a creation approaches a creator, a subject approaches a ruler. He approaches Yahweh as a collaborator, a friend.³⁶

Therefore, in strict sense, Moses (as any other mortal) does not interact with Elohim; he must address himself to Yahweh, which means that it is only through Yahweh that Moses can acquire any knowledge of Elohim’s law, namely, the law of creation. Elohim’s law is

³⁵ Cf. Derrida: “The law is transcendent and theological, and so always to come, always promised, because it is immanent, finite and so already past.” (FL 993)

³⁶ Arthur Jacobson. *The Idolatry of Rules*, 1082. This work is hereafter cited parenthetically in the text as IR.

ineffable, is beyond human cognition. Elohim knows this; that is why he addresses Moses as Yahweh, as collaborator. As a friend God/Yahweh gives Moses “the two tables of testimony, tables of stone, written with the finger of God.” (Exodus 31:18) These tables “were the work of God, and the writing was the writing of God, graven upon the tables.” (Exodus 32:16) After Moses breaks the tablets (Exodus 32:19), God/Yahweh will help him to rewrite them (Exodus 34:27-28). The first writing of God’s law can be somehow easily explained due to the inaccessibility for humans of Elohim’s will. If God/Elohim desires his law to be obeyed, he has to make it accessible for man; he has to turn himself from being the all-powerful master of creation, into man’s friend. And so, He makes a gift to Moses in the form of two tablets where His law is engraved. But as we know, after Moses descends from Mount Sinai and finds his people worshipping idols, he destroys these tablets in front of them. He violently *erases* God’s law. Then Yahweh asks Moses to rewrite the commandments, and helps him to do it. This second writing is more difficult to explain. It does not seem to be necessary for God to order Moses to write the commandments for a second time. But in fact it is. Without the erasure of the first writing (actually God’s first writing of His law is the *second*. The first one was made by God during the seven days of creation – this is Elohim’s writing) and the posterior rewriting, God’s law will be in serious danger of falling into decay by turning itself into an *idol*, in peril of inaugurating an ideology like the one we have described as pertaining to positive law and myth.

Let us remember that we are mobilizing these ideas on the essence of commandments in order to foresee a space where the utterance ‘I am just’ would be possible and meaningful. Since we have subscribed Derrida’s words when he affirms that “for a decision to be just and responsible, it must, in its proper moment if there is one, be both regulated and without regulation” (FL 961), what we are looking for then is the possibility of making justice *calculable*, but at the same time impossible to *generalize*. In short, the notion of commandment must make it possible for us to keep talking about divine justice without betraying it. And this is precisely what a *rule* within the realm of law cannot offer. Rules, by conforming a legal order that seeks relentlessly to legitimize itself by exerting law-preserving violence without limits, offer themselves to man as products of

fate, thereby turning themselves into the most servile and abnegated servants of ideology, of myth. Rules, which law presents as the justified ends to be preserved, are nothing more than the actual means that law uses to maintain the monopoly of *Gewalt* for its own sake. Rules are there not to be contested, but to be blindly obeyed – worshipped as idols. This is why it is necessary that Elohim’s law must be written, erased and written once again:

To write law only once is to get only Elohim’s commandments. These are unconscious [i.e. uncognizable], hence incomplete. The people on their own cannot specify them or take responsibility for administering them as rules. Natural law is law written without delay, only once, by Elohim ... To write law twice is to get the rules Moses wrote. It is to tolerate some delay. The people will administer rules as idols, and obey them out of fear of sanctions. Ordinary people will not use the rules as premises for action. Ordinary rulers will not administer them as further commandments. Positive law is law written only twice, by humans such as Moses ... Moses’ law needs three writings: Elohim’s commandments defining perfection in action; Moses’ further commandments assisting humans to achieve the perfection of Elohim’s commandments; and Yahweh’s rewriting of Elohim’s commandments providing standards propelling the further commandments even further towards perfection ... Law requires both movements: posing rules and putting them in play. (IR 1100)

Summarizing: Elohim’s first writing is not enough because it is beyond human cognition (although this first writing is the condition of possibility of human knowledge, and of every other writing); God’s second writing is also not enough because it is a gift given *directly* by Him, thereby running the risk of presenting His law as object of worship. This is the writing of positive law, of myth, of ideology. Be it God or be it Fate the source of these writings, rules are there as the incontrovertible testimony of this all-embracing power. The result is that rules become idols because the individual sees in them the secure, pre-given way for acting in a morally responsible way – his essential responsibility is delegated on the ‘justness’ or ‘sacredness’ of rules: if a deed does not contradict any of the rules then it *must* be just. Individual deliberation is replaced by the technical calculability and applicability of legal codes. Perhaps the individual can still say ‘I am just’, but then he will inevitably have to add, ‘because I have acted according to the rules.’ When rules turn themselves into idols, the justness of a deed becomes calculable only inside the boundaries of legality.

Moses’ erasing of the second writing, and the ulterior rewriting (with the help of Yahweh) prevents this idolatry of rules. *It restores the possibility for individuals to rule*

themselves in observance to a heterogeneous call for responsibility. This is the crucial distinction between rules and commandments:

Do legal rules rule or do characters? Legal rules rule by commanding or prohibiting classes of specific acts, and by punishing disobedience with sanctions. Characters rule by ruling themselves according to ten commandments. Commandments rule by assent, by the aspiration of characters, not by commanding or prohibiting classes of specific acts using sanctions. To rule by commandments is to engage in ceaseless conversation with Yahweh. (IR 1083)

I believe this is in tune with Benjamin's thought, specifically when he writes about commandments, that, "just as it may not be fear of punishment that enforces obedience, the injunction becomes inapplicable, incommensurable, once the deed is accomplished." (CV 250) Rules go hand in hand with legally recognized sanctions to persuade the individual to follow them; commandments leave the individual in the uncertainty of the incalculable, so that he will bear the complete responsibility for his behavior. For neither the divine judgment nor the grounds for this judgment can be known in advance. Divine justice acts immediately, without justification on any legality, and we can know this because commandments are *mediated* manifestations of divine justice; they are the seal of God's covenant with humanity. The mediation of commandments makes the immediacy of divine violence comprehensible. According to Derrida, "for a decision to be just and responsible, it must, in its proper moment if there is one, be both regulated and without regulation." (FL 961) The new context that we are proposing permits us to interpret these words in a different manner. Assuming that commandments are not applicable *before* the deed has actually taken place, an individual that struggles with the infinite particularity of a given situation with a commandment as his guide for action, is deciding at the same time with and without regulation, in a seemingly eternal instant. He cannot simply apply the commandment as it has been done before in more or less similar situations: as we know by now, to pretend to generalize a certain application of law is to contradict the very nature of justice (cf. CV 247). He must then engage in ceaseless conversation with Yahweh; he must recur to God, his friend *par excellence*, to help him decide and act with justness.³⁷ He must

³⁷ It is worth noticing that Jacobson has in his mind the next equation: "Today, following Hegel, we would characterize this ceaseless conversation as 'self-consciousness.' Though the parallels are by no means exact, perhaps the best translation of 'Yahweh' is 'Self-consciousness' (*Selbstbewusstsein*), and 'Elohim,'

then act with *faithful certainty* in the justness of his actions since his decision springs from his intimate relation to Yahweh: “it is never reason that decides on the justification of means and the justness of ends: fate-imposed violence decides on the former, and God on the latter.” (CV 247)



Marc Chagall. Moïse recevant le tables de la loi, 1952. Oil on canvas.

The ceaseless conversation between man and God/Yahweh is possible because the commandments that we know are not God/Elohim's law; rather, they are Moses rewriting after he has erased His first writing, which means that their authority remains unharmed,

'Consciousness' (*Bewusstsein*).” (IR 1083). One wonders if this equation would still be tenable under the light of discourses such as that of psychoanalysis, where the role of consciousness is seriously put into

but their applicability is signaled by some uncertainty – an uncertainty that opens the space for human deliberation and responsibility. Moses’ rewriting prevents God’s law from being regarded by human beings as imposed and final. Instead, this rewriting presents God’s commandments as *propositions* that must be read and interpreted every single time a situation calls for a moral decision. The individual, with his own reading of the commandments, supplements them with his own interpretation. The individual must feel the responsibility that a commandment confers the decision of those who act according to them, because by reading it, he is at the same time rewriting God’s law. He becomes a collaborator with God in the never-ending task of creation. This collaboration with Yahweh through commandments marks the crucial difference between these and rules; between morality and idolatry.³⁸ In virtue of this collaboration, the necessity of seeking the reason for the commandment must be looked for “no longer in what the deed does to the victim, but in what it does to God and the doer.” (CV 251) By this Benjamin does not intend to say that the suffering of the victim is no longer important, but rather, that violating a commandment makes a victim *both* the doer and God. In attempting against the order of creation, the wrongdoer harms not only his victim(s), but also himself, and God’s covenant with humanity.

Commandments, then, *befriend God with man* in the task of creation, as well as in suffering. This collaboration lends an infinite responsibility to man: his actions are no more mere deeds inside certain legality; by writing the commandments ‘upon the table of his heart, man’s behaviour becomes a *humble* part of a creation that is ongoing. His decision takes place in the uncertain place of the undecidability that is restored with the seal of divine justice that a commandment is. This undecidability is dangerous because it can allow the worst to come into the world. And, paradoxically, it also opens the possibility for human decisions to be *free* and *moral* decisions. For to apply a commandment is not a

question, especially when it comes to moral decisions.

³⁸ Cf. Jacobson: “An idol is a completed creation. Creation is complete, when Elohim rules. When Yahweh collaborates with characters, creation is ongoing. To approach God only as Elohim is to treat creation as finished. It is to consider things as products, not as constituents of further creation. It is to treat things as idols. Everything that will be has been given. It is, because it has been. Yahweh asserts that what will be, is not, because it has not been. Nothing is given. It is to treat God only as Elohim. It is to approach Him as a subject, rather than as a collaborator.” (IR 1083)

matter of legal certainty; it is a matter of *faith*. In reading (rewriting) the commandments, the individual must erase all previous applications of divine law and act respecting the irreducible singularity of every case: To erase is to rescue writing from idolatry, and in doing so, to rescue divine law from decay. Only law that is salvaged from decay confers man the possibility of truthfully saying ‘I am just’, and to make him desire the eternal promise of justice to be fulfilled in this very instant of moral certainty. We must take on ourselves the responsibility of making every single moment an eternally worthy moment for the future coming of the redeemer to occur, so that it could be hastened, even demanded. The promise of justice is also God’s gift unto us of “a *weak Messianic power*” [*eine schwache messianische Kraft*]³⁹ to hasten the fulfillment of this promise. This future, eternal coming of divine justice must be anticipated, hastened, respected and enforced, “for the future is first and foremost a matter of anticipating, that is, the end must be expected at every moment. Only thus does the future become the time of eternity. *Every moment can be the last.*”⁴⁰

Digressions. (Law & Power in Colombia)

(1) *I will risk the next proposition: democracy can and must incarnate the promise of justice. And where there is democracy, there is respect for the rule of law. A democratic state is only possible if the law enjoys certain authority, albeit an authority that springs from a legitimate power. In other words, I do not think we can reject the rule of law in a way so radical as Benjamin’s. I believe that Benjamin’s evaluation of law is so somber and aporetic because he is captured by the ambivalence of the term Gewalt. Assuredly, this is partially explained by the fact that Benjamin did not live to see democracy, as we know it today. However, I think that a rigorous critique of Gewalt should draw a distinction between power and violence. Granted, Benjamin does seem to point toward this distinction when he speaks of ‘governing [schaltende] violence’ and ‘governed [verwaltete] violence’, but he does so only to conclude that both must be rejected [Verwerflich]. (CV 251) This*

³⁹ Walter Benjamin, “Theses on the Philosophy of History,” in *Illuminations*, ed. Hannah Arendt (London: Pimlico, 1999), 246. I’ll return to this idea.

⁴⁰ Rosenzweig, *The Star of Redemption*, 226 (my emphasis).

rejection is equal to rejecting the state as it existed in, for Benjamin, 'contemporary European conditions' (CV 238), namely, the totalitarian-fascist state that was beginning to rise in European politics. Critique of Violence was written amidst a 'state of emergency' that made the difference between violence and power almost impossible to be conceived. But we, amidst our own sense of emergency, cannot ponder long enough on this difference, because it is here where the possibility of democracy is won or lost. Democracy as the incarnation of the promise of justice can only come where the rule of law is powerful enough to preclude violence as a means for whatever ends. Only there where the violent nature of the law takes on the form of democratic power and authority is it possible to think justice inside the law. Benjamin has taught us the dangers of a powerful state that can all too easily bring the nightmare of totalitarianism to earth, but now I would like to say a thing or two about the dangers that haunt us where the state becomes a menace, not due to its excessive power, but rather to its own weakness. Just as a totalitarian state lives from the ambiguity of its own violent nature, making the distinction between power and violence hard to draw, a weak (although democratic) state can also have the same effect, because it tends to repair its lack of power with the use of violent means.

(2) Democracy in Colombia has not been able to be consolidated because the distinction between power and violence is constantly blurred, most of the time in a calculated fashion. The result is a vicious circle in which a weak state⁴¹ must recur to violent (and not always legal) means to preserve democracy, but at the same time it is weakened by this very same recourse to violence. The same is true of the guerrillas: their incapability to take power leads them to the use of indiscriminate violence, but in doing so they lose all political legitimacy. Finally, the paramilitaries, incapable of defeating the guerrillas, also enter a spiral of violence that turns them into a threat for the stability of the state, which they claim to be defending. The confusion of violence with power has the consequence that the groups in conflict lose in politics what they win in militaristic terms. And the conflict becomes more and more degraded because what they win in militaristic terms is not enough to

⁴¹ All the following reflections presuppose the thesis that Colombia's State suffers from a lack of legitimacy due to its historical weakness. Since a full presentation of this thesis is beyond the scope of this work, I can

*finally defeat the enemy; therefore all overt confrontation is avoided. War is traded for terrorism. Ironically, in Colombia “the humanitarian crisis does not come from military confrontation, but from the absence of it.”*⁴²

(3) On this subject one should listen attentively to Michel Foucault’s words: “what defines a relationship of power is that it is a mode of action that does not act directly and immediately on others. Instead, it acts upon their actions: an action upon an action, on possible or actual future or present actions. A relationship of violence acts upon a body or upon things; it forces, it bends, it breaks, it destroys, or it closes off all possibilities.”⁴³

While Benjamin makes emphasis on the relation between ends/means aspect of the relation between power and violence, Foucault prefers to construct the distinction with regards to the object on which power/violence is exerted. To be schematic, power has the subject’s actions as its object, while violence acts directly on the subject’s body, by inflicting harm on it or by annihilating it. Power, by maintaining the life of the subject, is a political relation through and through, while violence represents the limits of politics: by annihilating the subject it forecloses every kind of relationship. Nevertheless, one should not be too quick to conclude that this distinction is without its own instability. Even if the main condition that defines a relation of power is that “‘the other’ (the one over whom power is exercised) is recognized and maintained to the very end as a subject who acts; and that, faced with a relationship of power, a whole field of responses, reactions, results, and possible inventions may open up”⁴⁴ – even so, Foucault recognizes that the modern state cannot escape totally from the violent character of every enforcing of the law: The state “wields its power over living beings as living beings, and its politics, therefore, has to be a biopolitics. Since the population is nothing more than what the state takes care of for its own sake, of course, the state is entitled to slaughter it, if necessary. So the reverse of biopolitics is

only give a few references: Palacios (1995), chapter 5; Deas (1987), pp. 543-567; Organización de las Naciones Unidas (2003), chapters 1-3.

⁴² Organización de las Naciones Unidas, *El conflicto, callejón con salida: Informe nacional de desarrollo humano para Colombia – 2003* (Bogotá: Programa de Naciones Unidas para el Desarrollo, 2003), 91.

⁴³ Michel Foucault, “The Subject and Power,” in *Power: Essential Works of Foucault, 1954-1984. Vol. III*, ed. James Faubion (London: The Penguin Press, 1994), 340.

⁴⁴ *Ibid.*, 340.

thanatopolitics.”⁴⁵ Here we learn that despite being the preservation of the population the ultimate end of the state, it takes care of the life of the subject only for its own sake, that is, for the sake of the state’s permanence. And sometimes this can mean the annihilation of the population (for example as a way to end a strike or to silence those who know ‘more than they should for their own safety’). In a way, the concept of thanatopolitics represents the limit of Foucault’s philosophy of power. However sharp the limit he draws between power and violence is, it seems that in the end he cannot prevent violence from intruding again into the governmental order. And here we find him too close to Benjamin’s thought. In my mind this is a clear symptom of the difficulty of maintaining a separation between power and violence, but at the same time of the necessity of trying to preserve the distinction. What is at stake here is the possibility of democracy and justice. This is clearly the case of Colombia, where the ‘democratic order’ is being preserved not only by means born from the power of democracy, but also by explicitly violent means that end up undermining the legitimacy of the state.

(4) The point I want to advance here is that, if one is really schematic, one could propose that there are (at least) two different theories of power. A first position claims that violence and power are not only different, but absolute opposites. This view is represented, among others by the work of Hannah Arendt. For example, in *On Violence* she says, “politically speaking, it is insufficient to say that power and violence are not the same. Power and violence are opposites; where the one rules absolutely, the other is absent. Violence appears where power is in jeopardy, but left to its own course it ends in power’s disappearance.”⁴⁶ This account presupposes that power needs to be legitimized in order to be effective and that it is completely impossible to legitimize violence by any means. The second position is the ‘Machiavellian’ one, where violence is considered as an expression of power, thereby making the exercise of power indifferent from its legitimization. I believe that if one is to make sense of Colombia’s conflict, then one must accept both positions, as if conforming an irresolvable tension. (Benjamin’s text has the virtue of achieving this,

⁴⁵ Michel Foucault, “The Political Technology of Individuals,” in *Power: Essential Works of Foucault, 1954-1984*, Vol. III, ed. James Faubion (London: The Penguin Press, 1994), 417.

⁴⁶ Hannah Arendt, *On Violence* (New York: Harcourt, Brace & World, 1970), 56.

although in a rather obscure fashion). Said simply: if a democratically elected state is nevertheless lacking legitimacy due to its history of corruption and nepotism, then it will not find an appropriate terrain to aspire to strengthen its legitimacy in the sphere of politics, and as a consequence its actions can easily turn arbitrary and violent.⁴⁷ A historically weak (although democratic) state as Colombia's is prone to recur to antidemocratic means to preserve democracy – it is a state in a permanent 'state of exception'.

(5) A state that is unable to monopolize the use of violent means opens the space for an overflow of violence all across the social order. Despite the violent character of the law, one must ask if it is really desirable to 'reject' all governing violence. When its population does not see the state as an efficient intermediate agency for the resolution of conflicts, the tendency then is to solve these conflicts by violent and illegal means. The most perverse figure of this kind of private law is paramilitarism. In an aberrant interpretation of the principle of self-defense (in fact, the most important nucleus of a federation of regional groups continues to use the self-defense label: Autodefensas Campesinas de Córdoba y Urabá), paramilitary organizations try to rationalize and justify acts that began as private vengeance.⁴⁸ They claim to be defending themselves from the abuses of the guerrillas, against which the state appears to be impotent. The violent means used by paramilitarism in the name of 'self-defence' are illegal through and through because they ignore the first and principal role of the state in contemporary politics: to preserve the life of the population. By placing itself on the side of the state, paramilitarism has the result of undermining the scarce legitimacy of the former. More importantly: this unregulated violence violates all the rules of just war, especially concerning crimes against humanity. Even if this concept comes from a dubious judicial source, one cannot simply do without it in the case of conflicts so degraded as the Colombian. And this is so because the concept of crimes against humanity simply states that there are means that are completely

⁴⁷ Cf. Luis Eduardo Hoyos, "Violencia," en *La filosofía y la crisis colombiana*, ed. Rubén Sierra Mejía y Alfredo Gómez-Müller (Bogotá: Taurus, 2002), 92-100.

⁴⁸ Cf. Fernando Cubides, "From Private to Public Violence: The Paramilitaries," in *Violence in Colombia 1990-2000: Waging War and Negotiating Peace*, ed. Charles Bergquist, Ricardo Peñaranda, and Gonzalo Sánchez (Wilmington: SR Books, 2001), 127-131.

unacceptable to make war, without regard to the enemy's actions.⁴⁹ And this applies not only to guerrillas or paramilitary groups. The state, by recognizing the Geneva Convention, must be the first to observe the rules of war. So, it may be true that since God's covenant with humankind we have always already known that we must not kill, but a political reminder is never to be discarded. For the sake of the state's legitimacy and a minimum degree of social order, we must aspire to do justice by human means, namely, by democratic means. Therefore we do need the concept of crimes against humanity – in cases as grave as the conflict in Colombia, it could be useful to overlook (maybe to forgive) the dubious nature of the concept, and decidedly enter into the logic of just and humanitarian war. Which does not mean a call for total confrontation, but for a confrontation in which the basic human rights are observed and respected.

(6) If direct confrontation between the parties is mostly avoided, then the question would be why is Colombia so violent? The answer is simply that violence in Colombia is mostly non-political violence. With a rate of violent deaths of 80 for each 100000 inhabitants, political homicides in Colombia are only 6 or 7% of the total. Around 85% of the total consists of homicides due to violent acts not directly related to any kind of political project.⁵⁰ This is another perverse effect of the weakness of the state. Therefore the concept of crimes against humanity is of the utmost importance in putting a halt to this spiral of violence. Especially because, if there is something that we can learn from Colombia's conflict, it is that the distinction between political and non-political violence is too unstable, if not misleading. It is important to remember that in Colombia, "the enemy, the political objective, is not always the obvious one: the state." It is interesting to notice that in Colombia's history more important than the state itself is the political party.⁵¹ We cannot

⁴⁹ Organización de las Naciones Unidas, *El conflicto, callejón con salida*, 82.

⁵⁰ Cf. Daniel Pécaut, "Pasado, presente y futuro de la violencia," en *Las dos Colombias*, ed. Jean-Michel Blanquer y Christian Gros (Bogotá: Editorial Norma, 2002), 19. This article was first published in 1996.

⁵¹ Much has been said about why the conflict in Colombia is *not* a civil war. This is one of the reasons that could sustain this view – the aim of overthrowing the *statu quo* is not understood as a mere defeat of the actual regime, but as an attack against all the statements of the society that somehow are perceived to question the 'revolutionary project' or the exercise of self-defense, whereby the violence is directed not only toward the State's institutions, but also against peasants, indigenous communities, members of NGO's, academics, entrepreneurs, etc. In short, in Colombian conflict the so-called 'civil society' has also become a target of violent actions. Cf. Malcolm Deas, "Violent Exchanges: Reflections on Political Violence in

discuss this problem at length here, but it explains a lot of the state's historical weakness, and of the primacy of private interest (or the party's interest) over the public one. The result is that the enemy may not be the state but the rival party that threatens the political future of one's own. Colombia's conflict most of the time resembles a fight between equals in which the state is unable to intervene. This violence is not always directed towards the gaining of political power, rather towards the achieving of some private interest. Thus the relation between violence and power acquires a more complicated aspect under these considerations. They imply that there could be something like 'non-political power' that, although relying on the terror of violent means, can nonetheless exert power by controlling people's actions. This other power is not political to the extent that it is not exercised with the intention of inflecting any change upon the social order, but only for achieving exclusively private interests. Here the risk that a weak state runs is that of alternative, albeit openly violent sources of power. The weakness of the state is viewed by the illegal actors of the conflict of exercising their own 'legal power', without necessarily defeating it. In this manner, competing sources of power can be found in the same place, contributing then to the dubious character of the state's authority. If an illegal source of power is more effective in solving problems of the population (like providing it with basic infrastructure as roads, water supply, etc.), then the democratically elected government can be regarded as 'dispensable'.

(7) Another paradox in Colombia's conflict: Since the state has always lacked power and strong legitimacy, violence affects the individual directly, but it only perturbs slightly the social and economical functioning of the country.⁵² It is like Colombian society has learned to live without a state, or at least, with one that is not to be trusted, hence not to be defended. This is another reason why there is no overt military confrontation, but more and more only acts of terrorism. There is no sense of the imminence of a final confrontation that would bring the conflict to an end because despite the rampage of violence the country is living, it still 'functions'. It is telling that Colombians, despite their long history of

Colombia," in *The Legitimization of Violence*, ed. David Apter (London: United Nations Research Institute for Social Development, 1997), 358-361.

⁵² Pécaut, *Pasado, presente y futuro de la violencia*, 70.

violence, are not convinced that a drastic solution is the only way to solve the conflict.⁵³ The paradoxical effect of the absence of direct confrontation is that the conflict becomes 'militarized'. It is seen not as a structural threat for the survival of the country, hence a threat that must be confronted by society as a whole, but as a military conflict that only concerns directly the military forces. In the last ten years, the increment of the main illegal actors of the conflict has been 157%. In different terms, there are more or less 32000 armed persons outside legality.⁵⁴ This enormous threat to democracy is being confronted mainly with military (i.e., legally but violent) means, leaving aside the necessary political reforms that the country needs. It goes without saying that understanding the conflict mainly in military terms results in reduced budgets for the areas of public health, education, the arts, scientific research, development of new technologies, etc., affecting directly the entirety of the development of the country. (The economics demands of a prolonged conflict without direct confrontations also affect the illegal parties. More than a word should be said here with regard to the role played by narcotraffic in the sustenance of both paramilitaries and guerrillas).⁵⁵

(8) One last point: The weakness of the state and the incapability of all the illegal actors make it untenable to propose a solely military solution to the conflict. The only way to avoid a negotiation process with the illegal parties is to defeat them, but almost 50 years of uninterrupted conflict are proof enough of the urgency of such a process. A state with limited authority and legitimacy must enter into a process of transactions where it is inevitable to make concessions to the enemy. This is not easy. In fact, it is an enormous risk. A peace process must be lead in the most careful of manners so that it will not end up in a complete delegitimization of the state. In the trade of war for peace the survival of the state is at stake. This is the risk of democracy, but it is a risk that we must urgently take. A peace process must not be understood as the rendition of any of the parties involved, or as the defeat of any of them. In fact, the prolongation of the conflict is the defeat of society as

⁵³ Deas, *Violent Exchanges*, 389.

⁵⁴ Organización de las Naciones Unidas, *El conflicto, callejón con salida*, 84.

⁵⁵ The role and influence of narcotraffic on the dynamics of violence in Colombia has been widely studied from diverse perspectives. The reader can find three different analysis of the economical impact of

a whole. A peace process should be regarded as a collective act of contrition, where every member of the community accepts that he/she is also part of the conflict. The result must be the recognition of the rule of law as the only moral scenery for the resolution of conflicts. And this recognition asks for the strengthening of the state and the law. For democracy can and must incarnate the promise of justice – and it is in our hands to hasten the fulfillment of this promise, here and now.

Part Two

Forgiveness and Justice

– O, Stephen will apologize.

Dante said: – O, if not, the eagles will come and pull out his eyes.

– Pull out his eyes, / Apologize, / Apologize, / Pull out his eyes. / Apologize, /

Pull out his eyes, / Pull out his eyes, / Apologize.

JAMES JOYCE. “A Portrait of the Artist as a Young Man.”

Crimes against humanity are *imprescriptible*. All the juridical criteria regarding statutory limitations usually applicable to common law crimes are beside the point when it comes to judge this atrocious kind of crimes. Time has no hold on them. The perpetrators must be persecuted to the ends of the earth (even more now that the word ‘terrorism’ -which is an adjective and not a noun- is so easily dealt). When the being of humankind has been shamelessly and systematically destroyed a call for pardon would be contradictory and even absurd. The act of forgiving crimes against humanity contradicts morality – it would be a new crime against the humanity of man and against human rights. Jankélévitch said it bluntly: “pardoning died in the death camps.” (P 567)

But, if not crimes against humanity, then, what calls for forgiveness? If it is really true that “there are no reparations for the irreparable” (P 571), what use would there be for forgiveness at all? If perpetrators of crimes against humanity are beyond all possible forgiveness, then one must ask *whom* and *what* is worthy of our pardon. Derrida posits the question we are raising here in *On Forgiveness*:

If one is only prepared to forgive what appears forgivable, what the church calls ‘venial sin’, then the very idea of forgiveness would disappear. If there is something to forgive, it would be what in religious language is called mortal sin, the worst, the unforgivable crime or harm. From which comes the aporia, which can be described in its dry and implacable formality, without mercy: forgiveness forgives only the unforgivable. (OF 32)

The first idea that underlies this argument is that, if one accepts that only ‘venial sins’ or ‘common law crimes’ deserve to be forgiven, then one is trapped inside an evident paradox, for if only the deserving ought to be forgiven, then “forgiveness is either unjustified (in the case of the undeserving) or pointless (in the case of the deserving, since there is nothing to forgive).”⁵⁶ In other words, forgiving the undeserving (those guilty of crimes against humanity) would be immoral and even a crime in itself, and on the other hand, forgiving the deserving would be a completely irrelevant act. But I do not think that from this apparent paradox one can simply conclude that forgiveness is impossible or that it is meaningless. There would be two obvious ways to escape the paradox: either one can argue that forgiveness *is* indeed justified in the case of the undeserving, or one can prove that forgiveness *has* indeed a point in the case of the deserving. My claim is that *both* options have to be accepted as being equally necessary and valid. Nevertheless, and this would be the second idea underlying Derrida’s position, it is from the first option, namely, the justification of forgiveness in the case of the undeserving, that the analytical structure of forgiveness is better brought to the fore. The first paradox, i.e. the one that results from limiting our practices or forgiving only to the deserving, has to be replaced by a second and more profound paradox: *true forgiveness forgives only the unforgivable*. Every possibility for forgiveness is risked in this impossibility. And it may signify that, in the end, only crimes against humanity are really worthy of forgiveness.

Evidently, this thesis must be evaluated under the light of our previous considerations regarding the origin of the concept of crimes against humanity. We have sufficiently argued that this concept (as all other judicial concepts) is sanctioned by a legal order that is essentially violent. As a brief summary of the ideas exposed in part one, I would like to quote these words written by Derrida:

All Nation-States are born and found themselves in violence. I believe that truth to be irrecusable. Without even exhibiting atrocious spectacles on this subject, it suffices to underline a law of structure: the moment of foundation, the instituting moment, is anterior to the law or legitimacy which it founds. It is thus outside the law, and violent by that very fact ... all States ... have their origin in an aggression of the colonial type. This foundational violence is not only forgotten. The

⁵⁶ Cheshire Calhoun, “Changing One’s Heart,” *Ethics* 103, 1 (1992): 76-89, 80.

foundation is made *in order to* hide it; by its essence it tends to organize amnesia, sometimes under the celebration and sublimation of the grand beginnings.(OF 57)

In accordance with this view, we also said that this original violence is felt as a threat by the Nation-State, and that as a result of this threat, the law aims to legalize every sphere of human life in order to secure its own existence via the preservation of the life of the population. As a preliminary conclusion, we can affirm that the concept of crimes against humanity may have been born in response to all sorts of aggressions that would put the existence of the state in jeopardy, and with the intention of repressing into oblivion the violence of its foundation. Nonetheless, at this point it is necessary to take a step further and recognize a relatively new phenomenon in contemporary geopolitics: “what appears singular and new today is the *project* of making States, or at least head of state in title (Pinochet), and even of current heads of state (Milosevic), appear before universal authorities ... The sovereignty of the State, the immunity of a head of state are no longer in principle, in law, untouchable.” (OF 57) However partial and incomplete this project may appear to us in the present, it is undeniable that it has great importance for our analysis of the experience of forgiveness. The grand scene of repentance and victimization that we are experiencing today may be, without it even being fully noticed, a recognition of the violent history of modern democracies all around the globe. This concealed recognition is only possible where politics has left native religions aside and accepted human rights as a universal notion. Nation-States can demand and/or ask forgiveness for crimes against humanity only once they have adopted the Abrahamic language inherited by current international politics. To this extent, every Nation-State has inevitably always already entered a process of Christianization which has no more need for the Christian church, and which, for this same reason, appears to be completely devoid of any religious contents. (I will come back to this idea).

In this process of Christianization the end of forgiveness is presented as that of achieving reconciliation and the restoration of peace. Forgiveness is supposed to re-establish a lost normality by amending past injuries and trespasses. There are clearly different conceptions of just what is involved in this process of forgiving in the name of

reconciliation, but these conceptions have a common core. In most analyses of forgiveness three factors are frequently mentioned:

First, forgiveness involves the suspension or overcoming of hostile feelings towards the wrongdoer. Second, it involves or fosters reconciliation and restoration of relationships. Third, forgiveness involves, in some sense, the removal or bracketing off of the wrong, or of the guilt created by the wrong – the wiping clean of the slate.⁵⁷

Each one of these factors can be evaluated in a different manner whether one wants to defend the acceptability of forgiveness or to show its implausibility. Such an evaluation will have to deal with a series of problems concerning the virtuous character of feeling various kinds of hostility to serious wrongdoing, the relation of forgiveness with punishment and condonation, the need for an explicit act of repentance from the side of the perpetrator, or the failing to take the wrong seriously on the side of the victim, among others. Every single one of these questions claims for a detailed analysis of its own, but the point that I would like to make here is that the final appearance of every theory of forgiveness depends, in the last resort, on how explicitly they address the transcendent horizon upon which forgiveness depends. For “in a world without the hope of resurrection any prescience of forgiveness can only remain a shadowy and hidden affair.”⁵⁸ I think that only an eschatological and transcendent horizon grounded on theological (Judeo-Christian, perhaps Islamic) premises can sustain the non-aporetic theory of forgiveness that I will advance. In such a theory the relation of forgiveness with reconciliation is no longer problematic, while maintaining their heterogeneity. This is the position I would like to defend in this second part.

But before advancing this view of forgiveness as a social and political practice distinctively based on theological premises, we must first explore those theories of forgiveness that analyze it under a pretended secular framework.⁵⁹ In this manner we will

⁵⁷ Eve Garrard and David McNaughton, “In Defence of Unconditional Forgiveness,” *Proceedings of the Aristotelian Society* 103, 1 (2003): 39-60, 41.

⁵⁸ John Hughes, “The Politics of Forgiveness: A Theological Exploration of *King Lear*,” *Modern Theology* 17, 3 (2001): 261-287, 262.

⁵⁹ Here it would also be possible, and indeed useful, to undertake an etymological analysis of the term ‘forgiveness’ to further clarify its meaning. Although I will use the words ‘forgiveness’ and ‘pardon’ indistinctively, this is a brief sketch of how such an analysis would look like:

be able to see why all these theories end up in insurmountable aporias, and to what extent these aporias can be solved when placed against an Abrahamic horizon of sense. In order to do this, I will explore two recurrent metaphors in the literature on forgiveness: ‘wiping the slate clean’ and ‘turning the other cheek’. The outcome will be that the aporias inherent to these theories can be partially explained by the identification that underlies all of them between forgiveness and reconciliation due to a particular understanding of the biblical tradition on this subject. This identification ought to be reconsidered because, as we have already said, it lies at the very heart of the concept of forgiveness as it is used in modern geopolitics. Despite common knowledge, I think this identification cannot be supported by our biblical heritage, or more precisely, by the teachings of the New Testament. In the few explicit references to forgiveness that one can find in these texts, it is never identified with reconciliation, but rather it just denotes “the removal of the barriers to reconciliation” or “the remission of sins.”⁶⁰ The importance of this refinement will appear.

Finally, I will reconstruct Derrida’s view of forgiveness in order to address one last problem. It is not clear if forgiveness must enter what he calls a “conditional logic of the exchange.” (OF 34) In other words, Derrida describes the impossibility of forgiving as the

(a) “Sorry” derives from *sore*; has a similarity in use to German ‘es tut mir leid’, and to French ‘je suis fâché de ...’

(b) “Excuse” (ex-causa, structurally analogous to German ‘ent-shuldigen,’ to Russian ‘iz-vinit’ and Spanish ‘dis-culpar’) directly speaks of *the removal of accusation*.

(c) & (d) “Forgive” (for-giefan), as well as the English/French “pardon” (perdonare) and the German ‘vergeben,’ indicate to *give completely*.

(e) “Apologize” (apo-logos, somewhat similar to Russian ‘prostit’) denotes speaking off, or a speech in defence.

An apology such as ‘I’m sorry for having stepped on your toe’ would thus mean: “I know I’ve hurt you. Believe that I didn’t intend to. I wish I hadn’t done it or that I could undo it. Given another chance I would be more careful. I regret having done it.” (Formulas a, b, c, d, e) According to Kramer-Moore (2003), “this type of apology serves as the prototype for the expression of *religious repentance*. In none of the other types of apology can we find the element of *regret* and a *promise not to repeat the offence*.” Daniela Kramer-Moore and Michael Moore, “Pardon Me for Breathing: Seven Types of Apology,” *ETC: A Review of General Semantics*, 60, 2 (2003): 160-169, 161 (my emphasis). They quote the Act of Contrition in the Catholic liturgy as it appears in such sources as the Baltimore Catechism:

“O my God, I am heartily sorry for having offended Thee, and I detest all my sins because of Thy just punishments, but must of all because they offend Thee, my God, Who art all-good and deserving of all my love. I firmly resolve, with the help of Thy grace, to sin no more and to avoid the near occasions of sin.”

For interesting, occasionally surprising, sources for words related to this same topic in other languages, see p. 167.

⁶⁰ Vincent Taylor, *Forgiveness and Reconciliation: A Study in New Testament Theology* (London: Macmillan, 1946), 23.

double injunction between a forgiveness that *must* remain pure in order to be worthy of its own essence, and a forgiveness that *must* become part of the economic transactions of the sociopolitical realm. An absolute purity of forgiveness is therefore impossible because self-interest and reciprocity will always contaminate our practices of forgiving. I will suggest that this double injunction loses most of its tension if one is able to think of a forgiveness that could enter a logic of exchange without becoming a *commodity* in doing so. Forgiveness could indeed become part of a logic of exchange if it remains as a *gift* inserted in an endless reciprocal gift-exchange.⁶¹ In short, I will explore the possibility of an *economics of the gift*. I believe that it is because Derrida does not explicitly consider this possibility that his account of forgiveness cannot be but purely one-sided and in consequence, aporetic – it can only lead to a “‘hyperbolic’ ethical vision of forgiveness.” (OF 51)⁶² In order to illustrate what this ‘endless reciprocal gift-exchange’ or economy of the gift may consist of, I will recur to passages of Matthew, especially to the little sermon on not worrying, in which Jesus urges his disciples not to count, not to worry, and not to calculate (6:25-34). This sermon seems to run counter most of the well-known Matthean ‘celestial economy’, which makes it even more attractive for our analysis of forgiveness as a gift and as a sacrifice. Crimes against humanity, I argue, *can* be forgiven, and even more, *should* be forgiven because this sacrificial act strengthens our sense of the promise of a justice that is yet to come, but precisely because of this, is always already possible. Our gift of forgiveness may be the most powerful expression of our weak messianic power in the quest for justice and reconciliation. It may be that the eagles will not come and pull out our eyes if we do not apologize as poor Stephen, but rather if we do not learn the lesson of forgiving...

Wiping the Slate Clean

Does forgiveness depend on repentance and atonement? If one thinks of forgiveness as the wiping clean of the slate, then the answer would be yes. Wiping the slate clean recognizes

⁶¹ Cf. Hughes, *The Politics of Forgiveness*, 272-274.

⁶² Of course, this concept runs along the same line with what Derrida has called ‘hyper-ethics’. Cf. *The Gift of Death*, 71.

that the wrongdoer has redeemed herself and has thereby reconnected fully with the moral community. Christopher Bennett calls this practice of forgiveness, ‘redemptive forgiveness’. As such, “the appropriateness of redemptive forgiveness depends on the wrongdoer (specifically, whether she has done enough to redeem herself).”⁶³ So, “reconciliation is achieved through repentance and atonement.” (PR 133) We wipe the slate clean only when the perpetrator has shown enough signs of regret and repentance, which includes being moved to do whatever it takes to make amendments. Granting redemptive forgiveness is morally permissible only when we are convinced that the wrongdoer has done all that she is capable of in order to make things as they were before she committed the wrong. When no moral barriers are still standing between us (the victims) and the repentant, we owe them forgiveness. Hence, wiping the slate clean is an act of forgiveness only to the extent that it is an act of *acknowledgement* of the wrongdoer’s return to the moral community from which she has distanced herself by means of harm and offence. In a word, the granting of redemptive forgiveness is not what effects the change in the person of the offender; it only recognizes his repentance.

When confronted with the decision of granting or refusing forgiveness, the victim asks herself a question that could be paraphrased like this: “Is there anything *for the sake of which* I ought to forgive even though I am clearly entitled to my resentment?”⁶⁴ What this question transpires is that the experience of forgiveness needs to be meaningful; it is a decision that must make sense, both for the victim and for the wrongdoer. In the case of forgiveness as wiping the slate clean, that which would make sense of our practices of forgiving is the recognition of the wrongdoer as a ‘member of the moral community’. Our shared moral demands constitute that for the sake of which we, sometimes, ought to forgive once apologies have been presented. The recognition of an individual as a member of the moral community entails that

we ascribe them a capacity to recognize and respond appropriately to moral demands ... This form of recognition also makes possible a kind of *prima facie* trustworthiness. When someone is ascribed the capacity properly to understand

⁶³ Christopher Bennett, “Personal and Redemptive Forgiveness,” *European Journal of Philosophy* 11, 2 (2003): 127-144, 127. This work is hereafter cited parenthetically in the text as PR.

⁶⁴ Calhoun, *Changing One’s Heart*, 78.

moral demands, we have an expectation (*prima facie*) that these demands will weight with them in the relevant situations, and this makes possible our reliance on them in various ways. (PR 132)

In other words, from this perspective the question of forgiveness is raised whenever our reliance on the other as a moral agent has been betrayed: our expectations about his capacity of properly weighting moral demands are suddenly contradicted by his trespass. But wrongdoing does not change the fact that the perpetrator remains a moral agent, despite the distance that we may draw between him and us. Assuredly, he remains a moral agent, but his moral status within the community has radically changed. For his action “is a violation of those values commitment to which is constitutive of the bond between us.” (PR 133) Ultimately, it is this moral bond what explains that we owe the wrongdoer redemptive forgiveness in the light of repentance and atonement – and that we *ought* to blame in the face of wrongdoing. If forgiveness involves “wiping the slate clean, overcoming blame, refusing to let the wrong condition the way we treat the wrongdoer, then it fails to take the wrong and the wrongdoer seriously.” (PR 133) It is because we *care* about those values that give sense to our life as a community that we ought to blame those who attempt to destroy or harm it in whatever manner whatsoever.

It is also this ‘*prima facie* trustworthiness’ what allows us to expect that the perpetrator will feel some degree of guilt or remorse, thereby being driven to make amendments. The perpetrators must feel the pain of being torn away from the moral community to which they belong by nature, and they will do something about it. It is not our forgiveness what moves the wrongdoer to repentance, but her feelings of remorse. Which means nothing else that, “being forgiven cannot in itself effect this change. Forgiveness cannot wipe the slate clean because it can do nothing to affect the source of the wrongdoer’s distance from the values of the moral community.” Strangely enough, Bennett manages to argue that *because* it is impossible to wipe the slate clean, “we can say that there are obligations surrounding redemptive forgiveness.” (PR 136) Since the wrongdoer has in fact felt some degree of remorse, and in consequence, has in fact done something to amend her fault, we owe her forgiveness. Which amounts to thinking that forgiveness is merely *reactive*: once apologies have been offered and the wrong has been amended, the

perpetrator has *earned* our forgiveness. Repentance is traded for pardon. And in this economy of forgiveness, redemptive forgiveness would only mark the end of blame, the overcoming of resentment, even though we are clearly entitled to it. But the slate will never be cleaned, or if it is indeed cleaned, it is the perpetrator who does the real change – the victim will just react to this change by way of acknowledgement. Still, it is not really clear why the perpetrator attempts against the moral community in the first place. Could there be valid reasons for his behavior? Are all actions outside this moral community completely devoid of moral or political meaning? So far, all we can say is that wrongdoing would be nothing but some sort of capricious and self-indulgent way of acting, which inevitably would recognize its own foolishness, thereby making everything possible to establish guilt and secure a measure of victimization by means of an apology or by material compensation. As mere reactive, redemptive forgiveness cannot raise the question for the reasons of evil – wrongdoing is simply a ‘deviant’ behavior devoid of any positive content, because it cannot even afford to question the moral demands of the community. More than a virtuous act, wiping the slate clean, as the acknowledgement of repentance, and therefore as the acknowledgement of the uncontested foundations of the moral community, is nothing more than an act of re-affirmation of sovereignty.

To my mind, this is not the only aspect of this view of forgiveness that makes it rather problematic. In the first place, I share Calhoun’s thesis that “forgiveness offered because it is deserved or to avoid the costs of resentment is disappointing. Such forgiveness is not, perhaps, what one aspired to get or to become able to give.”⁶⁵ Indeed, Bennett accepts that forgiveness, as the wiping clean of the slate, if there is such a thing, is only possible if it does not mean at the same time the end of blame. If we did really care about the moral bond that supports our society, then ‘putting the wrong behind you’ could not amount to overcome all resentment, because time has no hold on wrongdoing (it should be kept in mind that we are concerned here exclusively with crimes against humanity). John Milbank illustrates this problem by means of an example: “The person blocking the entrance can simply be removed. But *that* he blocked the entrance for a time, and prevented

⁶⁵ Ibid., 76.

such and such another person from getting through, so crucially delaying her, and so forth, can never be altered, or changed, ever.”⁶⁶ This means that despite all efforts from the perpetrator to amend his wrong, the fact that the wrong was committed cannot simply be forgotten; hence there will always be space for blame and resentment. But resentment is not usually regarded precisely as a virtue (that may explain why almost every theory of forgiveness claims that resentment must be left behind).⁶⁷ However this is not so self-evident. Resentment is not necessarily a morally inappropriate reaction. For example Jankélévitch proposes a view of resentment where it appears under a much more favorable light: “For *ressentiment* can also be the renewed and intensely lived feeling of the inexpressible thing; it protests against a moral amnesty that is nothing but shameful amnesia; it maintains the sacred flame of disquiet and faith to invisible things.” (P 572) When placed against Bennett’s theory, Jankélévitch’s words function as a reminder that if we really do care about our moral community, then forgiveness cannot be the end of blame. Forgiveness does not simply result from a reaction that the wrongdoer’s repentance would cause. Granted, Jankélévitch is not proposing that we should forgive in spite of resentment; for him remembering is a moral duty that cancels the possibility of forgiving crimes against humanity. But it certainly looks like, and we’ll come to this, it is possible to argue that pardoning rules out neither resentment nor punishment.

It is not without significance that writing in an explicit religious context, though using almost the same language as Bennett’s, Joseph Butler is able to give a completely opposite account of resentment. For Butler it is not true that “resentment reveals insecurity” (PR 138), on the contrary,

the indignation raised by cruelty and injustice, and the desire of having it punished, which persons unconcerned would feel, is by no means malice. No, it is resentment against vice and wickedness: it is one of the *common bonds*, by which society is held together; a fellow-feeling, which each individual has in behalf of the whole species, as well as of himself.⁶⁸

⁶⁶ Milbank, *Being Reconiled*, 51.

⁶⁷ Cf. Bennett (2003), p. 139; Calhoun (1992), p. 85; Garrard (2003), p. 45.

⁶⁸ Joseph Butler, “Sermon VIII: Upon Forgiveness of Injuries,” in *The Works of Joseph Butler, Volume II, “Sermons,”* ed. W. E. Gladstone (Bristol: Thoemmes Press, 1995), 141 (my emphasis).

It turns out then, that resenting ‘cruelty and injustice’ can also amount to defend the ‘values of the moral community’ that have been harmed by means of wrongdoing. Rather than morally inappropriate, resentment would be a moral duty of the individual with himself and the whole species. Hence, if resentment is one of the common bonds that held society together, there would not be acts of repentance enough to wipe the slate clean: we may as well recognize the perpetrator’s efforts to apologize, and this could be indeed a factor that would facilitate us granting him forgiveness, but, nevertheless, it is not clear to me that repentance and atonement are neither *sufficient* causes to lead us to grant pardon, nor that they are *necessary* for forgiving.

Which takes me to a second problem that I think emerges from Bennett’s account of forgiveness as the wiping clean of the slate. If I have understood him correctly, his idea of redemptive forgiveness runs counter the thesis that pardoning “is something we ask or hope, rather than demand, for ourselves and grant, rather than owe, to others. Forgiveness is a gift, not the paying of a debt or the remission of a debt whose collection would prove too costly.”⁶⁹ I think that if forgiveness is something we *ought* to grant in the presence of repentance, it runs the risk of becoming a *commodity* within an economic circuit of exchange. Forgiving as if collecting a debt can in fact prove too costly because forgiveness ceases to be an entirely gratuitous act, and is transformed into a mere *means* in the quest for certain *ends*. This is why reconciliation would come at too high a price. For it is not only that wiping the slate clean risks turning the experience of forgiveness into a commodity; it also risks degenerating into a mere *mimicry* of pardon. The problem with this view of forgiveness is that the moral demands that seem to hold our moral community together, will never be enough to determine with complete certitude when an act of repentance is genuine or not. As Calhoun says, “whatever elective appearance forgiveness may have reduces to the fact that in most cases we will have to deliberate about the repentance’s authenticity (Is he genuinely repentant?) and sufficiency (Is repentance enough?)”⁷⁰ If the sphere of our moral values is so unclear for ourselves that repentance and blame can mean both malice and virtue, how can we expect it to provide us with sufficient criteria that would allow us to

⁶⁹ Calhoun, *Changing One’s Heart*, 81.

be sure when forgiveness is owed the perpetrator? When can we be assured that his repentance is genuine? It is not correct to think that the appropriateness of any kind of forgiveness depends on the wrongdoer, because finally pardoning is a decision that is up to *us*, and one can just never know *enough*. The secret of the other's heart will forever be an inscrutable one, notwithstanding what kind of capacity to properly understand moral demands we may ascribe the wrongdoer, or anybody for that matter. Perhaps Jankélévitch and Butler are so reluctant of leaving resentment behind because it would be the only guarantee that wrongdoing will not be committed again, or at least that it will not go unnoticed.

As I see it, the main problem with forgiveness as wiping the slate clean is that it will always arrive *too late*. Put in a different way, since forgiveness is not what calls for an apology, it ceases to be an efficient act, and becomes only the acknowledgement of repentance. Reconciliation has been achieved before forgiveness is granted or even asked for. As a mere reactive act, redemptive forgiveness is too easy to grant and almost impossible to deny; repentance makes forgiveness both risk free and rational.⁷¹ Forgiveness thereby ceases to be a real decision. And this is precisely why resentment cannot be overcome in this scenery: if redemptive forgiveness depends on the wrongdoer, it is impossible not to feel somehow cheated – everything would be permitted as long as it is followed by apology and atonement, because *then, after* repentance, it would be morally contradictory not to pardon. I believe that it is this lateness of forgiveness what makes possible the commodification of pardon. Because in strict sense, here forgiveness arrives when it has already turned trivial and meaningless: I acknowledge your repentance so I will exchange it for my pardon, securing in this way the sovereignty of the moral system that was threatened by the wrongdoer's actions. But resentment will always be the surplus in this economy of forgiveness. I will keep my resentment as a receipt of the transaction. Everything is now settled so that the grand scene of confession and repentance can begin. The currency of forgiveness can now start to circulate endlessly, while we keep on piling resentment onto blame. And at this point it is impossible not to remember that abhorrent

⁷⁰ Ibid., 83.

system of indulgences built upon the sacrament of penance as an instrument of forgiveness, where the Church could dispense everyone from the temporal pains of Purgatory in exchange of performing certain prescribed ecclesiastical exercises, such as saying given prayers, attending given offices, or paying fixed sums of money. Indeed, everyone is most welcomed in the new free-market of modern indulgences for the sake of the modern state's sovereignty. Just put a price on your crime, however hideous it may be, that I will acknowledge it, swallow my resentment (although I am morally entitled to it), wipe the slate clean, and pay whatever it costs for your repentance – all in the name of our common moral values. Reconciliation is a bargain in the game of sovereignty. And as such, as the exchange of repentance for pardon, forgiveness remains part of that logic of evil of which we have spoken before. For evil lives on resentment and vengeance, that is, on the inevitable surplus of this economy of forgiveness. And so, by sanctioning crimes against humanity, the state secures for itself a new way to exercise its power: death can only come about as part of the state's thanatopolitics. Inflicting 'illegal death' is the real crime of those guilty of crimes against humanity. And the state legal power is there to prevent this abuse of *Gewalt*. But repentance should not be engendered by the threat of being blinded by the eagles of sovereignty.

Turning the Other Cheek

No, we do not want assassins setting a price on their apologies. Nor do we want a state too willing to pay such price for the sake of its own sovereignty. If laying the appropriateness of forgiveness on the wrongdoer's amounts to the institution of such a spurious economy of exchange where our pardon ceases to be a virtue and a gift, we must explore then the possibility of a practice of forgiveness in which its moral value would depend on the victim. Bennett contemplates this possibility under the concept of 'personal forgiveness'. He defines it as the virtuous achievement of the morally appropriate attitude towards a wrongdoer, and identifies it with the metaphor of turning the other cheek. According to Bennett's theory, "the appropriateness of granting personal forgiveness depends on the

⁷¹ Ibid., 81.

forgiver rather than the offender.” (PR 127) Again, it is its relation to repentance and resentment what defines this practice of pardoning: “Personal forgiveness can be granted in the absence of repentance because granting personal forgiveness is compatible with continuing to condemn.” (PR 129) Understood as turning the other cheek, forgiveness is unconditional, but only with the proviso that the victim withholds her right and duty to continue to demand repentance and atonement. Personal forgiveness is only permissible if the forgiver withholds redemptive forgiveness.

To the question ‘is there anything *for the sake of which* I ought to forgive even though I am clearly entitled to my resentment?’ personal forgiveness’ answer is yes: we ought to forgive for the sake of our ‘moral confidence’ (which involves regaining full conviction in a belief about the *egalitarian* nature of moral status). Turning the other cheek involves having sufficient confidence in our own moral status that we are prepared to make ourselves vulnerable to further insult in order to reach out to the wrongdoer in some way – for instance in the hope of encouraging his return to the moral community (PR 139). But personal forgiveness will always reach out to the offender knowing that punishment and rancor are not left behind; we encourage his return to the moral community only so that blame and resentment are appropriate again. Paradoxically, we must make sure that the offender, no matter the nature of his crime, never loses his status as a member of the moral community. Contrary to what Jankélévitch thinks, those guilty of crimes against humanity are not ‘monsters’ (P 556). Because monsters cannot only not be pardoned; they also cannot be judged. But Bennett does not want to debase the perpetrators to a point where they will be deprived of any degree of humanity, because it is only if we regard them as valid moral agents, that we are able to keep on blaming and punishing them.

I think that at this point the problem is that repentance and atonement are more or less surreptitiously identified with *punishment*, which means that reconciliation can only come where some measure of punishment is secured. The consequence is, following Bennett, that the way of forgiveness does not represent a real alternative to the way of ‘retributive justice’. “For either forgiveness has to be earned by repentance and atonement (in which case it is the result of a person’s undergoing punishment) or it is only properly

granted if we continue to demand repentance and atonement (i.e. punishment).” (PR 142) In other words, forgiveness, either as wiping the slate clean or as turning the other cheek, will always be trapped inside an economy of exchange where repentance, forgiveness, and punishment are traded endlessly, for the sake of our common moral values and our own moral confidence. This is what ‘retributive justice’ means, and forgiveness cannot do without it and still be morally permissible. When some measure of punishment is secured, we can exchange our pardon for repentance. But despite the fact that this order of retributive justice (which is nothing else than the order of law) appears as the more rational, and thereby ‘just’ way to deal with evil, because it ‘takes the wrong and the wrongdoer seriously’, it dangerously remains too close to the *lex talionis* – ‘an eye for an eye and a tooth for a tooth’. Wrongdoing for punishment; repentance for pardon – reconciliation *after* retribution. Indeed, retributive justice has been criticized as ‘irrational’, ‘immoral’, or even ‘wholly unchristian’.⁷² In a paper read before the Martineau Society in 1899, Rashdall Hastings said:

If it is to do anybody any good, punishment is not inflicted for the sake of retribution. It is the retributive theory, to my mind, which shows a disrespect for human personality by proposing to sacrifice human life and human well-being to a lifeless fetish styled the Moral Law, which apparently, though unconscious, has a sense of dignity and demands the immolation of victims to avenge its injured *amour propre*.⁷³

But this fetish styled the moral law is pretty much alive, and its existence is violent because it survives on power and sovereignty. Crimes against humanity are inexpiable and imprescriptible because, as a threat against moral law, they demand the immolation of the perpetrators to avenge their disrespect toward our moral community. ‘Crimes against humanity’ is another judicial concept of the *lex talionis* of the modern state: No forgiveness without punishment, even if human life must be sacrificed in the name of law (the death penalty was the outcome of most of the trials carried on by the Allied Tribunal at Nuremberg).

⁷² Rashdall Hastings, “The Ethics of Forgiveness,” *International Journal of Ethics* 10, 2 (1900): 193-206, 197.

⁷³ *Ibid.*, 197.

But we can still turn the other cheek: “Doing so is not obligatory – it is after all a difficult thing to do – but it does seem to be a virtuous thing to do.” (PR 139) Luckily it is not true that forgiving the unrepentant is always wrong, and it can even be admirable – as far as redemptive forgiveness (i.e. the persistence of blame) is withheld. Turning the other cheek shows a ‘full respect for morality’ when our commitment to its values is not simply an abstract intellectual assent to a proposition, but rather feeds our ‘sense of dignity’, and leads the way we behave in relation to others. But there is too much sense of dignity, moral confidence and *amour propre* in retributive justice for regarding forgiveness as a gift. In fact, when we turn the other cheek and reach out to the wrongdoer, we are not acting out of love for the other, the *tout autre*⁷⁴ that the perpetrator will always be. What we are truthfully looking for when we grant personal forgiveness is to regain our moral confidence and to restore our sense of dignity. What is really at stake is our own self-esteem. So when we turn the other cheek we are simply affirming our superiority over the offender, or more exactly, the superiority of the moral community that demands repentance. And there is hardly anything virtuous in this. Because “to insist on an apology is to insist that the wrongdoer humble himself before one, and this implies that there is still some residual resentment.”⁷⁵ Even as turning the other cheek forgiveness remains an exercise of power. The sovereignty of law (of *our* law; the law born from a certain Enlightenment and its desire for a universal, purely rational law) is what is doing the work here: everybody, with no exception, should fall in line behind the Moral Law – there are no ‘others’ when it comes to law. And hence, inside the economy of retributive justice, forgiveness can only remain a shadowy affair because it is seen as a dangerous exception to the law; it questions and undermines the legitimacy of the judicial order. Law responds to a threat with another threat: apologize; otherwise we will pull out your eyes. That is the price of our forgiveness.

If, as cleaning the slate clean, the appropriateness, i.e. the price of forgiveness depends on the offender, as turning the other cheek, victims settle the price of pardoning. But *that* is the point; that there will always be a *price* to pay for forgiveness. And this price must be calculated as precisely as possible. For retributive justice, for law, forgiveness has

⁷⁴ Cf. Jacques Derrida, *The Gift of Death* (Chicago: University of Chicago Press, 1995), section 4.

to become a commodity; otherwise it will disrupt the economy of general exchange (means for ends, violence for power, repentance for pardon, punishment for reconciliation...) that supports it. Be it redemptive or personal, forgiveness is aporetic through and through when it is justified solely on the moral law. Forgiving only the deserving, or granting pardon to the undeserving with the condition of continuing to blame renders forgiveness as both unjustified and pointless. And this is so because for law pardoning amounts to reconciliation, and the law cannot be reconciled with those who attempt against its most precious possession: human life. Forgiving cannot be an end in itself; it must be a means for restoration. But it is an *illegal* means, or more precisely, an extra-legal means. Even more, having in mind the line of argumentation exposed in part one, it could be said that forgiveness is *violent* in so far it stands outside the legal sphere. It does violence on the law. It inscribes in the laws a power above the laws. For the law it is imperative, therefore, that forgiveness be legalized under judicial concepts such as amnesty or condonation. Forgiveness must not be regulated by the ‘culture of the heart’ but by the calculating procedures of law. In this manner our practices of pardoning are won for politics. In a sad irony, forgiveness does not break but rather helps to perpetuate the logic of evil that sustains retributive justice. And true forgiveness, that one which proceeds spontaneously and generously from trust and hope, ceases to be a decision and a sacrifice.

A Hyperbolic Ethical Vision of Forgiveness

The question for the possibility of forgiving crimes against humanity remains unanswered. If forgiveness really is a matter of calculation, the consequence in the case of crimes against humanity is that we will never be able to determine when repentance is enough. For this would amount to set a price on human life. As a means, forgiveness, if there is such a thing, is only possible for the weaker, the easier cases, the ‘venial sins’ (and even then I would doubt to consider it real ‘forgiveness’). But when confronted with mortal sins, all calculation is impossible, if not repugnant. This is why for Jankélévitch pardoning died in the death camps and why “evil is as strong as forgiveness.” (P 553) And he is right.

⁷⁵ Garrard, *In Defence of Unconditional Forgiveness*, 47.

Because there will never be punishment *proportional* to these crimes: “For in relation to the infinite all finite magnitudes tend to equal one another; hence the penalty hardly seems to matter; strictly speaking, what happened is *inexpiable*.” (P 558) Forgiveness in this case, therefore, would be nothing else than an act of shameful frivolity. It would only come to act as a disguise for interests that have nothing to do with the virtuous pardoning of the guilty *as guilty*. For in the economy of retributive justice, forgiveness ends up being simply just another political practice with the aim of seeing to it that the nation survives its discords, that the traumatisms give way to the work of mourning, and that the Nation-State is not overcome by paralysis (OF 41). At any rate, the transformation of the guilty is not the first concern for any of the political practices of law that are enacted with the pretension of being acts of forgiveness. What is really important for them is that the harm inflicted on the political system may be finally left behind, which as we already know, implies certain degree of vengeance. And for this matter perhaps the death penalty would to the job better. It would be just a logical consequence and application of the *lex talionis*: an eye for an eye and a life for a life. The imprescriptibility of crimes against humanity inevitably leads politics and law to the question of the death penalty. When faced with the impossibility of calculating the ‘just’ price for forgiveness, it seems as if the only way for dealing with radical evil is by inflicting even more evil. The annihilation of human life is strictly irreparable, and the only transaction that seems to come closest to a true remission of the debt is the legalized annihilation of another human life. Forgiveness as amnesty or condonation appears to be utterly inappropriate in the case of crimes against humanity, and the economy of the exchange of repentance for pardon and punishment for reconciliation is here violently brought to a halt. And forgiveness suddenly appears as ‘moral’ impossibility.

Derrida’s theory of forgiveness attempts to run counter this somber perspective. According to him, “one can maintain the imprescriptibility of a crime, give no limit to the duration of an indictment or a possible pursual before the law, while still forgiving the guilty. Inversely, one can acquit or suspend judgment and nevertheless refuse to forgive.” (OF 33) Said with different words, we can follow Jankélévitch’s ideas on the imprescriptibility of crimes against humanity, and still leave room for a forgiveness that

would not be another crime against humanity itself. The first step we must take in order to achieve this is to draw a definitive separation between forgiveness and reconciliation, and between forgiveness and retribution:

Each time forgiveness is at the service of a finality, be it noble or spiritual (atonement or redemption, reconciliation, salvation), each time that it aims to re-establish a normality (social, national, political, psychological) by a work of mourning, by some therapy or ecology of memory, then the 'forgiveness' is not pure – nor is its concept. Forgiveness is not, it *should not be*, normal, normative, normalizing. It *should* remain exceptional and extraordinary, in the face of the impossible: as if it interrupted the ordinary course of historical temporality. (OF 32)

Briefly, this amounts to the next proposition: “One could never, in the ordinary sense of the words, found a politics or law on forgiveness.” (OF 39) The impossibility of forgiveness of which Derrida speaks is completely different to that impossibility we have found in the sphere of retributive justice. For the latter pardoning (crimes against humanity) is not possible because a fair price cannot be settled with due precision, while for Derrida the point is that forgiveness cannot have a price at all. *Forgiveness is impossibility itself*. That is the extraordinary character of forgiveness; that is its dignity and its sacrifice – it is possible only as a response to the address of the impossible. And this is why law and forgiveness are, and must remain, heterogeneous. Forgiveness is not concerned with retribution or with reconciliation because it is not a means of whatever kind. Forgiveness does not calculate because it lives in the immediacy of the address: it is “wholly pure and unprepared-for present tense, and not unprepared-for alone, but also unpremeditated”.⁷⁶ By being absolutely present, forgiveness remains foreign to law’s economy of exchange, thus having the power of disrupting it; pardoning incarnates the possibility of surprising the normal course of history, and hence, of inflicting the order of politics and of changing the law. Forgiveness is an arrest of fate by faith.

But before we continue, we must be quick to add that none of this means that forgiveness has nothing to do with justice. Quite the opposite; it is, as love, one of the most powerful acts of justice, albeit it must be clear that “forgiveness would be just of a justice which had nothing to do with judicial justice, with law.” (OF 43) Derrida does not say

⁷⁶ Rosenzweig, *The Star of Redemption*, 177.

anything explicitly of that other justice distinct from law in *On Forgiveness*. The most explicit allusion to it is this:

In order to inflect politics, or the ‘pragmatic processes’, in order to change the law ... it is necessary to refer to a “hyperbolic” ethical vision of forgiveness’. Even if I were not sure of the words ‘vision’ or ‘ethics’ in this case, let us say that only this inflexible exigency can orient a history of laws, and evolution of the law. It alone can inspire here, now, in the urgency, without waiting, response and responsibilities. (OF 51)

What is this inflexible exigency? And why is Derrida not sure about the use of the word ‘ethics’ in this context? Assuredly because the inflexible exigency is that one which rises from the realization that decisions and responsibilities are to be taken in the abyss between the conditional and the unconditional. Every time we *decide*, we must do it with the certainty (not knowledge) that these two poles are irreconcilable but indissociable. Justice lives in a structural double-bind, a double injunction to which we must respond every time we decide. This is why ‘ethics’ is a term somewhat inappropriate in this context. Because the value of our decisions, our actions, and our responsibilities does not spring from a shared set of moral values from which we could simply ‘deduce’ which is the moral course of action given certain conditions, but from an absolutely individual instance. Notwithstanding all possible references to tradition, to history, to past-use that could help us arrive to a morally appropriate decision, in the last resort, when forgiving, we are left all alone, and we will never know enough. We will never be *sure* when we ought to pardon, because the demand for forgiveness cannot lend itself to calculation. It will always be up to *us*. The justness of forgiveness is an inviolable secret forever hidden in the heart of the forgiver. The most one can say is that the forgiver is always confronted with the crucial aporia of pardoning: “It can only be possible in doing the impossible” (OF 33), that is, in *forgiving the unforgivable*.

Let us now elaborate somewhat further what are the unconditional and the conditional, when referred to forgiveness. The tension between these two poles (which comes directly from our biblical heritage) has,

on the one side, the idea which is also a demand for the *unconditional*, gracious, infinite, aneconomic, forgiveness granted to *the guilty as guilty*, without counterpart, even to those who do not repent or ask forgiveness, and *on the other side*, as a great number of texts testify through many semantics refinements and

difficulties, a conditional forgiveness proportionate to the recognition of the fault, to repentance, to the transformation of the sinner who then explicitly asks forgiveness. And who from that point is no longer guilty through and through, but already another, and better than the guilty one. To this extent, and on this condition, it is no longer the *guilty as such* who is forgiven. (OF 34-35)

In this double injunction between a forgiveness that *must* remain pure in order to be worthy of its own nature, and a forgiveness that *must* become part of the messiness of the judicial-political, the space for a “hyperbolic” ethical vision of forgiveness’ is opened. And it is in this same space where forgiveness as madness resides. Yes, as madness. Forgiveness is hyperbolic and mad, hyperbolically mad, because it is only and without exception, pure *giving*. And furthermore, not mere giving, but giving to the undeserving, to the guilty as guilty. Outside the economy of exchange, forgiveness is a gift – only as a gift is forgiveness ‘gracious’, ‘infinite’, and ‘aneconomic’. The unconditional side of the tension explains why *le don* is inseparable from *le par-don*. The conditional side, that is, that one that demands of forgiveness to be an effective reality in the world of politics, law and history, is what makes it *mad*. Because contrary to their most basic principle, forgiveness as a gift is not a secret calculation of a way to get a return for oneself. The outcome of pardoning is not a debt. And taken to the last consequences, forgiveness as a gift forgives whatever debts, whatever guilt the other incurs, even when this other fails to repent or ask for pardon. It is inevitable then that to the eyes of retributive justice forgiveness as a gift is completely mad. But this is exactly what a hyperbolic ethical vision of forgiveness consists in: that when addressed by the demand for unconditional forgiveness, we must respond to it without any consideration to the conditional circumstances that may intervene in our effective practices of pardon. This means that a proportionate recognition of the fault, repentance, the transformation of the sinner, and finally reconciliation *may* come after we have forgiven – or maybe not. For true forgiveness this is indifferent; it pardons the guilty as guilty, and not simply the repentant (i.e. the deserving) who from that point on would no longer be guilty through and through, but already another, and better than the guilty one. Here resides the sacrificial character of forgiveness: “it is a power that the victims have to *initiate* a peace process, to reach out to those who wronged them.” (PR 127) Pardoning is the power (as weak as it may be) that we have to cut into the logic of evil and exchange without any

considerations for the results of our actions. Just give; just give to the most helpless of all: the undeserving. Just sacrifice, just be mad enough to leave the circle of the economy of debt and do things but *not* because they are due: *le devoir ne doit rien, il doit ne rien devoir*.⁷⁷

Derrida also posits the question of the deservedness of forgiveness and the worthiness of the wrongdoer in the last chapter of *Given Time*:

And does one have to deserve forgiveness? One may deserve an excuse, but ought not a forgiveness be accorded without regard to worthiness? Ought not a true forgiveness (a forgiveness in authentic money) absolve the fault or the crime even as the fault and the crime remain what they are?⁷⁸

Forgive *not* because it is due. Forgiveness cannot be deserved; just given. Under this perspective the other remains an absolute other, despite his crimes and trespasses. But he remains an absolute other not in the same sense as he remains a moral agent for retributive justice. We do not want to preserve the otherness of the other, that is, his ‘humanity’, so that we can still be able to blame and punish, but because we want to respect the inscrutable secret of his heart. In other words: judge not. Any consideration about the worthiness of the offender betrays *le don* of *le pardon*. Such a calculation, such a judgment is “what makes the ‘I forgive you’ sometimes unbearable and odious, even obscene,” because then it would be an “affirmation of sovereignty.” (OF 58) Our pardon would be the re-affirmation of a moral order (ours) that obliges us to forgive so that blame and hatred can endure. So we must judge not. Infinite respect always goes hand in hand with true forgiveness. As mad, as a gift, and as absolute present, forgiveness does not ask questions or foresees any results. Jankélévitch sustains that “we must respect our neighbor’s right to live, and our neighbor owes us nothing in return – except the same respect.” (P 555) But even when our neighbor, the closest-other, has fail to reciprocate our respect for his life, even then, and most than ever, *then*, is pardoning possible. In fact it is only here that the question of forgiveness can be posited at all: it is only the unforgivable what calls for pardon.

Since we have equated the unforgivable with radical evil in the figure of crimes against humanity, certain considerations must be added to these difficult conclusions. First,

⁷⁷ Jacques Derrida, *Given Time, I: Counterfeit Money* (University of Chicago Press, 1991), 69 n. 23.

⁷⁸ *Ibid.*, 163.

this unconditional respect for the secret of the other's heart does not mean that we must not know anything about it when we forgive. Because forgiveness as an absolute purity of thought does not exist. The conditional (politics, ethics, history) has demands of its own, and we should respect them as well. In this manner forgiveness can be mad but also responsible at the very same time. Responding to the demands of the conditional means that we must know the most and the best possible. We must try to explain to ourselves the reason for *this* certain evil. Does this certain evil make any sense? Are there any reasons for it? Can we learn something from it? Can we draw any lessons from the systematic and cold-blooded annihilation of human life? Perhaps. But no matter how exhaustive an answer can we offer to any or to all of these questions, our decision to forgive or not to forgive cannot be justified by these answers. They will never be reason enough. In neither way. We can, and therefore we must, attempt to reach some sense, some meaning for radical evil. This is our responsibility, and this is what 'taking the wrong and the wrongdoer seriously' means. But nevertheless, the abyss remains: "One is never sure of making the just choice; one never knows, one will never know with what is called knowledge. The future will give us no more knowledge, because it itself will have been determined by that choice." (OF 56) Neither the future nor the past can justify us. Forgiveness is stubborn and refuses to be inserted in the tight circle of any economy of exchange, and this includes time understood as the mere homogeneous passing away of the moments of life. Beyond all justification, before every reason and every cause, forgiveness is sacrifice – a sacrifice that does not wait for repentance. Because sacrifice exhausts itself in the immediate present, while repentance has its hope always in the future. "Forgiveness is thus mad. It must plunge, but lucidly, into the night of the unintelligible." (OF 49) The night of the unintelligible is the other's (and perhaps even one's own) heart in its close relation to the worst. This secret is inscrutable. And we enter it without knowledge and with sacrificial love.

Second, "if anyone has the right to forgive, it is only the victim, and not a tertiary institution." (OF 44) Since we have argued that forgiveness has nothing to do with the political sphere as it is inaugurated by a violence of the colonial type, thus we have to accept the conclusion that forgiveness engage two *singularities*: the guilty and the victim.

For “as soon as a third party intervenes, one can again speak of amnesty, reconciliation, reparation, etc., but certainly not of pure forgiveness in the strict sense.” (OF 42) We cannot avoid returning at this instance to the issue of sovereignty. For the fact that only the victim is entitled to grant or withhold pardon evinces a conflict between private and public forgiveness. As John Milbank explains, “private forgiveness always implies an interruption of public justice which is associated with the perspective of a third party.”⁷⁹ But we have sufficiently insisted that true forgiveness lives in an absolute present where no third parties are allowed. The victim is alone in her unconditional and gratuitous reaching out to the guilty. This is why

the anonymous body of the State or of a public institution cannot forgive. It has neither the right nor the power to do so; and besides, that would have no meaning. The representative of the State can judge, but forgiveness has precisely nothing to do with judgment. Or even with the public or political sphere. (OF 43)

Indeed, where are we to locate the sovereign power to represent all those injured who may lie unknown beyond any traceable boundary of space and time? It turns out then that amnesty and condonation are also exercises of sovereignty where the pain of the victims is overtly ignored. Such political processes of ‘forgiveness’ can be seen as an easy gesture, “which puts those who cannot or will not forgive in a poor light.”⁸⁰ When pardon is imposed by the anonymous body of the state, the sacredness of the secret is being trampled. In fact, how can forgiveness be ordered? If we ought to forgive, certainly this obligation does not come from the order of law. On the contrary, we must forgive but not because it is due. Forgiveness is so hyperbolic that the realm of politics (i.e. that of means and ends) will always fall short from the real dignity of the sacrifice that forgiving is. The sovereign forgiveness of the state is a failure of loyalty to every victim, even if they are also willing to forgive. In the case of ‘forgiving’ crimes against humanity this failure of loyalty acquires infinite dimensions because the true victims do not survive at all to be able to proffer pardon. Legal forgiveness thus is a betrayal not only to the person of the victims, but also to their memory.⁸¹ Because the dead depend entirely on our loyalty. Once more, it is

⁷⁹ Milbank, *Being Reconciled*, 50.

⁸⁰ Garrard, *In Defence of Unconditional Forgiveness*, 41.

⁸¹ Of course a second problem emerges here. If one accepts that only the victims are entitled to proffer or to withhold forgiveness, then in the case of crimes against humanity one is confronted by the terrible fact that

Jankélévitch's unhealed harm what comes to remind us of our unavoidable duty: "These innumerable dead, these massacred, these tortured, these trampled, these offended, are *our business*." (P 571) Before any possible and selfish exercise of power and sovereignty stands the call for justice from that "immense mountain of miserable ashes." (P 558) The fact that these victims are no longer here with us to proffer their forgiveness only means that we have *inherited* this responsibility. Walter Benjamin knew it very well: "There is a secret agreement between past generations and the present one. Our coming was expected on earth."⁸² This agreement, this inheritance converts us also in victims, and thereby endows us with the power and the responsibility of forgiving in the name of the dead.

Outside politics the responsibility of forgiving turns hyperbolic. Forgiveness stops from being simply impossible to become impossibility itself. Or more exactly, it is yet another name for the impossible (as friendship, hospitality or love). And it is indeed this impossibility what makes forgiveness possible again. The aporias that determine all our practices of forgiving are insurmountable because they are structural ones; they are essential to the sacrifice of pardon. Because as sacrifice, forgiveness is the impossible gift that holds no reciprocity, return, exchange, counter-gift, or debt.⁸³ The impossibility of the gift is what makes us desire and hope for it:

For finally, if the gift is another name of the impossible, we still think it, we name it, we desire it. We intend it. And this *even if* or *because* or *to the extent that* we *never* encounter it, we never know it, we never verify it, we never experience it in its present existence or its phenomenon.⁸⁴

As names of the impossible, sacrifice, the gift, and forgiveness are inseparable. Not that they amount to the same. Nor that they are interchangeable. They all are different

most of the victims have not survived, which would mean that forgiveness here is no longer possible. To this aporia must be added another factor: the victims of crimes against humanity will never appear to exonerate us. "In the first place, they are far too numerous: since an evil deed is contagious, it is impossible to know how far the consequences of even the simplest and most minor misdemeanor extends. That is its terror; that is why all wrong is so absolutely wrong. Therefore, the infinite jury of victims can never be summoned to the consistorial court of penitence." Milbank, *Being Reconciled*, 50. Nevertheless, this is not entirely true. Because although these victims cannot be summoned so that they will be able to forgive, this does not mean that they are completely dead. In fact they survive in our memory as a haunt that we cannot escape. We also have a responsibility toward these specters because it is mainly from them that the address for unconditional forgiveness comes.

⁸² Benjamin, *Theses on the Philosophy of History*, 246.

⁸³ Cf. Derrida, *Given Time*, 12.

⁸⁴ *Ibid.*, 29.

experiences of that infinite responsibility that haunts us as inheritors of a certain tradition that refuses to be defined through and through by reason and knowledge or by law and politics. Somehow we have always already known (albeit not with ‘knowledge’) that this tradition has a claim on us, and that it cannot be avoided or settled cheaply. It may be that our desire for true forgiveness is nothing else than a certain response to that promise of justice that comes from a tradition that cannot be at ease with the demands of its Biblical origins. And it may be that the most precious gift of this tradition to us is that of *sense*.

Outside Politics: The Birds of the Air – Matthew 6:25-34

Look at the birds of the air: they neither sow nor reap into barns, and yet your heavenly father feeds them. Are you not of more value than they?

MATTHEW 6:26

The impossible and the hyperbolic are born from the same worry: that of hypocrisy. Our inheritance, that is, the demands inscribed in the Abrahamic archive that makes us responsible for our own history, cannot be brought to rest when witnessing a global scene of confession and pardon in progress, where more than one is making a profit under the virtuous name of the gift. It is always possible to mimic the scene of ‘complete’ repentance and ‘immediate’ forgiveness for the sake of reconciliation and restoration. The gift can always be a demonstration of sovereignty rather than a true act of love: “The gift occasions a crisis of faith.”⁸⁵ Indeed, one can never be sure of the authenticity of all these acts of pardoning; their secret is more profound than any human insight. One can only believe in them or not; have faith in their righteousness or not. But *today* (as ever) one cannot help being suspicious. Because even if all of these acts of pardon were genuine (which we will *never* know), something rotten must be going on in the world today, of which the present proliferation of scenes of repentance, or of asking ‘forgiveness’, is both the agent and the symptom. As Derrida points out, the great danger in this ‘new’ economy of exchanging repentance for pardon is that “*forgiveness must have a meaning*. And this meaning must determine itself on the ground of salvation, of reconciliation, redemption, atonement, I

would say even sacrifice.” (OF 36) Forgiveness acquires a meaning when politics exerts a certain violence on the secret hidden in the heart of the one who forgives. The action of the forgiver is assigned a meaning with respect to political processes that are in principle completely heterogeneous to it. More precisely, forgiveness is only meaningful if it is at the service of reconciliation, redemption, or salvation. Which means that pardoning is meaningful only there where punishment is always possible; there where punishment is deserved, but nevertheless withheld – for the moment. So, as a correlate to a judgment and a punishment that are always possible, the meaning of forgiveness can all too easily become just another commodity. It can now start to circulate in the circuits of exchange of contemporary geopolitics. It is as if the motto of this immense scene of culpability were those words that Edgar utters near the end of *King Lear*: “Let’s exchange charity. I am no less in blood than thou art.” (Act V, Scene III) Since we are all equally guilty, let’s exchange charity and pardon each other with the hope that someday everything will be finally forgotten: hypocrisy in the name of reconciliation. *That* is what is rotten in geopolitics today.

In his attempt to escape all of these bad economies, Derrida’s view of forgiveness has to relate it to the idea of the altruistic, unilateral and unreturnable gift. Only then it is salvaged from the dangers of commodification. A forgiveness that is not born out of hypocrisy has thus to be utterly mad. Outside politics there is only madness. But this does not go without problems of its own. One of these problems is the aporetic relation of this absolutely unreciprocated altruism with certain contents of our Abrahamic heritage. For forgiveness is a practice that is implicitly committed to a certain view of the world. And despite all the hypocrisy and the treachery that surrounds forgiveness today, the biblical origins of this certain view of the world are unavoidable. They have never stop from addressing us, while at the same time giving us the gift of sense. In the case that occupies us here, that sense is offered by the transcendent horizon upon which forgiveness depends. Forgiveness can become meaningful (albeit in a wrong *sense*) not only inside retributive justice with its endless logic of checks and balances; in fact it makes true sense as a social

⁸⁵ John Caputo, *The prayers and Tears of Jacques Derrida: Religion Without Religion* (Bloomington &

and political practice only when based upon theological (Abrahamic, and for the most, Christian) premises. In the same vein in which we said that behind the idea of crimes against humanity lies a Jewish but above all Christian interpretation of the ‘neighbor’ or ‘the fellow man’, and of the ‘sacredness’ of human life, I would like to argue now for the next proposition: “Forgiveness and reconciliation can be justly said to be a comprehensive description of the Christian experience, provided regard is paid to all that these terms imply.”⁸⁶ In other words, I would like to examine the possibility of a theory of forgiveness where it can be related (but not confounded) with reconciliation, without falling in the aporias we have analyzed under the metaphors of the wiping clean of the slate and of turning the other cheek. For this to be accomplished it is indispensable to turn back in an explicit manner to the Christian horizon of sense where the experience of forgiveness should acquire new meaning. The basic idea here is that all the worries about hypocrisy and the commodification of forgiveness can be solved if we are able to think a kind of economy where gifts can be exchanged without losing their essence, that is, their *givenness*. In contradistinction to Derrida’s position, I would like to suggest the possibility of an *economy of the gift*; an economy where *le don* of *le par-don* remains a gift; an economy where forgiveness knows nothing of judgment or punishment; an economy, finally, where pardoning is not an exercise of sovereignty. We are concerned here with a “transaction that has an individual interest, and, therefore, an interest which is at once more limited and more intimate.”⁸⁷ The nature of this transaction is what we must investigate now.

From the point of view of the Christian memory, the absolutely mad gift of forgiveness that Derrida proposes is risky business because,

if this utterly unreciprocated altruism is the supreme model of Christian virtue, then one should not only hope for the rejection of one’s offerings of love and forgiveness (which would thus become more holy), but the most virtuous Christian would be an atheist one, whose intention is thus purified from ‘contamination’ by the hope of a reward in heaven ... Ultimately, one should also then admit that such an altruism is finally impossible (we must wait its eternally postponed arrival). The ‘gift’ of love and forgiveness cannot be given, precisely because such an absolute

Indianapolis: Indiana University Press, 1997), 217.

⁸⁶ Vincent Taylor, *Forgiveness and Reconciliation*, xiii.

⁸⁷ William Cobb, “Forgiveness (NT and Christian),” in *Encyclopædia of Religion and Ethics*, ed. James Hastings (Edinburgh: T. & T. Clark, 1913), 78.

purity of intention and detachment from our own interests and hope for return is in practice impossible, as even the minimal return of someone's grateful thanks contaminates the 'pure' intention.⁸⁸

Of course, nothing of this actually contradicts Derrida's position. Assuredly this is another way of describing the impossibility of forgiveness, forgiveness as impossibility itself. But what this argument does is making us turn our attention to a danger that goes unnoticed for Derrida. If virtue is about the absolute and unconditional concern for the other and the total exclusion of every trace of self-interest, then "it would seem that suffering is dangerously close to becoming a virtue *per se*, and replacing the happiness of the Beatific vision as the goal of Christian life."⁸⁹ Again, this is not a real counterargument to Derrida's ideas because he is not interested in a solely 'Christian' way of life. But this objection is important for us who have accepted explicitly that forgiveness is a 'comprehensive description of the Christian experience'. With this warning against the exaltation of suffering in mind, one can understand that for Christianity it is not enough to arrive to the impossibility of forgiveness, thus running the risk of making of it an excuse for fanatic martyrdom. Forgiveness cannot remain an impossibility; at the most, this impossibility is only relative to the context from where we try to make (some) sense out of forgiveness. And in a Christian context, forgiveness understood as 'the remission of sins', is a central part of the doctrine. For Christianity, forgiveness is an indisputable reality since it is the only way in which the kingdom can finally arrive. This explains why "while it may be beyond law, forgiveness, like love, is not antithetical to justice, but is its consummation."⁹⁰ Justice as a promise is the promise of the kingdom, and forgiveness is the consummation of this promise here and now, because the kingdom is a kingdom of today, of a present that is always already prepared enough to welcome the arrival of the kingdom. Its coming must be hastened and expected at every moment. Hence it is the (Christian? Jew? Judeo-Christian?) promise of justice that lies behind all our practices of forgiveness. It is because of this promise that within the New Testament the legitimate desire for happiness and hope for immediate or eschatological return are not excluded from the practice of virtue: "If you

⁸⁸ Hughes, *The Politics of Forgiveness*, 273.

⁸⁹ *Ibid.*, 272.

⁹⁰ *Ibid.*, 279.

forgive men their trespasses your heavenly Father also will forgive you.” (Matthew 6:14) What is important for my argument is that it is not properly self-interest and reciprocity which are problematic in themselves, but the *commodification* which can distort these qualities. Derrida does not consider this possibility in an explicit manner, thus making his position completely aporetic. And we do not want to dwell in the impossibility, in the eternal awaiting for a justice forever to come; we want an experience of forgiveness that is able to fulfill the promise of justice here and now.



Rembrandt van Rijn. Saint Matthew and the Angel, 1661. Oil on canvas.

Now, it is imperative to realize that a different ontology is required to sustain reciprocity and exchange without commodification. More positively we can indicate that, “the very logic of reciprocity itself requires the recognition of a *transcendent* horizon as the

condition for its possibility.”⁹¹ Indeed, if love and forgiveness must be reciprocal, then they require the hope for and the promise of the kingdom or of the beatific vision. If we are arguing for an endless circuit of exchange where each forgiving person would be implicated in the experience of being forgiven, we still need to find our way into this infinite circle. Which means that it is necessary that someone make the risky and mad step of taking the initiative to break the circle of evil and vengeance in order to get the gift-exchange to begin at all. In other terms, “forgiveness requires the existence of a perfect being who does not require forgiveness and cannot be other than forgiving as the condition for its very possibility.”⁹² The remarkable, formidably difficult *donology* of Jean-Luc Marion explores precisely this necessity of a perfect being in order to be able to think the world as being-given in its totality: an ontology of the gift; ontology as donology. Though I cannot go here through all the refinements of Marion’s thought, I would like to borrow some of his ideas in order to clarify my claim that reciprocity and exchange are possible without commodification.

According to Marion, donation can arise only once causality has been radically surpassed, in a mode whose own rationality causality does not even suspect. Causality, being here just another name for the disparate spurious economies we have discussed so far, cannot understand the logic that determines the economy of donation because it is radically heterogeneous from the requirements of rationality. An example of this heterogeneity comes from the answer that Marion gives to the question of the perfect being that would make all for-giveness possible. Contrary to what a solely rational analysis would conclude, this perfect being does not assume the figure of the giver but that of the *being-given*⁹³ par excellence. In Marion’s words,

if the world can be defined as what appears as the being-given in its totality, if the ‘I/me’ can be designated as what appears as the closest being-given, then ‘God’ would be determined as the being-given par excellence. That excellence indicates neither sufficiency, nor efficiency, nor principality, but the fact that he gives

⁹¹ Ibid., 276.

⁹² Ibid., 276.

⁹³ The term used by Marion is *étant-donné*. It should be kept in mind that the term *donation* can convey at least three interrelated senses: giving, givenness, and the given.

himself and allows to be given more than any other being-given. In short, with 'God' it is a question of being abandoned [*l'étant-abandonné*].⁹⁴

God (without quotation marks: it is obvious that I am speaking of a certain God, Abraham's God) abandons himself in an infinite giving in which the totality of the world appears as pure being-given, as well as He. He has always already being given by himself as pure gift. Hence God is defined by his being-given by himself and his sheer givenness. Only as such does he 'ex-ists'. In virtue of his standing out ecstatically into that which he gives (donation as gift), can his donation remain equal to itself (donation as action).⁹⁵ His donation cannot fall into corruption (i.e. calculation) because He is being-given by himself, and this action is thus divine and infinite. His donation without reserve endows him with a presence without limits, and thus prevents him from presenting himself as an object, or even as a 'metaphysical' principle or *a priori*. Due to his infinite giving and being-given, He becomes invisible and remains forever in a state of infinite abandon.⁹⁶ Donation can thus pass for abandonment: there cannot be donation without the being-given par excellence whose mode of existence is his own abandonment. By abandoning (giving) itself without prevision, without measure, without analogy, without repetition, the being-given par excellence makes all donation possible.

Put in more Christian terms, this amounts to saying that all our acts of love and forgiveness are made possible by the experience of the always already given love of God for us. His being-given by himself and his givenness are "the love behind us and before us which draws forth our love."⁹⁷ The horizontal economy of forgiveness between men is only possible because there is a vertical economy between heaven and earth. This is the religious (Christian) horizon upon which forgiveness depends. God's always already past breaking into the economics of violence demands from us to imitate the divine initiative in order to

⁹⁴ Jean-Luc Marion, "Metaphysics and Phenomenology: A Relief for Theology," *Critical Inquiry* 20 (1994): 572-591, 588.

⁹⁵ *Ibid.*, 589.

⁹⁶ The being-given par excellence does have a very precise type of manifestation: that of the *saturated phenomenon* or, more precisely, that of the saturated phenomenon typical of revelation. However, phenomenology (and not any kind of metaphysics) can identify the saturated phenomenon of the being-given par excellence only as *possibility*. That is, as the possibility of donation itself. Cf. Marion, *Metaphysics and Phenomenology*, 590-591.

⁹⁷ Hughes, *The Politics of Forgiveness*, 276.

inflect politics, law, and history. The world can only be transformed once we have learned the ultimate lesson of forgiveness: it may entail the supremely difficult vocation to martyrdom, but not for suffering's sake, but as an act of love that combines the trust that one is forgiven and the hope that one will receive forgiveness back. As an act of love, forgiveness is eminently an act of self-abandonment. Thereupon there is no difference between forgiving and being forgiven: it is one and the same experience. This is why Paul can urge us to forgive and to be kind to one another "as God in Christ forgave you." (Ephesians 4:32) And this is also why we should be able to ask for our debts to be forgiven as indeed we have forgiven our debtors (Matthew 6:12). This is the lesson: to forgive as we are forgiven. This is the secret: that there is no secret. It is pointless to forgive so that we can be forgiven because we have always already been forgiven (and hence admitted into the kingdom of God). Our self-interest in being forgiven cannot become a commodity because it is a *fait accompli*. Thus forgiving and being forgiven are inseparable; there is no delay between them so that commodification and selfish self-interest can creep in. If there is any real self-interest in pardoning, it is not a selfish search for salvation; quite the opposite, in an eminent manner, "forgiveness regards the higher welfare only of the offender."⁹⁸ We forgive him so that he may learn the lesson of forgiveness; we forgive him so that he may realize that he was already forgiven *before* we came out to him and said: 'I pardon you'. We forgive him so that our extraordinary and excessive pardon will continue the gift-exchange initiated by God. Strictly speaking, there is nothing for us to win here – and certainly much to lose. Because God's cut into the economics of evil and violence is not God's forgiving us, but rather his giving us the gift of the capacity for forgiveness.⁹⁹ Within this horizon of sense forgiveness recovers its positivity and stops being a simply reactive act of acknowledgment. Our capacity for forgiving is precisely our capacity to strive and even to sacrifice ourselves for the other's welfare and salvation. Reconciliation is not an end (because it has been always already consummated by the forgiving love of God), so forgiveness cannot ever become a means. At any rate, it is the other, the closest other, what should move our love and inspire our forgiveness. "This constant, transforming

⁹⁸ Cobb, *Forgiveness*, 81

loving-faithfulness is what we understand by the social and political practice of forgiveness.”¹⁰⁰ As God exists completely outside himself in perfect abandonment and donating ecstasy, we are also decentered “toward the always already open, offered, and abandoned face of the other [*d’autrui*] and thus toward the being-given of the other.”¹⁰¹ And as God abandons (gives) himself without restraint, so we can reply to the address of the abandoned face of the other with the answer of a gift. Forgiveness is not born out of the selfishness of an entirely self-absorbed ego, but from the intrusion of the helpless other that forces us to make the first step to cut into the relentless economies of evil, violence, and vengeance, by abandoning (giving) ourselves in the gift of forgiving love. We give ourselves not because it is due; we give ourselves without why: that is our abandonment, our being-given. That is why we can forgive.

Nonetheless, this is not so clear and straightforward in Christianity itself. These ideas are just a way to make sense of forgiveness upon Christian premises. But the fact is that, as a religion of ‘pure love’, Christianity is always running the risk of falling back into commodification by changing one spurious economy for another. The intimate proximity that the biblical archive (especially throughout the New Testament) establishes between forgiveness and reconciliation (and for that matter with justification, fellowship, sanctification, and atonement) yields the risk of bringing back selfishness and miserliness into our practices of forgiving, because reconciliation can be all too easily identified as the goal of forgiveness, if not completely equated with it. The system of indulgences built upon the sacrament of penance as an instrument of forgiveness is certainly the most corrupted example of this danger. For this reason I would like to endorse at this point the view according to which the teaching of Jesus in relation to forgiveness is like that one found in the rest of the New Testament passages: “It is positive, not negative, but it is concerned with the things which stand in the way of reconciliation rather than with reconciliation itself.”¹⁰² However frail the distinction between forgiveness and reconciliation might be, nevertheless it must be preserved to the end, because what is at stake here is the very

⁹⁹ Cf. Milbank, *Being Reconciled*, 62.

¹⁰⁰ Hughes, *The Politics of Forgiveness*, 270.

¹⁰¹ Marion, *Metaphysics and Phenomenology*, 586.

possibility of true forgiveness: the very possibility of escaping the commodification of self-interest and reciprocity. And in the last resort this is the very possibility of justice. Hence, it is more in accordance with the facts to say that forgiveness is the condition precedent to reconciliation, or that a man is first forgiven, and then declared to be once again in normal relation to us (and hence to God). In the New Testament, forgiveness is not so much directly related to reconciliation and restoration, as it is characterized as the removal of the barriers to reconciliation or as the remission of sins.¹⁰³

I believe that nowhere is this frail distinction and the dangers of disrupting it better illustrated than in *Matthew*. Because it is perfectly true that with *Matthew* an ‘economy of salvation’ or a ‘celestial economy’ is established. It is not without significance that the anonymous author of *Matthew* was a tax collector whom was found by Jesus sitting on a tax office, and summoned to follow him (9:9). Following the spirit of his author, this gospel revolves around an economic principle: “For where your treasure is, there will your heart be also.” (6:21) The heart, the place of the secret, is thus also the place where we store our treasure. But the Jesus of *Matthew* warns us from the dangers of laying up our treasure on earth, and advises us to better lay it up in heaven, “where neither moth nor rust consumes and where thieves do not break in and steal.” (6:19) This economic principle prevents us from storing and exchanging earthly and perishable goods, because then our reward will be earthly and perishable too. We should not sound no trumpet before us when we give alms, nor should we pray in the synagogues or in the streets where we may be seen by men. Because then no secret will exist and we will have already received our reward. If we make the secret so overtly visible, then the profit will also be overtly visible; it will be mundane

¹⁰² Taylor, *Forgiveness and Reconciliation*, 13.

¹⁰³ Contrary to what is commonly supposed, explicit references to forgiveness do not abound in the New Testament. The commonest word is ἀφεσις, which as noun or verb can be found 61 times, of which 45 are in the Synoptic Gospels (18 in Luke), 2 in 1 John (1:9, 2:12), 1 in James (5:15), 6 in Acts (2:38, 5:31, 8:22, 10:43, 13:38, 26:18), 2 in John (20:23), 1 in Romans (4:7), 1 in Ephesians (1:7), 1 in Colossians (1:14), and 2 in Hebrews (9:22, 10:18). In all of these passages, what is said to be forgiven is ‘sins’, ‘debts’, ‘iniquities’, or ‘trespasses’.

The term χαρίζεσθαι occurs 11 times (2 Corinthians 2:7, 2:10, 12:13; Ephesians 4:32; Colossians 2:13, 3:13; Luke 7:42, 7:43), καλύπτω (‘to cover’) is used 3 times (Romans 4:7; James 5:20; 1 Peter 4:8), Luke uses also ἀπολυω twice in 6:37, and παρεσις (‘passing-by’) occurs only in Romans 3:25. In the Apocalypse the idea of forgiveness is expressed as a loosing or cleansing by the blood (1:5, 7:14, etc.). Cf. Cobb (1913), p. 78 and Taylor (1946), p. 3.

and measured by earthly exchange rates, forever subjected to the perils of devaluation. Matthew's Jesus teaches us that to store our treasures on earth, as Pharisees do, is a bad investment. We must store, but heavenly goods – and in secret. Because then our reward will come directly from our Father who sees in secret (6:4, 6:6, 6:18). In this manner Matthew institutes a new economy of sacrifice: “you will be well paid if you rise above earthly considerations and set your sights on the supersensible, heavenly returns.”¹⁰⁴ Trading heavenly, invisible goods in secret will always be a better investment because at the end the reward will be heaven itself. He whom sees in secret will very well reward the secret of our sacrifice: we will be finally admitted in his kingdom by knowing how to play the heavenly market. But the danger here is that that secret which only God can see is not really one of sacrifice, but one of an all too well calculated long-term investment. We renounce to enter the earthly economics of exchange, so that on the outside it looks like perfect renunciation, but in fact it is just a delay of our final collecting. Our renunciation is not a real gift to the undeserving, but rather a long-term investment in an invisible, supersensible, heavenly economy. Not sacrifice, but hypocrisy is the real outcome of this economics of heavenly goods: “By drawing the gift back into a calculus, *Matthew* reproduces a second, more sublime pharisaism, a higher, holier, heavenly hypocrisy.”¹⁰⁵ The gift of sacrifice becomes thus a virtue *per se*, a commodity that renders the highest profit: to win heaven economically. If we think of the economy of the gift as an endless reciprocal gift-exchange, then the economy of sacrifice of Matthew's Jesus would be but a countergift of the gift;¹⁰⁶ a second, but still spurious, petty and hypocritical economics where forgiveness is only possible as a (heavenly) means for reconciliation, that is, for the entrance into the kingdom – as if making God into some sort of business partner and asking him: “Let's exchange charity!” Reconciliation would still be a bargain; a heavenly one, but a bargain after all.

But in Matthew we also find the little sermon on not worrying, where Jesus urges his disciples not to count, not to worry, and not to calculate (6:25-34). When Jesus asks his

¹⁰⁴ Caputo, *The Prayers and Tears of Jacques Derrida*, 214.

¹⁰⁵ *Ibid.*, 216.

¹⁰⁶ Cf. Derrida, *The Gift of Death*, 105 ff.

disciples to behold the birds of the air and the lilies of the field, he “does not turn on making earthly payments on long-term, deferred celestial returns but on giving, pure and simple.”¹⁰⁷ He urges them not to be anxious about their life, not to be anxious about tomorrow, “for tomorrow will be anxious for itself.” (6:34) We should not worry, asking, ‘What shall we eat?’ or ‘What shall we drink?’ or ‘What shall we wear?’, for our heavenly Father knows what we need *before* we ask him (6:8). Our for-giving father has always already given us what we need: This is the gift of the kingdom of God. Because the kingdom is a kingdom of gifts; in the kingdom everything is being-given. Consider the birds of the air: they neither sow nor reap nor gather into barns, and yet God feeds them. And if God cares so much about birds, how much will God care for us, who are of more value than they are (6:26). Does not the existence of birds and lilies seem a little gratuitous? What productive work do they do? But just look at them; look how they live without a care in the world; look how they just exist; how they are just being-given; just gifts from God. And if God sees so much after them, whose existence appears as *sheer* being-given, and if “the ‘I/me’ can be designated as what appears as the *closest* being-given,”¹⁰⁸ how, then, can we doubt that God will give us what we need, or more exactly, that He has always already given us what we need?

Thus Matthew, the same tax collector who has Jesus saying that we should always be keen on storing heavenly goods (i.e. suffering and renunciation), so that at the end we can exchange them to buy our entrance into the kingdom, this same Matthew, this same tax collector, advises us through Jesus’ mouth to live like the birds of the air, to live without why, to give not because it is due, to forgive our debtors as we have been already forgiven our debts – to for-give out of love, to give as if we were already in the kingdom and given what we need *today*; as if the promise of justice has been already fulfilled. This is another economy (if it is an economy at all). It is the economy of the gift. It is the economy of forgiveness. It is the economy that can cut into the economies of law, violence, and history out of a mad act of loving sacrifice, which has as its only self-interest the welfare of the other. In this economy of the gift, if there is such a thing, we cannot make any profit, for

¹⁰⁷ Caputo, *The Prayers and Tears of Jacques Derrida*, 222.

the greatest reward of all we already have: God has forgiven us as indeed we forgive others. This is the logic of exchange between heaven and earth:

[Our forgiveness] should overflow towards others and thus return to God, so that within the always already prior activity of divine grace and forgiveness, we can and should 'offer up' to God our acts of forgiveness in the hope that they will continue to be non-identically returned in his merciful forgiveness towards us.¹⁰⁹

The return, the 'reward' can only be hoped for. There is no way to secure it. It is up to God's mercy to 'reward' us. So just give. Just for-give. Just forgive because it is just to forgive. Just forgive because no matter how mad forgiveness might be, in the economy between heaven and earth *it makes sense to forgive*. So just give. Without why.

This is quite mad. But it is not the hyperbolic madness of Derrida's impossibility of forgiveness where there will always remain an abyss between the most refined knowledge and the responsible decision; rather it is the madness of faith. For faith means living without keeping count. This other Matthew, this other Jesus urges us to turn on God's love and God's gift-giving – on his being-given par excellence. He asks us to trust God and let him to the worrying. Because God's love for us, which is at least as great as his love for the birds of the air, will proved us with what we need. This is why forgiveness is an arrest of fate by faith. We forgive out of a spontaneous and generous act that trusts in God's love and hopes for his kingdom. In this manner we cut into fate-imposed economies of law, violence, and history. Forgiveness, as an act of love and sacrifice, refuses to play the game of these economies in order to play the economy of the gift, because when we forgive we are in the kingdom. And in the kingdom there is neither judgment nor punishment; just the gift of love. For the kingdom is the call of the other, and the kingdom arrives when we forgive him.

But nothing is without a risk of its own: "You *should* worry that *not* worrying will turn into a life of bourgeois ease, which is the counterfeit coin of letting God do the worrying."¹¹⁰ That is to say that our decision to forgive or not to forgive is not without consequences, and that those consequences can be put into our account. Not worrying for

¹⁰⁸ Marion, *Metaphysics and Phenomenology*, 588 (my emphasis).

¹⁰⁹ Hughes, *The Politics of Forgiveness*, 275.

¹¹⁰ Caputo, *The Prayers and Tears of Jacques Derrida*, 225.

tomorrow does not mean indifference or negligence; it does not mean delegating our responsibilities on God or a higher instance whatever nature it might have. Yes, of course we should worry, but not for tomorrow. It is *the present*, the present that is the straight gate through which the Messiah might enter,¹¹¹ the present where the kingdom exists, what should be the reason for our worries. And more precisely, it is *the present of our secret* what should make us worry. Our worry should be that our decisions do not have any secret behind them. We must strive to erase all secret from our heart so that not only He whom sees in secret, but also, and especially, ourselves, might be certain whether in one's heart one is pharisaical or not, whether one is living like the birds of the air or just enjoying a comfortable life with good benefits. And our worry should never cease because we will never, by definition, *know* what one's own secret, unconscious motives are. Here there is only faith. A mad faith in the unconditionality of our decision to forgive or to withhold forgiveness. That is our worry: to live without secret, although we will never be sure where love ends and hypocrisy begins. Tomorrow will be anxious for itself; let's not be anxious for it; let's be anxious for our present responsibility of playing one economy or another: "Let the day's own trouble be sufficient for the day." (6:34) And the day's most urgent trouble, the trouble of *today*, is that we will never know enough; the worry of today is that we must decide and take responsibilities with *faithful certainty* in the justness of our actions, but without full knowledge. We must decide madly and faithfully – today. God's gift of the capacity to forgive lends an infinite responsibility on us, and it cannot be settled cheaply: "if you forgive the sins of any, they are forgiven; if you retain the sins of any, they are retained." (John 20:23) Jesus urges us to forgive, but in analogous fashion to what we said in part one regarding commandments, he acknowledges the possibility of not forgiving. But there are no rules to help us deciding here. We can forgive and thus decide to participate in the never-ending gift-exchange between heaven and earth, or not forgive, and then exchange harm for another harm. We can decide to keep on piling resentment unto blame for the sake of the nation's survival, or of a work of mourning by which the Nation-State might overcome offences and injuries. We can always disrupt the economy of the gift for

¹¹¹ Benjamin, *Theses on the Philosophy of History*, 255.

the sake of reconciliation. However, we should not do this while forgetting about our responsibility: whatever crimes we do not forgive, then God will also not forgive them. These two economies are not independent from each other, and what we do in any of them, is reflected on the other. There is always the possibility of retaining the sins of any, so that they are retained, while forgetting at the same time that then, we are also denying the forgiveness of our own debts: Forgive us as indeed we forgive others. That should be our worry: not to confound law's judgment and punishment with justice.

The fact that the economies of violence and of the gift are not independent is what makes it possible for us to make the first move, and imitate the divine initiative of putting a halt to the downward spiral of evil and revenge. Here lies the possibility of justice outside politics. Because forgiveness, despite (and precisely because) being beyond law, is the consummation of justice. For forgiveness, as an act of love, "is more truly just in its attention to the specificity of a situation, than an arbitrary formalist justice based upon the equivalence which thus ignores individual difference."¹¹² That is to say that forgiveness is pure love for the abandoned other, for the always already open, offered, and abandoned face of the other and thus toward the being-given of the other. The gift of the other does not come without responsibility, and one can hardly expect to respond to it by making of that other just another case that could be subsumed under a certain universifiable principle of pure reason (like the categorical imperative). Only by attending the irreducible singularity of the other can we expect to make any justice to his address. So forgiveness is impossible to generalize. All that is there to guide us is Jesus' advice to forgive others (especially our enemies) and our self-interest in the others' welfare. In a fashion analogous to that of commandments, forgiveness restores the possibility for individuals to rule themselves in observance to a heterogeneous call for responsibility, that is, the call of the other. Paradoxically, forgiveness is gratuitous because, as love, it is commanded: "You shall love your neighbor as yourself." (Romans 13:9) But can love be commanded? Well, "no third party can command it or extort it. No third party can, but the One can. The commandment

¹¹² Hughes, *The Politics of Forgiveness*, 280.

to love can only proceed from the mouth of the lover.”¹¹³ God, as the being-given par excellence, as being-abandoned can command us to abandon ourselves in our love for the neighbor. Contrary to the pretended autonomy of moral law, the commandment reaffirms its heteronomy by responding to the address of the abandoned other. This is why justice must entail love for the other; it is the only way to do justice to his infinite singularity. The commandment of love brings with it its proper economy: “Since love cannot be commanded except by the lover himself, therefore the love for man, in being commanded by God, is directly derived from the love for God. The love for God is to express itself in love for one’s neighbor. It is for this reason that love of neighbor can and must be commanded.”¹¹⁴ As we said before, that we can give love is only possible thanks to the always already present love of God for us. This love endows us with the responsibility of maintaining the reciprocity by loving and forgiving the abandoned other.

As a mad act of love and faith, forgiveness thus carries justice to its extreme: it stands in judgment of all our judging. By obeying the commandment of love, forgiveness steps out of the economy of law, thereby refusing to judge the other, but in doing so it judges the order of law where there is no possible forgiveness but only (earthly) judgment and punishment. Forgiveness reminds us of the self-destroying nature of the economics of violence that supports retributive justice by making the reconstitution of social relations possible. It is only as spontaneous and generous giving that forgiveness can be the remission of sins or the removal of the barriers to restoration and reconciliation. Forgiveness is necessary for reconciliation, albeit it does not guarantee it. There is a gap between them that forgiveness alone does not have the power to close. We can just strive for the other’s welfare and forgive him; that is all we can do. That is our responsibility. That is our worry. That is our madness. And that is justice.

So what about reconciliation? Do not ask, do not worry; just forgive. God will provide. Yes, reconciliation may come, but it is not up to us.

¹¹³ Rosenzweig, *The Star of Redemption*, 176.

¹¹⁴ *Ibid.*, 214.

Digressions. (Amnesty & Forgiveness in Colombia)

(1) Colombia's conflict is a perfect example of the dangers of 'forgiveness' understood as a political means in the quest for peace and reconciliation. More than 60 exemptions and 25 amnesties have been sanctioned since 1820.¹¹⁵ But in all of these cases the result has been one of impunity, an impunity that, to great extent, is the cause of the current state of the conflict. Colombian society has come to realize that processes of 'forgiving and forgetting' put an immense drag on the coexistence, and that in the long term, those who are really interested in forgetting are the forgiven, because for the victims this same exercise proves to be impossible. Past wounds have never really been healed, and sometime the result has been that the 'forgiveness' granted by the state has not been recognized by the offended, which then seek to make justice by illegal means. The consequence then is that the way of forgiveness does not appeal anymore to some individuals or groups, who thereby encourage a militaristic solution to the conflict. The miscarried peace process that can be found throughout Colombian history have had the perverse outcome of a more or less general skepticism toward possible non-violent resolutions of the conflict, which are therefore regarded as 'naive pacifism', or even as allies to one or another of the parties involved.

(2) Since forgiveness is always linked directly with reconciliation, then its goal has been defined as a "new foundation of the rule of law."¹¹⁶ According with this idea, this position accepts that forgiveness disrupts the current legal order in order to give way to a new, stronger, and more legitimate legal order. But of course, in doing this the state is accepting that the legality that supports it is not completely legitimate, and that it may be one of the reasons for the beginning of the hostilities. Evidently, this is a hard step to take, and most likely only strongly legitimate states would be prone to accept such a gap in their legal system. In the digressions to part one I have endorsed the thesis that the Colombian state is weak because of its long history of nepotism, corruption, and even violations to International Human Rights. But the paradox is that despite their weakness (i.e. lack of

¹¹⁵ Edgardo Maya, "Ley para incorporación de grupos armados: ¿perdón de lo imperdonable?" *Lecturas Dominicales - El Tiempo*, Sept. 5, 2003.

¹¹⁶ Luis Carlos Restrepo, "Un pacto de confianza," *Semana* 948, Jun. 2000.

legitimacy) several governments have attempted to negotiate a way out of the conflict. This could be partially explained by a fact that we stressed in part one: for its most part, Colombia's population has come to realize that a militaristic solution is not enough, and that some degree of negotiation is inevitable. However, none of these peace processes has been able to achieve reconciliation. And this is so because, as experience has demonstrated, any peace process requires a state that is strong enough to carry the process beyond the actual negotiation. In short, it is not enough to 'forgive' (that is to sanction the prescription of certain crimes) the perpetrators; actually this is the easiest part of the whole process. For once 'forgiveness' has been granted, those who have been forgiven must be brought back to civil life. And this is not an easy task: it entails finding a place for the perpetrators inside the society they have once attempted against. They must be provided with jobs, social security, education, and so on. And in a society where most of these conditions is considered a privilege, the fact that the perpetrators of the past might come to be part of the few privileged of the present, may result in more resentment and blame, threatening thus that which was won by means of negotiation. These problems post-negotiation are the state's business, and until now, the Colombian one has failed to deal with them.

(3) Let us repeat it once again: justice does not necessarily bring the healing of past wounds. For instance, it may just as well lead to rage on the part of the victims, triggering revenge, or fear on the part of former perpetrators, leading then to a demand of separation. In the case of a conflict such as the Colombian, one must have in mind that "yesterday's perpetrators and victims -today's survivors- have to confront the problem of how to live together. Faced with identities inherited from the past, they must forge new and common identities."¹¹⁷ Any process of reconciliation must address the problem of how to live together in the post-conflict. This is a very difficult problem because it has to do with the limits of remembering and the limits of blame. To what extent should we keep remembering the atrocities of the past if such memories prove to be an obstacle for living together? But the other question is, of course, equally valid: To what extent should we forget without

¹¹⁷ Mamdani Mahmood, "Reconciliation Without Justice," in *Religion and Media*, ed. Hent de Vries and Samuel Weber (Stanford: Stanford University Press, 2001), 378.

running the risk of facing the dangers that may come from impunity? I do not think that this is a problem that could be completely regulated by any of the parties in conflict. And that is because this is a matter of forgiveness, not of reconciliation. The state might have sanctioned amnesty, but that does not necessarily mean that the victims will forgive and/or forget. This is what the abyss between law and forgiveness looks like in societies that have been in conflict with themselves for so long. And it is not to be close by mere political means, at least not by those means of the modern state – this is a matter for a different kind of democracy that is yet to come.

Conclusion

Democracy Without Sovereignty?

Be angry but do not sin.

EPHESIANS 4:26

But seriously, what about reconciliation? If it is not up to us, then who is to bring reconciliation finally? God? But what then if I do not believe? Is forgiveness possible only for those who believe in the God of Abraham? Do you really expect us to forgive crimes against humanity for the sake of some sort of ‘madness of the gift’? What point is there to forgive these horrid crimes if some kind of restoration is not to follow? What sense has this absolutely gratuitous forgiveness? Does it not fail to take these crimes seriously? And, have not you also said that forgiveness must be nurtured into a political possibility? What happened with that?

Well, before I answer these questions, please allow me first to make a few remarks. I will commence by the question of Christianity, or more exactly, by the question of to what extent is my account of forgiveness ‘Christian’? To make it clear from the start, I admit, following Jean-Luc Nancy, that Christianity is not something that only forms part of *our* tradition, but rather that this tradition has been axially constituted around Christianity. That is to say that the modern world (that which is signaled by that elusive and ill-defined expression ‘The West’) has itself evolved out of the Christian one.¹¹⁸ To this extent, then, one can no longer attack or defend Christianity, dispose of it or salvage it. One can no longer think without Christianity. Hence, the answer to the question for the Christianity of (my view of) forgiveness depends on the answer for a more comprehensive question:

“How, from the moment that there is such a thing as Christianity, does our entire tradition, including the part of it that *precedes* Christianity, find itself reopened and revived?”¹¹⁹ The enormity of this question far exceeds the limits of this paper, but nevertheless I will risk one idea or two. First, it is possible to think that our tradition has been constituted around Christianity, because at the heart of Christianity “lies a specific type of conflict that is best defined as the conflict between an integrity and its disintegration.”¹²⁰ Indeed, this tension can be seen in the very history of Christianity, which can be divided at least in three stages: a Jewish Christianity, a Greek Christianity, and a Roman one. These stages do not go along together in perfect harmony, but rather constitute a dogmatic-ecclesiastical integrity plagued with conflicts and tensions. As Nancy has it, “Christian identity is from the outset a construction through self-overcoming: the ancient law in the new law, the logos in the Word, the *civitas* in the *civitas Dei*, and so on.”¹²¹ Therefore Christianity, rather than by its dogma, if there is such a thing, is better defined by its permanent state of self-overcoming. There is a certain instability at the heart of Christianity which endows it with a *sense*. Here ‘sense’ should be understood not only as ‘meaning’ but also as ‘direction’ – the self-overcoming of Christianity draws it forth into history and opens it up for its own negation. Which means that from the moment that there is such a thing as Christianity, our entire tradition, including the part of it that *precedes* it, is constantly renewed and illuminated. Between its integrity and its disintegration, Christianity is what it is “only by being progressively revealed to itself as the integration of what precedes it and is carried before it.”¹²² The sense of this ‘progress’ is the experience of the path that would lead to salvation. The sense of Christianity was fated since the day that father Abraham was pushed to leave his homeland. Since then Christianity is on a journey that is indissociable from human history, or at least, from the history of ‘the West’.

¹¹⁸ Derrida is a bit more precise: The modern world would have been born from a certain (European) Enlightenment and a certain (European) philosophical humanism, and more exactly, out of a cosmopolitanism born from a graft of stoicism with Pauline Christianity (OF 31).

¹¹⁹ Nancy, *The Deconstruction of Christianity*, 112.

¹²⁰ *Ibid.*, 117.

¹²¹ *Ibid.*, 119.

¹²² *Ibid.*

This history can be regarded as the opening up of sense. Due to its structural process of self-overcoming, Christianity is always at the quest for (some) sense – and at the same time it is always in the process of dissolving every sense. As Derrida notes, the opening up of Christianity has sealed its own destiny from the beginning: “Christianity’s true destiny is to be demythologized and secularized.”¹²³ The paradox of Christianity, or more exactly, of Christianity *today*, is that it has to contemplate the present possibility of its negation. This does not mean that Christianity has ceased to exist, yet, “if sense is of the order of the ‘common’, Christianity has doubtless ceased to be a way of life, has moved away *from itself* and taken another role in another order of sense and another order of the communal sharing of sense.”¹²⁴ I do not know if one can simply affirm that there is just one order of the communal sharing of sense where Christianity plays a determinant role. I think that the spheres of law, of history, of ethics, of philosophy, and so on, can be more or less successfully related to Christianity’s history. But in order to finally start answering some of the questions that opened the last section of this paper, there is one order of sense where Christianity is certainly playing a decisive role today. This is the sphere of politics. Assuredly, this is not a new situation; Christianity and the political have lived in an intimate closeness (if not identification) since the birth of the first. But the politics of today is a special case – it is the case of *democracy*. Contemporary politics is a special case because it is the case of a democracy spawned in a certain Enlightenment, and lead by the light of what Kant called ‘autonomy’. In this context, autonomy means answering only to a law (*nomos*) that you give yourself (*autos*). Precisely this is what being rational means for Kant: knowing the limits of our own reason so that any alien or heterogeneous power will not overwhelm it. Hence, as entirely rational and self-grounding, autonomy lends a certain sovereignty on the political order that it supports, namely, democracy. Since for autonomy everything begins and ends with the self, in the same manner in democracy everything begins and ends in the people. Nothing that could come from outside this circle is admitted anymore into the political: democracy is the secularization of politics. That is the project of modernity. From it comes its power, its sovereignty. This is what John Milbank calls

¹²³ Jacques Derrida, *The Gift of Death*, 112.

‘secular immanence’, “which is totalizing and terrorist because it acknowledges no supra-human power beyond itself by which it might be measured and limited.”¹²⁵ While shifting the rule from a sovereign one or few (usually considered as representatives of a higher order in earth) to the people, modern democracies have, nevertheless, left the space for sovereign violence undisturbed.

Nevertheless, the truth is that modernity does not, in a single stroke, render obsolete all religious categories: “however secular modern democracies think they are or have become, the truth is that secularization always presupposes a theology to secularize, so that, for better or for worse, secularism is the continuation of theology by another means.”¹²⁶ This means that democracy is not just a new episode in the transfer of the religious into the political, and that it is not a simple matter of the reactivation of the religious at the weak points of the social, as Claude Lefort suggests.¹²⁷ The fact is that that certain Enlightenment that gave birth to modern democracies forms part, from its very beginning, of the history of Christianity as the opening up of sense. With this I do not intend to say that the Enlightenment is a religion in itself (although strong arguments for this thesis could actually be proposed), but less radically, that it is part of the process of self-overcoming essential to Christianity. I believe that modernity is in fact the result of the ongoing demythologization and secularization that is the fate of Christianity. And the same could be said about the ‘turn to religion’ of which so much has been said. The ‘return of religion’ is nothing more than another stage in the distension and the opening up of sense as such. But this is not to say that it is without importance. To the contrary, one can just not ponder enough about the significance of this so-called return of the religious. Because to great extent, this return is a reaction against modernity. Or more precisely, as Adorno suggests, it is a turn against the excess of rationality, and the dangers that spring from such an excess. For, after all, an excess of rationality is a *lack* of rationality. The increase of all apparatuses

¹²⁴ Nancy, *The Deconstruction of Christianity*, 115.

¹²⁵ Milbank, *Being Reconciled*, 5.

¹²⁶ John Caputo, “Without Sovereignty, Without Being: Unconditionality, the Coming God, and Derrida’s Democracy to Come,” *Journal for Cultural and Religious Studies* 4.3 (2003): 9-26, 12.

¹²⁷ Claude Lefort, “The Permanence of the Theologico-Political?” in *Democracy and Political Theory*, (Cambridge: Polity Press, 1988), 255.

and means of quantifiable domination and the rational organization of mankind, which is left abandoned to play the economy of power, puts democracy always on the edge of totalitarianism. The excess of *ratio* endangers the achievements of autonomy by replacing the sovereignty of the people with the sovereignty of the state. However, Adorno is not calling for an overcoming of reason, but for a reasonable use of it. Which is nothing else than a call for self-reflection: “Certainly a *ratio* that does not wantonly absolutize itself as a rigid means of domination requires self-reflection, some of which is expressed in the need for religion today.”¹²⁸ The paradox of modernity (paradox that runs along that of Christianity as its own self-overcoming) is that at the precise moment when it seems to finally achieve its final end, that is, the total secularization of human life, a need for religion comes to haunt it from a past that was thought to have been overcome.

For this reason I cannot follow Adorno when he says that, “the religious renaissances of today are philosophy of religion, not religion.”¹²⁹ I disagree with Adorno not because I think that the religious renaissances of today *are* religion, but because a philosophy of religion, today, has to be more than just philosophy *of* religion. Instead, it could be affirmed that, “the turn to religion discernible in modern and contemporary philosophy goes hand in hand with a reassessment of the ethical and the political.”¹³⁰ The excess of rationality (understood as lack of reason) has demonstrated all too well the dangers of the secular immanence that was the goal of the modern project. By erasing all supra-human or eschatological horizon of sense, modernity turned the risk and the threat of the worst into a disturbing positivity. What awaited us at the end of the secularist project was not liberty, equality, and fraternity, but rather radical evil. So more than just philosophy of religion, the turn to religion of today is a question for the relation between the self and the other, that is, a question for the limits of autonomy, and thereby, of democracy. And furthermore, it is a question for the relation between religion, or better yet, the religious, with violence, politics, and history. Again, it is the self-overcoming of

¹²⁸ Theodor Adorno, “Reason and Revelation,” in *Critical Models: Interventions & Catchwords* (New York: Columbia University Press, 1998), 138.

¹²⁹ *Ibid.*, 137.

¹³⁰ Hent de Vries, *Religion and Violence: Philosophical Perspectives from Kant to Derrida* (Baltimore: The Johns Hopkins University Press, 2002), 212.

Christianity what is doing the work here – because this return to religion is in fact a stage further in Western history as the opening up of sense.

Nonetheless, it should not go unnoticed that this new stage in the history of Christianity is experienced as a *return*. According to Vattimo, “that religious experience is given to us as a return is already a sign and a consequence of the fact that we live this experience in terms of the Hebraic-Christian Holy Scriptures.”¹³¹ Furthermore,

to do justice to the significance of the experience of the return one must therefore hold oneself within the horizon of this twofold sense of positivity: createdness as a concrete and highly determined historicity, but also, on the contrary, historicity as a provenance from an origin that, as not metaphysically structural and essential, also has all the features of contingency [*eventualità*] and freedom.¹³²

In other words, the return to religion is the return to its positivity, to its actuality, to its current state, because religion is its history. Philosophy of religion is thus much more than the simple ‘philosophical’ interpretation of the religious dogma or doctrine. It is the ‘deconstruction’ or the ‘genealogy’ of its very historicity and factuality. However, religion’s history, despite all its positivity, is nevertheless absolutely contingent, since it does not spring from a metaphysical principle that would have settled its destiny from the beginning. Its principle, if there is one, is absolutely historical, that is, positive and contingent. I do not think that this contradicts Nancy’s theory of the history of Christianity as being destined to its own self-overcoming. Because after all a history that has no teleological horizon except that of the dissolving of every horizon, is a history that lives from the sheer positivity of its concrete and determinate happenings. This is why a return of religion is so truthful to the Hebraic-Christian Holy Scriptures. Because as a return, religion is not seeking to recover its authentic language; instead, it is a return to that basic structure of (monotheistic) religion as a promise and a sacrifice. And so, the turn to religion is *neither* religion *nor* philosophy of religion – it is “the expression of the unavoidable -and no doubt ontological- difficulty democracy has in reading its own story – and of the

¹³¹ Vattimo, *The Trace of the Trace*, 88.

¹³² *Ibid.*, 85.

difficulty political or philosophical thought has in assuming, without making it a travesty, the tragedy of the modern condition.”¹³³

Secular modernity has to confront the fact that there are no more horizons and that everywhere there is a clamor for horizons. Both, the absence and the need for horizons are the trademark of the Christian experience. Therefore, if any new horizon of sense is to be reached, a turn to that what secularization thought to have left behind once and for all is unavoidable. If there is any sense that modernity should follow in order to regain any sense, it is necessary that modernity rediscover its own provenance in the New Testament. Only in this manner can this turn to religion “take the form of a thinking of the event-like character of Being that is not simply reducible to a bare acceptance of the existent or to pure historical and cultural relativism.”¹³⁴ That is to say that the turn to religion is the return of *another* religion after a certain Enlightenment. The return of religion is not the return of Roman Christianity, not even of Pauline Christianity, but of a certain messianism that protests against the existent order of the sovereignty of the modern state, in order to recover the experience of justice as promise and sacrifice. It is the coming of a political religion that seeks to do justice outside politics. It is the coming of a religion without religion(s) completely open to the self-overcoming of sense. It is the coming of a religion that goes hand in hand with a democracy without sovereignty. It is the coming of a religion that recognizes the claim that the past has on our existence. Finally, it is the coming of a religion that responds to the call of the abandoned and helpless other for justice and love. In a religion without religion(s) the negative commandment “Thou shall not kill” acquires the positivity and unconditionality of the commandment of love: “Love your enemies and pray for those who persecute you.” (Matthew, 5:44)

The aim of this paper has been so far to explore possible ways out of the violence of sovereignty. For that I have returned to the notion of forgiveness that lies at the heart of our Abrahamic archive – an archive that is overdetermined through and through by Christianity’s history. So, when I posited the question for the possibility of forgiving crimes against humanity, another question was leading my analysis: May it be that

¹³³ Lefort, *The Permanence of the Theologico-Political?*, 255.

forgiveness is the experience that would permit us to live *without religion* the possibility of religion? To these two questions I want to answer yes. Yes: crimes against humanity can and should be forgiven. And yes: forgiveness (as well as friendship and love) is an experience that permits us to live, or at least to foresee, the possibility of religion without religion(s), or what is (almost) the same, the possibility of justice outside law and politics. With this I do not mean that justice is absolutely impossible within law and politics, but rather that it is impossible within law and politics as they are *today*. The problem is not democracy; the problem is that we still have to accept that “there is more to democracy than democracy delivers at present.”¹³⁵ For example, in the eschatological future of the “democracy to come” (OF 55) forgiveness would not be antithetical to justice, but rather it would be justice carried to its extreme. In this democracy to come the practice of pardon would not be a re-affirmation of sovereignty but an act of generous and gratuitous love. But for the final arrival of this democracy to come, for the welcoming of the kingdom, democracy still has to forgive itself. Democracy is yet to overcome the difficulty it has in reading its own violent history, so that the very thought of justice will not run the risk of making a counterfeit of the tragedy of the modern condition. This is the challenge of democracy today: not to perpetuate the tragedy of secular modernity by exerting violent and antidemocratic measures on the other for the sake of the defense of democracy. Every time democracy re-affirms its sovereignty by recurring to violent means, its own legitimacy is undermined. And here a space for the evil of fanaticism is opened up. Democracy still has to demonstrate that justice is possible within it, but for this it will have to recur to “forms of solidarity yet to be invented.” (OF 4) But maybe not all of them still have to be invented; it may be that forgiveness and love are the key to unravel the tragedy of the modern condition.

So, what about reconciliation? All I can say is that it is not up to us. Since all I have been trying to do up until now is to avoid an experience of forgiveness where it would be the unbearable and odious, even obscene, affirmation of sovereignty, I think that the most one can say is that forgiveness might be the most powerful expression of our weak

¹³⁴ Vattimo, *The Trace of the Trace*, 92.

messianic power. By making it possible for us to foresee the possibility of a democracy where justice would not be an affirmation of sovereignty, forgiveness restitutes us the possibility of giving only for the sake of the other's welfare. So forgiveness is the kingdom here and now, *today*. But we can hasten the arrival of the kingdom only out of some power of powerlessness. Forgiveness, as justice carried to its extreme, is pure giving, sheer being-given, thus it cannot be a sovereign power in the order of being. At the most, forgiveness is "a call that incites us, a promise that lures us and awakens our desire."¹³⁶ And since this call comes from the powerless, from the oppressed, from the trampled, and ultimately, from the specters of the death, it is not a call for vengeance, but one for justice and forgiveness. I am not sure that this 'weak force' would be strong enough to save us, but I am positive that it is not enough to oblige reconciliation. That is not up to us; it is up to the promise of the democracy to come.

So just have a little more faith and give. Just for-give. Without why. Just act out of a faithful certainty in the righteousness of your decision. Just take on your responsibilities and respond to them out of self-abandonment. Be outraged by injustice, but do not play the economy of violence. Trust that in the path of righteousness is life, and that in the pathway thereof there is no death.

That is what nurturing forgiveness into a political possibility means: to give madly so that perhaps, the political and the legal order may change for better. So just give. Forgive the unforgivable. Without why. Just forgive so that you would be forgiven too.

May we learn to forgive finally.

To give.

So that we will be forgiven too – finally.

In a religion without religion(s).

In a democracy without sovereignty.

Finally. Today.

¹³⁵ John Caputo, *Without Sovereignty*, 18.

¹³⁶ *Ibid.*, 14.

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