

ANDRO KITUS

A Post-Structuralist “Concept”
of Legitimacy



DISSERTATIONES RERUM POLITICARUM
UNIVERSITATIS TARTUENSIS

II

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Chapter I: Introduction

In modern times, legitimacy appears as the main and continuous concern of all political communities, especially from the point of view of liberal theory and practice – for governments, it divides between obedience and unrest; for subjects, it divides between freedom and oppression. If governments hope to contain legitimacy inside law, following in this, consciously or not, Max Weber, who has argued that “today the most common form of legitimacy is the belief in legality,” then political events have consistently disproved that possibility.¹ This is clearly manifest in cases, where lawful action by authorities, despite its lawfulness, induces unrest of its subjects. Examples of such cases are abound in politics. In Estonia, we could recall the events surrounding the displacements of the World War II monument in Lihula in 2004 and the Bronze Soldier monument in 2007. Both of these monuments, the first of which was erected by the local authority of Lihula parish to commemorate soldiers who died fighting for Estonian independence in the Second World War, and the second by the Red Army in 1947, named as “Monument to the Liberators of Tallinn,” were displaced by force on the orders of Estonian government. In the case of the monument of Lihula, the government’s appeal to legality in defence of its action is strikingly clear; it was claimed that the monument was erected on state land (a local graveyard) without consultation with its owner.² Nevertheless, the action of the state was perceived as violence, which justified (from the viewpoint of interested groups in society) a violent response, leading to the unrest.

Such and similar events keep repeating themselves in different circumstances over and over again, like in the case of the Bronze Soldier monument three years later, but also, for example, in the Arab Spring uprisings in 2010. Whatever deeper socio-economic reasons underlie the protests that eventually spread over many Arab countries in Northern-Africa and around the Persian Gulf, they started from an almost inconspicuous act of law enforcement in Tunisia: a municipal inspector confiscated the wares of a young man, identified as Mohammed Bouazizi, who sold, without a permit, fruits and vegetables at a roadside stand.³ This must have been a routine procedure for the inspector, but in that case, the young man, being unemployed without any hope of finding a job, and left without any means of earning income as a result, doused himself with gasoline and set himself afire. This radical protest of one person against injustice triggered protests and unrest on the national level, and beyond, and led

¹ Max Weber, *Economy and Society: An Outline of Interpretive Sociology* (Berkeley: University of California Press), p. 37.

² See the transcript of the press conference of Estonian government on the 3rd of September, 2004: <http://valitsus.ee/et/uudised/pressikonverentsid/stenogrammid/6279/valitsuse-pressikonverentsi-stenogramm-03092004>.

³ See BBC on-line news from January 5, 2011, <http://www.bbc.co.uk/news/world-africa-12120228>.

to the change in government in several countries. We could add into this line of examples also the suburban riots, for example, in France 2005 and 2007, or in Sweden 2013, which follow the same pattern.

Ultimately, these unrests were not about this or that particular action, decision or statute, and they cannot be explained by the failure of one or another person in applying the law rightfully. Rather, an act by the government that is perceived as violent in relation to the people, whom the government is supposed to represent, calls into question the government's right to rule in its entirety (though, whether the unrest evolves to include the whole society or remains marginalised depends on concrete circumstances). The possibility of such events shows that legitimacy cannot be reduced to law or legality (or power, or order), and legitimacy continues to be an important issue, to the explication of which this thesis hopes to give its contribution.

"What is legitimacy?" is a question traditionally asked in any research into the concept or manifestations of legitimacy. The answers have been divergent for at least two reasons: firstly, due to their origin in different disciplines that have all taken legitimacy to be their matter of concern, like political science, law, political philosophy, sociology, political anthropology; and secondly, due to differences in theoretical approaches. Before these differences will be outlined, it is only proper to start the thesis with pointing out what seems to be a minimal agreement on legitimacy. Jean-Marc Coicaud's statement in the beginning of his book *Legitimacy and Politics* is emblematic in this respect: "Despite these [differences], there exists a common ground for understanding: the idea of legitimacy concerns first and foremost the right to govern. Legitimacy is the recognition of the right to govern."⁴ Much in the same way, Dolf Sternberger starts his entry on legitimacy in *International Encyclopedia of the Social Sciences*: "Legitimacy is the foundation of such governmental power as is exercised both with a consciousness on the government's part that it has a right to govern and with some recognition by the governed of that right."⁵ Thus, what forms the basis of shared understanding is that legitimacy is related to someone's right to govern someone else.

Aside from this recognition of a common object of study in the formula "right to rule," the academic community is divided over how the question "what is legitimacy" is to be handled. In the first part of the introduction, I trace some of the basic controversies in this respect to give the reader a general idea of the theoretical discussions surrounding the concept of legitimacy. It also forms a background to the formulation of the research question in the second part of the chapter. This structure of the introduction is justified by the fact that, even if this thesis is a study into the concept of legitimacy, it does not directly engage

⁴ Jean-Marc Coicaud, *Legitimacy and Politics: A Contribution to the Study of Political Right and Political Responsibility* (Cambridge: Cambridge University Press, 2002), p. 10.

⁵ Dolf Sternberger, "Legitimacy," in D. L. Sills, *et al.* (eds), *International Encyclopedia of the Social Sciences*, Vol. 9 (New York: The Macmillan Company & the Free Press, 1968), p. 244.

with these debates, because it questions their very starting point in the question “what is legitimacy?”. This means, among other things, that the opening examples of how law cannot control legitimacy were not intended to signal the theme of the research in the legality-legitimacy relationship, for the relationship remains governed by the question “what is legitimacy?”, but simply to demonstrate the relevance of the problem of legitimacy.⁶ As I will explicate later in this chapter, what interests me in this thesis is a gap not between law and legitimacy, but in legitimacy itself. Questioning the “is” of legitimacy means that this thesis seeks to deconstruct, and it seeks to arrive at a deconstructed “concept” of legitimacy (which I call in this thesis, in order to indicate to the paradigm it originates from, a post-structuralist “concept” of legitimacy). It must be warned ahead that the thesis aims at demonstrating that legitimacy is not a concept at all, but it functions as a Derridean infrastructure. In short, the thesis argues that legitimacy is *resigning* (rather a “movement” than a concept), which synthesises in itself two opposite meanings of resigning and re-signing. However, this would be the very end result of the argument proposed in this thesis, and the explication of the “logic” and meaning of *resigning* can take place only gradually in the course of the thesis. Due to the deconstructive approach I use, which will be introduced later in this chapter, I do not apply “resigning” to the discourse on legitimacy, but I read it out from it. For that reason, also, the exact research question will be explained not in the beginning, but in the course of this whole first chapter alternately moving between the formulation of the question and “methodology” of deconstruction, for in this project, perhaps more than in any other, the research question does not precede the approach, but grows out of it (or, with it).

1.1 Background discussions: “What is legitimacy?”⁷

The most basic division in answering “what is legitimacy?” emanates from the difference between empirical or descriptive and normative approaches to legitimacy. The empirical approach seeks “to explain why or when people ...

⁶ The legality-legitimacy relationship is an important issue, especially in legal philosophy. In very broad strokes, the main discussion focuses on the question whether there is an intimate link between legitimacy and legality (which is the argument of the Natural Law School) or there is not (the view of Legal Positivism). See David Dyzenhaus, *Legality and Legitimacy: Carl Schmitt, Hans Kelsen, and Hermann Heller in Weimar* (Oxford: Oxford University Press, 1997).

⁷ The following section, as said above, gives background information on legitimacy, but it should not be considered as a literature review for the thesis. Due to the discrepancy which we will soon see unwinding between the beginning of the thesis and its ends, this section, it can be said, belongs neither inside nor outside the thesis – it seems at the same time necessary as an introduction, but also irrelevant from the perspective of what will come. I hope that the position of the following section will become clearer by the end of this introductory chapter.

obey, respect, or show allegiance to a particular government, regime, state, policy or institution. Or, conversely, why or when do they revolt, disobey, or act disloyally?”⁸ Perhaps the most well-known empirical-descriptive take on legitimacy is Max Weber’s theory, which states that legitimacy consists in belief in legitimacy: “The modern position of political associations rests on the prestige bestowed upon them by the belief, held by their members, in a specific consecration: the ‘legitimacy’ of that social action which is ordered and regulated by them.”⁹ According to Weber, this belief in legitimacy has sources either in charisma, in the tradition, or in the rational-legal value.

Inside the empirical approach there is sometimes a distinction made between subjective and objective strands; for example, José Guilherme Merquior considers authors like Carl Joachim Friedrich, Seymour Martin Lipset and David Easton as belonging to the subjective strand, for they base legitimacy on the conviction of the ruled.¹⁰ Their similarity is clearly discernible from their respective definitions of legitimacy: for Friedrich, legitimacy is “the question of fact whether a given rulership is believed to be based on good title by most men subject to it;”¹¹ for Lipset it is “the capacity of the system to engender and maintain the belief that the existing political institutions are the most appropriate ones for the society;”¹² and for Easton, legitimacy describes “the conviction on the part of the member that it is right and proper ... to accept and obey the authorities and to abide by the requirements of the regime.”¹³ In contrast to these views, Merquior refers to Stillmann’s definition of legitimacy as representing the objectivist stance: “a government is legitimate if and only if the results of governmental output are compatible with the value pattern of the society.”¹⁴ Stillman’s approach is objective in the sense that it emphasises a certain congruence between government’s actions and the system of values and beliefs of society.

Robin Stryker offers a more contemporary summary of empirical legitimacy, categorising possible definitions in this approach, firstly, into “attitudinal approval of rules,” which equates legitimacy to “attachment, loyalty, allegiance,

⁸ Christopher Ansell, “Legitimacy: Political,” in N. J. Smelser, P. B. Baltes, *et al.* (eds), *International Encyclopedia of the Social & Behavioral Sciences* (Amsterdam: Elsevier, 2001), p. 8704.

⁹ Weber, *Economy and Society*, pp. 903–4.

¹⁰ José Guilherme Merquior, *Rousseau and Weber: Two Studies in the Theory of Legitimacy* (New York and London: Routledge, 2006), pp. 4–5; see also Weber, *Economy and Society*, p. 33.

¹¹ Carl Friedrich, *Man and His Government: An Empirical Theory of Politics* (New York: McGraw Hill, 1963), p. 234.

¹² Seymour Martin Lipset, *Political Man: The Social Bases of Politics* (New York: Anchor Books, 1963), p. 64.

¹³ David Easton, *A Systems Analysis of Political Life* (Chicago and London: The University of Chicago Press, 1979), p. 278.

¹⁴ Peter G. Stillman, “The Concept of Legitimacy,” *Polity*, Vol. 7, No. 1 (Autumn 1974), p. 39.

and a ‘favourable affective orientation’,” secondly, into “behavioural consent to rules,” and thirdly, into “cognitive orientation to binding rules,” which allows for rules that are recognised as collectively binding still not to be personally supported rules.¹⁵

Besides the empirical approach to legitimacy, there is also a normative approach that seeks “to identify the standards by which a regime or action must be judged if it is to be regarded as legitimate.”¹⁶ Merquior asks in this vein: “What is legitimacy, after all, but the experience of the *validity* of a given normative order?”¹⁷ The conceptual distinction, on which much of the normative theory is based upon, is between *de facto* or effective and legitimate authority, which allows us to conceive the task of the theory in terms of a justification of authority. Inside this approach several strands and theories can be identified. In the following, I refer to five such views.

One of the strands of normative thinking on legitimacy circles around the idea of consent, which was brought into significance already by John Locke, and developed further by, for example, A. John Simmons.¹⁸ The basic argument in this conception is that legitimacy is conferred to a political authority only upon the consent of its subjects. Another approach to legitimacy is the so-called “democratic legitimacy,” which argues that on the assumption of the shared world where people have to make decisions how to live together, legitimacy is a function of the decision making process akin to democratic one with its ways to consider different opinions and interests.¹⁹ There are also several strands related to concrete influential thinkers. For example, John Rawls proposes a consensus-type conception of legitimacy. A standard quote on Rawls’ take on legitimacy is as follows: “Political power is legitimate only when it is exercised in accordance with a constitution (written or unwritten) the essentials of which all citizens, as reasonable and rational, can endorse in the light of their common human reason.”²⁰ Rawls relates here legitimacy to a (overlapping) consensus achieved on the basis of reasonableness of the members of society. Ronald Dworkin’s theory is called the “associative obligations” approach. Dworkin

¹⁵ Robin Stryker, “Rules, Resources, and Legitimacy Processes: Some implications for Social Conflict, Order, and Change,” *American Journal of Sociology*, Vol. 99, No. 4 (January 1994), p. 856–7. See also George M. Thomas, Henry A. Walker, Morris Zelditch, Jr., “Legitimacy and Collective Action,” *Social Forces*, Vol. 65, No. 2 (Dec., 1986), pp. 378–404.

¹⁶ Ansell, “Legitimacy: Political,” p. 8704.

¹⁷ Merquior, *Rousseau and Weber*, p. 8.

¹⁸ See John Locke, *Two Treatises of Government and A Letter Concerning Toleration* (New Haven and London: Yale University Press, 2003); also, A. John Simmons, *Moral Principles and Political Obligations* (Princeton: Princeton University Press, 1979), especially, pp. 122–157.

¹⁹ See Thomas Christiano, “The Authority of Democracy,” *The Journal of Political Philosophy*, Vol. 12, No. 3 (2004), pp. 266–290.

²⁰ John Rawls, *Justice as Fairness: A Restatement*, ed. by E. Kelly (Cambridge, Mass. and London: The Belknap Press, 2001), p. 41.

states four conditions that generate obligations irrespective of whether the association that corresponds to these conditions is voluntary or what are the disagreements on principles: members of community “must regard the group’s responsibilities as *special* ..., *personal* ..., as flowing from a more general responsibility each has of *concern* for the well-being of others in the group ..., [and as reflecting] *equal* concern for all members.”²¹ In some sense, Dworkin sets here different associations like family, friendship and political society on the same footing. The last type of conception of legitimacy, to which I refer here, is Joseph Raz’s instrumental approach:

The normal way to establish that a person has authority over another involves showing that the alleged subject is likely to better comply with the reasons which apply to him (other than the alleged authoritative directive) if he accepts the directives of the alleged authority as authoritatively binding and tries to follow them, rather than by trying to follow the reasons which apply to him directly.²²

In other words, what Raz says here is that an authority is legitimate if it gives orders to its subjects to do things that they have reasons to do anyway.

As it can be seen, the normative approach is more extensively employed by political and legal philosophers, who often consider the alternative of the empirical approach to legitimacy as deeply deficient for its implicit relativism. For example, Leslie Green contends: “It is absurd to say, as some political scientists do, that a state is legitimate if it is believed to be legitimate by its citizens; for what are we to suppose they believe in believing *that*?”²³ Wilfried Hinsch adds an additional difference from the empirical approach, arguing that if legitimacy is conferred to an institution on claims emanating from the normative approach, then it entails morally binding consequences, rather than being a mere report on what is believed.²⁴

The tensions between empirical and normative approaches to legitimacy have, in turn, inspired a third movement that seeks to overcome their antithetic nature. Roughly speaking, there are two strategies to achieve this: the first one proposes a new third approach above the two; the other assigns to either of these two concepts its own sphere of application. The first route is pursued, for example, by Jürgen Habermas, who considers both the empirical and the normative approaches deficient, and advocates his own third view:

[The empiricist concept of legitimation] can be employed in the social sciences but is unsatisfactory because it abstracts from the systematic weight of grounds for validity; [the normativist concept of legitimation] would be satisfactory in

²¹ Ronald Dworkin, *Law's Empire* (Oxford: Hart, 1998), pp. 199–200.

²² Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon, 1988), p. 53.

²³ Leslie Green, *The Authority of the State* (Oxford: Oxford University Press, 1988), p. 5.

²⁴ Wilfried Hinsch, “Legitimacy and Justice: A Conceptual and Functional Clarification,” in J. Kühnelt (ed.) *Political Legitimization without Morality?* (Dordrecht and London Springer, 2008), p. 41.

this regard but is untenable because of the metaphysical context in which it is embedded. I would like, therefore, to propose a third concept of legitimation, which I shall call the “reconstructive”.²⁵

The term “reconstructive” refers here to “the procedures and presuppositions under which justifications can have the power to produce consensus.”²⁶ In his *Legitimation Crisis*, Habermas argues that without the consideration of mechanisms of consensus production, all possible grounds for a belief in legitimacy in an empirical sense would “have only psychological significance;” in such case, “whether such grounds can sufficiently stabilise a given belief in legitimacy depends on the institutionalized prejudices and observable behavioural dispositions of the group in question.”²⁷ On the other hand, proceeding from certain determinable conditions of consensus, allows any validity claim on which the belief in legitimacy is based to “be tested and criticised independently of the psychological effect of these [claims].”²⁸ These conditions are, for Habermas, intrinsic to the structure of communication itself: “Participants in argumentation cannot avoid the presupposition that ... the structure of their communication rules out all external or internal coercion other than the force of the better argument and thereby also neutralises all motives other than that of the cooperative search for truth.”²⁹ All in all, Habermas is able to conclude that “only the rules and communicative presuppositions that make it possible to distinguish an accord or agreement among free and equals from a contingent or forced consensus have legitimating force today.”³⁰ Such an approach, then, on the one hand, moves beyond grounding legitimacy on a belief, but at the same time, in offering grounds for validity, it deduces them from the rules of communication itself and avoids any metaphysical references.³¹

The other strategy to deal with the empirical and the normative dichotomy is to demonstrate the utility of both concepts of legitimacy in their own disciplinary spheres of application. This strategy can be exemplified by David Beetham’s account of legitimacy. Beetham makes the distinction between the moral or political philosopher for whom “power is legitimate where the rules governing it are justifiable according to rationally defensible normative principles” and the social scientist, whose concern is to identify “the empirical consequences that legitimacy has for the character of power relations, for the

²⁵ Jürgen Habermas, “Legitimation Problems in the Modern State,” in his *Communication and the Evolution of Society* (Boston: Beacon Press, 1979), p. 204.

²⁶ Ibid., p. 205.

²⁷ Jürgen Habermas, *Legitimation Crisis* (Boston: Beacon Press, 1975), p. 97.

²⁸ Ibid.

²⁹ Jürgen Habermas, *Moral Consciousness and Communicative Action* (Cambridge, MA: the MIT Press, 1995), p. 87–8.

³⁰ Habermas, “Legitimation Problems in the Modern State,” p. 188.

³¹ For Habermas’ approach to legitimacy in the context of the philosophy of law, see Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge and Malden, MA: Polity Press, 1997).

different ways in which they are organised, and for the extent to which the powerful can actually count on the obedience or support of those subordinate to them.”³² In other words, the social scientist is concerned with explaining, rather than setting up normative standards. This is to say that even if there are differences between the normative and the empirical approaches to legitimacy, they should not be taken as conflictive, but as having different purposes. Furthermore, on some higher level of explanation, their positions even converge:

When it comes to explaining, not people’s behaviour, but legitimacy itself, and how the beliefs and the consent that comprise it are maintained and reproduced within established relations of power, the social scientist ... is compelled to adopt a standpoint that transcends these self-confirming processes of legitimation. ... And this position is identical to that of the normative philosopher who has to stand outside all power relations to establish philosophically valid principles of legitimacy, and to identify the conditions under which consent to power rules is truly voluntary because it is unconstrained by their effects.³³

A similar approach to Beetham’s is echoed in Richard H. Fallon’s analytical distinction between different concepts of legitimacy, depending on types of criteria used to judge on it. Relating these types of criteria back to the disciplines they originate from, Fallon discriminates between legal legitimacy, i.e. lawfulness; sociological legitimacy, i.e. when “the relevant public regards it [a regime, an institution or a decision] as justified, appropriate, or otherwise deserving of support for reasons beyond fear of sanction or mere hope for personal award;” and moral legitimacy, which refers to “moral justifiability or respect-worthiness.”³⁴ Fallon clearly assigns to every concept its own task to fulfil, and even if it is possible to conceive of an “overall legitimacy”, Fallon opines that “there is a real risk that the terminology would obscure the ultimately moral or ethical character of the underlying judgment.”³⁵

These different approaches to legitimacy have been outlined here in order to give the reader a more general understanding of the background of the subject matter of the thesis. However, the thesis does not directly engage with these debates and sets itself upon an entirely different route, which aims at questioning the starting point of these debates in the question “what is legitimacy?”. The following section clarifies the research question of the thesis and explains what has led to the formulation of such a problem.

³² David Beetham, *The Legitimation of Power* (Basingstoke and New York: Palgrave, 1991), p. 5.

³³ Ibid., p. 246.

³⁴ Richard H. Fallon, Jr., “Legitimacy and the Constitution,” *Harvard Law Review*, Vol. 118, No. 6 (April 2005), pp. 1794–7.

³⁵ Ibid., p. 1851.

1.2 The research question

This thesis is motivated by an observation of a specific trait of legitimacy's effects in society. For example, Rodney Barker, discussing the work of Lipset, notes: "Legitimacy as a term is used when its absence is identified rather than when its presence is described. It is the normal and unremarked characteristic of liberal democratic societies, and is, like the air we breathe, only commented upon when it turns nasty."³⁶ Also, Habermas makes a similar remark, saying "historically as well as analytically, the concept is used above all in situations in which the legitimacy of an order is disputed, in which, as we say, legitimation problems arise."³⁷ However, even if noticed, the consequences of this trait or "movement" of legitimacy are not properly spelled out. In other words, what should be noticed here is that if legitimacy is said to be present, then in fact, what is present is what legitimacy is attributed to, i.e., in most general terms, a political order or a system of laws, whereas legitimacy itself remains not a tangible object. Though, on the other hand, if legitimacy is said not to be in existence, then there is a demand for legitimacy as if it were something absolutely essential for the political order. Hence, legitimacy seems to "exist" in its self-erasure, because if an order is assumed to be legitimate and it comes into existence, appearing to function by its own laws and logic, then legitimacy is not considered to be withdrawn from that order, but is assumed to be present. It seems to be a paradox; legitimacy is present in its non-presence.

That legitimacy is not *with* an order or a law, but always slides under it, so that what exists is simply this order or this law, follows from the fact that legitimacy has no control over what it makes possible. Even if the founding act of law of laws is grounded on certain principles or criteria that allow confirmation of its legitimacy (by determining a belief in it or existence of certain normative standards), then the presence of these criteria at the founding of the law, does not predetermine their following in every subsequent application of the law; in other words, before the application of the law, it cannot be said whether it corresponds to the criteria that determine legitimacy in that particular community or not. This is because the application of the law cannot function as an automatically released script, but as a repetition of law. This gap in law is also referred to by Jacques Derrida in the context of his discussion of law and justice:

If the act [of decision] simply consists of applying a rule, of enacting a program or effecting a calculation, we might say that it is legal, that it conforms to law, ... but we would be wrong to say that the decision was just. To be just, the decision of a judge, for example, must not only follow the rule of law or a general law, but must also assume it, approve it, confirm its value, by a reinstituting act of

³⁶ Rodney Barker, *Political Legitimacy and the State* (Oxford: Clarendon Press, 1990), p. 76.

³⁷ Habermas, "Legitimation Problems in the Modern State," pp. 178–9.

interpretation, as if ultimately nothing previously existed of the law, as if the judge himself invented the law in every case.³⁸

In order to be just, according to this interpretation, one needs to do both at the same time – to follow prescriptions and rules, and to certain extent betray them, or to suspend them for a reinterpretation and reinvention could be possible. In other words, there is a gap between law and justice. However, this also means that in the invention of law, the possibility of misinterpretations is imminent; there is no guarantee and there is no law that the application of law would comply – because of a reinterpretation or of a new context – to what has authorised it.

This might also explain the emphasis on the formula “belief in legitimacy” in the history of legitimacy theory: if at one moment an agreement on the presence of legitimacy has been reached, then any moment thereafter it needs to be as if “believed in,” for legitimacy is not something “present” in itself – what is present, is, depending on a context of discussion, a law, power, an order, etc. (that functions by its own logic).

The traditional discourse on legitimacy overrides the “movement” of erasure in legitimacy, because, proceeding from the question “what is?”, it necessarily excludes the non-presence (“is not”) of legitimacy from its concept. The other side of this exclusion is that it turns legitimacy into an “evaluative concept” (Lipset), or a “contestable validity claim” (Habermas), for it can intervene only after the fact.³⁹ In this interpretation, it appears that the role of legitimacy is to mark the relation of correspondence between a certain empirically or normatively deduced value and action(s) of the government.⁴⁰ The label “legitimate” is a positive evaluation (or a test result) that these two sides of value and action coincide, grounding in such a way a voluntary obedience to an order or to a system of laws. In this way, legitimacy does not stand as a condition of law and order, as producing them, on the contrary, its intervention presumes that there is a law and an order in operation, which will be later evaluated.

What concurs with this passive evaluation is that legitimacy has no means to exclude manipulation – every government seeks legitimacy to preserve its right to rule, and in doing that, it can trick its subjects to believe into its legitimacy. Even if normative standards are established, it is always possible to create an impression of pursuance of values underlying judgements on legitimacy in that community.

For the reasons that become clear immediately after, I point out that this critique of the concept of legitimacy parallels with Jacques Derrida’s critique of

³⁸ Jacques Derrida, “Force of Law: The ‘Mystical Foundation of Authority’,” *Cardozo Law Review*, Vol. 11, No. 5–6 (July–August, 1990), p. 961.

³⁹ Lipset, *Political Man*, p. 64; Habermas, “Legitimation Problems in the Modern State,” p. 178.

⁴⁰ See, for example, Lipset, *Political Man*, p. 64: “Groups regard a political system as legitimate or illegitimate according to the way in which its values fit with theirs.”

the concept of the sign in structuralist linguistics. The structuralist idea of language will be introduced in a more elaborate manner in the next section of this chapter, but here it suffices to say that the sign of structural linguistics is comprised in two sides – the signifier (a sound pattern) and the signified (a concept), whereby the signification and the meaning becomes possible on the union of these two halves. This is very similar to how legitimacy, as it was outlined above, functions on the field of politics. In the same way as legitimacy is the union of concrete actions or expressions of the state and the values (whether contained in people's beliefs or settled by the philosophical argument), the sign emerges in the union of the "material" side and the "ideal" side, producing a meaning, in the same manner as legitimacy produces an order. In that case, the critique Derrida launches against such a concept of the sign can be equally applied to legitimacy:

By asking "What is the sign in general?," we raise the question of the sign to an ontological plane, we pretend to assign a fundamental or regional place to signification in an ontology. This would be a classical procedure. One would subject sign to truth, language to being, speech to thought, and writing to speech. To say that there could be a truth for the sign in general, does this not suppose that the sign is not the possibility of truth, does not constitute it, but is satisfied to signify it – to reproduce, incarnate, secondarily inscribe, or refer to it?⁴¹

This is the same objection that is raised against the concept of legitimacy above: legitimacy is reduced to signification of a political order, but it does not create it. This reduction is an inevitable outcome if one starts with the question "what is?," because no answer to this question is able to account for the movement of legitimacy delineated above, where legitimacy is not present in what it makes possible.⁴² In order to give to legitimacy its potential productive role, the concept of legitimacy must be able to contain its negative dimension or non-presence, i.e. its erasure in what it makes possible. This can be done only by challenging the very form of the question of "what is legitimacy?". Legitimacy that proceeds from the question "what is?," if it wants to appear intervening into the political order, has to put the value it is based upon into the position of a metaphysical outside, an absolute presence (of God, for example). In contrast to this, I ask in this thesis, paraphrasing here Derrida's similar question on the sign: Is not legitimacy something other than a being – the sole "thing" which, not being a thing, does not fall under the question "what is..." but on the

⁴¹ Jacques Derrida, *Speech and Phenomena: And Other Essays on Husserl's Theory of Signs* (Evanston: Northwestern University Press, 1973), p. 24.

⁴² In this respect, Derrida says on the sign: "the formal essence of the signified is *presence*. ... This is the inevitable response as soon as one asks: 'what is the sign?,' that is to say, when one submits the sign to the question of essence, to the '*ti esti*'." Jacques Derrida, *Of Grammatology* (Baltimore & London: the Johns Hopkins University Press, 1997), p. 18.

contrary, should the occasion arise, produces “politics” in this way as the empire of the *ti esti*?⁴³

With this question I have set myself on the path of deconstructive strategy, which, as it will be argued and demonstrated in the course of the thesis, allows to account for the non-presence in the present. I will explicate deconstruction as an approach and paradigm of this thesis more closely in the methodology section of this chapter.

Thus, in so far as the concept of legitimacy that accounts for the movement of its erasure in what it makes possible is a deconstructed concept of legitimacy, it is the task of the thesis to arrive at such deconstruction of legitimacy and to formulate (underlining its paradigm of origin) a post-structuralist “concept” of legitimacy. The best starting point for such deconstructive analysis of legitimacy is to follow contradictions that the current concept of legitimacy must necessarily generate. If it is that the movement of erasure in legitimacy has been so far approached over the question “what is?,” which leads, as it has been argued, to the inability to account for the dimension of negativity with its “connotations of alterity, the non-rational and unrepresentable,” as Diana Coole puts it, then it has to result in certain paradoxes and contradictions in the current understanding of legitimacy.⁴⁴

One of these paradoxes has plagued legitimacy from the very moment it turned into a problem of political theory. The beginning of legitimacy as a distinct problem can be traced back to the seventeenth century, when beliefs that the rule of some over others is “the divinely, naturally or ontologically ordained state of human affairs” start to wane and give view to the standpoint that “human beings ... are, by nature or before God, free and equal in at least one respect: no human being has natural or divinely ordained authority to rule them.”⁴⁵ From that moment on, any government is understood as requiring justification. However, if legitimacy cannot be related to some extramundane source of authority, i.e. it is not conferred by some absolute standard, then it immediately poses a problem, a paradox, which was clearly discerned already by Jean-Jacques Rousseau, who nearly 250 years ago defined the great problem of politics as “how to find a form of government which sets the law above man.”⁴⁶ Rousseau was among those who transformed legitimacy into an urgent question for political theory by developing the concept of “popular

⁴³ Derrida, *Speech and Phenomena*, p. 25.

⁴⁴ Diana Coole, *Negativity and Politics: Dionysus and Dialectics from Kant to Post-structuralism* (London and New York: Routledge, 2000), p. 1.

⁴⁵ Richard E. Flathman, “Legitimacy,” in R. E. Goodin, P. Pettit and T. Pogge (eds), *A Companion to Contemporary Political Philosophy* (Malden, Oxford, Chichester: Blackwell, 2007), p. 678.

⁴⁶ Jean-Jacques Rousseau, “Lettre à M. le Marquis de Mirabeau (Tryre, le 26 juillet 1767),” in C. E. Vaughan (ed.) *The Political Writings of Jean Jacques Rousseau* (Cambridge: Cambridge University Press, 1915), p. 160: “le grand problème en politique...: Trouver une forme de Gouvernement qui mette la Loi au-dessus de l’homme.”

sovereignty,” which derived legitimacy of power from the people.⁴⁷ Nevertheless, perhaps the clearest formulation of this conundrum can be found in Abbé Sieyès’s writings for the French Revolution in 1789,⁴⁸ which is well encapsulated by Hannah Arendt as follows: “Those who get together to constitute a new government are themselves unconstitutional, that is, they have no authority to do what they set out to achieve.”⁴⁹ In other words, the constitution that is instituted by a constitutive assembly also creates, on the moment of its being signed or becoming effective, its own subjects, and therefore, its own authority, i.e. as if retrospectively. If so, the question poses itself how can a voluntarily obeyed legitimate legal order emerge under these circumstances? In this thesis, I take this paradox as a starting point in questioning of the concept of legitimacy, and by tracing different solutions to it, I hope to arrive at the formulation of the post-structuralist “concept” of legitimacy.⁵⁰ In the next section, before I outline the structure of the thesis, the approach of this enquiry into the paradox of legitimacy is further explicated. The structure of the thesis is in this case directly dependent upon its “methodology,” and therefore, for a better appreciation of the composition of the text, the methodology part is introduced first.

I.3 Methodological Considerations: the Paradigm and Theoretical Assumptions

I.3.1 From Structuralism to Post-Structuralism

In engaging with the idea of legitimacy as delineated above, this thesis proceeds from the post-structuralist paradigm of thought. The term “post-structuralist paradigm” is used here in a rather loose sense, because post-structuralism does not constitute a unified theory, and theorists who are considered to be working

⁴⁷ See Jean-Jacques Rousseau, *The Social Contract and The First and Second Discourses*, ed. Susan Dunn (New Haven and London: Yale University Press, 2002).

⁴⁸ See Emmanuel Joseph Sieyès, *Political writings: Including the Debate between Sieyès and Tom Paine in 1791*, ed. M. Sonenscher (Indianapolis and Cambridge: Hackett Publishing Company, 2003).

⁴⁹ Hannah Arendt, *On Revolution* (London: Penguins Books, 1990), pp. 183–4. See also Emmanuel Sieyès, *Qu’est-ce que le Tiers état? Édition critique avec une introduction et des notes par Roberto Zapperi* (Genève: Librairie Droz, 1970), p. 184: “ce ne seroit pas à ce corps constitué à prononcer sur un différend qui touche à sa constitution. Il y auroit à cela une pétition de principes, un cercle vicieux.”

⁵⁰ It is worth pointing out that posing the question in such a way means that the argument is developed in the context of democracies in the post-metaphysical situation (whatever are the implications of the outcome of the argument). This allows the imbrication of legitimacy and founding (which are conceptually, nevertheless, kept separated by the fact that not all polities are democracies in a post-metaphysical context).

in this tradition remain remarkably different in their theoretical positions.⁵¹ However, it is possible to elicit some basic ideas that could function as a common core of the post-structuralist movement. In this introductory chapter, I will outline the basic features of the post-structuralist concept of language, focusing on the relationship between language and reality. In a sense, this relationship is well captured by Derrida's often misinterpreted catchphrase "there is nothing outside of the text [there is no outside-text; *il n'y a pas de hors-texte*],"⁵² which is also echoed in Laclau's and Mouffe's similar statement: "Our analysis rejects the distinction between discursive and non-discursive practices ... every object is constituted as an object of discourse."⁵³ But in order to unravel these statements, and with that the post-structuralist concept of language, it is necessary to make a detour over structuralism, because post-structuralism remains, as already the name indicates, intimately connected to structuralism, sharing with it many of its most basic assumptions. According to John Sturrock: "Post-structuralism is not 'post' in the sense of having killed Structuralism off, it is 'post' only in the sense of coming after and of seeking to extend Structuralism in its rightful direction."⁵⁴

The ground for what later becomes known as "structuralism" is laid with the founding of the so-called "structural linguistics"⁵⁵ by Ferdinand de Saussure (1857–1913).⁵⁶ Saussure established that the object of study in linguistics is the linguistic sign, which is "not a link between a thing and a name, but between a concept and a sound pattern," i.e. between the signifier (a material or sensory sound-image) and the signified (an ideal concept).⁵⁷ This was a revolutionary idea that starts to subvert the humanist or essentialist concept of language, according to which language was principally representational, i.e. a transparent

⁵¹ For example, Jonathan Culler, commenting on differences within the post-structuralist camp, concludes: "Structuralists generally resemble post-structuralists more closely than many post-structuralists resemble one another." Jonathan Culler, *On Deconstruction: Theory and Criticism after Structuralism* (Ithaca, New York: Cornell University Press, 1982), p. 30.

⁵² Derrida, *Of Grammatology*, p. 158.

⁵³ Ernesto Laclau, Chantal Mouffe, *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics* (London & New York: Verso, 2001), p. 107.

⁵⁴ John Sturrock, *Structuralism*, 2nd ed. (Malden (MA), Oxford, Melbourne, Berlin: Blackwell, 2003), pp. 122–3.

⁵⁵ The term "structural" in linguistics was taken into use not before the First Congress of Slavic Philologists has taken place in 1929, which became the inauguration event of Linguistic Circle of Prague. Saussure used the term "system" of signs, rather than that of "structure." See, Émile Benveniste, "'Structure' in linguistics," in his *Problems in General Linguistics* (Coral Gables, Florida: University of Miami Press, 1971), pp. 79–83; originally published in R. Bastide (ed.), *Sens et usages du terme "structure" dans les sciences humaines et sociales* (The Hague: Mouton & Co., 1962), pp. 31–39.

⁵⁶ Ferdinand de Saussure, *Course in General Linguistics* (London: Duckworth, 1983). The original publication: 1916.

⁵⁷ *Ibid.*, p. 66.

means to describe the “outer” world and our perceptions of it.⁵⁸ The revolution Saussure initiated is based on two basic principles. First, the linguistic sign is arbitrary, meaning that the relationship between the signifier and the signified is not natural. For example, there is nothing in the sound-image “sister” that naturally binds it to the concept of sister. The second principle states that the signifier has a linear nature, which means that all elements in language appear in time, and therefore, they succeed one another, forming a chain.⁵⁹ These two principles together account for the differential nature of language, which purports that the meaning of a term emerges in its difference from other terms; for example, the meaning of the term “mother” is determined by concepts like “father,” “child,” “uncle,” etc. The fact that this system of differences is said to apply to all language causes further radical consequences:

In the language itself, there are only differences. Even more important than that is the fact that, although in general a difference presupposes positive terms between which the difference holds, in a language there are only differences, *and no positive terms*. Whether we take the signification or the signal, the language includes neither ideas nor sounds existing prior to the linguistic system, but only conceptual and phonetic differences arising out of that system.⁶⁰

On the basis of these ideas, Saussure is able to argue that “in itself, thought is like a swirling cloud, where no shape is intrinsically determinate. No ideas are established in advance, and nothing is distinct, before the introduction of linguistic structure.”⁶¹ Saussure summarises his findings into a simple but revolutionary formula: “*the language is a form and not a substance*,” i.e. it consists of differences.⁶²

In principle, the movement that became later known as “structuralism” owes its birth to the ideas put forward by Saussure. Jonathan Culler observes:

Indeed, what is now called “structuralism” arose when anthropologists, literary critics, and others saw that the example of linguistics could help to justify what they sought to do in their own disciplines; and as they began to take linguistics as

⁵⁸ See also, David Howarth, *Discourse* (Buckingham & Philadelphia: Open University press, 2000), pp. 16–34; Mary Klages, *Literary Theory: A Guide for the Perplexed* (London & New York: Continuum, 2006), pp. 47–52.

⁵⁹ See, Saussure, *Course in General Linguistics*, pp. 65–7.

⁶⁰ Saussure, *Course in General Linguistics*, p. 118. (Here and throughout the thesis italics used in quotes is original, if not stated otherwise.)

⁶¹ Ibid., p. 110; “Prise en elle-même, la pensée est comme une nébuleuse où rien n’est nécessairement délimité. Il n’y a pas d’idées préétablies, et rien n’est distinct avant l’apparition de la langue.” Ferdinand de Saussure, *Cours de linguistique générale*, édition critique préparée par Tullio de Mauro (Paris: Payot, 1973), p. 155.

⁶² Ibid., p. 120 / p. 169: “la langue est une forme et non une substance.”

a model they realised that they were in fact developing the semiology which Saussure had so long ago proposed.⁶³

The appropriation of the ideas of structural linguistics in social sciences can be traced back to the first publication of Claude Lévi-Strauss *Les Structures élémentaires de la parenté* (*The Elementary Structures of Kinship*) in 1949, and to his major work *Anthropologie structurale* (*Structural Anthropology*) in 1958, in which he compared the structural linguist with the anthropologist on grounds that “like phonemes, kinship terms are elements of meaning; like phonemes, they acquire meaning only if they are integrated into systems,” and declared that “structural linguistics will certainly play the same renovating role with respect to the social sciences that nuclear physics, for example, has played for the physical sciences.”⁶⁴ In psychoanalysis, the influence of structuralist ideas amounted to a new strand of psychoanalysis, which sought to rehabilitate “interest in the functions of speech and in the field of language.” It was Jacques Lacan, who made this call in his paper “The Function and Field of Speech and Language in Psychoanalysis” to the Rome Congress (*Congrès des Psychanalystes de langue français*) in 1953.⁶⁵ Four years later, in 1957, he formulated his famous slogan “unconscious is structured like a language” in “The Agency of the Letter in the Unconscious or Reason since Freud.”⁶⁶

Post-structuralism fully subscribes to the idea of language as a pure form without positive terms. However, it should be clarified, that if there was a revolutionary potential assigned to Saussure’s theory of the linguistic sign, it was done in relation to “the fundamental nature which he attributed to it,” rather than how Saussure actually defined it.⁶⁷ This is because Saussure’s definition of the sign suffered from several inconsistencies that undermined his theory’s radical novelty and logical conclusion. Therefore, post-structuralism’s attitude towards Saussure’s theory remains ambivalent; on the one hand, it partially agrees with and draws from this theory, on the other hand, it criticises Saussure and diverges from his theory.⁶⁸ For example, Sturrock’s definition of post-

⁶³ Jonathan Culler, “Introduction to *Course in General Linguistics*.” In Ferdinand de Saussure, *Course in General Linguistics* (London: Fontana & Collins, 1974), p. xiv.

⁶⁴ Claude Lévi-Strauss, *Structural Anthropology*, tr. by C. Jacobson and B. G. Schoepf (London: Allen Lane the Penguin Press, 1969), p. 34, 33.

⁶⁵ Jacques Lacan, *Écrits: A Selection* (New York: Norton, 1977), p. 35. Original publication: “Fonction et champ de la parole et du langage en psychanalyse,” *La Psychanalyse*, vol. 1, 1956, pp. 81–166.

⁶⁶ Lacan, *Écrits*, p. 147. Original publication: “L’instance de la lettre dans l’inconscient ou la raison depuis Freud,” *La Psychanalyse*, vol. 2, 1957.

⁶⁷ Émile Benveniste, “The nature of the linguistic sign,” in his *Problems of General Linguistics* (Coral Gables, Florida: University of Miami Press, 1971), p. 44. Originally published in *Acta Linguistica*, Vol. 1 (Copenhagen, 1939), pp. 23–9.

⁶⁸ For example, Derrida points out interrelatedness of structuralism and deconstruction as follows: “To deconstruct was also a structuralist gesture or in any case a gesture that assumed a certain need for the structuralist problematic. But it was also an anti-structuralist

structuralism reflects well this uneasy relation: “Post-structuralism is a critique of Structuralism conducted from within: that is, it turns certain Structuralism’s arguments against itself and points to certain fundamental inconsistencies in their method which Structuralists have ignored.”⁶⁹ In the following, four criticisms of Saussure’s theory of the sign will be briefly discussed to outline the basic tenets of the post-structuralist concept of language. The first three criticisms, which focus on formality of language, the subject behind language, and the potential scope of structuralist analysis, albeit taken over by post-structuralism, can be considered as belonging to the internal development of structuralism itself; the final criticism concerning the stability and completeness of any structure marks the turn from structuralism to post-structuralism.

The first critique, and perhaps the most principal one, follows from the acknowledgement by structuralists themselves of the fact that Saussure’s conceptualisation of the sign is not able to sustain the formal character of language. Émile Benveniste was the first to point out that the usage of (and the idea behind) the term “arbitrary” by Saussure does not in fact exclude a “natural” relationship between the signified and the signifier *via* a third term, *via* reality itself.⁷⁰ Saussure explains the interdependence between the arbitrary nature of the sign and the differential nature of language as follows:

No particular configuration of sounds is more aptly suited to express a given message than any other such configuration. So it is clearly the case – indeed, it must be the case – that no linguistic item can ever be based, ultimately, upon anything other than its non-coincidence with the rest. Here the terms *arbitrary* and *differential* are two correlative properties.⁷¹

In other words, as there is no natural relationship between the signified and the signifier, the meaning is created by differences between signs. But the problem is that Saussure inadvertently establishes the arbitrariness between the signified and the signifier in relation to a “steady” ground, which is the reality itself. When Saussure exemplifies the arbitrariness in language by referring to the fact that the “ox” is signified differently in different languages,⁷² Benveniste points out that it is the ox as a real thing that is signified here. This means that the

gesture, and its fortune rests in part on this ambiguity. Structures were to be undone, decomposed, desedimented (all types of structures, linguistic, ‘logocentric,’ ‘phonocentric’ – structuralism being especially at that time dominated by linguistic models and by a so-called structural linguistics that was also called Saussurian – socio-institutional, political, cultural, and above all and from the start philosophical).” Jacques Derrida, “Letter to a Japanese friend,” in D. Wood and R. Bernasconi (eds), *Derrida and Differance* (Warwick: Parousia Press, 1985), p. 2.

⁶⁹ Sturrock, *Structuralism*, p. 123.

⁷⁰ Benveniste, “The Nature of the Linguistic Sign,” p. 44. See also Derrida, *Of Grammatology*, p. 44.

⁷¹ See Saussure, *Course in General Linguistics*, p. 116.

⁷² See *ibid.*, p. 68.

differential or relative character of language cannot follow from arbitrariness, because it does not rule out “an externally imposed element” as Saussure supposes.⁷³ On the contrary, the relational character of language follows from the necessary relationship between the signified and the signifier; in the words of Benveniste: “The concept (the ‘signified’) *bœuf* is perforce identical in my consciousness with the sound sequence (the ‘signifier’) *böf*. ... The mind does not contain empty forms, concepts without names.”⁷⁴ In other words, it is precisely the necessary coincidence of the signifier and the signified that justifies leaving out “the conformity of the sign to reality.”⁷⁵ Then, however, if to follow Saussure’s characterisation of the nature of the sign as a purely formal entity, the differentiation between the signified and the signifier becomes impossible to maintain. The problem is later solved by Louis Hjelmslev and the Copenhagen linguistic school, who split the word into smaller units (glossemes), in which case the common reference point of the signified and the signifier is eliminated.⁷⁶

Saussure’s incomplete separation of the signified and the signifier also leads to positing the human mind or the subject as pre-existing in relation to language. Although Saussure introduces the distinction between language and speech, or *la langue* and *parole*, with the purpose to separate what is essential and formal from what is accidental and contingent in language, which allows him to determine the specific object of linguistic research, he is unable to maintain this distinction. Saussure states: “Language is not a function of the speaker; it is a product that is passively assimilated by the individual... Speaking, on the contrary, is an individual act. It is wilful and intellectual.”⁷⁷ But already in this quote, there is “an individual,” that is a subject with consciousness and intentions existing prior to language, having a task to link together the signified and the signifier, and ultimately the sign and the reality. Later, when the difficulties of Saussure in developing a formal concept of language were overcome, the subject also lost its camouflaged presence in the structuralist analysis, which was most famously pronounced by Roland Barthes in his essay “The death of the author” (1967).⁷⁸

⁷³ See *ibid.*, p. 111.

⁷⁴ Benveniste, “The Nature of the Linguistic Sign,” p. 45.

⁷⁵ *Ibid.*, p. 47.

⁷⁶ See also Ernesto Laclau, “Identity and hegemony: the role of universality in the constitution of political logics,” in J. Butler, E. Laclau, S. Žižek (eds.), *Contingency, Hegemony, Universality: Contemporary Dialogues on the Left* (London: Verso, 2000), p. 69.

⁷⁷ Saussure, *Course in General Linguistics*, p. 14 / *Cours de linguistique générale*, p. 30: “La langue n’est pas une fonction du sujet parlant, elle est le produit que l’individu enregistre passivement... La parole est au contraire un acte individuel de volonté et d’intelligence...”

⁷⁸ Roland Barthes, “La Mort de l’Auteur”, *Aspen Magazine*, No. 5-6, automne–hiver 1967. English translation in *Image, Music, Text* (London: Fontana, 1977). “The death of the author” means that taking into consideration of the author’s intentions and his or her biographical data cannot lead to a truer or to a single valid interpretation of the text.

The third criticism is directed at Saussure's inability to extend linguistic analysis to discourse. Saussure classifies linguistic units longer than sentences under the term "speech," which means that any combination of sentences depends solely on the will and wishes of individual speakers, and therefore discourse could not be analysed by recourse to a regular system. Saussure explains: "But we must realise that in the syntagm there is no clear-cut boundary between the language fact, which is a sign of collective usage, and the fact that belongs to speaking and depends on individual freedom."⁷⁹ This certainly became a major obstacle in developing a science of semiology that he hoped would follow his theory.⁸⁰

Lastly, for Saussure, language (*la langue*) is always assumed by a linguist as a complete or closed structure, where meanings of signs are already determined. This is related to his distinction between synchronic (functional whole) and diachronic (historical evolution) dimensions of language, whereby *la langue* belongs into the synchronic and *la parole* into the diachronic dimension. This also means that Saussure is not able to analyse language in the process of production, but only as a finished product.⁸¹ But even more importantly, it might be argued, that the system or structure acquires a function of a transcendental ground, which underlies the inconstant surface, i.e. the fully constituted system takes priority over the differential system that Saussure wishes to propose. Objections to this sort of essentialism became cornerstones of post-structuralist paradigm.

The first major attack on the idea of the complete and self-sufficient structure is launched by Derrida in the lecture "Structure, Sign and Play in the Discourse of the Human Sciences" at John Hopkins University in 1966. According to Derrida, every structure is organised around a centre, which arrests the freeplay of structure's elements. The closed structure of language (*la langue*) in structural linguistics depends on the absolute presence of the sign, i.e. on the unity of the signifier and the signified. This relationship between the signifier and the signified is what Derrida seeks to dismantle. He identifies two ways in which one can do that:

There are two heterogeneous ways of erasing the difference between the signifier and the signified: one, the classic way, consists in reducing or deriving the signifier, that is to say, ultimately in *submitting* the sign to thought; the other, the one we are using there against the first one, consists in putting into question the system in which the preceding reduction functioned: first and foremost, the opposition between the sensible and the intelligible.⁸²

⁷⁹ Ibid., p. 123.

⁸⁰ See *ibid.*, pp. 15–17.

⁸¹ See also Howarth, *Discourse*, p. 30.

⁸² Jacques Derrida, "Structure, Sign and Play in the Discourse of the Human Sciences," in his *Writing and Difference* (New York and London: Routledge, 2005), p. 355.

Without going deeper into the deconstructive strategy itself, which is dealt with in the next section, the solution Derrida and post-structuralism in general offers, is treating the signified as another signifier: “the signified ... is always already in the position of the signifier.”⁸³ The similar move is performed, for example, by Lacan: “it is in the substitution of signifier for signifier that an effect of signification is produced.”⁸⁴ In other words, the meaning appears now in the interplay between signifiers themselves, not in the union of the signifier and the signified. It is important to notice, that the signified, however, cannot be entirely effaced, because without the signified, the signifier would not exist as well, or as Derrida puts it: “This does not, by simple inversion, mean that the signifier is fundamental or primary. ... The signifier will never by rights precede the signified, in which case it would no longer be a signifier and the ‘signifying’ signifier would no longer have a possible signified.”⁸⁵ Hence, the critique of the presence of the sign must retain the signifier-signified distinction, but nevertheless be able to destabilise it. Lacan achieves this by moving the signified into the realm of the Real, which is the field of the non-symbolisable and therefore ungraspable for the consciousness; in the case of Derrida, the arrival of the signified is indefinitely deferred (by the movement of *différance*). Said differently, the notion Derrida sets in opposition to the presence and the stability of the sign is that of the “play,” the play of signifiers, which seeks to “destroy the entire conceptuality organised around the concept of the sign (signifier and signified, expression and content, and so on).”⁸⁶ According to Derrida, structuralism did not measure up to the idea of differentiality, which it invented, and it could not entirely give up the idea of the transcendental signified:

Turned towards the lost or impossible presence of the absent origin, this structuralist thematic of broken immediacy is therefore the saddened, *negative*, nostalgic, guilty, Rousseauistic side of the thinking of play whose other side would be the Nietzschean affirmation, that is the joyous affirmation of the play of the world and of the innocence of becoming, the affirmation of a world of signs without fault, without truth, and without origin which is offered to an active interpretation.⁸⁷

In sum, post-structuralism builds on criticisms of structuralism, and, in trying to find solutions to them, it takes structuralism to its radical conclusion, and finally surpasses it. In its most general sense, post-structuralism (together with structuralism) argues that meaning in language is not established by the correspondence between a word or a name and a “real” object in the world, rather it is

⁸³ Derrida, *Of Grammatology*, p. 73.

⁸⁴ Lacan, *Écrits*, p. 164.

⁸⁵ Derrida, *Of Grammatology*, p. 324, fn. 9.

⁸⁶ Ibid.

⁸⁷ Derrida, “Structure, Sign and Play,” p. 369.

created inside language itself; “reality” is produced by/in language, not the other way around. This means that, since thinking can occur only in language, our understanding must also be mediated and structured by language. As opposed to structuralism, post-structuralism dismantles the idea of language’s static coherence.

The perspective that language is constitutive of “reality” requires at least one further clarification. The structuralist and post-structuralist views on language do not deny the existence of the reality external to language, which would reduce these perspectives to some sort of idealism. A widely quoted explanation of this from Laclau’s and Mouffe’s book *Hegemony and Socialist Strategy* deserves to be repeated here:

The fact that every object is constituted as an object of discourse has *nothing to do* with whether there is a world external to thought, or with the realism/idealism opposition. An earthquake or the falling of a brick is an event that certainly exists, in the sense that it occurs here and now, independently of my will. But whether their specificity as objects is constructed in terms of “natural phenomena” or “expressions of the wrath of God” depends upon the structuring of a discursive field. What is denied is not that such objects exist externally to thought, but the rather different assertion that they could constitute themselves as objects outside any discursive conditions of emergence.⁸⁸

In other words, if there are objects and facts out there, they appear to human beings in interpretation, i.e. always already being interpreted one or another way.

1.3.2 Deconstruction

The word “considerations” in the title of this chapter was intended to signal a certain indecision about talking about methodology. The thesis, indeed, follows a deconstructive “strategy,” but deconstruction, as Derrida explicitly states, “is not a method and cannot be transformed into one,” for it precludes an autonomous subject as well as the essence of the object, which would be presupposed by any traditional methodology.⁸⁹ In addition, “deconstruction is neither an analysis nor a critique,” because it does not attempt to dissolve a structure into simpler “original” elements.⁹⁰

These “features” of deconstruction follow from the very nature of what deconstruction aims to achieve or to account for, i.e. to show, as is one way to put it, that no concept that in the traditional philosophical discourse is determined in opposition to another completely exterior concept can avoid including the other’s trace in itself. In other words, deconstruction tries to think the openness

⁸⁸ Laclau & Mouffe, *Hegemony and Socialist Strategy*, p. 108.

⁸⁹ Derrida, “Letter to a Japanese Friend,” p. 3.

⁹⁰ Ibid.

to the other (concept, for example, but also in general). This means that it has to account for oppositions without annulling their confrontation. However, in that case, as Gasché puts it, if deconstruction “is not a practice in search of an essence, ground, or unity beyond all singular and opposite terms,”⁹¹ then:

[its way of synthesising] must not be of the nature of the opposites for which it accounts; otherwise it would belong to the order of what it comes to explain. With regard to the traditional and canonical oppositions of presence and absence, of being and nothingness, ... [it] must not be described in terms of these bipolar oppositions, or of other oppositions derivative of them.⁹²

This is the reason why there cannot be given a straight answer to the question “what is deconstruction,” as also Derrida warns, “all sentences of the type ‘deconstruction is X’ or ‘deconstruction is not X’ a priori miss the point, which is to say that they are at least false.”⁹³

Nevertheless, even if “no path leads around in a circle toward a first step, nor proceeds from the simple to the complex, nor leads from a beginning to an end,” what is left for deconstruction is not just a sort of free play, but “a certain marching order.”⁹⁴ This allows to explicate deconstruction as a specific strategy of reading, which aims at textual aporias and contradictions produced by the unthought dimension of otherness in the traditional philosophy. Such reading can be characterised by two different “logics” – that of “double bind” and “double gesture.”

The “double bind” consists, on the one hand, in a very close reading of the text – in highest faithfulness possible towards the text. On the other hand, it consists in an eventual betrayal of the text, which occurs, paradoxically, because of the very faithfulness to the text. The “double gesture” explains how this betrayal comes about; in its close reading of the text, the deconstructive reading aims, first, to highlight and reverse the hierarchies and oppositions found in the text, and second, to show how previously subordinate elements are in fact constitutive of the very unity of the text. By doing that, the deconstructive reading reveals textual aporias, certain “blind spots,” which are not governed by the conceptual framework of the text, but which are responsible for the possibility and simultaneously, impossibility of the unity of the text. Derrida explains this as follows:

⁹¹ Rodolphe Gasché, *The Tain of the Mirror: Derrida and the Philosophy of Reflection* (Cambridge, MA: Harvard University Press, 1986), p. 142.

⁹² Ibid., p. 148.

⁹³ Derrida, “Letter to a Japanese Friend,” p. 4.

⁹⁴ Jacques Derrida, “The Double Session,” in *Dissemination*, tr. Barbara Johnson (London and New York: Continuum, 2004), p. 274.

By means of this double play, marked in certain decisive places by an erasure which allows what it obliterates to be read, violently inscribing within the text that which attempted to govern it from without, I try to respect as rigorously as possible the internal, regulated play of philosophemes or epistemes by making them slide – without mistreating them – to the point of their non-pertinence, their exhaustion, their closure.⁹⁵

Here, Derrida also stresses that this arriving at a “blind spot,” i.e. at the point of non-pertinence, exhaustion and closure, is achieved by the means of the text itself, by revealing its internal play: whatever it is a deconstructive reading wants to accomplish, it does it with what is already taking place in the text.

This takes us to another important moment of deconstructive reading: its aim is not to solve the aporia or to close the undecidability involved in it, but precisely the opposite, to do “justice” to the aporia by maintaining it, for it is insurmountable – “an aporia is a non-road.”⁹⁶ In other words, deconstruction aims to direct us to the experience of the impossible, which is achieved by a sort of synthesis that does not solve the contradictions and aporias it has detected – these syntheses can be called, with some caution I explain below, as “infrastructures.” By definition of Rodolphe Gasché, who has brought the term into a wider usage, “*infrastructures* are ‘grounds’ by means of which deconstruction attempts to account for the ‘contradictions’,”⁹⁷ or, put differently, it is “the formal rule that each time regulates differently the play of the contradictions in question.”⁹⁸

For example, one of the earliest *infrastructures* invented by Derrida is *différance*, which is said to describe “sameness which is not identical.”⁹⁹ There is no such word in French as *différance*; it is invented by replacing “e” in the word “*différence*” with “a,” but this difference is inaudible in speech. It is the same and different at the same time, or to put it differently, this difference never arrives as an identity, but is always postponed, deferred. Equally, as its identity is deferred, it differs. In this sense, *différance* is more like a movement than a word; it is differentiation, differing itself; i.e. differing that produces all differences (remaining non-present at the same time). This movement will be explicated much more thoroughly on the basis of several other *infrastructures* in the course of the text.

Infrastructures would not be able to function as they are intended, i.e. to account for the other as other in the same, if they could be just applied to the text from the outside. Therefore, Derrida further delimits deconstruction:

⁹⁵ Jacques Derrida, *Positions*, tr. Alan Bass (London and New York: Continuum, 2004), p. 5.

⁹⁶ Derrida, “Force of Law,” p. 947.

⁹⁷ Rodolphe Gasché, *The Tain of the Mirror: Derrida and the Philosophy of Reflection* (Cambridge, MA: Harvard University Press, 1986), p. 184.

⁹⁸ *Ibid.*, p. 142.

⁹⁹ Jacques Derrida, “Différance,” in his *Margins of Philosophy* (Chicago and London: The University of Chicago Press, 1982), p. 12.

It must also be made clear that deconstruction is not even an act or an operation. ... Deconstruction takes place, it is an event that does not await the deliberation, consciousness, or organization of a subject, or even of modernity. It deconstructs itself. It can be deconstructed.¹⁰⁰

This means that deconstruction is always already in progress; deconstruction is not something applied on the text, but it is to be “noticed” and accounted for as already happening to the text. Therefore, also, *infrastructures* are always bound to the contexts of particular texts where they are born, which is emphasised by Derrida in the following quote from “Letter to a Japanese friend”:

For me ... the word [deconstruction] has interest only within a certain context, where it replaces and lets itself be determined by such other words as “écriture,” “trace,” “différance,” “supplement,” “hymen,” “pharmakon,” “marge,” “entame,” “parergon,” etc. By definition, the list can never be closed, and I have cited only names, which is inadequate and done only for reasons of economy. In fact I should have cited the sentences and the interlinking of sentences which in their turn determine these names in some of my texts.¹⁰¹

In other words, “deconstruction does not exist somewhere, pure, proper, self-identical, outside of its inscriptions in conflictual and differentiated contexts; it ‘is’ only what it does and what is done with it, there where it takes place.”¹⁰² This, however, poses a problem to the usage of the term “infrastructures,” for it means that *infrastructures* cannot exist as a generality – there cannot be a concept of *infrastructure*, and Derrida clearly warns about its misuse:

The word *infrastructure* troubles me a bit, even though I did use it myself for pedagogical and analogical purposes, at the time of *Of Grammatology*, in a very specific rhetorical and demonstrative context, and even though I understand what justifies the strategic use of it proposed by Gasché (and I talked to him about it). In an analysis of “literary” writing, you do of course have to take account of the most “general” structures (I don’t dare say “fundamental,” “originary,” “transcendental,” “ontological,” or “infra-structural,” and I think it has to be avoided) of textuality in general.¹⁰³

This thesis, nevertheless, follows Gasché’s usage of the term *infrastructure*, being at the same time well aware of its strategic purposes; in Gasché’s words:

¹⁰⁰ Derrida, “Letter to a Japanese Friend,” pp. 3–4.

¹⁰¹ Ibid., pp. 4–5.

¹⁰² Jacques Derrida, “Afterword: Toward an Ethic of Discussion,” in his *Limited Inc* (Evanston, IL: Northwestern University Press, 1988), p. 141.

¹⁰³ Jacques Derrida, “This Strange Institution Called Literature: An Interview with Jacques Derrida,” in Derek Attridge (ed.), *Acts of Literature* (New York and London: Routledge, 1992), pp. 70–1. See also an exchange between Derek Attridge and Jeffrey T. Nealon on this subject in *Publications of Modern Language Association* (PMLA), Vol. 109, No. 2 (March 1994), pp. 283–4.

“Infrastructures are only ‘general and formal predicative structures’ that represent the ‘common root’ for all predicates characterising opposing terms. This explains why *infrastructures* cannot be concepts, but rather have the status of ‘philosophical quasi-concepts’.”¹⁰⁴

Despite that *infrastructures* are always already at work in the text and they are not generalizable grounds, which means that they cannot be applied to the text as a method, yet, as much as deconstruction does not produce its effects internally, but it has to be incised, or inscribed, as Gasché puts it, deconstruction is not just a “non-method.”¹⁰⁵ Lasse Thomassen has aptly summarised the possibility of deconstruction as a method:

We should think of deconstruction in terms of rearticulation. It is not a set of procedures or techniques to be applied, as if it were a given method applied to an object from the outside. Rather, we are dealing with a relation of rearticulation, where deconstruction as a method is not given prior to its particular uses. ... on one hand, deconstruction *cannot* be applied because it is not given as a method prior to its applications; on the other hand, deconstruction can *only* be applied because it only exists through its particular applications, and does not exist independently of these.¹⁰⁶

This means that if deconstruction is followed in this thesis as an approach, then it has to repeat or reinvent deconstruction in its course; the “method” of this research is not separable from its aim. Therefore, this thesis follows deconstructive “strategy” in the double sense of the term: it follows deconstruction in its analysis of legitimacy, but it also follows deconstruction itself in order to give account for its own movement, its conditions of possibility. In this sense, the aspects of deconstruction that have been brought up here in a preliminary fashion to explain the approach and the paradigm of this thesis, will be duly unfolded, explicated and engaged with in the course of the whole thesis.

I.4 The Structure of the Thesis

As much as the deconstructive approach employed in this enquiry directly affects the way how it is structured, I outline (perhaps unconventionally) the structure of the thesis here after the methodology section. There are two different “logics” that determine the trajectory of the thesis. Firstly, the thesis evolves through the analysis and comparison of certain exemplary accounts of the paradox of founding in the non-foundationalist perspective. But secondly,

¹⁰⁴ Gasché, *The Tain of the Mirror*, p. 156.

¹⁰⁵ *Ibid.*, p. 123.

¹⁰⁶ Lasse Thomassen, “Deconstruction as Method in Political Theory,” *Österreichische Zeitschrift für Politikwissenschaft (ÖZP)*, Vol. 39, No. 1 (2010), p. 51. See also Jacques Derrida, “‘As if I were Dead’: An Interview with Jacques Derrida,” in J. Brannigan, R. Robbins, J. Wolfreys (eds.) *Applying: To Derrida* (London: Macmillan, 1996), p. 218.

due to the research question and the approach chosen, this linear structure of the thesis, which moves forward from paragraph to paragraph upon the completion and closure of a task at hand, is complicated by another, non-linear structure – a repetition. Next, I unfold these considerations more closely.

As it was noted above, this thesis, in aiming at deconstructed “concept” of legitimacy, takes its lead from the paradox generated by the traditional understanding of legitimacy. Namely, the thesis proceeds by the analysis of the paradox of the “vicious circle” embedded in the founding act of any (republican) constitution or state. The question how to establish a fundamental law or “law of the land” without recourse to an extramundane source, to use Arendt’s phrase, from which all other laws gather their authority and which can rely upon voluntary obedience of those who are under it, is the problem of legitimacy *per se*, at least as modernity has learned to know it.¹⁰⁷ The following discussion of this paradox of the founding act concentrates on what has become an exemplary and paradigmatic case of such act in the current academic literature, namely on the Declaration of Independence of America (hereafter the Declaration). From the point of view of political theory, the Declaration largely owes such exemplary status to two original contemporary commentaries on it with their own ways to deal with the “vicious circle,” and which have evoked, in turn, a lot of response from other theorists. These two commentaries belong to the already above cited, Hannah Arendt in *On Revolution* and to Jacques Derrida in “Declarations of Independence.”¹⁰⁸

There is a rather substantial secondary literature on both authors’ analyses of the Declaration in association with some other authors or taken separately, most relevant of which find their way into the current thesis as well.¹⁰⁹ But in addition, the reading of these two authors – Arendt and Derrida – together, in comparison (or in opposition), as I also intend to do, has its history in the

¹⁰⁷ See Arendt, *On Revolution*, p. 184.

¹⁰⁸ Jacques Derrida, “Declarations of Independence,” in Derrida *Negotiations: Interventions and Interviews 1971–2001*, ed., tr. Elizabeth Rottenberg (Stanford: Stanford University Press, 2002). The text was first delivered as a public lecture at the University of Virginia in Charlottesville in 1976.

¹⁰⁹ One might consider the following texts on this subject matter: J. Claude Evans, “Deconstructing the Declaration: A Case Study in Pragmatology,” *Man and World*, Vol. 23 (1990), pp. 175–189; Noah Horwitz, “Derrida and the Aporia of the Political, or the Theologico-Political Dimension of Deconstruction,” *Research in Phenomenology*, Vol. 32, No. 1 (2002), pp. 156–176; Benjamin Lee, “Performing the People,” *Pragmatics*, Vol. 5, No. 2 (1995), pp. 262–280; Patchen Markell, “The Rule of the People: Arendt, Archê, and Democracy,” *American Political Science Review*, Vol. 100, No. 1 (2006), pp. 1–14; James R. Martel, “Can There be Politics Without Sovereignty? Arendt, Derrida and the Question of Sovereign Inevitability,” *Law, Culture and the Humanities*, Vol. 6, No. 2 (2010), pp. 153–166; William E. Scheuerman, “Revolutions and Constitutions: Hannah Arendt’s Challenge to Carl Schmitt,” *Canadian Journal of Law and Jurisprudence*, Vol. 10 (Jan., 1997), pp. 141–161; Jacques de Ville, “Sovereignty without Sovereignty: Derrida’s Declarations of Independence,” *Law Critique*, Vol. 19, No. 2 (2008), pp. 87–114.

academic literature. Such comparison can be traced back to Bonnie Honig's seminal article "Declarations of Independence: Arendt and Derrida on the Problem of Founding a Republic" published in 1991.¹¹⁰ Another reading on the same subject comes five years later in 1996 from David Ingram: "Novus Ordo Seclorum: The Trial of (Post)Modernity or the Tale of Two Revolutions."¹¹¹

From these two texts, I clearly remain more indebted to Honig's post-structurally inclined reading than Ingram's hermeneutical interpretation. Above all, I accept the analytical "space" of constatives and performatives in which Honig's interpretation moves. Honig takes these concepts from the text of Derrida and then applies these to Arendt's text, creating thereby a certain common ground of comparison. However, Derrida's reference to these concepts passing in the text of 1976 on the Declaration draws on a closer and earlier analysis of them in the conference paper on John L. Austin's speech act theory, later published as the article "Signature Event Context."¹¹² As the theory of performatives and constatives to certain extent pertains to the argument of the thesis, I return to it for a fuller exposition later in the second chapter.

Now, it is through the analysis of these two accounts of the paradox embedded in the republican founding act that I hope to reveal a different, so far still hidden role of legitimacy (if there is such a thing) in the act of founding and in the sphere of the political in general. The analysis of these accounts proceeds by close reading of relevant texts, some of which were mentioned above, and it grows into engagement with philosophies of mentioned authors, i.e. above all with Arendt and Derrida, but also with some auxiliary authors like John Austin, Bonnie Honig, and Walter Benjamin. However, these authors in themselves are not the subject matter of the thesis. Even if the thesis re-interprets some of the aspects of their philosophies, it is not the aim of the thesis to deal with their philosophical systems as a whole. The thesis concentrates on specific texts chosen in view of the research question, which is about arriving at the post-structuralist "concept" of legitimacy, and it engages with these authors' theories only with this purpose in mind. In other words, I compare their specific interpretations and play them against each other to displace the ground of thinking on legitimacy.

¹¹⁰ Bonnie Honig, "Declarations of Independence: Arendt and Derrida on the Problem of Founding a Republic," *American Political Science Review*, Vol. 85, No. 1 (March 1991), pp. 97–113. Republished in Frederick M. Dolan, Thomas L. Dumm (eds.), *Rhetorical Republic: Governing Representations in American Politics* (Amherst: The University of Massachusetts Press, 1993), pp. 201–225; and as a chapter in her *Political Theory and the Displacement of Politics* (Ithaca: Cornell University Press, 1993), pp. 77–115.

¹¹¹ David Ingram, "Novus Ordo Seclorum: The Trial of (Post)Modernity or the Tale of Two Revolutions," in L. May, J. Kohn (eds.), *Hannah Arendt: Twenty Years Later* (Cambridge, MA and London: The MIT Press, 1996), pp. 221–250.

¹¹² Jacques Derrida, "Signature Event Context," in Jacques Derrida, ed. G. Graff, *Limited Inc* (Evanston, IL: Northwestern University Press, 1988), pp. 1–23; originally a conference paper presented for the *Congrès international des Sociétés de philosophie de langue française*, in Montreal, August 1971.

This analysis and comparison constitutes the linear and manifest structure of the thesis with its division into chapters that will be outlined in the end of this section. However, as said above, the deconstructive approach complicates this linear structure; it is not simply an analysis or a critique, which is applied to these texts. Rather, what the deconstructive approach aims at is to reveal something that is latently already operating in these texts, which can be glimpsed only by a certain displacement of their inner structure. The displacement, however, cannot be introduced from the outside of the text, but is achieved by following the inner logics of the texts in discussion, as Derrida puts it, by following “the internal, regulated play of philosophemes or epistemes by making them slide – without mistreating them – to the point of their non-pertinence, their exhaustion, their closure.”¹¹³

This complication poses a problem for the structure of the analysis. On the one hand, the analysis and comparison cannot be *applied* after some full exposition of the accounts of Arendt and Derrida, but has to take place concurrently with the evolvment of their interpretations, for if legitimacy is to be approached prior to the question “what is?,” then only in this way it is possible to postpone or suspend the arrival of their (full) argument, which allows us to see alternative routes of thinking inside their texts. On the other hand, as much as the analysis needs to trace movements inside their texts, it can take place only after some full exposition of their theories, which gives a sense of the whole in which these movements take place. In order to overcome the difficulty, the thesis is structured, in addition to the linear structure, by another principle of structuration – by a ternary repetition. Each of the three repetitions in some sense presents the whole argument of the discussed authors on a “solution” of the paradox, but nevertheless, without aspiring to offer a complete account, and in this sense as if postponing the beginning or the arrival of the argument.

The first repetition is the “repetition of the same,” i.e. the most faithful following possible, with a slightest possible interpretation by me, of the course of the arguments in the discussed accounts of the paradox of the “vicious circle.” It is separable from the second repetition only analytically, and it serves to give to the reader a preliminary understanding of the problem. In itself, it would be impossible, for there is no text without an interpretation. In order to make this repetition more admissible, I have followed the texts very closely, and where possible, have let authors to speak themselves by quoting them directly.

The second repetition is the “repetition of the same with a difference.” It consists in setting the arguments of these accounts into an interpretative framework of somebody who has already analysed them. In engaging with such interpretations, I arrive at another level of understanding of the accounts repeated in the first repetition, and here, comparisons of different accounts become possible.

¹¹³ Derrida, *Positions*, p. 5.

The third repetition repeats to displace the discussed accounts in the first and the second repetition, so that an alternative route of thinking is revealed, which replaces the previous repetitions by its own repetition, which, in some sense, remains repeating in their stead, but also showing how “repetitions with a difference” become possible in the first place.

Even if the repetitive movement in the thesis should make reading of the text easier for the reader, it also requires some additional patience, because the main line of argument arrives to its proper form and meaning only in the very end of the text.

The “inner” structure of the thesis in its ternary repetition is not exactly traceable to particular chapters, but the linear structure certainly is, and in the following, I will briefly introduce the basic division of the thesis into chapters.

As it was already stated above, this thesis proceeds by examining and comparing two accounts of an exemplary case of a republican founding act, namely Arendt’s and Derrida’s interpretations of the Declaration of Independence of United States of America. Both Arendt and Derrida utilise in *passim* the term “legitimacy,” but not in the deconstructive sense. My plan is to play accounts of Arendt and Derrida against each other so that Arendt’s account reveals an unfinished route in Derrida’s thought on legitimacy, and Derrida’s deconstruction, in turn, exposes inadequacy of Arendt’s conceptualisation of legitimacy. The division of the thesis into two parts, in addition to chapters, follows this line of thought; the first part consists of a reading of Arendt against (but also into) Derrida, and the second is a demonstration of how deconstruction deals with the “vicious circle,” which is a reading of Derrida against Arendt (above all Arendt, but also Benjamin). However, such comparison of these authors passes through several stages, for it requires several auxiliary tasks to be completed before conclusions can be drawn, and therefore, the thesis is also divided into five chapters (excluding Introduction and Summary).

The second chapter gives a preliminary outline of both authors’ accounts of the Declaration and the problem of the “vicious circle” in it. It also explicates John Austin’s theory of performatives and constatives, which forms the common ground of comparison between Arendt and Derrida.

In order to use Arendt’s analysis of the Declaration to displace Derrida’s account on legitimacy, it cannot stand merely in opposition to the latter, but has to be able to intervene into it on the basis of some essential similarity that goes further than the established common ground of comparison. An important interpretation that stands on this way is Bonnie Honig’s account on these authors, which sets Arendt and Derrida against each other to the detriment of the former. The third chapter critically examines Honig’s comparison of Arendt and Derrida on the Declaration and points out some inconsistencies in her reading of Arendt, which allows for the thesis to move on with another take on Arendt as well as to look for another concept of violence to theorise resistance to the founding act. The theme of resistance (and of violence) springs up in the analysis, since in order to think of the republican founding act that does not rely

on any absolute source of authority, one must be able to think resistance (or “augmentation,” as Arendt terms it) to the founding act as already part of the same founding act, for otherwise, it would turn into the same absolute beginning, from which it wishes to distance itself. The concept of violence in play in Honig’s account is elucidated in this third chapter on the basis of Walter Benjamin’s analysis of violence, but it is found to be insufficient to theorise the resistance in the founding act.

In the fourth chapter, I reinterpret Arendt’s theory by rendering it differently in terms of performatives and constatives. This reinterpretation reveals that Arendt addresses a more radical violence or rupture (which cannot be put in the service of the existing founding act), than the undecidable violence conceptualised in the previous chapter. Besides, such reading of Arendt’s theory, which is much more in line with Derrida’s, allows it to be used in situating the radical violence in Derrida’s account of the Declaration. This displaces Derrida’s analysis, so that its limits become apparent, and a possibility emerges to take the unfinished route of thinking to arrive at a post-structuralist “concept” of legitimacy. Although, the chapter 4 delineates the conditions of a deconstructive intervention and establishes what is called “radical violence” as a necessary condition to think the republican founding act, the question how to think the radical violence aporetically is addressed in the following chapter. The chapter 4 concludes the first part in which Arendt’s account was read to displace Derrida’s interpretation.

The second part of the thesis places under scrutiny different ways how radical violence is addressed by the authors already mentioned. Thus, the fifth chapter examines how radical violence is accounted for by Walter Benjamin and Hannah Arendt. The general theme of these analyses is to read Derrida against Arendt (and Benjamin) to show, in turn, the limits of their accounts compared to the deconstructive approach.

The sixth chapter delineates the deconstructive approach on radical violence, which clears the way to move beyond Arendt’s and Derrida’s treatments of legitimacy. While remaining on the ground of Arendt’s thought on legitimacy and of Derrida’s thinking of how to account the other as other, the thesis proposes a “concept” of legitimacy, which functions like a Derridean *infrastructure*. In explicating the deconstructive accounting, I also engage in this chapter with Noah Horwitz’s and Ernesto Laclau’s mistakes of deconstruction.

The seventh chapter summarises the thesis by delineating the whole course of the argument up to its conclusion that legitimacy “is” *resigning*.

PART I

Chapter 2: The Paradox of Founding

At first sight, the aim of this thesis – to advance a post-structuralist “concept” of legitimacy – might seem to be a kind of oxymoron. The term “legitimacy” does not stand out as having any deconstructive or other notable role to play in post-structuralist discourse on law and politics. Rather, the whole attention is focused on the difference between law and justice, and the difference is subsumed under the term calculability. For example, Derrida states in “Force of Law”: “Law is the element of calculation, and it is just that there be law, but justice is incalculable, it requires us to calculate with the incalculable.”¹¹⁴ In other words, justice is addressed to the singularity, which no calculable rule can comprehend. And in this discrimination, legitimacy appears to be left to the side of law, as also Jiří Příbáš has observed, “legitimacy, according to Derrida, belongs to the sphere of the calculable and therefore is closer to law than justice.”¹¹⁵ In line with this observation, we find in Derrida the term “legitimacy” inserted into the same semantically related series of terms as “law,” “legality,” “rules,” “prescriptions,” and others like these. For instance, in “Force of Law” Derrida offers an extended list of “calculables”: “the exercise of justice as law or right, legitimacy or legality, stabilisable and statutory, calculable, a system of regulated and coded prescriptions...,” or in another place, “the deconstructibility of law (*droit*), of legality, legitimacy or legitimation.”¹¹⁶ Such usage, as far as I know, has not been contended by other authors writing in this tradition, which only seems to confirm that legitimacy is something to be deconstructed, rather than something that partakes in its advancement.

Still, there are some doubts raised about such calculable legitimacy from the side of jurisprudence. For example, Jiří Příbáš expresses hesitation on such merging of legitimacy and legality: “legitimacy, however, does not seem to be of the same genre as legality. ... it is tied in some way to the notion of justice.”¹¹⁷ He goes on in his article to propose an idea to understand legitimacy as a narrative or narratives about justice that take place between incalculable justice and calculable laws:

Legitimacy is a realization of justice in the form of narrative which, unlike law, cannot be immediately backed by state force or violence and belongs to the sphere of opinion, narrative rules, and rhetoric skills. ... The legitimacy of law grows from the very sphere of difference between calculable law and incalculable justice; it grows as an effort to bridge a seemingly infinite gap

¹¹⁴ Jacques Derrida, “Force of Law: The ‘Mystical Foundation of Authority’,” *Cardozo Law Review*, Vol. 11, No. 5-6 (1989–90), p. 947.

¹¹⁵ Jiří Příbáš, “Beyond Procedural Legitimation: Legality and Its ‘Inflections’,” *Journal of Law and Society*, Vol. 24, No. 3 (Sept., 1997), p. 341.

¹¹⁶ Derrida, *Force of Law*, p. 959, 945, respectively.

¹¹⁷ Příbáš, “Beyond Procedural Legitimation,” p. 341.

between the ethical demands of justice, articulated from the singularity of individual being, and the impersonal system of general legal rules and procedure.¹¹⁸

Although, the idea in Přibán's article remains, in my mind, on the level of a proposal in need of further elaboration, its basic recognition that "it is not possible to legitimate law merely by some transformation of the incalculable justice into the procedures of the autopoietic legal system," does not stand too far from the starting point of the thesis.¹¹⁹

One thing has become clear from the above: if there is any deconstructivist take on legitimacy, then it presumes demonstrating an intrinsic undecidability of legitimacy (i.e. an aporetic nature of legitimacy) and untangling it from its association with the order of the calculable.

The previous chapter has already explicated how the task will be tackled. In this first part of the thesis, I embark on the comparison between Arendt and Derrida with an aim to find a way to read Arendt's account of the Declaration against and into Derrida's interpretation. In other words, by comparing their accounts, counterposing their disagreements, which I will do in a fruitful engagement with Honig's similar endeavour, I hope to displace the ground on which legitimacy is thought and find a gap which reveals a different functioning of legitimacy.

In that, my approach in this part of the thesis is more similar to Ingram's, who clearly reads Arendt against Derrida (but not vice versa). However, while he contrasts these two authors, I read Arendt much more (as if) into Derrida. In doing so, still, I refrain from taking Arendt as a post-structuralist *avant la lettre*, which is the verdict of Ingram on Honig's reading, which, I think, is unjustified, and makes sense only from Ingram's negative perspective on deconstructive arguments in this debate.¹²⁰ If eventually, I am able to point out the limitation of Derrida's analysis in "Declarations of Independence," I do not deny it having its aim and purpose, which it might fully also achieve, but only that it cannot be used, at least without some bending, to theorise resistance to or intervention into the law (of the land) as such, as Honig claims.¹²¹ In this "gap" of the argument in Honig (as well as in Derrida), I would like to carve out a space for the undecidable legitimacy.

However, first of all this chapter proceeds to give an introductory synopsis of the paradox of founding through a close reading of the commentaries of Arendt and Derrida on the Declaration.

¹¹⁸ Ibid., p. 342.

¹¹⁹ Ibid.

¹²⁰ Ingram, *Novus Ordo Seclorum*, p. 248.

¹²¹ Honig, "Declarations," p. 108.

2.1 Arendt on the Paradox of Founding

The paradox of founding consists, in fact, in two paradoxes, as Arendt puts it: there are “two vicious circles, the one apparently inherent in human law-making, and the other inherent in the *petitio principii* which attends every new beginning, that is, politically speaking, in the very task of foundation.”¹²² The first of them concerns “the need of all positive, man-made laws for an external source to bestow legality upon them and to transcend as a ‘higher law’ the legislative act itself.”¹²³ In other words, the act of a group of people to voluntarily agree to put themselves under the law, creating thereby a new political entity, cannot take place under the law it creates (or any other ordinary law), because if it were, it would not be as free and voluntary as it should be for the people to agree on it. This, in turn, leads to a certain regression where the authority to oblige submission to the law so created is derived from some external, more universal “higher law.”¹²⁴

The other vicious circle concerns not legality (validity, authority in Arendt’s usage) but power: the power of those who constitute an independent entity is unconstitutional, because the legitimacy of this power to achieve what it is set to achieve emerges only after its deed; so, it seems there can be no legitimacy to institute an entity.¹²⁵ This discrimination between the two circles proves important in Arendt’s account, but not so much in Derrida’s, in which case both are referred to as “Sieyès’s vicious circle” in this thesis.

According to Arendt, the act of founding a political institution becomes a problem only in modern times. Historically, the paradox of founding accompanies the emergence of revolutions on the political scene, being thus the herald of a whole new era. Arendt contrasts revolutions of modern times to what could be called “restorations” or “renovations” of pre-modern times; the latter might have been rebellious, but could not be deemed possible without professed attempts at “the recovery of ancient liberties” and/or “the reinstitution of lost authority and lost power.”¹²⁶

Revolutions, on the other hand, are characterised by (more or less conscious) creation of new laws and founding of an entirely new body politic. This new era became possible in the background of the process of secularisation, i.e. “the emancipation of secular power from the authority of the Church.”¹²⁷ Arendt

¹²² Arendt, *On Revolution*, p. 161. The name “vicious circle” refers here to Sieyès’s formulation, as cited in Introduction, fn. 49.

¹²³ Ibid.

¹²⁴ The infinite regress itself is technically not a paradox, for there is nothing logically contradictory in it, but in the context of the founding act, it still can be taken as one, for the states are founded and the infinite regression contradicts this possibility.

¹²⁵ David Ingram dubs the problems involved in these two vicious circles as the problems of “prepolitical” and “preconstitutional” legitimations, respectively. See Ingram, *Novus Ordo Seclorum*, p. 221, 223.

¹²⁶ Arendt, *On Revolution*, p. 155; see also, p. 37.

¹²⁷ Ibid., p. 159.

notes that the first result of the process of secularisation was European absolutism, which is defined by “the existence of an absolute sovereign whose will is the source of both power and law.”¹²⁸ However, absolutism, although having departed from the sanctifying and authorising support of the Church, still managed to evade the founding problem:

It is as though absolutism were attempting to solve this problem of authority without having recourse to the revolutionary means of a new foundation; it solved the problem, in other words, within the given frame of reference in which the legitimacy of rule in general, and the authority of secular law and power in particular, had always been justified by relating them to an absolute source which itself was not of this world.¹²⁹

But by the time of the modern revolutions,

with the necessity of making new laws and of founding a new body politic, former “solutions” – such as the hope that custom would function as a “higher law” because of a “transcendental quality” ascribed to “its vast antiquity,” or the belief that the exalted position of the monarch as such would surround the whole government sphere with an aura of sanctity ... stood now revealed as facile expedients and subterfuges.¹³⁰

Hence, the modern revolutions, of which Arendt compares the French Revolution of 1789 and the American Revolution of 1776, had to face the paradox of founding in its full sense.

In order to succeed, both revolutions, the French as well as American, had to find the means to overcome the “vicious circle.” But their different ways of resolving the paradox explains, and this is the meaning of the comparison for Arendt, why the French Revolution ended in bloody violence and the American one founded a republic. Abbé Sieyès’s theory, the guiding theory of the French Revolution, remained too much embedded in the absolutistic tradition it grew out from.¹³¹ The absolute monarch of France “was the source of both law and power, and it was this identical origin that made law powerful and power legitimate.”¹³² Sieyès followed this model by simply replacing the sovereignty of the king with the sovereignty of the nation, so that, as Arendt puts it, “both power and law were anchored in the nation, or rather in the will of the nation, which itself remained outside and above all governments and all law.”¹³³

¹²⁸ Ibid.

¹²⁹ Ibid., p. 160.

¹³⁰ Ibid., p. 162.

¹³¹ See Emmanuel Joseph Sieyès, “What is the Third Estate,” in his *Political writings: Including the Debate between Sieyès and Tom Paine in 1791*, ed. M. Sonenscher (Indianapolis and Cambridge: Hackett Publishing Company, 2003), pp. 94–162.

¹³² Arendt, *On Revolution*, p. 156.

¹³³ Ibid., p. 163.

One thing that follows, for Arendt, from deriving power and law from the selfsame source is that it could in no circumstances lead to the founding of the republic, because it would only amount to the rule of men (or of majority, in this case), not to the rule of laws. But secondly, it also caused the demise of the revolution. The key here is, as Arendt puts it, that the revolution “threw the whole French nation into a ‘state of nature’; it dissolved automatically the political structure of the country as well as the bonds among its inhabitants, which had rested not on mutual promise but on the various privileges accorded to each other and estate of society.”¹³⁴ For Arendt, the existence of power, which springs from mutual promises, was of utmost importance for the success of a revolution. But in the case of the French Revolution, it happened that

the chaos of unrepresented and unpurified opinions, because there existed no medium to pass them through, crystallised into a variety of conflicting mass sentiments under the pressure of emergency, waiting for a “strong man” to mould them into an unanimous “public opinion,” which spelled death to all opinions.¹³⁵

In other words, the sovereign power that the revolution wanted to locate in the people was in fact simply a “natural force” (not mediated by mutual promises as in the American Revolution), which under conditions of the revolution became unleashed as a mere violence. As the law was derived from the same place as power, there was no one with means to check the violence, because “like the absolute prince, the nation, in terms of public law, could do no wrong because it was the new vicar of God on earth.”¹³⁶ Therefore, as the French Revolution could not distinguish between power and violence, it eventually was swept away by “the natural force of the multitude.”¹³⁷

It is an entirely different story with the other side of Arendt’s comparison – with the American Revolution. Arendt claims that what failed in the French Revolution – the founding of the republic – succeeded in the American Revolution. It means that in Arendt’s opinion the Founding Fathers overcame the paradox of the vicious circle and the lack of authority in establishing new political institutions. Above all, of course, the discussion of the American Revolution reveals Arendt’s own answer to the vicious circle.

According to Arendt, the main difference between the French and American revolutions is that the “framers of the American constitutions ... [did not] derive law and power from the same origin. The seat of power to them was the people, but the source of law was to become the Constitution,” which, in turn, made conceivable that the constitution “remained binding for the body politic to

¹³⁴ Ibid., p. 180.

¹³⁵ Ibid., p. 228.

¹³⁶ Ibid., p. 190.

¹³⁷ See *ibid.*, p. 181.

which it gave birth.”¹³⁸ Several fortunate factors, as Arendt observes, were conducive to this development, above all, the absence of mass poverty (in contrast to the situation in France) and the practice of self-government, or the rule of “limited monarchy.”¹³⁹

An important consequence of this in the context of our exposition is that these factors simplified the paradox of founding for the American Revolution; instead of two “vicious circles,” it had to deal with only one: “the chief problem of the American Revolution ... turned out to be the establishment and foundation not of power but of authority.”¹⁴⁰ According to Arendt, the problem of power did not surface in America because “the people of the colonies, prior to their conflict with England, were organized in self-governing bodies,” and, as much these bodies were based upon mutual promises and covenants, they were scaffoldings for power, not for “natural force” or violence.¹⁴¹

Essential for an understanding of Arendt’s argument here is her differentiation between a “consent” and a “promise,” which is also another way of casting the difference between the French and American Revolutions: “the act of consent, accompanied by each individual person in his isolation, stands indeed only ‘in the Presence of God’, the act of mutual promise is by definition enacted ‘in the presence of one another’.”¹⁴² Thus, the consent is intrinsically related to the search for the absolute, which characterised above all the French Revolution, but the promise has no need for such sanction, and it was the way of the American Revolution. As Arendt says, for “the men of American Revolution ... power came into being when and where people would get together and bind themselves through promises, covenants, and mutual pledges.”¹⁴³ As a result of the presence of power in the people, “the revolution ... did not throw them into a state of nature, [so] that there never was any serious questioning of the *pouvoir constituant* of those who framed the state constitutions and, eventually, the Constitution of the United States.”¹⁴⁴

Even if the “vicious circle” of power was not a problem for the American Revolution, the other one of authority remained to be solved; in Arendt’s words,

while power, rooted in a people that had bound itself by mutual promises and lived in bodies constituted by compact, was enough “to go through a revolution” (without unleashing the boundless violence of the multitudes), it was by no means enough to establish a “perpetual union,” that is, to found a new authority.¹⁴⁵

¹³⁸ Ibid., p. 157.

¹³⁹ See *ibid.*, p. 157, 165.

¹⁴⁰ Ibid., p. 178.

¹⁴¹ Ibid., p. 165.

¹⁴² Ibid., p. 171.

¹⁴³ Ibid., p. 181.

¹⁴⁴ Ibid., p. 165.

¹⁴⁵ Ibid., p. 182.

The task, which proves to be “the most troublesome of all,” was to find authority for the laws of the new state, and thereby also to ground the act of founding, without relying on any absolute that stands outside the human realm.

It is clear that the Founding Fathers wavered here – they certainly brought into the Declaration references to absolutes, like “nature’s God” or “self-evident truths,” which is acknowledged also by Arendt.¹⁴⁶ The situation is somewhat puzzling. The Founding Fathers faced the “vicious circle” and underwent all the troubles in finding authority, the troubles that were caused by the secularisation of the political scene and the departure from religious authority or from absolutism, but after experiencing all the weight of the problem, they as if return to find reassurance from absolutes. As much as the aim was to found a republic, an absolute cannot be a possible ground for it in Arendt’s view, because it would destroy all openness of the public realm which is the defining feature of any republic. Arendt argues that the absolute is,

a truth that needs no agreement since, because of its self-evidence, it compels without argumentative demonstration or political persuasion. By virtue of being self-evident, these truths are pre-rational – they inform reason but are not its product – and since their self-evidence puts them beyond disclosure and argument, they are in a sense no less compelling than “despotic power” and no less absolute than the revealed truths of religion or the axiomatic verities of mathematics.¹⁴⁷

Arendt’s solution here is to demonstrate that the very spirit of the deed of founding in the case of the American Revolution diverges from the words or the form it was cast. She apologetically blames the influence of traditions when she remarks:

The curious fact that the men of the revolutions were prompted into their desperate search for an absolute the very moment they had been forced to act might well be, at least partly, influenced by the age-old thought-customs of Western men, according to which each completely new beginning needs an absolute from which it springs and by which it is “explained”.¹⁴⁸

But above all, what counters their leaning on absolutes, and what eventually leads to their way out from the vicious circle is, in Arendt’s mind, their conscious intent “to imitate the Roman example and to emulate the Roman spirit.”¹⁴⁹ Arendt draws attention to the interrelation of foundation and augmentation in the Roman concept of authority. In fact, as Arendt notes, the etymological root of *auctoritas*, authority, is *augere*, to augment and increase. The Romans thought that members of the Roman Senate have their authority

¹⁴⁶ See <http://www.ushistory.org/declaration/document/index.htm>

¹⁴⁷ Arendt, *On Revolution*, p. 192.

¹⁴⁸ Ibid., p. 206.

¹⁴⁹ Ibid., p. 203.

only by virtue of their being a reincarnation of the spirit of the founding fathers, so that by every following generation the spirit of foundation was augmented and increased. Arendt argues:

The very concept of Roman authority suggests that the act of foundation inevitably develops its own stability and permanence, and authority in this context is nothing more or less than a kind of necessary “augmentation” by virtue of which all innovations and changes remain tied back to the foundation which, at the same time, they augment and increase.¹⁵⁰

Hence, recalling the Roman concept, augmentation can be understood as invoking in people a sense of being part in the founding act through the possibility to amend and improve the constitution so founded. The very spirit (or content) that guides augmentation lies within the first act of beginning, as Arendt explains,

what saves the act of beginning from its own arbitrariness is that it carries its own principle within itself, or, to be more precise, that beginning and principle, *principium* and principle, are not only related to each other, but are coeval. The absolute from which the beginning is to derive its own validity and which must save it, as it were, from its inherent arbitrariness is the principle which, together with it, makes its appearance in the world.¹⁵¹

In the case of the American Revolution (as a republican revolution) this principle is a mutual promise and common deliberation. So, in relying on her account of augmentation and principle, Arendt is able to conclude:

The very fact that the men of the American Revolution thought of themselves as “founders” indicates the extent to which they must have known that it would be the act of foundation itself, rather than an Immortal Legislator or self-evident truth or any other transcendent, transmundane source, which eventually would become the fountain of authority in the new body politic. From this it follows that it is futile to search for an absolute to break the vicious circle in which all beginning is inevitably caught, because this “absolute” lies in the very act of beginning itself.¹⁵²

What Arendt depicts here as the answer to the “vicious circle” by the Founding Fathers of the American Revolution is equally her own answer how republics can be founded without resort to some extramundane absolute. At this point, I leave Arendt’s account as it is; I intended, as much as possible, to let Arendt to present her views herself without too much intervention. It needs to be noted

¹⁵⁰ Ibid., p. 202. See also Hannah Arendt, “What is Authority,” in *Between Past and Future: Six Exercises in Political Thought* (New York: The Viking Press, 1961), pp. 121–2.

¹⁵¹ Ibid., p. 212.

¹⁵² Ibid., p. 204.

that even if Arendt's account is embedded in the analysis of historical events, the focus of this thesis remains Arendt's theory, rather than history. It is assumed that her theory functions to certain extent independently of her historical interpretation (that might or might not raise counterarguments).

2.2 Derrida and the Paradox of Founding

Unlike Arendt, who sets two revolutions against each other, Derrida focuses in his short text solely on the American Revolution, and specifically on the text of the Declaration of Independence, the founding document of the United States (of course, analysing through it the founding act in general).¹⁵³ Similarly to Arendt, he admits that the signers of the Declaration are stuck in Sieyès's "vicious circle": "The 'we' of the Declaration speaks 'in the name of the people.' But these people do not exist. They do not exist as an entity, the entity does not exist before this declaration, not as such."¹⁵⁴

This very clear-cut assertion has induced several criticisms on Derrida's account on the "factual" basis. Namely, it has been argued, that the American people, in fact, existed already before the Declaration. Probably the most straightforward criticism based on this claim comes from J. Claude Evans who refers to the political context prior to the Declaration, saying that American colonies, in fact, had their own legitimate political bodies so that the people had a say in the matters of respective colonies through their representatives.¹⁵⁵ These representatives were also sent to "the Continental Congress" since 1774 and therefore they were involved in the act of declaring the independence. But also Arendt, as it has been shown above, integrates the experience of limited self-government of American colonies into her version of the founding act. Ingram, on the other hand, although he at first approvingly points to this potential criticism, later qualifies it by indicating that there is a sense in the idea of "American people" that is created by the Declaration, namely "a universal right to self-determination."¹⁵⁶ I agree with Ingram in this and do not take the factual objection as valid in regard to Derrida's account or to the "vicious circle" in general. In fact, as we see below, such an appeal to prior "freedom" of the American people is included in Derrida's argument as well. Moreover, if to

¹⁵³ If it is considered as a founding document then in the sense as Arendt understands it: From the two documents, the Declaration of Independence and the Constitution of the United States, "the Preamble to the Declaration of Independence would provide the sole source of authority from which the Constitution, not as an act of constituting government but the law of the land, derives its own legitimacy; for the Constitution itself, in its preamble as well as in its amendments which form the Bill of Rights, is singularly silent on this question of ultimate authority." Arendt, *On Revolution*, pp. 193–4; see also pp. 203–4.

¹⁵⁴ Derrida, *Negotiations*, p. 49.

¹⁵⁵ J. Claude Evans, "Deconstructing the Declaration: A Case Study in Pragmatology," *Man and World*, Vol. 23, No. 2 (1990), p. 183.

¹⁵⁶ Ingram, *Novus Ordo Seclorum*, p. 227.

follow Arendt in the acknowledgment of the “American people” prior to the Declaration, then it could not in itself, as we have seen, cancel out the paradox of the “vicious circle” (or at least, both of them).

If Arendt is, perhaps, more attentive to the self-governing of “the American people,” then Derrida is observant of the fact that the Founding Fathers appealed to the absolutes. For Derrida, however, this reliance is not accidental as it is for Arendt, but it is necessarily so. First, in order to understand his argument, a small detour is necessary to the theory of constatives and performatives.

2.2.1 The Performative/Constative Distinction

“Performatives” and “constatives” are concepts coined by John Austin and first presented in a lecture series at Oxford University in 1951–54 and at Harvard University in 1955.¹⁵⁷ As Austin explains, the impetus for the discrimination between performatives and constatives is a simple observation that “not all ‘sentences’ are (used in making) statements.”¹⁵⁸ There also are utterances that “do not ‘describe’ or ‘report’ or constate anything” but are themselves doing of an action.¹⁵⁹ Austin dubs such utterances “performatives.” For example, performatives can be utterances starting with phrases like “I bet,” “I promise” (i.e. contractual performatives) or “I declare” (i.e. declaratory performatives), such as when someone is promising to be at a meeting place or is declaring an event open. The other term of the pair – the constative – is suggested by Austin for utterances that describe states of affairs.

The main substantial difference that the discrimination between these two kinds of utterances appears to highlight is that the performatives, unlike the constatives, cannot be described in terms of truth or falsity. If someone uses an uttering to perform an action, it can be judged successful or not, rather than true or false. If such uttering achieves its end, Austin calls it a “happy” or “felicitous” performative. However, the felicitousness of the performative is not the matter of fact and depends on several conditions, which Austin covers in a list of six points: there must exist an accepted conventional procedure, appropriate circumstances and persons, correct and complete execution of the procedure, proper intention of participators, and corresponding subsequent conduct by persons involved.¹⁶⁰ These six types of what can go wrong with performatives form Austin’s doctrine of infelicities, which is developed in his second, third and fourth lectures.

What adds an additional complexity to Austin’s account of performatives and constatives is that the argument expounded in twelve lectures contains its own revisions and, in fact, the clear cut division between performatives and

¹⁵⁷ Lectures held at Harvard University were published as a book: John L. Austin, *How to Do Things with Words*, ed. J. O. Urmson (Oxford: Clarendon Press, 1962).

¹⁵⁸ *Ibid.*, p. 1.

¹⁵⁹ *Ibid.*, p. 5.

¹⁶⁰ See *ibid.*, p. 14–5.

constatives does not persist up to the end of his investigation. So, halfway through the lectures, he announces a fresh start on the subject matter because he is not able to maintain the performative/constative distinction, and the second half of his lectures is mainly devoted to envisioning possible scenarios to rescue the distinction. The purpose of the following short outline of Austin's scenarios of saving his initial argument is less to offer their thorough analysis, for his theory is not directly the subject matter of the thesis, but to indicate a basis for the later evaluation of Derrida's critique of Austin. Besides, it also helps better to appreciate the complexity of the theory of performatives and constatives.

His first attempt to rescue the distinctions he made is to find a criterion or criteria of grammar or of vocabulary for distinguishing the performative from the constative utterance,¹⁶¹ but after studying this possibility in some lengths, he concludes "it is not possible to lay down even a list of all possible criteria ... [because] very commonly the same sentence is used on different occasions of utterance in both ways, performative and constative."¹⁶²

Thereafter, he tries to compile a list of performative verbs on the ground of a further discrimination between "explicit" and "primitive" performatives. The explicit performative is designed to have "a verb in the first person singular present indicative active" form, which as Austin explains, "makes clearer the force of the utterance, or 'how it is to be taken'," as in, for example, "I promise that I shall be there."¹⁶³ The primitive performative, on the other hand, is ambivalent (inexplicit) with regard to the form, as in "I shall be there." Austin proposes that if primitive performatives could be reduced to the explicit form, then the list of performative verbs can be created. But again, after studying it further, he finds that "it is often not easy to be sure that, even when it is apparently in explicit form, an utterance is performative or that it is not."¹⁶⁴

Lastly, Austin makes, as he says, a fresh start, and begins "to refine upon the circumstances of 'issuing an utterance'."¹⁶⁵ Basically, what he means is that the same sentence can appear in different uses (or senses), and one of the uses might be at least compatible with what was named as the explicit performative. He abstracts three senses (or dimensions) of the speech act in general: locutionary sense denotes a referential and semantic aspect of language (i.e. "performance *of* an act of saying something"), illocutionary sense refers to the (conventional) force that utterance carries in doing or in attempting to do something (i.e. "performance of an act *in* saying something"), and perlocutionary sense refers to the effects achieved by the utterance ("performance

¹⁶¹ Ibid., p. 55.

¹⁶² Ibid., p. 67.

¹⁶³ Ibid., p. 67–72.

¹⁶⁴ Ibid., p. 91.

¹⁶⁵ Ibid., p. 92.

of an act *by* saying something”).¹⁶⁶ Still, even here things are not entirely clear. The tests he provides for recognising illocution and perlocution “are at best very slippery,”¹⁶⁷ so that he seems to disregard perlocution in the end altogether and focus only on locution and illocution. Above all, a success of perlocution, i.e. if it achieves certain effects, is entirely contingent (or unintentional). In other words, perlocution lacks the conventionality that is one of the defining features of the performative. His first general conclusion is:

With the constative utterance, we abstract from the illocutionary (let alone the perlocutionary) aspects of the speech act, and we concentrate on the locutionary... With the performative utterance, we attend as much as possible to the illocutionary force of the utterance, and abstract from the dimension of correspondence with facts.¹⁶⁸

However, already on the same page, he casts doubt on the conclusion, calling it not “so very expedient,” because in reality there are not two poles, but “rather an historical development.” All in all, he maintains the distinction between performatives and constatives under a more general speech act theory, whereby a particular force of an act depends on the context of issuing an utterance and on certain assumptions made by participators in the speech situation, which approximate an utterance to a pre-existing convention.

Returning to Derrida’s text on the Declaration, we can see that he clearly situates his approach – what he also calls an experiment on, and a test of, “conceptual schemes, such as a critical problematic of ‘speech acts,’ a theory of ‘performative writing’” – in the framework of performatives and constatives. In setting up his point of departure for the analysis, he states “[the declarative act that founds an institution] does not come back to a constative or descriptive discourse. It performs, it accomplishes, it does what it says it does: this at least would be its intentional structure.”¹⁶⁹ In other words, founding a new political entity, a state, by way of revolution in the Arendtian sense, is in its “intentional structure” a performative. The big question of Derrida’s analysis is, whether this “intentional structure” can live up to its expectation or it inevitably returns to a description, to an absolute. Derrida’s answer to this question can be found in his critique of Austin’s theory in “Signature Event Context.” The following exposition follows the main line of the argument of Derrida by elaborating in the first part on what will be in the second part the very principle of reading of Austin’s theory.

¹⁶⁶ See *ibid.*, p. 99–101. Austin offers for an example a sentence “Shoot her!,” where the locution would be the meaning of to shoot her, the illocution indicates urging, or advising, or ordering to shoot her, and the perlocution persuading, or convincing somebody to shoot her.

¹⁶⁷ *Ibid.*, p. 129.

¹⁶⁸ *Ibid.*, p. 144–5.

¹⁶⁹ Derrida, *Negotiations*, p. 47.

2.2.2 Iterability and Derrida's Critique of Austin's Theory of Performatives and Constatives

The text of "Signature Event Context" is not specifically devoted to Austin's speech act theory, but instead, as being intended as a presentation at the Conference on the topic of communication, it starts with questioning the idea of communication as it is inherited from the history of philosophy, i.e. "as a vehicle, a means of transport or transitional medium of a meaning, and moreover of a unified meaning."¹⁷⁰ Derrida uses Condillac's *Essay on the Origin of Human Knowledge* to exemplify this kind of perspective on communication with a special emphasis on the notion of writing as a means of communication.¹⁷¹ According to this traditional or classical view, other means, like, above all, speech (but also, for example, action for Condillac), are not always possible when a recipient is not present, hence, writing as "a species of this general communication" comes to complement communication in general.¹⁷²

From that point on, Derrida focuses in this text on what is "the essential predicate of this specific difference" of writing – absence, non-presence. If the traditional or, as Derrida puts it, "ideological" concept of communication¹⁷³ admits the absence as an accident that can affect communication, then Derrida sees it as embedded in the very structure of communication – without the possibility of such absence, communication would not be possible (for in case of total presence, there would be nothing to communicate). In the course of the text, Derrida gradually detaches his argument from the context of writing and communication and generalises it to characterise all language and all experience.

The very core of his argument centres on demonstrating the paradox of mutual dependence of two contradictory notions of "absence" and "repetition" in the act of communication. As concerns their interdependence then the absence of the recipient presumed in the communicative act implies the possibility of repetition, because when something is written (and read), it must be capable of being read again, repeated, by the addressee of the writing (whose non-presence instigated the communication in the first place). Equally, repetition implies an absence, because absolute plenitude, where nothing is absent, cannot be repeatable, like in case of a self-present absolute knowledge, if it were possible (for there would be nothing to communicate). The other aspect of contradiction between these terms of "absence" and "repetition" stems from the fact that while repetition entails a minimal identity, or sameness, a certain ideality, so that a minimal recognition (of repetition) would be possible, then

¹⁷⁰ Derrida, "Signature Event Context," p. 1.

¹⁷¹ See Étienne Bonnot de Condillac, *Essay on the Origin of Human Knowledge* (Cambridge: Cambridge University Press, 2001). Original title: *Essai sur l'origine des connaissances humaines* (1746).

¹⁷² Derrida, "Signature Event Context," p. 6.

¹⁷³ "Ideological concept" points to the centrality of ideas or ideals in it; see *ibid.*

the absence refers to the non-identity with itself, to the difference, and thus, to the possibility of alteration. Hence, there is a paradox, where two sides that deny each other, nevertheless, make each other also possible.

In order for the absence as well as repetition to be structural features of the written sign, they both have to be “carried to a certain absoluteness;”¹⁷⁴ they cannot be thought of as empirical accidents happening in some circumstances. Hence, the possibility of repetition, of readability as such, cannot be delimited to any concrete number of cases. Derrida emphasises that even when something is encoded to be readable for two persons only, the possibility of it being readable remains for everybody.¹⁷⁵ In the same way, and due to the mutual implication of absence and repetition, the absence cannot be conceived of as “a continuous modification of presence,” which would be “merely a distant presence, one which is delayed,” but as “a rupture in presence, the ‘death’ or the possibility of ‘death’ of the receiver inscribed in the structure of the mark.”¹⁷⁶

The same logic demonstrated in relation to the receiver pertains also to the sender or to the producer, and consequently, to the intention of a writing, because the presence of a fully determined conscious intention would arrest its repeatability. As Derrida puts it:

for writing to be a writing it must continue to “act” and to be readable even when what is called the author of the writing no longer answers for what he has written, for what he seems to have signed, be it because of a temporary absence, because he is dead or, more generally, because he has not employed his absolutely actual and present intention or attention, the plenitude of his desire to say what he means, in order to sustain what seems to be written “in his name.”¹⁷⁷

Making the absence of the receiver as well as intention absolute allows for Derrida to highlight some of the predicates of the classical concept of writing that has been held in abeyance and, so to say, liberate their force. First, as the sign is repeatable beyond any receiver, sender or intention, then it dissociates the written sign from the context; it can always be repeated in other contexts, where it attains a different meaning; or in other words, a context (as well as intention) cannot conclusively determine the meaning of a written sign anymore. The meaning is, on the one hand, deferred, as no context can arrest it finally, and on the other hand, the meaning is always different, as it is ascertainable only in particular contexts. It also follows that if writing cannot convey a definite meaning, then it cannot be a species of communication anymore. Secondly, the absence inscribed into the very structure of the written sign means that there cannot be any original, pure, first sign that will be repeated afterwards, but the absence, the non-presence divides the sign at the

¹⁷⁴ Ibid., p. 7.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid., p. 7–8.

¹⁷⁷ Ibid., p. 8.

very moment it emerges, so that the first time is always already a repetition. In “Limited Inc a b c . . .,” which defends and expands the ideas of “Signature Event Context,” Derrida sums it up as follows:

At the very moment when someone would like to say or to write, . . . the very factor that will permit the mark (be it psychic, oral, graphic) to function beyond this moment – namely the possibility of its being repeated another time – breaches, divides, expropriates the “ideal” plenitude or self-presence of intention, of meaning (to say) and, a fortiori, of all adequation between meaning and saying.¹⁷⁸

This division also becomes the internal structure of the written sign in that the sign only appears as being separated by a space, or by an absence (by a difference) from other signs.

Now, the sign can never be present in itself; it is present, only in its being divided by repetition – but if this is so, then “the unity of the signifying form” that carries all possible meaning, experience, or communication, is constituted only by this movement of division by repetition and repetition in difference. Hereby, Derrida has effected a reversal, in which communication is turned into a species of writing and the classical concept of writing has been displaced and generalised into a “law” of *iterability* affecting all language and all experience. *Iterability* is a so-called “infrastructure,” or by words of Derrida, “a grapheme in general; which is to say . . . the non-present remainder of a differential mark cut off from its putative ‘production’ or origin,”¹⁷⁹ that maintains the “movement” of repetition and alteration at the same time. So it is that *iter* of *iterability* combines twofold root of *iter* as “again” and also its (probable) etymological root in Sanskrit *itara* as “other.”

Later in his text Derrida analyses the concept of signature in view of *iterability*, which I use here as an illustrative example of *iterability* in operation. A signature under a document is meant to identify solely the person of the undersigned; it must be a unique, singular, a different mark from all others. However, the signature can function in its “singularity” only if it is repeatable; it can be recognised only as belonging into the series of the “same signature.” This makes repeatability part of its constitution, as Derrida says, “in order to function, that is, in order to be legible, a signature must have a repeatable, iterable, imitable form.”¹⁸⁰ Thus, the act of signing is permeated by the paradox whereby it must be “as if” a unique, a different event, and still the same event. However, a corollary of this is that there always exists a possibility that the

¹⁷⁸ Jacques Derrida, “Limited Inc a b c . . .,” in his *Limited Inc.*, ed. G. Graff (Evanston, IL: Northwestern University Press, 1988), p. 62; originally published in *Glyph*, vol. 2, 1977, as a rejoinder to John R. Searl’s reply “Reiterating the Differences: A Reply to Derrida” in the same journal to “Signature Event Context.”

¹⁷⁹ Derrida, “Signature Event Context,” p. 20.

¹⁸⁰ *Ibid.*, p. 10.

signature is repeated by someone else than its actual “owner,” because there is nothing that could arrest the repetition into a single, unequivocal, and determined context. This, in turn, writes the possibility of failure (or infelicity) into the structure of the signature. In other words, *iterability* reveals that what makes the signature possible is simultaneously what makes it impossible.

Derrida further elaborates on *iterability* by critically engaging with Austin’s theory of performatives and constatives. He notes that, at first sight, it might seem that Austin challenges the classical idea of communication. Contrary to the classical concept of the constative (as a description), the performative of Austin’s theory is not a passage of a thought-content, but rather it itself produces an effect; also, it does not describe the outside of language, i.e. it does not have a referent; finally, it is dissociated from a true/false opposition. So, Derrida, on the one hand, admits a novelty of Austin’s theory. However, on the other hand, he points out two other main features of Austin’s theory that positions it on the side of the classical concept of communication, namely that the possibility (or the success) of the performative is eventually referred back to a “total context” of a speech act situation, and that the speech act is determined only in relation to a conscious intention of a speaker. Both these moments can be inferred from the six infelicity conditions of performatives listed above.¹⁸¹

Derrida’s deconstructive move in relation to Austin’s theory consists in showing that, in order to keep these two characteristics, Austin has to exclude certain other “non-serious” kind of infelicities on the assumption that these do not pertain to the determination of the performative speech acts. There are three different types of such infelicities described by Austin; two of them concern intentionality – when something is said by accident or by mistake, or when the said is misunderstood; one relates to the “total context” – when “a performative utterance will, for example, be *in a peculiar way* hollow or void if said by an actor on the stage, or if introduced in a poem, or spoken in soliloquy.”¹⁸² Austin admits such exclusion and even the fact that these infelicities “infect all utterances,” but nevertheless he postpones developing a theory that could incorporate all infelicities, like he says, “I suppose some very general high-level doctrine might embrace both what we have called infelicities and these other ‘unhappy’ features of the doing of actions ... in a single doctrine: but we are not including this kind of unhappiness.”¹⁸³ According to Derrida, this move by Austin casts his whole doctrine of infelicities as contextual; “it consists in recognizing that the possibility, that failure is an essential risk of the operations under consideration; then in a move which is almost *immediately simultaneous*, in the name of a kind of ideal regulation, it excludes that risk as accidental, exterior.”¹⁸⁴

¹⁸¹ See above, p. 47.

¹⁸² Austin, *How to Do Things with Words*, p. 22.

¹⁸³ Ibid., p. 21.

¹⁸⁴ Derrida, “Signature Event Context,” p. 15.

For Derrida, this position is untenable. Citability, i.e. the possibility of every sign or writing to be cited in different contexts, is another name for repeatability that is, as it was shown above, a constitutive feature of every sign. Thus, Derrida asks rhetorically:

Could a performative utterance succeed if its formulation did not repeat a “coded” or iterable utterance, or in other words, if the formula I pronounce in order to open a meeting, launch a ship or a marriage were not identifiable as conforming with an iterable model, if it were not then identifiable in some way as a “citation”?¹⁸⁵

By the “logic” of *iterability*, infelicities, like a “non-serious” citing on the stage or an unintentional utterance under duress, cannot be excluded from the determination of the performative, which means that, paradoxically, “a successful performative is necessarily an ‘impure’ performative”.¹⁸⁶

It must be briefly noted that Derrida’s reading of Austin is not quite as unproblematic as it might seem. The debates about the “ground” of Derrida’s criticism, i.e. *iterability*, which were acute in the aftermath of publication of “Signature Event Context,”¹⁸⁷ have mostly subsided for today. But there is a line of criticism still relevant at present that questions whether Derrida’s critique does justice to Austin. One such recent criticism comes from James Loxley,¹⁸⁸ who, in turn, is referring back to works of Shoshana Felman¹⁸⁹ from 1980 and Sandy Petrey¹⁹⁰ from 1990, among others. It can be argued that Derrida does not pay sufficient critical attention to the development of Austin’s text and its style, which has warranted Loxley to argue that “a style of philosophy of Austin’s, furthermore, riddled as it is with jokes, irony, puns, citations and allusions, could hardly be expected to assume that seriousness and playfulness are simply opposed to each other in such a fashion.”¹⁹¹ Derrida notices the evolving character of Austin’s text, but does not seem to consider it integral to Austin’s argument. But there is a possibility that all the revisions of the performative/constative distinction in the text, i.e. being well aware in making those distinctions that they do not survive up to the end, convert the

¹⁸⁵ Ibid., p. 18.

¹⁸⁶ Ibid., p. 17.

¹⁸⁷ See especially John R. Searle, “Reiterating the Differences: A Reply to Derrida,” in *Glyph*, vol. 1 (1977).

¹⁸⁸ James Loxley, *Performativity* (London and New York: Routledge, 2007).

¹⁸⁹ Shoshana Felman, *The Scandal of the Speaking Body: Don Juan with J. L. Austin, or Seduction in Two Languages*, tr. Catherine Porter (Stanford: Stanford University Press, 2002. Original title: *Le Scandale du corps parlant: Don Juan avec Austin, ou, la séduction en deux langues* (Paris: Editions du Seuil, 1980); first English translation: *The Literary Speech Act* (Ithaca, NY: Cornell University Press, 1983).

¹⁹⁰ Sandy Petrey, *Speech Acts and Literary Theory* (New York and London: Routledge, 1990).

¹⁹¹ Loxley, *Performativity*, p. 86.

initial distinction as non-serious, so that what appears as an undoubtedly serious attempt of delineating the performative contains a certain non-seriousness in itself.¹⁹² This allows a considerably different reading of Austin; according to Felman,

the fact that research itself comes to an *unhappy* ending (which by that very token it considers a non-ending, a need to start all over again) may mean that research, subjected to the felicity/infelicity criterion, constitutes in itself a performance more than a statement, that it too belongs to the order of the performative rather than to that of the constative.¹⁹³

In that case, all these revisions and later switching to general theory of speech acts indicate that “the Austinian analysis, if it is an act, is only the act of *failing to grasp the constative of the performative*.”¹⁹⁴ Therefore, this inability to include the non-serious into the determination of the performative indicates a necessary failure in the structure of the performative, because the constative of the performative would fail the very idea of the performative, as also Felman maintains, “for Austin, the capacity for failure is situated not outside but *inside* the performative, both as speech act and as theoretical instrument. Infelicity, or failure, is not for Austin an *accident* of the performative, it is inherent in it, essential to it.”¹⁹⁵ Such reading, of course, depends on the possibility of separating Austin’s performative from its alleged grounding on intention and context. Petrey suggests that it can be done; after all, Austin himself says that illocutionary act “is constituted not by intention or by fact, essentially but by *convention*”¹⁹⁶ and, as Petrey argues, convention can be understood as “socially specific and historically constituted.”¹⁹⁷

The thesis does not enter this debate, as it does not contest Derrida’s main argument of *iterability* and his demonstration how it undermines every new beginning and every performative. Perhaps, it might be summed up that Austin did not have such concise theoretical framework for his ideas on the performative as Derrida, but his theory, nevertheless, expresses similar features that show certain affinity to Derrida’s views. Loxley refers to a later article of Derrida, where he seems to concede in relation to “the ‘works’ of Austin”: “One value of these works is to have not only resisted but marked the line of resistance to systematic work, to philosophy as formalising theorisation, abso-

¹⁹² See also above, pp. 48–9.

¹⁹³ Felman, *The Scandal of the Speaking Body*, p. 43.

¹⁹⁴ Ibid.

¹⁹⁵ Ibid., p. 45.

¹⁹⁶ Austin, *How to Do Things with Words*, p. 127.

¹⁹⁷ Petrey, *Speech Acts and Literary Theory*, p. 138.

lute and closed, freed of its adherences to ordinary language and to so-called natural languages.”¹⁹⁸

In conclusion, be as it may with doing justice to Austin’s text, what has become clear from the previous discussion is that for Derrida, there cannot exist any pure performative, and for that matter, no performative that founds on its own a new state (for example). A performative inevitably returns to a description.

2.2.3 Derrida on Declarations of Independence

Having cleared the ground by explicating the performative/constative distinction, which is used by Derrida as the framework for the analysis of the Declaration, I can now proceed to preliminary outlining of Derrida’s interpretation of it. Although, Derrida does not explicitly refer to *iterability* in the text of “Declarations of Independence,” it, nevertheless, informs the whole analysis from the very beginning, and therefore, the conclusion arrived in his critique of Austin that no performative can exist in its purity but it is always already intermingled with a constative, must find its expression also in the analysis of the Declaration.

According to Derrida, the Declaration suffers a sort of “necessary undecidability,” or as he puts it, “one cannot decide ... whether independence is stated or produced by this utterance.”¹⁹⁹ The founding, taken as the moment of signing the Declaration, would be a pure performative, if it were not divided from the beginning by a constative, according to which the Declaration does not *create* the freedom of the people, but only affirms it being a fact.²⁰⁰ And as Derrida says, “it is not a question here of an obscurity or of a difficulty of interpretation,” but the act of founding cannot even come into existence without such undecidability.

However, pointing out this undecidability by itself does not solve the “vicious circle” that, as Derrida admits, permeates all acts of founding, because a theoretical question remains, how the people can be free before they even become to exist. There must be an additional step to break the “vicious circle.” Here, Derrida argues that a prior freedom and with that, the possibility of the founding act is established by a “fabulous event”: “This signer can only authorise him- or herself to sign once he or she has come to the end – if one can say this of his or her own signature in a sort of fabulous retroactivity.”²⁰¹ In other words, the originary freedom of the people, which is stated by the

¹⁹⁸ Loxley, *Performativity*, p. 111; Jacques Derrida, “Typewriter Ribbon” in his *Without Alibi*, ed., tr., Peggy Kamuf (Stanford: Stanford University Press, 2002), p. 123.

¹⁹⁹ Derrida, *Negotiations*, p. 49.

²⁰⁰ Here, it can be seen, how the “fact” of the prior freedom of the American people, the neglect of which was imputed to Derrida’s account, is included into his argument. See above, p. 46.

²⁰¹ Derrida, *Negotiations*, p. 49–50.

Declaration, is created retroactively, by a certain “future perfect” tense: as if “I will have given myself a name and an ‘ability’ or a ‘power,’ understood in the sense of power- or ability-to-sign by delegation of signature.”²⁰²

The “fabulousness” of this event must be spelled out here. It is only by recourse to a fable that retroactivity can succeed, because this future perfect “should not be declared, mentioned, taken into account” – in order to succeed, i.e. to hide its delegitimizing “coup de force,” retroactivity must present itself as “the simulacrum of the instant,” which is achieved by a fable that covers up temporality of the act of retroaction.²⁰³ To use Richard Beardsworth’s expression, the fable effectuates the “disavowal of time.”²⁰⁴ It might be said that when the Founding Fathers of the American Revolution searched for a confirmation and bearing from absolutes, like laws of nature, or God’s will, or immemorial tradition, then they created fables, the role of which was to hide the operation of retroactivity and to invent the game “that tends to present performative utterances, as constative utterances.”²⁰⁵ So, it follows that the signature under the Declaration still is as if countersigned by an authority beyond the human realm, from which the best one, as Derrida says, the most ultimate one, is the name of God.²⁰⁶ In this sense, every founding act, every “originary beginning” needs (a fable of) god (or nature, the subject, language, a tradition) to sign in the last instance.

Derrida’s solution might seem not much different from Rousseau’s, in that also Rousseau, in his letter to marquis Mirabeau cited above and in *The Social Contract*, argues that imposing laws above man requires God for their validity,²⁰⁷ but there is an important reservation. It must be noted, that the necessary failure in the founding act does not erase the beginning nor does the fable entirely replace it. The failure of the performative is a “necessary possibility” – it is part of the structure of the beginning which comes to exist only because it necessarily and simultaneously is being undone. The undecidability, or, one might say, contamination, between the performative and the constative does not mean that these terms annihilate each other or that they are combined in a certain compromise; if this could be the case, the whole paradox, the aporia, understood as a “non-road”, a non-passage to the thought, would be (dis)solved.²⁰⁸ As it was noted in the methodology part on deconstruction, it is

²⁰² Ibid., p. 50.

²⁰³ Ibid., p. 50–1.

²⁰⁴ Richard Beardsworth, *Derrida & the Political* (London and New York: Routledge, 1996), p. 101.

²⁰⁵ Derrida, *Negotiations*, p. 51.

²⁰⁶ Ibid., p. 52.

²⁰⁷ Rousseau, *Lettre à M. le Marquis de Mirabeau*, p. 161. See also Rousseau, *The Social Contract*, p. 183.

²⁰⁸ See Derrida, *Force of Law*, p. 947.

the function of *iterability* (or any other “infrastructure”) to enable to account for the aporia without cancelling it out or sublating it into a higher unity.²⁰⁹

Thus, what is so different from Rousseau, and what appears as a part of the solution to Sieyès’s “vicious circle” in Derrida is, paradoxically, the affirmation of the aporia: the force of the declaration that binds people and is constantly binding them to such declarations is that the question always remains open: “Is it that the good people have already freed themselves in fact and are only stating the fact of this emancipation in the Declaration? Or is it rather that they free themselves at the instant of and by the signature of this Declaration?”²¹⁰ In this sense, if Derrida is forced to conclude, in this very similar manner to Austin, that “the question remains: How is a state made or founded, how does a state make or found itself?” there is no contradiction in it – there cannot be a constative of the performative.²¹¹ Derrida’s take on the Declaration will be further explicated in several subsequent parts of this thesis.

²⁰⁹ See Gasché, *The Tain of the Mirror*, p. 151.

²¹⁰ Derrida, *Negotiations*, p. 49.

²¹¹ *Ibid.*, p. 53.

Chapter 3: Comparison of Arendt and Derrida on Declarations: Bonnie Honig's Case

This thesis has so far delineated two quite different accounts on the paradox of founding or the “vicious circle.” In order to break with the “vicious circle,” Arendt sees a possibility to “ground” the founding act on itself; Derrida, on the other hand, informed by *iterability*, ultimately “grounds” it on the logic of retroactivity and on fables that close the temporal gap in the latter, leaving behind an on-going play of undecidability (which then also is “ungrounding” at the same time, for the closure never succeeds entirely).

One reason for outlining these two accounts was to lay the ground for comparison and opposition of Arendt's and Derrida's approaches to the “vicious circle” and to the Declaration. In this thesis, I develop a position that Arendt questions the act of founding in a more radical manner than perhaps appears in the first sight, indicating a level of analysis deeper than the interplay of performatives and constatives, which, as could be argued, remains the level of analysis for Derrida in “Declarations of Independence.” Only in some later texts does Derrida revise and complement his earlier take on issues of the Declaration in such fashion that it could allow him to finish the analysis first taken up in “Declarations of Independence.”²¹² The layer beyond (or/and between) the opposition between performatives and constatives to which Arendt indicates, will be theorised later as a “place” of undecidable legitimacy.

As mentioned above, this thesis follows Bonnie Honig's strategy of grounding the comparison on performatives and constatives. However, when Derrida's argument on the Declaration utilises (or, at least, explicitly refers to) the concepts of the performative and the constative, Arendt's theory does not do that, and therefore, casting her theory in these terms inevitably involves a certain degree of interpretation. In the following discussion, I will elicit my own understanding of Arendt's approach, but in doing that, I constantly engage with Honig's interpretation and with the way she renders Arendt's theory in terms of constatives and performatives.

3.1 Bonnie Honig: Arendt's Search for Pure Performativity

Honig's position in relation to Arendt is rather univocal. She argues that what Arendt celebrates as a break of Sieyès's “vicious circle” is a theory of pure performativity, which avoids references to constative structures. Honig's argument takes hold from pointing out Arendt's rejection of absolutes as possible grounds for authority in founding a republic. Indeed, as also referred above, Arendt does not see reliance on absolutes beyond the human realm, like self-evident truths or God, either historically or theoretically viable option for

²¹² See, for example, *infra*, n. 541, n. 600.

revolutions of the modern age.²¹³ Theoretically, Honig argues, Arendt discards absolutes because of their constative character; she interprets Arendt's description of absolutes as "self-evident truths" to denote their constative character, which, as they compel without argument, substantiates Arendt's denial to ground a republican revolution on absolutes.²¹⁴ Honig paraphrases what in her view is Arendt's stance on constatives as follows: "Constatives are violent, despotic, and disempowering: they are not the product of shared public agreement, they demand an isolated acquiescence to a truth. They are not held by us, we are held by them."²¹⁵ Hence, Honig sums up, for Arendt, "the appeal to an absolute is illicit because of its constative character."²¹⁶

If absolutes are discarded for being constatives, it follows as a matter of course that action itself becomes the only possible source of authority and stability. Describing Arendt's position, Honig rewords, "we cannot live without standards or some stability; yet our traditional sources of stability are no longer viable. Consequently, we are left to the devices of politics and action."²¹⁷ In other words, Arendt must find a new form of authority that emanates from action itself, or as Honig puts it, she looks for "an alternative conception of authority, one that inheres not in an untenable absolute."²¹⁸

What happens as a corollary to such an account of Arendt's theory is that the concept of founding merges with the concept of action, i.e. action, in the Arendtian sense, accrues a meaning of founding. In other words, according to Honig, Arendt is saying that founding has lost its traditional or historical reference to a constative and is now bound to emerge from a performative. It also is not very difficult to find an additional leverage for her claim about Arendt's understanding of the founding act as a pure performative in Arendt's conception of action, for, indeed, in *The Human Condition*, she argues: "To act, in its most general sense, means to take an initiative, to begin ... to set something into motion. ... It is in the nature of beginning that something new is started which cannot be expected from whatever may have happened before."²¹⁹ This conception of action can be easily related to the idea of the performative, allowing for Honig to conclude: "The uniquely political action, on Arendt's account, is not the constative but the performative utterance, a speech act that in itself brings 'something into being which did not exist before'."²²⁰ Thus, it seems indeed that Honig's insistence on Arendt's depiction of the founding act as a performative is well in concordance with Arendt's conception of action.

²¹³ See also above, p. 40.

²¹⁴ Arendt, *On Revolution*, p. 192; also *supra*, n. 147.

²¹⁵ Honig, "Declarations," p. 106.

²¹⁶ *Ibid.*, p. 99.

²¹⁷ *Ibid.*, p. 103.

²¹⁸ *Ibid.*, p. 102.

²¹⁹ Hannah Arendt, *The Human Condition* (Chicago and London: The University of Chicago Press, 1958), pp. 177–8.

²²⁰ Honig, "Declarations," p. 99.

But at the same time, merging of founding and action poses a problem for Honig. Arendt characterises action as “boundless” and “unpredictable,”²²¹ “incalculable,”²²² as beginning something “unexpected,”²²³ all of which “is the price to pay for plurality and reality”²²⁴ in several places in *The Human Condition* and elsewhere. The question is how such essentially unpredictable and spontaneous action can contain stability necessary for founding a political entity. After all, for Arendt, founding comprises in “constituting a stable worldly structure.”²²⁵ The problem leads Honig to Arendt’s concept of “promising,” which appears to offer a certain stability in/to action, securing, by Arendt’s words, “isolated islands of certainty in an ocean of uncertainty.”²²⁶ However, in that case, Honig argues, “Arendt’s characterisation of action as a beginning with nothing to hold on to is somewhat misleading.”²²⁷ Honig sees a certain contradiction in Arendt’s combining of promising and action, which she sums up as a dilemma:

The problem is that if promising is to be a source of reassurance and stability, the operation of the practice of promising and the meaning of particular promises must be relatively unproblematic. In that case action as promising cannot occur ex nihilo and it will not be as risky – as contingent and unpredictable – as Arendt says it is. On the other hand, if action is as contingent as that, promising will not by itself be able to provide the stability Arendt expects it to: the stability is coming from somewhere else, possibly from something external to action’s purely performative speech act.²²⁸

In other words, if action is to found, it needs stabilisation of promising, which would contradict Arendt’s definition of action as unpredictable and spontaneous. But if we remain true to Arendt’s concept of action, it cannot found, at least without recourse to an absolute – the possibility of which was rejected from the outset.

Honig does not find a proper answer to the difficulty in Arendt. The rest of her argument in the article hinges on a conditional, “if we take seriously Arendt’s claim that action is a ‘beginning’ that occurs ex nihilo,”²²⁹ which is to presume, under the dilemma Honig faces, that Arendt’s theory cannot be immune to the influence of absolutes or constatives. In this sense, Honig’s further argument can be read as a demonstration how Arendt’s attempts at the

²²¹ Arendt, *The Human Condition*, p. 119, 244.

²²² *Ibid.*, p. 245.

²²³ *Ibid.*, p. 178.

²²⁴ *Ibid.*, p. 244.

²²⁵ *Ibid.*, p. 175.

²²⁶ *Ibid.*, see also Honig, “Declarations,” p. 104.

²²⁷ Honig, “Declarations,” p. 103.

²²⁸ *Ibid.*, p. 104.

²²⁹ *Ibid.*

solution of the problem of authority for a republican revolution remain intertwined with absolutes.

Firstly, Honig argues that Arendt's effort to erase the need for absolutes takes itself the place of an absolute. The argument relates back to Arendt's intention to demonstrate the American Revolution as a genuine founding of the republic by a performative act, even if the text of the Declaration cannot do without constatives and there are two instances in the "Preamble" where an appeal is made to "nature's god" and to truths that are "self-evident," which are noticed also by Arendt.²³⁰ In order to maintain her position, Arendt, in Honig's view, conceals the fact by trying to prove that the Founding Fathers' appeal to absolutes, to constatives, is something immaterial or accidental. So, Honig writes:

In my view, Arendt wants to celebrate the American Declaration of Independence as a purely performative speech act, but in order to do so she must disambiguate it. She dismisses its constative moments and holds up the Declaration as an example of a uniquely political act.²³¹

Arendt's explanations in regard to the constative side of the Declaration by referring to antecedent political traditions, to the founders' mistrust of their own power do not seem to convince Honig, and she argues that the reference to an absolute (as much as it cannot be avoided) is not lost, but replaced by Arendt's own story, i.e. by "her fable of the American revolution and founding," which sets up "the faith that the American founding fathers did not need gods in order to found a legitimate republican politics."²³²

Secondly, Honig emphasises that the concept of augmentation, which is Arendt's solution to the problem of authority in a republican revolution, grounds for Arendt the idea of resistibility to "irresistible absolutes."²³³ In the following, I explore Honig's construal of Arendt's concept of augmentation in more depth, as it also will be a starting point for unpacking the disagreement between the interpretations of the thesis and of Honig.

3.2 A Critique: Resistibility to Irresistible Absolute

Honig arrives at the concept of augmentation in the context of her attempt to reveal a possible common ground between the approaches of Derrida and Arendt. Their obvious difference is that while Arendt denies absolutes as a possible ground for authority then Derrida finds a way to embrace them.

²³⁰ See <http://www.ushistory.org/declaration/document/index.htm>; also, *supra*, n. 145.

²³¹ Honig, "Declarations," p. 101.

²³² *Ibid.*, p. 107. See also Ingram, *Novus Ordo Seclorum*, p. 248, for his favourable note on Honig's mention of "retroactive narration" (and the idea of promising).

²³³ *Ibid.*, p. 109.

Derrida, as it was shown above, combines the performative and the constative sides of the founding act together in a sort of undecidability.²³⁴ The constative side, an absolute, is needed for there to be the performative side. In the light of this, Honig first contrasts Arendt's and Derrida's approaches:

Arendt resists this undecidability because she seeks in the American Declaration and founding a moment of perfect legitimacy. Insofar as the authority of the founding derives from a constative, it is rooted not in power but in violence. This undecidability, then, delegitimizes the republic and so, for the sake of her moment of pure legitimacy, Arendt must do away with it. What she does not see is that the American Declaration and founding are paradigmatic instances of politics (however impure) because of this undecidability, not in spite of it.²³⁵

Despite the described discrepancy between Arendt and Derrida, Honig finds a way to bridge it by way of pointing to their common concern with the possibility of resisting the force of the constative, of the absolute. Derrida, like Arendt, "refuses to allow the law of laws to be put, unproblematically, above man," i.e. "to secure the law of laws from all (political) intervention."²³⁶ She notes that while Arendt theorises resistance through the concept of augmentation, then Derrida expresses a similar thought by the concept of translation: "Just as, on Arendt's account, the Constitution calls out to be amended, so Derrida's text calls out to be translated: it is not present yet."²³⁷ This "translation" in Derrida does not merely reproduce the text but also maintains and augments it, which, in turn, is linked to the concept of survival. Thus, the rationale behind Derrida's translation is the same as behind Arendt's augmentation; it "responds to the text of document that seeks to preserve and refer to the past moment of founding by augmenting it with another event, another speech act or, as in this case, by an act of translation."²³⁸

Still, it should be added that Honig eventually talks about an uneasy negotiation rather than a successful bridging of these two authors.²³⁹ The difference remaining between them is that while Arendt's exclusion of the constative is a precondition of politics, then Derrida sees exactly in the intervention of the constative the very moment of the emergence of politics, or as Honig puts it, "for Derrida, politics begins with the entry of the irresistible absolute; it is the impossible superimposition of constative on performative utterance that occasions the Derridean intervention, an intervention that is political."²⁴⁰ In short, Arendt calls for resisting constatives or absolutes in order

²³⁴ See above, p. 56.

²³⁵ Honig, "Declarations," p. 106.

²³⁶ Ibid., p. 108.

²³⁷ Ibid., p. 110.

²³⁸ Ibid.

²³⁹ See, *ibid.*, p. 111.

²⁴⁰ Ibid.

to save the political space; for Derrida, politics consists in resisting the always intrusive constative. In Honig's view, if there is any similarity between Arendt and Derrida, then it is because Arendt is not able to keep the absolute from intervening (even if it is against her will), which is, it might be said, rather similar to Derrida's conclusion.

Upon a closer analysis, however, problems surface, on the one hand, in relation to the association Honig creates between resistibility and augmentation in Arendt, and on the other hand, with regard to her usage of the concept of resistibility in the context of Derrida's undecidability.

3.2.1 On the Concept of "Augmentation" in Arendt

As concerns Arendt, her concept of augmentation functions as a source of authority in two senses. In the first sense, the possibility of augmentation and amendment of the constitution authorises the founding act by making all present and future generations of people part of the beginning and of founding of the existing political entity.²⁴¹ This is also pointed out by Honig: "Our practices of augmentation and amendment make that beginning our own – not merely our legacy but our own construction and performative."²⁴² However, in the other sense, augmentation means a continual founding and amendment, i.e. "republics do not rest on one world-building act of foundation but are manifestly committed to augmentation, to the continual preservation and amendment of their foundation."²⁴³ In other words, the act of founding is unable to fix any permanent law of laws above man, for augmentation contains the principle of openness and the possibility of resistance to any such attempt. These two senses or dimensions can be related together by different logics.

The first logic emphasises that augmentation is devised to replace an absolute as a source of authority. Arendt searches for an alternative conception of authority because absolutes are irresistible and leave no room for persuasion and politics, i.e. they "possess a power to compel which is as irresistible as despotic power."²⁴⁴ Hence, if absolutes are leaned upon as sources of authority, they become irresistible and overpowering, but the task is exactly to replace the source of authority by an alternative, i.e. with a possibility of augmentation which contains its own revisions and dynamism that does not let it to become a grounding idea in an absolute sense. In that case, the sense of continual amending and resisting of augmentation is made an internal aspect of the conception of authority and subjected to what could be called "the logic of replacement."

²⁴¹ See also above, p. 44–5.

²⁴² Honig, "Declarations," p. 111.

²⁴³ Ibid., p. 109.

²⁴⁴ Ibid., p. 100. See also Arendt, *On Revolution*, p. 193.

Honig seems to be well aware of this aspect and clearly spells it out, but as much as such interpretation takes us back to the problematic idea of “founding action,” Honig seems to exclude this logic ultimately and emphasise the other possibility, which prioritises the sense of continuous founding and amending in the act of augmentation. As it was discussed above, according to Honig’s account on Arendt, founding becomes reduced to action, which necessitates supplementing action with a certain stability via some external “placeholders,” like absolutes.²⁴⁵ However, this means that absolutes are irresistible, not in the sense of an effect that emerges when absolutes are appealed for support of authority, but in the sense of their essential attribute. Absolutes are irresistible for their incessant intrusion and insistence, which manifests itself in every amendment’s innermost tendency to show itself as a totality, as an absolute. As being inescapable, they can be resisted, but not replaced by some “non-absolute alternative.” Here a different logic of irresistibility takes over “the logic of replacement.”

As much as the idea of irresistibility is conceivable only *vis-à-vis* attempts of resisting it, so also Arendt’s search for authority in the performative via the concept of augmentation can be interpreted as one of such attempts of resisting, which then turns out affirming the logic of irresistibility, rather than undermining it. In other words, the logic of resisting or continual founding and amending absorbs the logic of “replacing,” and Arendt’s attempt to find authority in a performative act transforms into an internal aspect of that logic. From this also follows Honig’s conclusion that “since, on Arendt’s account, the practice of authority consists largely in this commitment to resistibility, the practice of authority turns out to be, paradoxically enough, a practice of de-authorisation.”²⁴⁶

At first glance, however, it is not entirely clear from Honig’s account how the continual amendment, resisting and founding is to be understood; for example, does it follow that Arendt propounds the idea of a permanent revolution? Honig situates the discussion about the idea of augmentation in the context of Arendt’s critique of the American Revolution. According to Arendt, the most serious flaw with the American Revolution, which eventually led to “the failure of post-revolutionary thought to remember the revolutionary spirit and to understand it conceptually,”²⁴⁷ was the inability of the spirit of revolution “to find its appropriate institution”²⁴⁸ – “the Revolution, while it had given freedom to the people, had failed to provide a space where this freedom could be exercised”²⁴⁹ because it “provided a public space only for the representatives of the people, and not for the people themselves.”²⁵⁰ The one from the Founding

²⁴⁵ See above, pp. 60–1.

²⁴⁶ Honig, “Declarations,” p. 111.

²⁴⁷ Arendt, *On Revolution*, p. 232.

²⁴⁸ Ibid., p. 280.

²⁴⁹ Ibid., p. 235.

²⁵⁰ Ibid., p. 238.

Fathers, who most clearly sensed the problem, was Thomas Jefferson, who, by Arendt's words,

proposed to provide in the Constitution itself "for its revision at stated periods" which would roughly correspond to the periods of the coming and going of generations. ... In other words, what he wished to provide was an exact repetition of the whole process of action which had accompanied the course of the Revolution.²⁵¹

Honig detects here a similarity to Machiavelli's advice to princes "to reinvigorate their rule with a repetition of the violence of their founding about every 10 years"²⁵² the idea of which is, by Hanna Pitkin's words Honig cites here, "to keep a political movement or action that the people have initiated ... from disintegrating into riot, apathy, or privatisation."²⁵³ The same idea about such need for the reinvigoration of the republican spirit can also be discerned from Arendt's emphasis on "vitality of the spirit of foundation" in her interpretation of the Roman concept of *auctoritas*, which, as said, "depended upon the vitality of the spirit of foundation, by virtue of which it was possible to augment, to increase and enlarge, the foundations."²⁵⁴ It can be deduced from the above that the continual founding and amending that Honig refers to in Arendt is a certain periodical reinvigoration of the spirit of the (republican) beginning and founding, rather than a permanent and never-ending revolution.

In that case, however, a theoretical question appears, namely how one could recognise another attempt of amendment and resistance *as* an amendment rather than as a revolution, or even how one could recognise the end of the revolution at hand. This recognition should not mean reducing another attempt of amendment to the same one as before, or excluding it completely as alien, but maintaining the difference, so that another (beginning) could appear in the same (of what exists) as entirely other (beginning, for example). It is as if the term "recognition" plays here on a double meaning; it simultaneously refers to an active aspect of giving recognition or acknowledging the difference, but also to a passive aspect of re-cognising or identifying familiarity or sameness.²⁵⁵

The matter cannot be solved simply by reducing it to the difference between Arendt and Machiavelli, which lies in the fact that Arendt does not search for reinvigoration in violence, but instead greatly admired Jefferson's plan to create a system of wards that function like "'small republics' through which 'every man in the State' could become 'an acting member of the Common

²⁵¹ Ibid., p. 234.

²⁵² Honig, "Declarations," p. 109.

²⁵³ Ibid., p. 110. See also, Hanna Pitkin, *Fortune is a Woman* (Berkeley: University of California Press, 1984), p. 88.

²⁵⁴ Arendt, *On Revolution*, p. 201.

²⁵⁵ See on recognition, Patchen Markell, *Bound by Recognition* (Princeton and Oxford: Princeton University Press, 2003).

government’.”²⁵⁶ The problem is well illustrated by Arendt’s account of the French Revolution, which witnessed the emergence of self-governing municipal bodies and “a great number of spontaneously formed clubs and societies” in its start.²⁵⁷ However, these spaces of potential resistance, reinvigoration and preserving the spirit of the revolution were crushed in the course of the revolution by the central government “not because they actually menaced it but because they were indeed, by virtue of their existence, competitors for public power.”²⁵⁸ It shows that every constitutional measure to establish such space for resistance, for “the constitution-making and the establishing a new government”²⁵⁹ presumes a *possibility* of recognition of the resistance as leading to an amendment rather than to an overthrowing of the regime. At the same time, the resistance (if it is to be resistance) must remain different and in this sense as if non-recognisable.

Honig’s account seems unable to offer any concrete answer in this respect. I will argue later that it is due to the fact that Honig entirely disregards Arendt’s concept of “principle,” that she understands on the same level as promising, but which could precisely indicate an answer to the above mentioned difficulty in the framework of Arendt’s theory.²⁶⁰

3.2.2 On Derrida’s Resistibility

In as much as Honig finds Arendt’s and Derrida’s notions of resistibility and augmentation comparable to each other, her account of Derrida’s resistance and intervention reflects similar problems as her interpretation of Arendt. Honig starts by stating an agreement with Derrida that “all acts of founding are (as Derrida claims) necessarily secured by a constative.”²⁶¹ The phrase “necessarily secured” also seems to carry the idea of irresistibility of constatives, i.e. that they are always (already) intruding and interfering. A look at Derrida’s analysis of the Declaration might give a clearer understanding of what is meant here. As it was shown above, Derrida argues that the only way for a declaration to found, is to be signed retroactively, because the people, in the name of which the declaration is signed, does not exist.²⁶² But the retroactive signing cannot be legitimate and must be hidden as if it did not exist. This role is fulfilled by a constative, which states that the people are already free. However, to simply state (in abstraction from everything else) that people are already free is equally impossible, because the people do not exist yet, prior to the founding act – how they can be free before they exist. Therefore, the appearance of the constative in

²⁵⁶ Arendt, *On Revolution*, p. 253.

²⁵⁷ Ibid., p. 240.

²⁵⁸ Ibid., p. 246.

²⁵⁹ Ibid., p. 235.

²⁶⁰ See also *supra*, p. 44, n. 150.

²⁶¹ Honig, “Declarations,” p. 108.

²⁶² See above, p. 46, 56.

a founding act is mediated by a fable, for example, God, which allows to sign the declaration retroactively by erasing time (creating people's freedom outside time) – people can sign the declaration, because they do it “in the simulacrum of the instant.”²⁶³ Honig's emphasis on the need of resisting “the irresistible absolute” seems to have a root in the fact that an absolute, for example, God, (counter)signs last and therefore, there is a constant inclination to perceive “performative utterances, *as* constative utterances.”²⁶⁴

Hence, Honig depicts Derrida's resistance as being directed against constatives/absolutes that secure performatives at the expense of creating an image of incontestability of law of laws. Without the possibility of this resistance, without the “commitment to resistibility,” i.e. also without the possibility of augmentation, of translation, the founding act, as Honig says, “is not present *yet*.”²⁶⁵ The question is how this commitment to resistibility (that should make an other to appear in the same) is theorised by Honig in the context of Derrida's analysis of the Declaration.

One possibility is to follow Honig's emphasis on the performative aspect of the Derridean resistance. Honig insists that there is no need to “succumb to its [i.e. the constative's] claim to irresistibility. We resist it. Our intervention testifies to the resistibility of this (allegedly irresistible) constative anchor; and posts our opposition to the attempt to ‘put the law above man,’ to secure the law of laws from all (political) intervention.”²⁶⁶ Elsewhere, Honig describes Derrida's resistance as an “adoption of a posture of intervention.”²⁶⁷ If formulated in these terms, a first thought might be that the Derridean resistance to a constative is itself a sort of a performative act with the emphasis on an active subject. The question could be then asked whether the constative is perhaps resisted by an entirely other performative. In that case, the performative would be promising of another declaration, another revolution with implicating still another constative. But as much as the founding act does not exist yet (without the possibility of translation, as it were), any other declaration would only perpetuate an ongoing revolution. This situation would correspond to the problem of a permanent revolution in Arendt's case.

But then could it be said that the (same) performative always already resists the constative that comes to secure it? If this is to presume a certain symmetrical relationship between a performative and a constative, then it would lead to an impasse, and nothing could be founded. In terms of the analysis of the Declaration, this possibility seems to entail the following. The performative declaration, having no authority to found as there is no people in the name of whom it can speak, draws support from the constative, which states that the people are already free and the declaration only confirms that fact. The constative, being

²⁶³ Derrida, *Negotiations*, p. 51.

²⁶⁴ Ibid.

²⁶⁵ Honig, “Declarations,” p. 110.

²⁶⁶ Ibid., p. 108.

²⁶⁷ Ibid., p. 108, 111.

unable to explain the existence of the people, relies on the performative, which maintains that the people are created by the declaration. Two sides mutually support each other to form a founding act. At the same time, conceptually, they remain separate, because they also undermine each other – the declaration cannot be a confirmation and an act of creation of independence at the same time; it must be one or the other. However, the result is not undecidability, but a hermetically closed circle, which in itself is perfect (i.e. fullness), but from outside, as being impenetrable, a conceptual paralysis (i.e. nothing). The circle assumes the existence of time as its ground and its limit. It follows that if such a possibility is conceivable, then only on the basis of a certain prior dissymmetry between the performative and the constative: the (same) performative can be conceived to support the constative (to appear) only after the constative is in fact made possible by a fable of an absolute (by erasing time). There is a dissymmetry in the sense that the constative is made possible not by a performative, but by a “fabulous” absolute, which closes time and prevents the concept to cancel itself out.

It can be gathered from Honig’s text that Derrida’s “intervention” is thought to partake in the (same) performative; for example, she argues that “Derrida’s own project of deauthorisation ... becomes part of a practice of authority, not simply an unauthorised assault on the institutions of authority from some outside.”²⁶⁸ As shown above, this implies a dissymmetrical relationship between the performative and the constative, which, however, modifies Honig’s apparent intent in her formulations of the Derridean resistance.

In describing Derrida’s intervention, Honig says that it is occasioned by “the impossible superimposition of constative on performative utterance,”²⁶⁹ which seems to indicate that the Derridean intervention is not only creating, but also constating the impossibility of this superimposition. It means that, on the one hand, Derrida’s commitment to or an adoption of a posture of resisting is an intervention that partakes in the form of performativity. On the other hand, Derrida’s resistance also constates an already pre-existing impossibility – “the inadequacy of the present to itself” – which is an ontological impossibility of a constative to finally impose itself on a performative.²⁷⁰ As much as the resistance reveals and realises (one might say inscribes) an ontological impossibility or a radical rupture, it pertains to the founding act; it lets an other beginning to appear so that it does not (re)turn into the same (as before).

However, the dissymmetrical relationship between the performative and the constative uncouples the constative and the absolute: it makes it possible to conceive the performative’s resistibility to the constative, but this resistance does not need to affect an absolute (and its irresistibility) or retroactivity induced by an absolute. If resistance does not intervene into the very retro-

²⁶⁸ Ibid., p. 111.

²⁶⁹ Ibid.

²⁷⁰ See Derrida, *Negotiations*, p. 50.

activity that “produces” the constative, it can only undermine the constative without (possibility of) failing it.

It relates well to Honig’s description of Derrida’s resistance as an “exposure” of the game of performatives and constatives.²⁷¹ This exposure of the laws of the game in general grounds resistibility in the sense that it opens up a general possibility for performatives; i.e. the exposure is not about entirely dismantling absolutes, but undermining them, so that the performative can appear posited against the constative.

Indeed, the founding act ultimately depends on neither the performative nor the constative *per se*, but on the undecidability between them; as Derrida puts it, “this obscurity, this undecidability between, let us say, a performative structure and a constative structure, is *required* to produce the sought-after effect.”²⁷² In the analysis of the Declaration, it means that every declaration of freedom, of independence leaves undecided whether the freedom is created by the declaration or the declaration only confirms the prior freedom of the people.

In this context, Honig’s phrase “the impossible superimposition of constative on performative utterance” assumes quite a different meaning from what was perhaps intended, because the resistance cannot be thought of repeating and realising an ontological impossibility but the same founding act. The resistance, in its performative dimension partakes in the same performative by undermining the constative, but in its constative dimension it re-states (even if differently) the same existing founding act. This, however, is the structure of critique. The resistance, as Honig describes it, indeed, resists the logic of how performatives appear as constatives, but with that it only reveals undecidability, which in fact, grounds the founding effect/act in the first place – the possibility of a critique of the constative moment is a necessary (internal) part of every founding act. For this reason, the critique of irresistibility of the constative does not bring an other (founding act, for example) into the same, but allows every other to appear as the same (at best, *with* a difference). In other words, Derrida’s commitment to resistibility appears to be cast in terms of a critique of constatives, which is not sufficient to intervene into the law of laws instituted by a founding act, because it gets constantly absorbed into the logic of founding and undecidability. For that matter, it also could not be a reinvigorating resistance to law of laws, if by reinvigoration it is meant the possibility of an entirely new beginning in the existing. That the resistance (i.e. “adopting of a posture of intervention”) Honig draws from Derrida’s analysis of the Declaration amounts to a critique rather than deconstruction has two possible exogenous sources.

First of all, it has to be admitted that Derrida’s text on the Declaration itself plays on the “verge” of deconstruction, and it might be argued that it is not a properly deconstructive text at all (I return to it later). In evaluating the text of “Declarations of Independence,” the context of its publication should not be

²⁷¹ See Honig, “Declarations,” p. 108.

²⁷² Derrida, *Negotiations*, p. 49.

forgotten: it was first presented as an introduction to a public lecture on Friedrich Nietzsche at the University of Virginia in Charlottesville in 1976, on the occasion of the 200th anniversary of the American Declaration of Independence, i.e. as an event in the chain of celebrations of the Declaration.²⁷³ Derrida's text does well its job of de/constructing the centrality of the Declaration for politics, revealing how the undecidability gives power to the Declaration or to the Constitution to organise people around itself, to constantly occupy people's minds, and thus, preserves it and keeps it alive. The question of the political significance of the Declaration is here the focal point and if there is a movement in the text that can be called properly deconstructive, then it is marked out and stated, rather than developed out in the course of the text. I will return to this deconstructive moment of the text in a short while. A "properly" deconstructive intervention into law in general is taken up by Derrida much later at the colloquium on "Deconstruction and the Possibility of Justice" at Cardozo Law School in October 1989 and published in 1990 as "Force of Law: The 'Mystical Foundation of Authority.'"²⁷⁴ Most likely, Honig's text, which was published in March 1991, was already in print, when the "Force of Law" was published. In any case, it will be argued that it is relatively easy on the basis of Derrida's text on the Declaration to formulate his resistance in terms of critique.

Another source of mistaking deconstruction for a critique is presaged by Honig's usage of the term of deconstruction in her text. Honig, indeed, refers to deconstruction and sees her understanding of resistance to be deconstructive, but she puts deconstruction "in service of" a certain prior recognition: "his [Derrida's] deconstruction of the American declaration is in the service of this recognition [that "power under the condition of human plurality can never amount to omnipotence, and laws residing in human power can never be absolute."]²⁷⁵ Here deconstruction appears as a means to something else, which betrays a critique as well as a subject behind the critical decision.

Derrida, in contrast, emphasises that critique is not what deconstruction is all about; he puts it bluntly: "deconstruction is neither an analysis nor a critique."²⁷⁶ In the article "Ja, ou le faux-bond," he adds,

deconstruction is not a critical operation, the critical is its object; deconstruction is always directed, at one moment or another, against the confidence in the critical – critico-theoretical, that is, deciding – authority, against the ultimate

²⁷³ See Geoffrey Bennington, *Interrupting Derrida* (London and New York: Routledge, 2000), p. 29.

²⁷⁴ Jacques Derrida, "Force of Law: The 'Mystical Foundation of Authority,'" *Cardozo Law Review*, Vol. 11, 1989–1990, pp. 919–1045.

²⁷⁵ Honig, "Declarations," p. 108.

²⁷⁶ Jacques Derrida, "Letter to a Japanese Friend," in D. Wood, R. Bernasconi (eds.), *Derrida and Différance* (Evanston, IL: Northwestern University Press, 1988), p. 3.

possibility of decidable; deconstruction is the deconstruction of critical dogmatism.²⁷⁷

It clearly shows that if there is a deconstructive concept of resistance, it cannot be formulated in terms of a performative or of a decision by a subject. In that case, the resistance either would not pertain to the founding act or would relapse into a conceptual paralysis. Derrida's much quoted passage in this respect states:

Deconstruction is not even an act or an operation. Not only because there would be something "patient" or "passive" about it (as Blanchot says, more passive than passivity, than the passivity that is opposed to activity). Not only because it does not return to an individual or collective subject who would take the initiative and apply it to an object, a text, a theme, etc. Deconstruction takes place, it is an event that does not await the deliberation, consciousness, or organization of a subject, or even of modernity. It deconstructs itself.²⁷⁸

Nevertheless, despite this statement is establishing a rather clear-cut partition, it should be considered more as a reaction to the danger that so widespread overemphasis of one part or dimension of deconstruction could overshadow the meaning of the whole. Indeed, it has not been uncommon to describe deconstruction as a sort of a critique,²⁷⁹ and for example, Clive Barnett, being attentive to this development, delineates two phases in the general reception of deconstruction, one of which is dubbed a more critical phase: "in the first phase, deconstruction was an avowedly critical enterprise, and became closely associated with a rigorous mode of literary-theoretical textual analysis."²⁸⁰ Such emphasis would have not been possible if deconstruction had no relation to critique at all.

In one of Derrida's "definitions" or determinations of deconstruction, this critical intervention can be located inside the "*general strategy of deconstruction*" as a phase of overturning of violent binary oppositions that metaphysics bequeaths to us. Deconstruction shows that any metaphysical opposition is not a natural and "peaceful coexistence of *vis-à-vis*, but rather ... a violent hierarchy," in which the dominant side always depends on the subordinate side.²⁸¹ The violence consists exactly in non-recognition of this dependence, which now gets revealed in deconstruction. Here, the tasks of critique and

²⁷⁷ Jacques Derrida, "Ja, ou le faux-bond," *Diagraphe*, Vol. 11 (1977), p. 103. Quoted from Rodolphe Gasché, "On Critique, Hypercriticism, and Deconstruction: The Case of Benjamin," *Cardozo Law Review*, Vol. 13, 1991–2, p. 1115.

²⁷⁸ Derrida, "Letter to a Japanese Friend," p. 3–4.

²⁷⁹ See for examples in: Nicholas Royle, "What is Deconstruction?" in N. Royle (ed.), *Deconstructions: A User's Guide* (Palgrave Macmillan, 2000), pp. 1–13.

²⁸⁰ Clive Barnett, "Deconstruction," in R. Kitchin and N. Thrift (eds.), *International Encyclopaedia of Human Geography* (Elsevier, 2009), pp. 23–30.

²⁸¹ Jacques Derrida, *Positions* (London and New York: Continuum, 2004), p. 39.

deconstruction coincide in uncovering a latent violence. At first sight, the exposed violence seems to undo, and therefore, intervene into the founding act, because no founding of freedom can come to exist by violence in regard to those in the name of whom the freedom is meant to be established. In the context of the case of the Declaration, it can be seen that the mutual undermining of the performative side of declaring and the constative side of affirming indeed inscribes a possibility of violence into any founding act. This is so because, if the role of the constative, being supported by a fable (of God, for example), is to show naturalness of the “coming” order or law of laws, then the performative simultaneously and equally questions that “naturalness.” In other words, something that is created by sheer (contingent) will of the people can always be different, and digressions from that will are conceivable. Consequently, although any order-creation entails exclusions of what is deemed to be “disorder,” every particular exclusion (retrospectively determined) can be reversible. In that, the idea of “naturalness” is not altogether abolished, but everything that at first appears natural might turn out to be “actually” a violent imposition after some lapse of time. This is what I call here “violence as forgery;” critical discriminations are needed to restore the “truth” of an order, to unveil false pretensions. However, it is not the violence that could intervene into the founding act, because it presumes the existence of that very system which it appears to undermine. Hence, the fact that violence is impugned, as in resistance advocated by Honig, does not mean by itself an intervention into the founding act. The concept that corresponds to this violence as a possibility inscribed into the founding act, is “undecidable violence,” which will be explicated in the next section.

3.3 Walter Benjamin: the Concept of Undecidable Violence

An important and much discussed account of undecidable violence is Walter Benjamin’s “Critique of Violence,” which I take as a lead in order to explain the concept.²⁸² Benjamin locates his critique of violence in the sphere of law and

²⁸² Walter Benjamin, “Critique of Violence,” in his *Reflections: Essays, Aphorisms, Autobiographical Writings*, ed. P. Demetz, tr. E. Jephcott (New York: Schocken Books, 1986), pp. 277–300. Since its publication, Benjamin’s treatise has been commented one way or the other, I dare to say, by nearly all authors who have written on political philosophy, or at least, on the subject of violence. Few names who have bearing upon this thesis deserve to be mentioned here in advance; there are a collection of articles on Benjamin and the topic of violence published in *Cardozo Law Review*, Vol. 13, 1991–2, commenting on Derrida’s interpretation of “Critique of Violence” in Jacques Derrida, “Force of Law: The ‘Mystical Foundation of Authority’,” Part II, *Cardozo Law Review*, Vol. 11, 1989–90, pp. 973–1045, including, among others, Rodolphe Gasché, “On Critique, Hypercriticism, and Deconstruction: The Case of Benjamin,” pp. 1115–1132; Werner Hamacher, “Afformative, Strike,” pp. 1133–1157; Samuel Weber, “Deconstruction before the Name: Some Preliminary Remarks on Deconstruction and Violence,” pp. 1181–1190. In the same volume with

justice, by stating in the beginning of his text that “a cause, however effective, becomes violent ... only when it bears on moral issues.”²⁸³ In his study, he searches for a criterion to criticise “violence itself as a principle,” i.e. without regard for the ends it may serve.²⁸⁴ He leaves out the natural law doctrine, which is able, according to Benjamin, to critique violence only in terms of its ends, and begins with examination of the (hypothetical) distinction made in positive law “between kinds of violence independently of cases of their application,” i.e. between sanctioned (or legitimate) and unsanctioned (or illegitimate) violence.²⁸⁵ The reasons why this distinction is made in positive law should reveal something about violence as such. Benjamin notes that in case an individual can achieve certain ends by using violence, the legal system tries to replace these “natural” ends (like in education) by legal ends, which can be realised only by legal power. The problem then seems not to be in ends themselves that can be attained violently, but in violence as such that lies outside the law. In other words, “law sees violence in the hands of individuals as a danger undermining the legal system.”²⁸⁶

The function of violence that law is so afraid of is revealed by Benjamin through cases where violence still is permissible in the present legal system. One such case is workers’ guaranteed right to strike, which is meant by the state to be a (non-violent) possibility “to escape from a violence indirectly exercised by the employer.”²⁸⁷ From the perspective of the worker, however, this right can be exercised as a form of extortion, “a conscious readiness to resume the suspended action under certain circumstances that either have nothing whatever to

Derrida’s text appeared also, Dominick LaCapra, “Violence, Justice, and the Force of Law,” pp. 1065–1078. Another collection of essays on the same topic are published in *Colloquy: text theory critique*, Vol. 16, 2008, including texts by Mathew Abbott, Adam Lodders, Lara Shalson, and others. Some other takes on Benjamin’s text to mention here are: Anselm Haverkamp, “Anagrammatics of Violence: The Benjaminian Ground of Homo Sacer,” *Cardozo Law Review*, Vol. 26, No. 3, 2005, pp. 995–1003; Robert Sinnerbrink, “Deconstructive Justice and the ‘Critique of Violence’: On Derrida and Benjamin,” *Social Semiotics*, Vol. 16, No. 3 (September 2006), pp. 485–497; Beatrice Hanssen, *Critique of Violence: Between Post-structuralism and Critical Theory* (London and New York: Routledge, 2000), especially pp. 16–29; Matthias Fritsch, *The Promise of Memory: History and Politics in Marx, Benjamin, and Derrida* (Albany: State University of New York Press, 2005), especially, pp. 103–155. Additionally, in numerous books and theories various authors have felt compelled to formulate their stance in regard to Benjamin’s text, like, Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford: Stanford University Press, 1998) and also his *State of Exception* (Chicago and London: The University of Chicago Press, 2005); and Slavoj Žižek, *Violence: Six Sideways Reflections* (New York: Picador, 2008).

²⁸³ Benjamin, “Critique of Violence,” p. 277.

²⁸⁴ Ibid.

²⁸⁵ Ibid., p. 279.

²⁸⁶ Ibid., p. 280.

²⁸⁷ Ibid., p. 281.

do with this action or only superficially modify it.”²⁸⁸ In the revolutionary situation of a general strike, these two interpretations collide and the state violently suppresses the strike in order to preserve order. Conferring a right to strike to workers, the state is fully aware of the possibility of its use as a violent extortion, but remains passive in regard to it, because it is an act of forestalling “violent actions the state is afraid to oppose.”²⁸⁹ In that case, the right functions as an inducement for “men to reconcile their interests peacefully without involving the legal system [on the basis of the fear of mutual disadvantage that violent confrontation can cause].”²⁹⁰ At the same time, the right to strike is actively called violent when it is exercised “to overthrow the legal system” in a general strike.²⁹¹

The concession of this right to strike for workers, in the light of these considerations, reveals the function of violence that the state is afraid of above all, and what is the target of Benjamin’s text; namely, the state fears violence’s law-making character (*die Rechtsetzende Gewalt*). Violence needs not to be characterised only as a “predatory violence” that fulfils its end and disappears. Benjamin refutes this by referring to military law, according to which “even in cases where the victor has established himself in invulnerable possession, a peace ceremony is entirely necessary..., [which] consists precisely in recognising the new conditions as a new ‘law’.”²⁹² The same danger emanates from the figure of the “great” criminal, who very often, “however repellent his ends may have been, has aroused the secret admiration of the public,”²⁹³ which can be explained not by his or her deeds, but only by their very violence, which “confronts the law with the threat of declaring a new law.”²⁹⁴ In sum, law confronts any violence outside its legal ends, because law recognises in the use of violence a possibility of lawmaking.

This immediately highlights another function or side of violence, which is called by Benjamin a law-preserving violence (*die Rechtserhaltende Gewalt*). This violence, but in fact, the whole duality of violence, is exemplified by general conscription, which is the “use of violence as a means to the ends of the state.”²⁹⁵ The conscription as an example of law-preserving violence seems to be chosen by Benjamin for the reason that it is enforced by the military, and not by the police. The latter represents for Benjamin an institution, where law-making and law-preserving are “unnaturally” mixed, because the police uses “violence for legal ends..., but with the simultaneous authority to decide these ends itself within wide limits (in the right of decree).” This results in their

²⁸⁸ Ibid., p. 282.

²⁸⁹ Ibid., p. 290; see also p. 282.

²⁹⁰ Ibid., p. 290.

²⁹¹ Ibid., p. 282.

²⁹² Ibid., p. 283.

²⁹³ Ibid., p. 281.

²⁹⁴ Ibid., p. 283.

²⁹⁵ Ibid., p. 284.

interventions “‘for security reasons’ in countless cases where no clear legal situation exists, when they are not merely, without the slightest relation to legal ends, accompanying the citizen as a brutal encumbrance through a life regulated by ordinances, or simply supervising him.”²⁹⁶ Nevertheless, it appears that the distinction Benjamin first (though, hypothetically) makes between law-making and law-preserving starts to crumble as soon as it is made. Besides the police, a similar concurrence is manifested in cases where law implements the capital punishment, and especially clearly when there is no doubt of its disproportionate use. Benjamin argues that such cases, for example, where “the death penalty is imposed even for such crimes as offences against property” unquestionably indicate that “its purpose is not to punish the infringement of law but to establish new law.”²⁹⁷ These cases reveal that there is, as Benjamin puts it, “something rotten in law,” because whoever stands outside the order of law and is confronted by the violence of the law (in the name of preserving it), is confronted by the same violence that he or she embodies against the law. This means that law’s outside, which threatens it, appears to be already its inside. Benjamin sums it up as follows:

The function of violence in lawmaking is twofold, 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.²⁹⁸

As much as law-making and law-preserving constantly turn into each other, violence in law remains undecidable. Similarly, Derrida points out in his extensive commentary on Benjamin’s text that “the law is transcendent, violent and nonviolent, because it depends only on who is before it – and prior to it.”²⁹⁹

In terms of our discussion on a founding declaration, if the violence of the performative declaration is hidden by a “successful” retroaction (enabled by a fable), which posits that the people are free naturally, by right, without any recourse to violence, then nevertheless, it is not possible for retroaction, by simply alluding to a fable, to erase all violence in the world, and for that matter, violence as such. Even if the fable disguises violence in the founding of a law of laws, there exists an outside of that law, which cannot be mastered by retroaction; law still has to make use of violence in order to defend itself. Therefore, retroactivity can conceal violence only by declaring that all violence used by the law is against “them” and not against “us.” In other words, a successful retroaction is grounded on the claim that all violence is used not against the

²⁹⁶ Ibid., p. 286–7.

²⁹⁷ Ibid., p. 286.

²⁹⁸ Benjamin, “Critique of Violence,” p. 295.

²⁹⁹ Derrida, *Force of Law*, p. 993.

entity which has been (or is being) created, but against “others,” who do not belong to the people, to the polity or to the order instituted by the law of laws. However, this use of violence to defend law is, in principle, as it was shown by Benjamin, the same violence that founds laws. This impossibility of determining with certainty whether violence is law-making or law-preserving means that it is not also clear whether violence used by the law is violence only against “them” (under the title power) or violence against “us,” or any part of “us.”

On the assumption of the undecidability of violence, a critique that points out the unfairness of a use of force, i.e. a wrongful discrimination between “us” and “not-us,” and calls it violence, is always possible, but with a proviso that uncovered violence *remains* undecidable, and therefore, negotiable. Violence is critiqued from the position of presumed non-violence within the same founding act. This does not mean that such critique might not have effects (that make difference), but simply that they remain in the service of the existing founding act.

As much as Benjamin’s aim is to critique not merely one type of violence from the position of another type, but violence as such, he has to admit the insufficiency of such critique if it stays on the level of undecidable violence. Benjamin offers a solution to the problem of the critique of violence in his further elaborations in the article, but we reserve an exposition of it to another chapter. Here, it sufficed to point out the limits of undecidable violence.

Going back to the scene of deconstruction, it can be argued that the same kind of insufficiency as was discovered by Benjamin is also emphasised by Derrida in regard to the critical first “phase” of deconstruction. The first “phase” involves a critique of violence embedded in a hierarchy, and resultant overturning of that hierarchy, however, “to remain in this phase is still to operate on the terrain of and from within the deconstructed system.”³⁰⁰ Therefore, a second “phase” has to take place, in which deconstruction arrives at certain quasi-concepts, “infrastructures,” or “undecidables ... that can no longer be included within philosophical (binary) opposition, but which, however, inhabit philosophical opposition, resisting and disorganizing it, without ever constituting a third term.”³⁰¹ The second “phase” of deconstruction will be elaborated also a little bit later in the following chapters, but at this point, I only want to accentuate that as much as deconstruction has to accomplish its second “phase,” it also has to pass through its first “phase” – “the necessity of this phase is structural,” as Derrida puts it; the violent and subordinating structure of these oppositions has to be addressed, otherwise “one might proceed too quickly to a *neutralization* that *in practice* would leave the previous field untouched, leaving one no hold on the previous opposition, thereby preventing any means of *intervening* in the field effectively.”³⁰² In this sense, the criticism

³⁰⁰ Derrida, *Positions*, p. 39.

³⁰¹ Ibid., p. 40.

³⁰² Ibid., p. 39.

of Nancy Fraser and Dominick La Carpa that deconstruction is unable to intervene into ontical violence and only deals with ontological violence is certainly not correct. Deconstruction has to “pass through” its critical phase.³⁰³

However, it also becomes evident here that the differentiation between phases cannot be taken at face value; if the first “phase” is a structural necessity, due to the fact that “the hierarchy of dual oppositions always re-establishes itself,”³⁰⁴ it cannot be a phase in a chronological sense of the term, and it certainly cannot be employed in the manner of a “technical procedure,” as Derrida underlines in an interview published in *Critical Exchange*.³⁰⁵ In other words, the first “phase,” being a necessity but still not deconstruction “as such,” can be understood as revealing a sort of structural possibility of deconstruction, which combines two aspects in it. Firstly, it reckons that deconstruction is always already taking place (intervening, so to say) inside of any hierarchy or a system, rather than being applied from the outside by a decision, in which case deconstruction would certainly be critical, but unable to intervene into the founding act. But secondly, this internal undoing (in the form of undecidable violence), nevertheless, remains a possibility, if it is not inserted or inscribed by a certain incision of deconstruction; because otherwise, without the need for such an incision, any hierarchy or system would undo itself prior to its appearance. It is this inscription that marks a “second phase,” where “an overturning deconstruction” turns into “a positively displacing, transgressive, deconstruction.”³⁰⁶ Unlike Honig’s formulation of deconstructive resistance in terms of a performative, of a decision, the incision of deconstruction is a certain “‘passive’ decision ... without freedom ... without that activity.”³⁰⁷ Derrida emphasises:

The incision of deconstruction, which is not a voluntary decision or an absolute beginning, does not take place just anywhere, or in an absolute elsewhere. An incision, precisely, it can be made only according to lines of force and forces of rupture that are localizable in the discourse to be deconstructed.³⁰⁸

These marks of force and rupture cannot be left, as we have shown, by undecidable violence that was the concept of violence targeted by critique. Deconstructive resistance requires another concept of violence, and tracking down this concept will be the task of the next chapter.

³⁰³ See Nancy Fraser, “The Force of Law: Metaphysical or Political?,” *Cardozo Law Review*, Vol. 13, 1991–2; Dominick LaCapra, “Violence, Justice, and the Force of Law,” *Cardozo Law Review*, Vol. 11, 1989–90.

³⁰⁴ Ibid.

³⁰⁵ See, James Creech, Peggy Kamuf, Jane Todd, “Deconstruction in America: An Interview with Jacques Derrida,” *Critical Exchange*, Vol. 17 (Winter 1985), p. 7.

³⁰⁶ Derrida, *Positions*, p. 56.

³⁰⁷ Jacques Derrida, *Politics of Friendship* (London and New York: Verso, 1997), p. 68.

³⁰⁸ Derrida, *Positions*, p. 68.

On the basis of this chapter, it can be concluded that, although Honig's interpretation posits Arendt's theory as "a re-theorisation of authority for a non-foundational politics," her project of thinking resistance deconstructively remains unfinished.³⁰⁹ In her formulations, resistance makes every other beginning to be a return of the same over and again, while deconstruction is, in the words of Rodolphe Gasché, "a responding to, first and foremost toward the other in its alterity – before all critical separation, division, and decision."³¹⁰ This prompts us to search for another reading of Arendt's theory that allows a different rendering of it in terms of performatives and constatives, and a more complex take on Derrida. In the next chapter, I am going to show that radical violence – the same violence that Benjamin as well as Derrida "look for" beyond what can be called undecidable violence – is addressed in Arendt's theory. Later, I use its explication to pinpoint a deconstructive moment in Derrida's text on the Declaration, i.e. where the incision of deconstruction is made along the line of rupture. First, however, it is argued that as much as Arendt's theory is interpreted as dealing with radical violence, her theory of action cannot be maintained to be a theory of pure performativity.

³⁰⁹ Honig, "Declarations," p. 98.

³¹⁰ Gasché, "On Critique," p. 1131.

Chapter 4: Reinterpretation of Arendt and Derrida on Declarations

4.1 Different Perspective on Arendt: Radical Violence of the Absolute

According to Arendt, as it was also showed above, the founding act in the modern age cannot draw its authority from absolutes, i.e. from sources standing outside the human realm.³¹¹ For Honig, Arendt excludes absolutes, because they are constative in their character; they compel “without argumentative demonstration or political persuasion.”³¹² Honig relates here absolutes (as fables) to constatives, on the ground that “all placeholders, according to Derrida, including those that are constative in structure, are fables.”³¹³ In fact, the whole idea of pure performativity of Arendt’s conception of founding depends on this fusion of absolutes and constatives, because, indeed, it then appears that from Arendt’s rejection of absolutes follows also the rejection of the whole constative dimension, leaving only performativity to describe action and founding. However, I would point out that the role of fables is much more intricate in Derrida than that. In his book *The Beast and the Sovereign*, where he discusses Hobbes’ fable of the Leviathan at lengths, he indicates that fable is never merely a constative:

What is fabulous in the fable does not only depend on its linguistic nature, on the fact that the fable is made up of words. The fabulous also engages act, gesture, action, if only the operation that consists in producing narrative, in organizing, disposing discourse in such a way as to recount, to put living beings on stage, to accredit the interpretation of a narrative, to *faire savoir*, to make knowledge, to make performatively, to operate knowledge.³¹⁴

My argument is that Arendt excludes absolutes as a possible source of authority, because of their radical violence, which pertains into the very founding act (and in a sense precedes it). If this is to hold, then Arendt’s idea of action cannot stand against such radical violence as a constant fighting back, in which case the radical violence is simply reduced into an undecidable violence. For that reason, I pursue here a possibility that Arendt’s discarding of absolutes does not mean the dismissal of the constative dimension in action at all, and consequently, Arendt’s theory of founding action cannot be regarded as a theory of the pure performative.

³¹¹ See above, pp. 40–1.

³¹² See Arendt, *On Revolution*, p. 192, and Honig, “Declarations,” p. 106.

³¹³ Honig, “Declarations,” p. 107.

³¹⁴ Jacques Derrida, *The Beast & the Sovereign*, vol. 1 (Chicago & London: The Chicago University Press, 2009), p. 63–4.

4.1.1 Theory of Action

Even if this thesis started by noting that both Arendt and Derrida similarly recognise the problem of the vicious circle, whereby the declaration that founds an entity receives its authority to do that only after the fact, their understanding of this paradox is still remarkably different. For Derrida, if there were hypothetically a pure performative, a declaration in its first movement, so to say, then it would have been inevitably violent and in this sense, illegitimate, because there always is (and will be) another declaration that must be erased by the new one, as he also mentions to be the case in the American Revolution: “another state signature had to be erased by ‘dissolving’ the links of colonial paternity or maternity.”³¹⁵ Therefore, the performative and the constative are always already imbricated in each other and impure.

For Arendt, on the other hand, a declaration of independence (for example), let us say a performative, is not necessarily violent. The presumed needfulness of violence in the founding act is for her “the fallacy which was bound to becloud the whole issue of action in the thinking of the men of the revolutions. It was in the nature of their experiences to see the phenomenon of action exclusively in the image of tearing down and building up.”³¹⁶ Violence is inescapable not for action or an act of creation, for starting a new beginning, but “for all purposes of fabrication precisely because something is created, not out of nothing, but out of given material which must be violated in order to yield itself to the formative processes out of which a thing, a fabricated object, will arise.”³¹⁷ It might seem that Arendt here indeed advocates the purity of action, i.e. its independence from a constative structure, but such conclusion is drawn merely from the fact that Arendt precludes violence from action. However, action can be conceptualised in such a way that it shuns from violence (of absolutes), but nevertheless, remains impure and in need of a constative structure.

In order to understand the place action fulfils in Arendt’s theory, it does not suffice to start from the paraphrase, also quoted above, that action is taking an initiative, beginning something, or rather, somebody, “who is a beginner himself.”³¹⁸ Instead, it requires uncovering its conditions of possibility. In most general sense, action is a moment of initiation of something that is (always already) inserted into “the ‘web’ of human relationships,”³¹⁹ into a plurality of human beings, which, therefore, becomes a part of the phenomenon of action, as “the basic condition of both action and speech.”³²⁰ In other words, action appears because of this plurality, and only in this web of relations “in which

³¹⁵ Derrida, *Negotiations*, p. 50.

³¹⁶ Arendt, *On Revolution*, p. 233.

³¹⁷ Ibid., p. 208.

³¹⁸ Arendt, *The Human Condition*, p. 177; see also *supra*, p. 60, n. 219.

³¹⁹ Ibid., p. 183.

³²⁰ Ibid., p. 175.

action alone is real.”³²¹ In the course of her account on action in *The Human Condition*, Arendt elaborates on four notions that elucidate the concept of human plurality, and which relate to action as its conditions, or rather, as its analytically distinguishable moments that make it up.

The first such moment that accompanies action is speech: “speechless action would no longer be action because there would no longer be an actor, and the actor, the doer of deeds, is possible only if he is at the same time the speaker of words.”³²² Speech relates to the plurality as being its actualisation, i.e. it enables to define oneself “as a distinct and unique being among equals.”³²³

The second aspect of action is “the space of appearance,” which “comes into being wherever men are together in the manner of speech and action.”³²⁴ The space of appearance is a mental, “intangible” space between participants in action and speech, “where I appear to others as others appear to me, where men exist not merely like other living or inanimate things but make their appearance explicitly.”³²⁵ Arendt illustrates the thought with an example of *polis* of ancient Greece, which she takes to be “not the city-state in its physical location; [but] it is the organisation of people as it arises out of acting and speaking together, and its true space lies between people living together for this purpose, no matter where they happen to be. ‘Wherever you go, you will be a *polis*.’”³²⁶ As much as the space of appearance is a space where humans can recognise each other, it also is a guarantor of reality for human beings: “To men the reality of the world is guaranteed by the presence of others, by its appearing to all.”³²⁷

The third dimension of action is power: “power is what keeps the public realm, the potential space of appearance between acting and speaking men, in existence.”³²⁸ The most important defining feature of power is its being a potentiality, i.e. power is not something that can be possessed and stored up, like strength or force can be, but it exists only in its actualisation; “power springs up between men when they act together and vanishes the moment they disperse.”³²⁹ By the same token, “without power, the space of appearance brought forth through action and speech in public fade away as rapidly as the living deed and the living word.”³³⁰

The last internal moment of action is promising, as it can be inferred from the following passage, which also combines all the mentioned aspects of action together:

³²¹ Ibid., p. 184.

³²² Ibid., p. 178.

³²³ Ibid.

³²⁴ Ibid., p. 199.

³²⁵ Ibid., p. 198–9.

³²⁶ Ibid., p. 198.

³²⁷ Ibid., p. 199.

³²⁸ Ibid., p. 200.

³²⁹ Ibid.

³³⁰ Ibid., p. 204.

The power generated when people gather together and “act in concert,” which disappears the moment they depart. The force that keeps them together, as distinguished from the space of appearances in which they gather and the power which keeps this public space in existence, is the force of mutual promise or contract.³³¹

The same thought is also expressed in *On Revolution*, in the context of the American Revolution, where Arendt relates promising back to the situation prior to the Revolution, saying: “what had happened in colonial America prior to the Revolution ... was, theoretically speaking, that action had led to the formation of power and that power was kept in existence by the then newly discovered means of promise and covenant.”³³² Power has a potentiality to keep the presence of people to each other alive, and promising provides a certain scope to it by having “the capacity to dispose future as though it were the present, that is, the enormous and truly miraculous enlargement of the very dimension in which power can be effective.”³³³

Arendt relates the faculty of promising back to other aspects of action by noting that promising is essential for disclosing our identities by speech in the space of appearance: “Without being bound to the fulfilment of promises, we would never be able to keep our identities ... [which can only occur] through the presence of others, who confirm the identity between the one who promises and the one who fulfils.”³³⁴ As much as all these notions designate internal dimensions of action, no one of them is prior to the other, but they determine mutually each other and actualise (in) action.

In this theorising of action it is revealed that the most characteristic attribute of action and power is their fleetingness. Arendt repeatedly reminds us that action by itself, if there is such a thing, would be a fleeting moment that fades as soon as togetherness of people involved in it is lost; there is only a “fleeting moment of the deed.”³³⁵ This means that Arendt’s conception of action cannot be thought as striving to be a pure performative, even if it forecloses violence, because it needs a (sort of) constative structure to achieve some perpetuity.

4.1.2 Promise

As the consideration of promising for an internal moment of action indicated, this perpetuity cannot be attained by Arendt’s notion of promising. In this, I disagree with Honig’s interpretation of the relation between promising and action, which grounds her charge of contradiction in Arendt. I would say that Honig’s reading seems to contain its own inconsistency, when, on the one hand,

³³¹ Ibid., pp. 244–5.

³³² Arendt, *On Revolution*, p. 176; see also above, p. 43.

³³³ Arendt, *The Human Condition*, p. 245.

³³⁴ Ibid., p. 237.

³³⁵ See, for example, Arendt, *The Human Condition*, p. 8, 173, 192, 201.

she describes the meaning of “promising” for Arendt as something that happens to action, as complementing it from the outside, like when she says: “Arendt’s performative politics presupposes a community of promisors, a pre-existing community.”³³⁶ On the other hand, she cites Arendt that promising and forgiving “are not applied to action from the outside [but] arise directly out of the will to live together with others in the mode of acting and speaking.”³³⁷

Arendt’s figurative phrasing in describing promising as “islands of predictability” leaves much room for interpretation and it can appear in conflict with action’s character as being unpredictable and starting the unexpected. If interpreted in this way, it is not easy to see how promising describes action from inside, which might also be Honig’s difficulty, as noted above.³³⁸ But Honig’s rather straightforward conclusion that “promising is to be a source of reassurance and stability” for Arendt does not add up in the context of the passage where Arendt cautions about the limits of the power of promises:

The moment promises lose their character as isolated islands of certainty in an ocean of uncertainty, that is, when this faculty is misused to cover the whole ground of the future and to map out a path secured in all directions, they lose their binding power and the whole enterprise becomes self-defeating.³³⁹

What Arendt seems to be saying here is that promising, i.e. making and keeping promises, is a plural concept – no promise can “cover the whole ground,” take upon itself to promise everything, and no contract can embrace all life, or it would not be a promise or a contract at all but simply a law. In Arendt’s words, without the faculty of promising “we would be the victims of an automatic necessity bearing all the marks of the inexorable laws.”³⁴⁰ Consequently, and importantly, the plural concept of promising inevitably includes its failure; it must be able to fail, which means, paradoxically, that promising “leave[s] unpredictability of human affairs and the unreliability of men as they are.”³⁴¹ Promising does not solve the problem it was called for to solve, but rather, “deals” with it, “using them [the unpredictability and unreliability of human affairs] merely as the medium, as it were, into which certain islands of predictability are thrown and in which certain guideposts of reliability are erected.”³⁴² In other words, there are only instances of promise-making, which here or there, sometimes, are also kept, and these are “the guideposts of reliability,” “islands of certainty,” which should uphold a possibility, a horizon of stability for the public realm. After all, promising is not a description of a

³³⁶ Ibid., p. 103.

³³⁷ Ibid., p. 100, see Arendt, *The Human Condition*, p. 246, also p. 236.

³³⁸ See above, p. 61 (n. 228).

³³⁹ Arendt, *The Human Condition*, p. 244.

³⁴⁰ Ibid., p. 246.

³⁴¹ Ibid., p. 244.

³⁴² Ibid.

state of affairs for Arendt, but a faculty of human beings, the actualisation of which remains undecided. All in all, in order to outlive “the fleeting moment” and appear explicitly in the human realm, action also requires the possibility of stability, which shows “the future as though it were the present.”³⁴³ It is not clear from Honig’s text, that the stability Honig makes Arendt to expect, i.e. stability over “promising,” is the same as Arendt pictures to herself. Rather, Honig’s reduction of promises to a source of stability seems to be exactly against which Arendt warns here; it would mean “to cover the whole ground” instead of being “isolated islands of certainty.”³⁴⁴

So, all in all, Honig’s argument was that Arendt, although willing to propound a pure performativity as a source of legitimacy and authority for a founding act, still is not able to succeed in it and she inconsistently relies on promising, which inadvertently undermines action’s spontaneity. However, now, after restating the relationship between action and promising, it can be seen that promising is not devised to cancel groundlessness and unpredictability of action, but is its inherent dimension, allowing for action to become what it is.

4.1.3 Action and Founding

Now, if we refrain from the view that “promising” was meant to offer some stability for action in Arendt, the question of the relationship between action and founding emerges once again. It was pointed out above that Honig’s reading of Arendt leads to a merger of action and founding.³⁴⁵ But if action cannot be fully stabilised, neither internally by promising nor externally by an absolute, then action and founding cannot be thought as coinciding; action remains fleeting and unpredictable and therefore, it could not be in itself also an act of founding. This is very clearly stated also by Arendt herself:

Neither compact nor promise upon which compacts rest are sufficient to assure perpetuity, that is, to bestow upon the affairs of men that measure of stability without which they would be unable to build a world for their posterity, destined and designed to outlast their own mortal lives.³⁴⁶

It does not mean, however, that if separated, action stands against the founding act, which would presume equating the founding act with what Arendt calls “fabrication,” or “making” (i.e. as opposed to creating something). Though, the proposition that action is made *durable* by “fabrication” is in itself not incorrect, because it is the realm of “work” that only can ensure some memorability for the *realm* of action, or as Arendt puts it, “acting and speaking men need the help of *homo faber* in his highest capacity, that is, the help of the artist, of poets and

³⁴³ Ibid., p. 245.

³⁴⁴ Supra, n. 339.

³⁴⁵ See above, p. 61.

³⁴⁶ Arendt, *On Revolution*, p. 182; see also supra, n. 221–225.

historiographers, of monument-builders or writers, because without them the only product of their activity, the story they enact and tell, would not survive at all.”³⁴⁷ Still, the founding act emerges only in case there is some measure of *stability* or *perpetuity* to action:

where and when men succeed in keeping intact the power which sprang up between them during the course of any particular act or deed, they are already in the process of foundation, of constituting a stable worldly structure to house, as it were, their combined power of action.³⁴⁸

What is important here to notice is that this being “in the process of founding” does not occur prior to the moment “when men succeed keeping intact the power,” i.e. prior to a stabilisation of action. This stabilisation can take place only by recourse to a constative structure. It follows that every founding act has a dual grounding in action and in its stabilising structure. In fact, this duality permeates Arendt’s discussion of French and American revolutions from the very beginning as she emphasises that the success of founding of the republic depends on finding its power and authority from separate sources.³⁴⁹

Here, it can be affirmed that in some sense Arendt’s depiction of the founding act is not much different from Derrida’s as in both cases the founding act appears in a certain interplay between the performative and the constative sides. In Arendt’s theory, action always *appears* into a certain permanence, otherwise it would be a fleeting moment, immediately disappearing, leaving no trace of memory of it.

4.1.4 Radical Violence in Arendt

In light of what was said previously, what makes up a genuine paradox for Arendt, and according to her, for the Founding Fathers of the American Revolution as well, is that while the founding act seems unavoidably in need of a constative structure, it could not rely on absolutes as a possible source of authority. The paradox lies here in the fact that, historically, absolutes were performing exactly this role which is now separated and left for constative structures; as she puts it, “the legitimacy of rule in general, and the authority of secular law and power in particular, had always been justified by relating them to an absolute source which itself was not of this world.”³⁵⁰ So, the perplexity of Arendt could be described as follows: assuming that absolutes are violent, something has to take the role of the absolute without being it. Even in her formulations of a solution to the problem of finding an alternative source of authority to absolutes, she never gave up the term “absolute” (only occasionally

³⁴⁷ Arendt, *The Human Condition*, p. 244.

³⁴⁸ Arendt, *On Revolution*, p. 175.

³⁴⁹ See above, pp. 41–2.

³⁵⁰ Arendt, *On Revolution*, p. 160.

used it within quotation marks). For example, she says: “this ‘absolute’ lies in the very act of beginning itself,” or “the absolute from which the beginning is to derive its own validity ... is the principle.”³⁵¹ Rather than deducing from these cases an argument for a pure performative, it can be understood as expressing the inescapability of the constative dimension. However, if so, then the question appears how this distinction inside the constative structure becomes possible: why does not discarding of absolutes affect the constative dimension in general in the same way?

For Derrida, the rejection of absolutes is not an option. For him, a performative declaration always contains a certain originary violence or illegitimacy, because there is no people yet, before the founding act, to authorise the signing of the declaration of independence, which means that an absolute (a fable of God, for example) is absolutely necessary to hide this violence, without which no performative (as well as constative) is conceivable. This *coup de force* of retroactive signing, which at the same time must remain inconspicuous, is in every beginning, in every performative declaration of independence.

In Arendt’s perspective things are different. Arendt’s theorisation of action, as it was expounded above, made apparent that action is theoretically constructed via power. Power, on the other hand, stands for Arendt in opposition to violence, as she very plainly states it in *On Violence*: “Power and violence are opposites; where the [first] one rules absolutely, the other is absent.”³⁵² Hence, to bring something new into the world, one needs power, not violence, and power relates to the idea of people acting together, while violence is instrumental, as a means to an end. If action builds on power it “needs no justification,” for it springs up from the people themselves.³⁵³ It follows that even if the fleetingness of power eventually makes the constative structure necessary, it does not preclude the possibility of the *initiation* of action. In this respect, Arendt even states at one place in *On Revolution* that power and action “was enough ‘to go through a revolution’ ..., [but] it was by no means enough to establish a ‘perpetual union’, that is, to found a new authority.”³⁵⁴ So, for Arendt, there is always a possibility of the very first initiation of action, which does not depend on an absolute or a constative. This is equally the condition to think of absolutes separately from (or in the dimension of) constatives.

Having established this, it is possible to show, how the “irresistible” absolute can be considered as a radical violence that threatens the possibility of the very founding act. For that purpose, it is necessary to take another look on the relationship between power and violence in Arendt, which is, in fact, a bit more complicated than their just described oppositional nature to each other.

³⁵¹ Ibid., p. 204, 212, respectively.

³⁵² Hannah Arendt, *On Violence* (San Diego, New York, London: A Harvest/Harcourt Brace Jovanovich, 1970), p. 56.

³⁵³ Ibid., p. 52.

³⁵⁴ Arendt, *On Revolution*, p. 182.

According to Arendt, power and violence appear also inevitably together, as it can be gathered from the following passage:

Violence appears where power is in jeopardy, but left to its own course it ends in power's disappearance. This implies that it is not correct to think of the opposite of violence as non-violence; to speak of non-violent power is actually redundant. Violence can destroy power; it is utterly incapable of creating it.³⁵⁵

In other words, and this is important for our purposes, the violence Arendt talks about can exist only together with power (even if being opposed to it). This means, however, that the violence located on the side of power depends in the same way as the latter for its stability (and perpetuity) on the constative side. But if it is assumed that there is any violence on the constative side (like the violence of absolutes) then it is the violence that could suspend all the interplay between the performative and the constative dimensions as well as destroy the violence on the side of power. The fact that the violence on the constative side, if there is such thing, must be thought as preceding the violence on the side of power, allows us to describe the latter as what was named above "undecidable violence."³⁵⁶ On the other hand, radical violence on the side of the constative is the violence that, as it was argued, must have been the final target for Benjamin's critique of violence and Derrida's deconstructive resistance.

It must be kept in mind that, as explained in the previous section, the radical violence (in the constative dimension) does not contradict the necessity for constatives in general, because the possibility of the initiation of action independent from the constative side makes their distinction possible (i.e. between absolute violence and the violence that relates to constatives).

As it can be discerned from the discussion above (e.g. from "if there is any violence on the constative side"), the radical violence (i.e. violence on the constative side) is not structurally explained in Arendt's theory.³⁵⁷ An explication how absolutes can be thought embodying radical violence has to be deduced from the particular historical situation that, according to Arendt, accompanies the French and the American revolutions. Above all, this period was affected by the process of secularisation and its effects. Secularisation, by which Arendt means the separation of the secular and the religious spheres, left politics without the religious, "a transcendent and transmundane" source of authority. However, the real problems that the loss of the religious sanction brought along for the secular realm first remained concealed by the rise of absolutism, which "seemed to have found, within the political realm itself, a fully satisfactory substitute for the lost religious sanction of secular authority in

³⁵⁵ Arendt, *On Violence*, p. 56.

³⁵⁶ See above p. 57, 76–7.

³⁵⁷ It perhaps must be reminded here that I will yet return to Arendt in the third repetition of her account.

the person of the king or rather in the institution of kingship.”³⁵⁸ In the American and French revolutions, it is exactly this “pseudo-solution” that is unmasked, revealing a “profound instability, [being] the result of some elementary lack of authority.”³⁵⁹ The following passage, I quote in full, seems to contain all the elements necessary to explain the radical violence of absolutes that emerged as a result of the decline of absolutism:

The revolutions, even when they were not burdened with the inheritance of absolutism as in the case of the American Revolution, still occurred within a tradition which was partly founded on an event in which the “word had become flesh,” that is, on an absolute that had appeared in historical time as a mundane reality. It was because of the mundane nature of this absolute that authority as such had become unthinkable without some sort of religious sanction, and since it was the task of the revolutions to establish a new authority, unaided by custom and precedent and the halo of immemorial time, they could not but throw into relief with unparalleled sharpness the old problem, not of law and power *per se*, but of the source of law which would bestow legality upon positive, posited laws, and of the origin of power which would bestow legitimacy upon the powers that be.³⁶⁰

What has to be highlighted in this passage is Arendt’s depiction of an unsolvable paradox that emerged for the initiators of these revolutions. When these revolutions of modern times were launched, they still faced the absolute source of authority as a seemingly successful guarantor of the entire secular realm. Indeed, they faced it and their project depended on it, but these revolutions themselves also marked the failure of this absolute source of authority in their attempt “to establish a new authority, unaided by custom and precedent.”³⁶¹ The process of secularisation evolving in the background, the initiators were left with the failure of the very ground they could not disclaim. The failure of absolutes consists exactly in their appearing as compelling without argument and, therefore, despotic and violent, like Arendt describes them.³⁶² This made absolutes unsuitable to be a source of authority for the republican founding act, because one cannot found such entity by recourse to violence in relation to those who make up this entity. On the other hand, this now violent ground regardless of its violence still functioned for the founders as their only possible ground of the revolution. This moment where a constative structure grounds, but nevertheless, also fails at the same time, is the moment of radical violence. At that moment, the very possibility of the founding act is put under question, and the interplay of the constative and the performative side is suspended. Here, we can also appreciate why the question of absolutes signifies such a paradox

³⁵⁸ Arendt, *On Revolution*, p. 159.

³⁵⁹ Ibid.

³⁶⁰ Ibid., p. 160.

³⁶¹ Ibid.

³⁶² Ibid., p. 192; also *supra*, n. 147.

for Arendt and why it induces such a sense of urgency in founders, putting the problem of finding a non-absolute source of authority “into relief with unparalleled sharpness,” as it is phrased in the above-cited passage.

So, said differently, the passage from Arendt shows that the so-called “intermediate stage” of absolutism in the process of secularisation produced a situation where, on the one hand, the absolute, as already “a mundane reality,” was radically violent, but on the other hand, there was a meaning or sense related to absolutes of transmundane source, like God, that made the latter still an allure. By Arendt’s account, the French revolution could not break free from that spell and raised “the will of the nation” to the place of the transmundane source of authority and power, with its dismal consequences.³⁶³ The American Revolution was concerned mainly with finding authority (for “a new law of the land”) rather than power which they had derived from a different source of togetherness of the people.³⁶⁴

Nevertheless, the Founding Fathers, as we have pointed out above, could not have refrained entirely from relying on absolutes. This being the case, Arendt still points to a possible excuse for the Founding Fathers, as their appeal to absolutes was intended perhaps differently. The despotic nature of expressions like “self-evident truths” and “nature’s God” that can be found in the text of the Declaration of American Independence refer above all to laws of reason such as we can confront in mathematics. But in that period of time, as Arendt observes, “mathematical laws were thought to be sufficiently irresistible to check the power of despots.”³⁶⁵ Their intention then was not simply to put absolutes in the place of a despot, but to include in it “a mechanism of check and balance.” Nevertheless, ultimately, “the fallacy of this position was ... to believe that these mathematical ‘laws’ were of the same nature as the laws of a community, or that the former could somehow inspire the latter.”³⁶⁶

If to leave aside this flirt with absolutes, there still is a “solution” for the problem of authority, that Arendt sees generating its effect in the American Revolution, and which eventually saves it from descending into chaos, but before it will be explicated any further, we examine how Arendt’s case can help to determine the radical violence in Derrida’s commentary on the Declaration.

4.2 Derrida’s Violence

As it was noted above, the “lines of force” and of rupture, along which the incision of deconstruction can be made, mark not the undecidable violence, but the radical one.³⁶⁷ The task then is to locate the line of rupture produced by the

³⁶³ See above, pp. 41–2.

³⁶⁴ Arendt, *On Revolution*, p. 178; see also *supra*, n. 140.

³⁶⁵ *Ibid.*, p. 193.

³⁶⁶ *Ibid.*

³⁶⁷ See above, p. 79.

radical violence, which allows deconstruction (deconstructive resistance) to be “inserted” (rather, inscribed) into the text. Setting up this task in the context of his text “Declarations of Independence” does not mean that Derrida has not dealt with violence in general, or with the radical violence in particular, in his works prior to the text on the Declaration. In his discussion of violence in the essay “Violence and Metaphysics” on Emmanuel Levinas, he notes that there is also a certain violence in the situation of urgency – which is the same kind of urgency that, according to Arendt, was felt by the Founding Fathers.³⁶⁸ In this sense, beyond radical violence of the absolutes, there still is a despotism of necessity or urgency to find a solution to this paradoxical situation, which would then make the solution, whatever it is, also a sort of violence (a sort of impossibility to act otherwise and with more consideration). This violence is called by Derrida a secondary violence, a “war upon the war,” and in taking up this theme, he clearly addresses the problem of radical violence:

This secondary war, as the avowal of violence, is the least possible violence, the only way to repress the worst violence, the violence of primitive and prelogical silence, of an unimaginable night which would not even be the opposite of day, an absolute violence which would not even be the opposite of nonviolence: nothingness or pure non-sense.³⁶⁹

Nevertheless, it is not immediately clear where the deconstructive moment of radical violence could be located in Derrida’s commentary on the Declaration. In order to reveal it, we take a lead from Arendt’s case, which can be described by pointing out two conflicting aspects in an absolute (source of authority): in its first aspect, an absolute (the constative dimension) grounds the secular realm, and therefore also the revolution, by guaranteeing (the possibility of) authority of the founding act; in its second aspect, the absolute, nevertheless, fails, as it gets “revealed as a facile expedient and subterfuge” by the revolution itself.³⁷⁰

The corresponding situation in Derrida’s analysis to the first aspect by which the founding of a new authority leans on an absolute (or on a constative dimension) is immediately obvious in that the declaration of independence must be, as Derrida puts it, countersigned by an absolute, for example, by God. However, as for the second aspect, an essential difference between Derrida’s and Arendt’s cases should be taken into account. While Arendt’s depiction or construction of the situation of the radical violence is, as we saw, historical, then Derrida’s must be structural, because the role of the absolute is to make

³⁶⁸ See, Jacques Derrida, “Violence and Metaphysics: An Essay on the Thought of Emmanuel Levinas,” in his *Writing and Difference* (London and New York: Routledge, 2005). See, also, his discussion of the tertiary structure of violence in his *Of Grammatology*, p. 112.

³⁶⁹ Derrida, “Violence and Metaphysics,” p. 162.

³⁷⁰ See above, p. 89; also, *supra*, n. 130.

possible the interplay of constatives and performatives that “grounds” the whole founding act by hiding the violence of the performative. Now, having established above that the success of the absolute to hide violence rests upon its ability to erase time so that the signature-giving and its authorisation take place “in the simulacrum of the instant,” it can be assumed that the key to the radical violence has to be found in the dimension of time.

Hence, the next step is to carefully consider the relation of the absolute to time. An absolute, for example, God, allows to think that the people have produced their freedom, but at the same time they also have confirmed it, because they are already free by the sanction of God. So, focusing on this moment of “the simulacrum of the instant,” it can be noticed that what the instant, in fact, creates is the “eternal time” of the people (their beginning from the time immemorial). But the eternal time cannot exist prior to the instant or somehow after it; it emerges in the very instant of the founding act, and therefore, the instant must be divided by the eternal time of the people from the very outset.

So it follows that at the moment of the instant, where the people are already free by God, the instant is put into question by the eternal time that it grounds. In other words, this division of the instant implies that the eternal time of the people cannot arrive at an instant, but must be thought as delayed, constitutively delayed; as if it is late to itself, so to say. The same line of thought has been proposed by Richard Beardsworth: “The unsurpassable violence of law (its aporia) is predicated on the delay of time. An act of legislation always arrives too early and/or too late.”³⁷¹

4.2.1 The Event of the Signature

My argument in the following is that the delay of time translates in the context of the Declaration to the delay of the signature. God countersigns, but the founding signature under the Declaration, nevertheless, does not “arrive” at the “right” time. The lag in the signature reveals the moment of radical violence, because God, an absolute, precisely had already signed, but he signed inconclusively and the signature is failing. In order to see what the “delaying signature” entails theoretically, some further clarifications are needed.

The act of signing has been analysed above by recourse to the *infrastructure* “iterability”.³⁷² However, in order to emphasise different aspects of it, I recast the problem of the signature less in terms of a beginning but of an event, and analyse the signature via *infrastructure* “undecidability.” After all, Derrida’s term for describing *infrastructures* has been the “non-synonymous substitutions,” meaning that even if *infrastructures* are substitutable, they still are not

³⁷¹ Richard Beardsworth, *Derrida and the Political* (London and New York: Routledge, 1996), p. 100.

³⁷² See above p. 52; also, *supra*, n. 180.

synonymous, and the transcription via a different *infrastructure* could reveal other angles to the signature.³⁷³

“Undecidability” is perhaps best explained by Derrida in his article “Force of Law” under the second aporia of law, which is, as he calls it, “the ghost of the undecidable.”³⁷⁴ The “logic” of the undecidability could be put as follows. A decision seeks to appear as definitive, infallible, authoritative, like the decision of a court, which cannot, for example, sentence anybody to death by expressing a probable, likely, unsure opinion on the matter of guilt.³⁷⁵ But it only can pretend to be definitive and final if it pursues a rule, a prescription, a logic. However, if the decision follows a rule, a prescription, etc., it cannot be a decision anymore, but a calculation; it is a calculation that establishes itself as a complete and infallible by following certain rules. So it follows that as long as the decision is not a calculation, it must be preceded not by a rule, but by a risk, uncertainty, openness, in short, undecidability. Derrida says: “A decision that didn’t go through the ordeal of the undecidable would not be a free decision, it would only be the programmable application or unfolding of a calculable process.”³⁷⁶ But even more importantly, the decision can never entirely overcome this uncertainty, because then it must have been still a calculation. According to Derrida:

the undecidable remains caught, lodged, at least as a ghost – but an essential ghost – in every decision, in every event of decision. Its ghostliness deconstructs from within any assurance of presence, any certitude or any supposed criteriology that would assure us of the justice of a decision, in truth of the very event of a decision.³⁷⁷

This is an aporia that affects law and justice. It must be noted that undecidability as an *infrastructure* in Derridean sense has to be kept apart from a mere “oscillation [or tension] between two significations, [or decisions] or two contradictory and very determinate rules, each equally imperative.”³⁷⁸ Even if it can be called as an undecidability, it is not the same as the undecidability in the “infrastructural” sense.³⁷⁹

It follows from the “logic” of undecidability, as explicated above, that any signature, also a founding signature, understood as an event, must have a possibility to fail, because otherwise it would be a mere calculability. In the context

³⁷³ Jacques Derrida, “Différance,” in his *Margins of Philosophy* (Chicago and London: The University of Chicago Press, 1982), p. 12.

³⁷⁴ Derrida, “The Force of Law,” p. 963.

³⁷⁵ See also Niall Lucy, *A Derrida Dictionary* (Malden, MA, Oxford: Blackwell), p. 148.

³⁷⁶ Derrida, “The Force of Law,” p. 963.

³⁷⁷ *Ibid.*, p. 965.

³⁷⁸ *Ibid.*, p. 963.

³⁷⁹ The distinction between two “undecidabilities” is well developed by Aletta Norval in her “Hegemony after Deconstruction: The Consequences of Undecidability,” *Journal of Political Ideologies*, Vol. 9, No. 2 (2004), pp. 139–57. I will return to this in the last chapter.

of the founding act, since the people as an entity does not exist prior to signing the declaration, the failure of the “signature” to found is the failure to create this very entity in the name of which the signature could have been given. Hence, the founding signature, being the signature that creates its own authorisation, and that exists only due to this authorisation, can appear only as a successful signature, because the failure of the signature, strictly speaking, cannot be conceived; it does not appear. Therefore, also, the failure of the founding signature cannot be understood as a simple non-recognition or illegitimacy (of the once successful signature) but only as a non-presence; there is no one to have recognised the signature. At the same time, even if the signature is successful in achieving its recognition and it comes into existence, this non-presence cannot be erased from the structure of the signature, because without the possibility of the failure of the founding signature, there is no signature at all; if the recognition of the signature were always already guaranteed ahead, there would be no need for it. Therefore, non-presence always remains in the signature and it is a necessary part of the structure of the signature.

A signature permeated by non-presence might seem a paradox. On the one hand, non-presence cannot directly stand against the presence of the signature as its simple cancellation. If this were the case, no signing could take place at all. On the other hand, non-presence obviously cannot inhabit in the signature as a complete nothing, without any effect, because then it would remain entirely unintelligible.

These two moments of non-presence as “cancellation” and “unintelligibility” are united or “reconciled” in the delay of the signature. The structure of delay is constituted of two sides. Firstly, there is a possibility of failure of the signature that places the non-presence in the very heart of the signature. But, secondly, there must also be a *possibility* of the signature (as a non-erasable potentiality), which allows for the non-presence to achieve its intelligibility. Such a possibility must exist, because delay itself (as delaying) cannot be directly perceived – it necessarily “occurs” prior to the presence of the signature. Without the non-erasable possibility of the signature, there would not be even non-presence, because non-presence is not dividable between itself and its possibility. Therefore, there would be no delay, but simply nothing in this situation.

Hence, the delay of the signature cannot be conceived without the non-erasable possibility. It can be noticed that it is the same kind of theoretical necessity as it was for Arendt who had to establish the possibility of differentiation between the constative and the absolute, by constructing the possibility of initiation of action independent from the constative dimension. This warrants a generalisation of the “non-erasable possibility” of the signature, as it was termed here, to a sort of transcendental condition of possibility of deconstructive intervention. As much as locating of radical violence in Derrida’s account of the Declaration presumes a clarification of the transcendental possibility or the non-erasable possibility of the signature, then in the following section, it will be shown how this is theorised by Derrida.

4.2.2 Transcendental Possibility

It has been established above that a deconstructive intervention is not simply inserted from the outside, but it is always already taking place in its structural possibility by undoing internally the deconstructed system. However, a deconstructive intervention does not emanate simply from the inside either, which means that the incision of deconstruction is still necessary, and this is performed on the line of rupture created by the radical violence. This raises a question how to think of the incision that is made neither from the outside nor the inside. As much as the task of deconstruction is to account for contradictions and aporias, the problem encountered here is essentially the same as posed by Gasché: “If the *infrastructures* do not constitute, engender, or produce these differences or contradictions, how, then, do they relate to them ... how, then, are we to think their intercourse with that of which they are *infrastructures*?”³⁸⁰

So it is that the incision of deconstruction cannot produce or start deconstruction, but neither is it simply a supplement and an addition to what takes place independently; as Derrida puts it: “The incision is neither the incised integrity of a beginning, or of a simple cutting into, nor simple secondarity.”³⁸¹ However, if the incision does not produce deconstruction, and at the same time, still is a necessary part of deconstruction, then the incision must have its own space of occurring already imbedded in what is incised; i.e. the incision itself, prior to its deconstructive effects, should have its own conditions of possibility. In other words, undecidable violence as a structural possibility is not the condition of possibility for the incision of deconstruction, but rather a condition of its effects, but the incision requires a sort of transcendental condition of possibility, a space of appearance, so to say, “prior to” the structural possibility. This space of appearance marks the non-erasable possibility.

The intricacy of the problem can perhaps be best explained by recourse to an example. Derrida employs the figure of a letter-opener in a few places in “Dissemination,” he says: “‘Scission’ ... also marks the arbitrary insertion of the letter-opener by which the reading process is opened up.”³⁸² I follow his usage and exemplify the incision of deconstruction by an incision or scission performed by a letter opener to open up reticent pages of the book. The first moment of interest is that the incision of a letter opener occurs along the bend of a sheet, just like “according to lines of force and forces of rupture that are localisable in the discourse to be deconstructed.”³⁸³ But the second moment is, and this is important, that the incision does not produce the space it opens up between the sheets of the book. Rather, it requires that space, a determined

³⁸⁰ Gasché, *The Tain of the Mirror*, p. 156.

³⁸¹ Derrida, *Positions*, p. 40.

³⁸² Jacques Derrida, “The Double Session,” in *Dissemination*, tr. by Barbara Johnson (London: The Athlone Press, 1981), p. 301.

³⁸³ Derrida, *Positions*, p. 68.

space or blank behind the surface of the bend to be able to make the cut. Derrida says at one point in *Dissemination*: “It [the fold] differs from itself, even before the letter opener can separate the lips of the book. It is divided from and by itself.”³⁸⁴ This space, that is already waiting there, but still as if a secret, can also be referred to as a determined blank or a fold or a playing space. Derrida works it out with the help of “to come” theoretical articulation: “the determined blank or playing space [is] imposed by the still to come theoretical articulation.”³⁸⁵ He has developed two concepts on the basis of this idea, “justice to come” and “democracy to come,” from which the first one is explicated next to show how “to come” theoretical articulation theorises the space of incision as a non-erasable possibility.

4.2.2.1 “Justice to Come”

The idea of justice (to come) relates directly to the aporia of undecidability and is analysed in the first part of “Force of Law.” Derrida argues there that justice has to be able to respond to the singularity of a case, and therefore, it has to untangle itself from a rule, a law and be open to undecidability. At the same time, justice also cannot be attained without a decision, “for only a decision is just.”³⁸⁶ This amounts to a sort of a paradox by which justice can never be fully present:

And once the ordeal of the undecidable is past (if that is possible), the decision has again followed a rule or given itself a rule, invented it or reinvented, reaffirmed it, it is no longer *presently* just, fully just. There is apparently no moment in which a decision can be called presently and fully just: either it has not yet been made according to a rule, and nothing allows us to call it just, or it has already followed a rule – whether received, confirmed, conserved or reinvented – which in its turn is not absolutely guaranteed by anything; and moreover, if it were guaranteed, the decision would be reduced to calculation and we couldn’t call it just.³⁸⁷

Nevertheless, it does not mean that there is no point in talking about justice; on the contrary, justice is required: “The deconstruction ... itself operates on the basis of an infinite ‘idea of justice,’ infinite because it is irreducible, irreducible because owed to the other, owed to the other, before any contract, because it has come, the other’s coming as the singularity that is always other.”³⁸⁸ Justice, as responding to the other in its singularity, is owed to the other who is neither excluded as alien nor included as the same, and the other’s remaining the other

³⁸⁴ Derrida, “The Double Session,” p. 259.

³⁸⁵ Derrida, *Positions*, p. 69.

³⁸⁶ Derrida, “The Force of Law,” p. 963.

³⁸⁷ Ibid.

³⁸⁸ Ibid., p. 965.

precludes justice to be thought as completed, or done, because the other cannot be known, i.e. appropriated. Justice is never already done, decided (by a lawful decision, for example), but it is always still to come. Therefore, the concept of “justice to come” marks an inevitable gap between law and justice:

Law is the element of calculation, and it is just that there be law, but justice is incalculable, it requires us to calculate with the incalculable; and aporetic experiences are the experiences, as improbable as they are necessary, of justice, that is to say of moments in which the decision between just and unjust is never insured by a rule.³⁸⁹

Hence, also, justice to come is the possibility of a “space” for a new declaration and signature, or for an incision into the law, because there never is enough justice, which is to say that justice is never fully present, to redress an expectation and urgency for a new signature, for a new promise of justice. Derrida concludes:

For this very reason, it *may* have an *avenir*, a “to-come,” which I rigorously distinguish from the future that can always reproduce the present. Justice remains, is yet, to come, *à venir*, it has an, it is *à-venir*, the very dimension of events irreducibly to come. It will always have it, this *à-venir*, and always has.³⁹⁰

This means that the signature is always possible and waited for, because justice is never executed in full – there always is a space for another signature, for another promise of justice. It can be said that every present signature, every founded law and identity is always already producing (a possibility of or potentiality for) another signature, law, identity from inside, because justice remains to come. The importance of the theoretical articulation of “justice to come” reverberates back in his statement that “deconstruction is justice:” “The undeconstructibility of justice also makes deconstruction possible, indeed is inseparable from it.”³⁹¹ It is understandable, for it is its transcendental condition of possibility.

Now, having established that “justice to come” theorises what has been called the determined space of incision, or a certain transcendental condition of possibility for deconstructive intervention, it is possible to fully outline the moment of radical violence and to understand how the signature can be suspended in its possibility, so that it infinitely delays.

³⁸⁹ Ibid., p. 947.

³⁹⁰ Ibid., p. 969.

³⁹¹ Ibid., p. 945.

4.2.3 Radical Violence in Derrida

As concluded in the previous section, on the basis of “justice to come” as a non-erasable possibility, the delay of the signature can be fully delineated. Since delay cannot be directly perceived, it must “occur” as an internal moment of the signature, which is to say that at the moment of its appearance, the signature has been delayed – it appeared “later,” not in the “right” time. In other words, delay happens only at (or in) the moment of appearing of the signature, because prior to its appearance, there can be no deadline set for the signature. In the context of the Declaration, this means that God has signed and the signature has appeared to authorise the Declaration, but it happened too late. So it is that in an instant, God creates the eternal time of the people so that the Declaration is also a confirmation of their freedom, but as soon as people already are free by the grace of God, there is no univocal relation to a possible signer (who was to sign in fact). Inevitably, the question emerges, who represents the people in their eternal time; who amongst them signs the declaration, because there is no one by right to sign the confirming declaration – no signature is better than any other.

The whole history that was invented with the eternal time puts under question every signature that is proposed to sign in representation of the eternally free people, and this question emerges from the very beginning, at the moment of no time, forming an internal structure of the founding act. Therefore, it holds the signature back; it does not let it emerge, and with that the whole founding act is put on hold, as if the instant of God’s countersignature itself did not arrive at all. In the delay of the signature, what is faced is precisely what Derrida has termed “nothingness or pure non-sense.”³⁹² Here it can be seen how retroactivity, which is disavowal of time, and delay, which is temporalisation, clash with each other.

Another way to put it is to say that, in its presence, (a space of) the signature appears temporalised. Such a delay reveals then a temporal as well as a spatial gap between the signature and the text. The signature, as soon as it is added to the text, does not hold together with the text (anymore) and is separated from it, because signing takes place later (or in advance) than writing of the text to be signed, and also below (or above) that text, i.e. outside the text. This fundamentally undermines the signature, because the text, the declaration, was first written violently outside the law. In “Signsponge,” Derrida similarly describes the signature’s belonging to the text and its “falling” outside the text at the same time:

By not letting the signature fall outside the text any more, as an undersigned subscription, and by inserting it into the body of the text, you monumentalize, institute, and erect it into a thing or a stony object. But in doing so, you also lose

³⁹² Supra, n. 369.

the identity, the title of ownership over the text: you let it become a moment or a part of the text, as a thing or a common noun.³⁹³

So, if the signature is in the text, it loses its authorisation; if it is outside the text, it disappears.

The moment of radical violence is manifested in the question “who signs?,” because in the delay of the signature, all possible signatures would be violent, but the signature cannot found freedom by recourse to violence in regard to those who are freed. Due to the aporia of time, God arrives to sign, but he fails to sign conclusively; i.e. at the moment when it appears that (as if) people have been always already free, the question emerges, “who signs?,” for besides God’s signature there must be somebody else who signs for the people in representing them. The founding act is left in a limbo.

Therefore, the question “who signs?” is the line of rupture, which makes it possible to make a deconstructive incision, an intervention. Indeed, Derrida’s text on the Declaration starts with this question: “And out of all these questions, the only one I will retain for the occasion ... is this one: who signs, and with what so-called proper name, the declarative act that founds an institution?” and the text ends with the same question: “The question remains: ... Who signs all of these authorisations to sign?”³⁹⁴

This is the deconstructive moment in the text of “Declarations of Independence;” the question “who signs?” marks out the line of rupture in any founding act. However, it might be argued that this question frames the text, or sets its margins, and its division, in such a manner that the question itself is not *questioned*; what is dealt with is what remains unquestionable in the question (which is undecidable violence). Derrida himself gives a sign of this withdrawal by finishing his text saying: “I will not, in spite of my promise, engage myself on this path today,” i.e. of answering (or rather questioning) the question “who signs?”. This is what has allowed me to argue that it is not a “properly” deconstructive text; though, not because the question is not answered, as it cannot be, but because it is not questioned, at least not in this text.³⁹⁵ Above all, this means that if deconstructive incision is marked out, the incision itself is not performed yet (one might say, not re-marked yet). *Infrastructure*, that precludes falling back into the “third term” that would bind everything back together, is not yet forged and enacted. This task it is taken up in the last part of the thesis

³⁹³ Jacques Derrida, “From Singsponge,” in D. Attridge (ed.) *Acts of Literature* (New York & London: Routledge, 1992), p. 363. Also, Jacques Derrida, *Signéponge = Signsponge* (New York: Columbia University Press, 1984), p. 56.

³⁹⁴ Derrida, *Negotiations*, p. 50.

³⁹⁵ See on the question of question (and for the shortest synopsis of Derrida’s project in general) an interview with Derrida “What comes before the question?,” which is published as a footage linked to the documentary *Derrida* by Kirby Dick, and Amy Ziering Kofman (USA: Zeitgeist Films, 2002). Accessible also in YouTube: <http://www.youtube.com/watch?v=Z2bPTs8fspk> (6.24 min.)

with some help (perhaps) of Arendt and Benjamin, whose theories are dealt with next.

In this chapter, a different interpretation of Arendt's theory was developed, which allowed us to argue that while Arendt rejected absolutes as a source of authority for the republican founding act, she did not abandon the constative dimension in general. Furthermore, exactly for the reason that she did not do that, she was forced to address the radical violence. Under this reinterpretation, it became possible to read Arendt's account of radical violence into Derrida's interpretation of the Declaration, and to reveal the latter's limits. In the next chapter, we consider what it entails to think radical violence and how different authors try to cope with that task. In the second part of thesis as a whole, we start to examine how deconstructive approach reveals limits of Arendt's account of legitimacy and of Benjamin's account of violence.

PART II

Chapter 5: Benjamin and Arendt: Reconciling Radical Violence

5.1 Benjamin's Critique of Violence, Continued

In the second part of the thesis the main question is how it is possible to “contain” the radical violence. So far we have located the radical violence in accounts of Arendt and Derrida, but we have not shown how they deal with it. It has been also stated that it is indispensable for the deconstructive resistance to theorise the radical violence, for it disrupts the return of the same, or put differently, if such resistance is not thought in the founding act, then it replaces the absolute with itself. At the same time, as it has been pointed out in their accounts, there is an intolerable urgency in this suspension of the founding act to find a way out and solve the paradox.

In the following, I am going to examine possible “solutions” to the radical violence. Firstly, I return to Benjamin’s critique of violence, which is an interesting and controversial case of a possible “solution.” The radical violence was not located in Benjamin’s analysis earlier because there is a possibility of seeing precisely in Benjamin’s idea of radical violence an attempt at solving the problem of violence of law. Some readings have seen in this concurrency a sign of Benjamin’s failure; others, in contrast, have called it “deconstruction before the name.”³⁹⁶ After the analysis of Benjamin’s “Critique of Violence,” I elaborate on a possible solution of Arendt to the situation of radical violence, and, by the same token, to the problem of founding a republic. Finally, I propose a “solution” in line with Derrida’s deconstruction, which is deduced from the act of signing the Declaration that founds a state.

Benjamin’s “Critique of Violence” was used above to outline the concept of undecidable violence, but as it was noted, his critique of violence, as much as it targets violence as such, could not stop at this point. First of all, facing the impossibility of maintaining a clear demarcating line between violence and non-violence, between law-making and law-preserving violence, Benjamin rules out two forms of criticism of violence as inadequate.

In the first case, he argues that “a really effective critique of it [violence] is far less easy than the declamations of pacifists and activists suggest,” because, in so far as all non-violence supports in some sense the same violence against which it stands, as it was shown above, all attempts of critique from the position of (presumably) complete non-violence become discredited.³⁹⁷ This explains Benjamin’s rejection of all that kind of “childish anarchism,” as he says, for it remains impotent: “Attacks that are made merely in the name of a formless

³⁹⁶ Samuel Weber, “Deconstruction Before the Name: Some Preliminary Remarks on Deconstruction and Violence,” *Cardozo Law Review*, Vol. 13 (1991), p. 1181.

³⁹⁷ Benjamin, “Critique of Violence,” p. 284. See above, p. 76–7.

‘freedom’ without being able to specify this higher order of freedom, remain impotent against it.”³⁹⁸

The second form of criticism that Benjamin dubs as insufficient, attacks particular laws and policies in the name of non-violence. The weakness of this approach is explained by reference to fate. Namely, in law’s eyes, there is no contradiction in punishing of what might seem an accidental infringement of an unwritten law, because according to law’s self-understanding, so to say, law is fate: “however unluckily it may befall its unsuspecting victim, its occurrence is, in the understanding of the law, not chance, but fate.”³⁹⁹ Law (or an infringement of the law) is waiting for a trespasser as the latter’s fate, so that at the moment of an accident, in law’s eyes, the trespasser will have been always already guilty. The figure of “fate” assembles here the undecidability of law, the uncertainty of the demarcating line between us and them, between law-preserving and law-making. This means, above all, that law does not apply as a deterrent, because this would “require a certainty that contradicts the nature of a threat and is not attained by any law, since there is always hope of eluding its arm.”⁴⁰⁰ Law’s nature as fate, Benjamin suggests, can be also identified in the principle of modern law by which “ignorance of a law is not protection against punishment.”⁴⁰¹ On these grounds, for Benjamin, all attempts to attack the violence of law by proposing to diminish its uncertainty through impugning particular laws and legal practices fail because “law-preserving violence is a threatening violence” and it is indifferent towards such calculations; in law’s perspective, everything “what threatens, belongs inviolably to its order.”⁴⁰² Relating law to fate also allows for Benjamin to name law-preserving and law-making violence together as “mythical violence.”

As a result of these considerations, Benjamin concludes that the task of critiquing violence as such is much more difficult, because now “such a critique coincides with the critique of all legal violence – that is, with the critique of legal or executive force – and cannot be performed by any lesser program.”⁴⁰³ Excluding these forms of criticism, Benjamin shows that, on the one hand, there is a futility of the straightforward critique against violence from the position of non-violence itself. On the other hand, this leads Benjamin to a certain paradox, because he shows next that the non-violent sphere itself is possible. For

³⁹⁸ Ibid., p. 285.

³⁹⁹ Ibid., p. 296.

⁴⁰⁰ Benjamin, “Critique of Violence,” p. 285.

⁴⁰¹ Ibid. Cf. Jacques Derrida, “Before the Law,” in D. Attridge (ed.) *Acts of Literature* (New York and London: Routledge, 1992), pp. 181–220.

⁴⁰² Ibid.

⁴⁰³ Ibid., p. 284. /s. 187: “Sie [durchschlagende Kritik] fällt vielmehr mit der Kritik aller Rechtsgewalt, das heißt mit der Kritik der legalen oder exekutiven Gewalt zusammen und ist bei einem minderen Programm gar nicht zu leisten.” As the translation of Benjamin’s rather elusive text might not convey all the nuances that could be of importance in such a close reading, I append German originals to the quoted passages from Walter Benjamin, *Gesammelte Schriften*, Vol. 2 (Frankfurt am Main: Suhrkamp, 1991).

example, this is the case in relationships of private persons in regard to “matters concerning objects,” i.e. in commerce.⁴⁰⁴ The possibility of exclusion of violence in principle for such affairs is demonstrable by the fact that “there is no sanction for lying,” which shows, in other words, that there is a human sphere, “the proper sphere of ‘understanding,’ language,” that is inaccessible to violence.⁴⁰⁵ A special case of non-violent means is a proletarian general strike. Benjamin borrows the concept from Georges Sorel, who introduced a distinction between political and proletarian general strikes in his *Réflexions sur la violence* (1908).⁴⁰⁶ The first, a political general strike, “is violent since it causes only an external modification of labour conditions,” however, the second, “sets itself the sole task of destroying state power,” and therefore, as much as “it takes place not in readiness to resume work following external concessions,” is nonviolent and “a pure means.”⁴⁰⁷ In addition, Benjamin counts among non-violent means the informal dealings of diplomats in resolving conflicts between states they respectively represent, and also referees who in a somewhat different way and context do the same.

It appears that the critique of violence resting on the ideal of non-violence is futile, but on the other hand, non-violent means of handling human affairs are possible. Benjamin faces here a paradox, because the sphere of non-violence cannot be created by non-violence (for the critique of violence from the perspective of a simple demand for such means cannot achieve its end), and the non-violent sphere cannot obviously be generated by the undecidable violence itself. The conclusion that non-violence is ineffective and the undecidable violence “gravely problematic” makes Benjamin to search for another kind of violence: “Since ... every conceivable solution to human problems ... remains impossible if violence is totally excluded in principle, the question arises as to other kinds of violence than all those envisaged by legal theory.”⁴⁰⁸

⁴⁰⁴ Ibid., p. 289. /s. 191: “auf dem Wege über die Sachen.”

⁴⁰⁵ Ibid. If there are sanctions for lying nowadays, then according to Benjamin, this is only the result of “a peculiar process of decay,” and a sign of the lack of confidence on the part of the law, for it places penalty on fraud “not out of moral considerations, but for fear of the violence that it might unleash in the defrauded party.” Ibid., pp. 289–90.

⁴⁰⁶ See, Georges Sorel, *Reflections on Violence* (Cambridge University Press, 2004).

⁴⁰⁷ Benjamin, “Critique of Violence,” p. 291. / Benjamin, *Gesammelte Schriften*, s. 194: “setzt der proletarische [Generalstreik] sich die eine einzige Aufgabe der Vernichtung der Staatsgewalt. ... Während die erste Form der Arbeitseinstellung Gewalt ist, da sie nur eine äußerliche Modifikation der Arbeitsbedingungen wieder die Arbeit aufzunehmen, so ist die zweite als ein reines Mittel gewaltlos. Denn sie geschieht nicht in der Bereitschaft, nach äußerlichen Konzessionen und irgendwelcher Modifikation der Arbeitsbedingungen wieder die Arbeit aufzunehmen.” See also Sorel, *Reflections on Violence*, pp. 109–173.

⁴⁰⁸ Ibid., p. 293. /s. 196: “Da ... jede Vorstellung einer irgendwie denkbaren Lösung menschlicher Aufgaben ..., unter völliger und prinzipieller Ausschaltung jedweder Gewalt unvollziehbar bleibt, so nötigt sich die Frage nach andern Arten der Gewalt auf, als alle Rechts-theorie ins Auge faßt.”

First, he reminds us the basic dogma of all legal theories that “just ends can be attained by justified means, justified means used for just ends,” against which he then puts up a hypothesis that there must be a non-mediate kind of violence, a sort of pure violence:

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 came into view 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?⁴⁰⁹

In this hypothesis, Benjamin does nothing else than unfolds the situation of radical violence. Benjamin depicts a situation where justified means, i.e. legitimate violence of law, could not appear, because they are in irreconcilable conflict with just ends, which are decided by God.⁴¹⁰ This means that legitimate violence, under the title of power, remains suspended, revealing an entirely different sort of violence that is called in this thesis as the radical violence. As Benjamin relates law-making and preserving violence to fate, which belongs to the mythical domain, he dubs this radical violence, being the violence that halts mythical violence, as “divine violence.” The radicality of this violence becomes also apparent in Benjamin’s portrayal of divine violence through contradistinguishing it from mythical violence:

If mythical violence is lawmaking, divine violence is law-destroying; if the former sets boundaries, the latter boundlessly destroys them; if mythical violence brings at once guilt and retribution [die Sühne], divine power only expiates; if former threatens, the latter strikes; if the former is bloody, the latter is lethal without spilling blood.⁴¹¹

It might be said that it is this characterisation of divine violence by Benjamin that has led to the emergence of two divergent “schools” of interpretation on the overall outcome of Benjamin’s critique of violence. There is an approach of Derrida and after him, Gasché, who argue that Benjamin’s divine violence falls

⁴⁰⁹ Ibid. / “Gerechte Zwecke können durch berechnigte Mittel erreicht, berechnigte Mittel an gerechte Zwecke gewendet werden. Wie also, wenn jene Art schicksalsmäßiger Gewalt, wie sie berechnigte Mittel einsetzt, mit gerechten Zwecken an sich in unversöhnlichem Widerstreit liegen würde, und wenn zugleich eine Gewalt anderer Art absehbar werden sollte, die dann freilich zu jenen Zwecken nicht das berechnigte noch das unberechnigte Mittel sein könnte, sondern überhaupt nicht als Mittel zu ihnen, vielmehr irgendwie anders, sich verhalten würde?”

⁴¹⁰ See on justness of ends as being decided by God, *ibid.*, p. 294. /s. 196.

⁴¹¹ *Ibid.*, p. 297. / s. 179: “Ist die mythische Gewalt rechtsetzend, so die göttliche rechtsvernichtend, setzt jene Grenzen, so vernichtet diese grenzenlos, ist die mythische verschuldend und sühnend zugleich, so die göttliche entschuldigend, ist jene drohend, so diese schlagend, jene blutig, so diese auf unblutige Weise letal.”

back into the schema it is supposed to criticise. Gasché calls it “Benjamin’s hypercriticism,” and clearly dissociates it from deconstruction (even if Benjamin is affected by deconstruction already in progress in the text). As much as later sections in this chapter will illuminate their perspective, next I will dwell on the argument of the other approach, which, probably, finds its most systematic exposition in Werner Hamacher’s article “Afformative, Strike,” though, there are also many other sympathetic authors to this cause.⁴¹² In general, this line of interpretation advances the argument that the divine violence not only marks a radical rupture, but prefigures a genuine, deconstructive “solution” to the situation. According to Hamacher, the divine violence is not a substitution of the (positing) violence of law (i.e. a substitution of “one violence with another”⁴¹³), but it is altogether something else, that, as he puts it, does not posit, nor oppose, but deposes (*entsetzen*).⁴¹⁴

Benjamin’s text certainly seems to lend support to this interpretation of divine violence as deposing violence. Firstly, even if divine violence is described as striking and lethal violence, and “it is justifiable to call this violence, too, annihilating,” it does not mean conferring on humans “lethal power against one another ... For the question ‘May I kill?’ meets its irreducible answer in the commandment ‘Thou shalt not kill’.”⁴¹⁵ Hence, no potential pretexts or justifications can be drawn from the character of divine violence for human behaviour.

Another favourable point for their argument is related to the fact that, by Benjamin’s description, the highest manifestation of divine violence by humans, revolutionary violence, is non-violent, a pure means – it consists of refusing to work without any specific end in mind, and therefore, as Hamacher puts it, “the proletarian strike can no longer be understood within a logic of positings and

⁴¹² Hamacher, “Afformative, Strike.” Republished in, *Walter Benjamin’s Philosophy: Destruction and Experience*, ed. Andrew Benjamin, Peter Osborne (London and New York: Routledge, 1994), pp. 110–138. Other authors who are writing in this tradition include Matthias Fritsch, Samuel Weber, Robert Sinnerbrink, and others.

⁴¹³ Ibid., p. 1138.

⁴¹⁴ A similar translation of Benjamin’s term “*Entsetzung*” is used by Matthias Fritsch as “depositing” in his *The Promise of Memory*, and by Giorgio Agamben as “de-posing,” in his *Homo Sacer*.

⁴¹⁵ Benjamin, “Critique of Violence,” p. 297–8. / Benjamin, *Gesammelte Schriften*, s. 200: “Insofern ist es zwar berechtigt, diese Gewalt auch vernichtend zu nennen;” “die letale Gewalt den Menschen ... gegeneinander.... Denn auf die Frage ‘Darf ich töten?’ ergeht die unverrückbare Antwort als Gebot ‘Du sollst nicht töten’.” – If there remains a possibility for describing divine violence as lethal then it is because the commandment “exists not as a criterion of judgement, but as a guideline for the actions of persons or communities who have to ..., in exceptional cases, to take on themselves the responsibility of ignoring it.” Ibid. /Ibid., s. 200–1: “Dieses steht nicht als Maßstab des Urteils, sondern als Richtschnur des Handelns für die handelnde Person oder Gemeinschaft, die ... in ungeheuren Fällen die Verantwortung von ihm abzusehen auf sich zu nehmen haben.”

their decay, or within a dialectic of performatives or of production.”⁴¹⁶ Perhaps, the most important passage in Benjamin’s text for this line of reasoning is where he cautions:

Less possible and also less urgent for humankind, however, is to decide when unalloyed violence has been realized in particular cases. For only mythical violence, not divine, will be recognisable as such with certainty, unless it be in incomparable effects, because the expiatory power of violence is not visible to men.⁴¹⁷

This means that divine violence is not decidable by human beings at all, even if it remains still as a possibility; it is determinable only in its effects, but never before. Hamacher concludes on this: “pure violence ‘shows’ itself precisely in the fact that it never appears as such.”⁴¹⁸ If it does not appear as such, it cannot be a substitute for mythical violence.

An interesting reading of the last sentence of Benjamin’s text by Samuel Weber might be added to these points, which clearly departs from Derrida’s reading. The latter indicates the closeness between Benjamin’s first name, Walter, and the last words of the text, “*die waltende*,” as if Benjamin indiscernibly signs the text inside it, taking by that, perhaps, the position of a divine violence. The last sentence is: “*Die göttliche Gewalt, welche Insignium und Siegel, niemals Mittel heiliger Vollstreckung ist, mag die waltende heißen.*” / “Divine violence, which is the sign and the seal but never the means of sacred execution, may be called sovereign violence.”⁴¹⁹

Weber, on the other hand, emphasises the ending of the word “*waltende*,” which refers to the grammatical form of the present participle; in English, it would give “-ing” ending, so that “*waltende*” could be then translated as not “sovereign” but “governing” violence. But governing violence “spans the opposition” of lawmaking and law-preserving violence, “parasiting and contaminating each of the two poles of the alternative.”⁴²⁰ In that case, the opposition is kept, rather than substituted, and even if divine violence is to found “a new historical epoch,” it is done not before, nor after, but “*on* the breaking of this cycle maintained by mythical forms of law, *on* the suspension [Entsetzung] of

⁴¹⁶ Hamacher, “Afformative, Strike,” p. 1149.

⁴¹⁷ Benjamin, “Critique of Violence,” p. 300. / Benjamin, *Gesammelte Schriften*, s. 202–3: “Nicht gleich möglich noch auch gleich dringend ist aber für Menschen die Entscheidung, wann reine Gewalt in einem bestimmten Falle wirklich war. Denn nur die mythische, nicht die göttliche, wird sich als solche mit Gewißheit erkennen lassen, es sei denn in unvergleichlichen Wirkungen, weil die entsöhnende Kraft der Gewalt für Menschen nicht zutage liegt.”

⁴¹⁸ Hamacher, “Afformative, Strike,” p. 1156.

⁴¹⁹ Benjamin, *Gesammelte Schriften*, s. 203. / Benjamin, “Critique of Violence,” p. 300.

⁴²⁰ Weber, “Deconstruction before the Name,” p. 1190.

law ..., and finally *on* the abolition of state power.”⁴²¹ Divine violence is bound to intervene, i.e. to govern, without interruption, all the time.

Hamacher assembles all these motives together into a “concept” that suspends and enables (“solves”) at the same time: “It would rather be the pre-possibility which is ‘realised’ in no performative, let alone in a constative, and does not *strive* for ‘realisation’.”⁴²² Thus, according to Hamacher, the divine violence could be understood as *afformative*; it is not a performative, as it is not positing anything, but “an absolute *imperformative*,” “as *depositive*, as political *a-thesis*.”⁴²³ *Afformative* contrasts to the performative, or “performance,” by writing off the (Latin) prefix “*per-*” with the prefix “*af-*”, which “marks the opening of an act, and of an act of opening.”⁴²⁴ But *afformative* does not substitute the performative entirely; it remains as an opening to any positing, any performative, or formation. But *afformative* is an opening not only to the performative, but to itself as well, so that “affirmation means also *exposing* to the unposited, giving what cannot become a gift, an event of formation which is not exhaustible by any form.”⁴²⁵ *Afformative* “is” “the event of forming, itself formless, to which all forms and all performative acts remain exposed.”⁴²⁶ As such, *afformatives* function in a twofold manner; first:

[They let something] enter into the realm of positings, from which they themselves are excluded; and, second, ... they are not what shows up in the realm of positings, so that the field of phenomenality, as the field of positive manifestation, can only indicate the effects of the *afformative* as ellipses, pauses, interruptions, displacements, etc., but can never contain or include them.⁴²⁷

Therefore, all in all, “*afformative*, or pure, violence, is a ‘condition’ for any instrumental, performative violence, and, at the same time, a condition which suspends their fulfilment in principle.”⁴²⁸

As it might be recognised, although it is not in any way acknowledged in the text, Hamacher has built up the “movement” of *afformative* in a perfectly deconstructive fashion – *afformative*, divine violence, makes something possible, while at the same time withdrawing from what was accomplished. This is similar to what Derrida says of *infrastructures*, like for example of the trace: “the trace is never as it is in the presentation of itself. It erases itself in

⁴²¹ Benjamin, “Critique of Violence,” p. 300 (with my emphases). / Benjamin, *Gesammelte Schriften*, s. 202: “Auf der Durchbrechung dieses Umlaufs im Banne der mythischen Rechtsformen, auf der Entsetzung des Rechts samt den Gewalten ..., zuletzt also der Staatsgewalt, begründet sich ein neues geschichtliches Zeitalter.”

⁴²² Hamacher, “Afformative, Strike,” p. 1140.

⁴²³ Ibid., p. 1138.

⁴²⁴ Ibid., p. 1139.

⁴²⁵ Ibid., p. 1143.

⁴²⁶ Ibid., p. 1139.

⁴²⁷ Ibid.

⁴²⁸ Ibid.

presenting itself.”⁴²⁹ To this closeness of *affirmative* to deconstruction, I will return in a short while, but at this point, I would like to propose another kind of reading that maintains the intrinsic (but unintentional) ambiguity of Benjamin’s text; in my opinion, Benjamin’s position remains ambivalent despite its aims.

It has been argued above that radical violence becomes discernible in the constative dimension as a whole only against the assumption of a certain inerasable possibility; for Arendt, it was the possibility of the initiation of action and for Derrida it was the transcendental condition of “justice to come.” In Benjamin’s case, a similar possibility was marked out in the possibility of a non-violent sphere of conflict resolution. As it was shown above, the paradox that ensued from the assumption of such non-violent sphere forced Benjamin to form a hypothesis of altogether different kind of violence. Nevertheless, on closer inspection, the possibility of the non-violent sphere cannot be thought to take the function of the transcendental condition or possibility.

Benjamin points to the possibility of the non-violent sphere by listing several instances of the use of pure means, the most important of which is the possibility of revolutionary violence of the proletarian general strike. At first sight, it might seem that on the basis of these manifestations, he isolates radical violence under the name of “divine violence.” However, in the very end of the text, he turns the logic around, when he argues that “if the existence of violence outside the law, as pure immediate violence, is assured, this furnishes the proof that revolutionary violence, the highest manifestation of unalloyed violence by man, is possible, and by what means.”⁴³⁰ In this sentence, the radical or divine violence proves the possibility of the non-violent sphere; i.e. from the existence of violence outside the law it is derived the possibility of revolutionary violence, which is described as a non-violent means of conflict resolution. So it seems that Benjamin, even if he argues for the possibility of the non-violent sphere, does not recognise it as the condition to think the radical violence.

Still, there are also other places in Benjamin’s text that can be argued to theorise the transcendental condition of possibility to think radical violence. Right after setting up his hypothesis on radical violence, Benjamin makes a brief reference to justice in the text, which might be of interest in this respect. He explains that even if it is beyond human reason to unravel the insolubility of all legal problems, i.e. to decide on the justification of means and the justness of ends, there still exists a general belief in the possibility of it. It is because of:

the stubborn prevailing habit of conceiving those just ends as ends of a possible law, that is, not only as generally valid (which follows analytically from the nature of justice), but also as capable of generalisation, which, as could be

⁴²⁹ Derrida, “Différance,” p. 23.

⁴³⁰ Benjamin, “Critique of Violence,” p. 300. / Benjamin, *Gesammelte Schriften*, s. 202: “Ist aber der Gewalt auch jenseits des Rechtes ihr Bestand als reine unmittelbare gesichert, so ist damit erwiesen, daß und wie auch die revolutionäre Gewalt möglich ist, mit welchem Namen die höchste Manifestation reiner Gewalt durch den Menschen zu belegen ist.”

shown, contradicts the nature of justice. For ends that for one situation are just, universally acceptable, and valid, are so for no other situation no matter how similar it may be in other respects.⁴³¹

According to Derrida's reading of this passage, justice is understood here as being something beyond law, something which law can never fully achieve: "This sudden reference to God above reason and universality ... is nothing other than a reference to the irreducible singularity of each situation. ... what I shall here call a sort of justice without *droit* [law]."⁴³² So, it might seem that what Benjamin here refers to is not much different than Derrida's "justice to come," which would then enable a proper theorising on the radical violence. However, a careful consideration reveals that there are, in fact, two movements taking place in Benjamin's text at the same time.

The sequence of Benjamin's argument is as follows: if there is an irreconcilable conflict between justified means and just ends, it throws light "on the ultimate insolubility [Unentscheidbarkeit] of all legal problems," because it is not reason but God that decides over the justness of ends, which is a thought that remains hidden because of a misconception that laws could in principle reach singular justice.⁴³³ In the first movement, indeed, it can be pointed out that the singularity of justice (named as God) is referred to as the condition on which radical violence can be recognised. However, in the second movement, all radicality of this irreconcilability between justified means and just ends, that also spotlights the insolubility of legal violence, is gained from the fact that God decides over the justness of ends; if it were not God who decides, the conflict of means and ends could have been a reconcilable matter. This means that God as justice not only stands over against radical violence making it discernible, but it also creates it.

Thus, God plays a double role here. That it seems to cause no trouble for Benjamin is explainable by an assumption he silently has to make that in this conflict between ends and means, God has no guilt; God does not fail, but remains to hover over the whole scene (of mythical as well as divine violence). All guilt and failure lies with laws and with humans themselves. If God were guilty, it would not stand over the scene under the name of justice; if it is not guilty, it can stand for the ineradicable possibility of justice, but it could not be the source of radicality in the conflict between means and ends that reveals radical

⁴³¹ Ibid., p. 294. /s. 196: "die hartnäckige Gewohnheit herrscht, jene gerechten Zwecke als Zwecke eines möglichen Rechts, d. h. nicht nur als allgemeingültig (was analytisch aus dem Merkmal der Gerechtigkeit folgt), sondern auch als verallgemeinerungsfähig zu denken, was diesem Merkmal, wie sich zeigen ließe, widerspricht. Denn Zwecke, welche für eine Situation gerecht, allgemein anzuerkennen, allgemeingültig sind, sind dies für keine andere, wenn auch in anderen Beziehungen noch so ähnliche Lage."

⁴³² Derrida, "The Force of Law," p. 1023.

⁴³³ See, Benjamin, "Critique of Violence", p. 293–4. / Benjamin, *Gesammelte Schriften*, s. 196.

violence. Hence, with this thought that God is right, Benjamin immediately closes, what he had opened – a thought on radical violence; it is opened in the first movement, only to immediately collapse into the constative dimension of undecidable violence in the second movement, because, and there is no other way to put it, God becomes a fate.

This explains the ambiguity related to Benjamin's account. Radical violence, if there is such thing in Benjamin, becomes now both – it is undecidable by humans, but nevertheless, it must be (is thought as) actual, because, in the last analysis, i.e. without a transcendental condition of possibility (with concomitant inability to maintain the difference between the logics of the absolute and the constative), its existence is guaranteed, "assured," as Benjamin puts it, only by its manifestations, by the threat (which is summoned by Benjamin, to recall Derrida's reading of the word "waltende") of its manifestations. Last sentences of his text only reverberate to this ambiguity: "Once again all the eternal forms are open to pure divine violence, which myth bastardized with law. It may manifest itself in a true war exactly as in the divine judgement of the multitude on a criminal."⁴³⁴

Depending on which movement of the text is stressed, the ambiguity of Benjamin's text also explains the existence of very divergent interpretations on it. In contrast to Hamacher's interpretation, for example, Slavoj Žižek presents his understanding of Benjamin by paraphrasing Friedrich Engels' 1891 reference to the Paris Commune:

Interpreters of Benjamin struggle with what "divine violence" might actually mean. Is it yet another leftist dream of a "pure" event which never really takes place? ... "Well and good, gentlemen critical theorists, do you want to know what this divine violence looks like? Look at the revolutionary Terror of 1792–94. That was the Divine Violence."⁴³⁵

Aside Žižek's affirmative conclusions from this for his own project, which are debatable, his reading of Benjamin certainly is equally viable, though, in its accentuation of the actual manifestations of violence, it stresses the second movement of the text.

Even if the pointed out ambiguity clarifies the paths to these different interpretations, it lessens their power of argument at the same time. Above all what interests us here is the possibility to depict Benjamin's text as a deconstructive intervention (and a "solution"). If at first sight, it seemed that Benjamin's account can be thought to belong to a deconstructive paradigm, as it was suggested by Hamacher and Weber, among others, nevertheless, after

⁴³⁴ Ibid., p. 300. /s. 203: "Von neuem stehen der reinen göttlichen Gewalt alle ewigen Formen frei, die der Mythos mit dem Recht bastardierte. Sie vermag im wahren Kriege genau so zu erscheinen wie im Gottesgericht der Menge am Verbrecher."

⁴³⁵ Slavoj Žižek, *Violence: Six Sideways Reflections* (New York: Picador, 2008), p. 196.

illuminating these developments in Benjamin's text, it is doubtful that this position can be maintained.

If, perhaps, there is a ground to consider divine violence as a deconstructive opening to the other in what was called the first movement of the text, then the second movement inevitably turns it around. The second movement of the text where God appears as a fate, rewrites or returns the "beginning point" of *afformative* in "dethronement, or deposition," which was said to be no longer valid (it was said that *afformative*'s opening not only to positing but to itself, to unposited, i.e. its "being-ahead-of-itself," invalidates this origin.) God's implication in radical violence means that the unposited turns into its literariness, i.e. into what remained unposited – its being "depositive," "imperformative," "a-thesis," "dethronement."⁴³⁶ The text's ambiguity allows us to keep the sense of opening of divine violence, but it is opening to depositing, and this is, even if depositing is understood in a non-positing way, opening to a "no," to a negative. This means that *afformative* takes the shape of "no-no."

No-no stands, in some sense, in relative opposition to an "infrastructure" *yes-yes* developed by Derrida in the analysis of James Joyce texts in "Ulysses Gramophone: Hear Say Yes in Joyce."⁴³⁷ Derrida observes the usage of the phrase *yes-yes* in Joyce's texts, but also in everyday speech, when one is answering a phone, or giving a promise – as if "yes must reaffirm itself immediately."⁴³⁸ But rather than seeing in it a chance expression, Derrida establishes it as a general law:

In order for *yes* of affirmation ... to have the value it has, it must carry the repetition within itself. It must *a priori* and immediately confirm its promise and promise its confirmation. ... The *yes* can only state itself by promising itself its own memory.⁴³⁹

Derrida generalises *yes-yes* into an affirmation that must "precede" (not temporally or logically) every utterance or identity. The infrastructure *yes-yes* will be delineated in more detail in the final part of this thesis, but here the contrast with *no-no* should mark out the affirmative nature of deconstruction. The latter is also directly confirmed by Derrida in several of his texts and interviews; for example, in a roundtable discussion published in *The Ear of the Other*, Derrida states: "the deconstructive gesture ... is accompanied, or can be accompanied ... by an affirmation. It is not negative, it is not destructive."⁴⁴⁰

⁴³⁶ Hamacher, "Afformative, Strike," p. 1133.

⁴³⁷ Jacques Derrida, "Ulysses Gramophone: Hear Say Yes in Joyce," *Acts of Literature*, ed. Derek Attridge (New York and London: Routledge, 1992), pp. 253–309.

⁴³⁸ Derrida, "Ulysses Gramophone," p. 276.

⁴³⁹ Ibid.

⁴⁴⁰ Jacques Derrida, *The Ear of the Other: Otobiography, Transference, Translation* (New York: Schocken Books, 1985), p. 85.

In the *no-no*, the affirmation of the “first” *no* is closed by the “second” *no*, which is inevitably definite, and therefore resembling not an opening “before all critical separation, division, and decision,” recalling Gasché’s words,⁴⁴¹ but an opening *after* separation, division, and decision, as to a final solution. This opening to *no* is conceivable, if “no” is said by someone altogether different and good (e.g. God) to what is altogether guilty and rotten (e.g. human law). As such the *no* remains into the system it negates, for any final solution is doomed to bring back the same. *No-no* of “affirmative” is more like mimicry of deconstruction (or of an *infrastructure*) than being itself the deconstructive “solution” we were looking for. If it sometimes might feel that *no-no* presumes an explanation, that an explanation is promised and must follow, then it is only because there is *yes-yes* already at work in “no-no.”

It can be argued that Benjamin’s inclination, or at any rate, his hope, to arrive at a final solution is manifest also in the following passage on the last page of his text. Benjamin states there:

The law governing their [the law-making and of law-preserving formations of violence] oscillation rests on the circumstance that all law-preserving violence, in its duration, indirectly weakens the law-making violence represented by it, through the suppression of hostile counter-violence. This lasts until either new forces or those earlier suppressed triumph over the hitherto law-making violence and thus found a new law, destined in its turn to decay.⁴⁴²

For Derrida this passage indicates that Benjamin might however dimly (i.e. “to some extent”) finally recognise the law of *iterability*, as much as he notices that “the founding violence is always represented in a conservative violence.”⁴⁴³ If I do not misinterpret Derrida’s phrase “to some extent,” then my reading runs here somewhat counter to Derrida’s. “The spectral mixture” of law-making and law-preserving violence is recognised by Benjamin much earlier in his text, but in this passage, Benjamin, rather, does exactly the opposite; he wavers and takes a step back from (what might be called) the law of *iterability*.⁴⁴⁴ Here, Benjamin lays out the whole logic or law of violence, which was initially delineated structurally as a sort of “spectral mixture,” in a historical continuum, inserting the dimension of time (as duration) into it. This depicts the law of oscillation as a symmetrical and hermetically closed circle, which, as it was shown above in this thesis, would be conceivable only on the basis of a prior dissymmetry.⁴⁴⁵ In this move, Benjamin seems to want to emphasise a need for divine violence to

⁴⁴¹ Gasché, “On Critique,” p. 1131.

⁴⁴² Benjamin, “Critique of Violence,” p. 300. / Benjamin, *Gesammelte Schriften*, s. 202: “Dessen Schwankungsgesetz beruht darauf, daß jede rechtserhaltende Gewalt in ihrer Dauer die rechtsetzende, welche in ihr repräsentiert ist, durch die Unterdrückung der feindlichen Gegengewalten indirekt selbst schwächt.”

⁴⁴³ Derrida, “The Force of Law,” p. 1033.

⁴⁴⁴ See Benjamin, “Critique of Violence,” p. 286.

⁴⁴⁵ See above, p. 69.

break the circle, and with that *finally* to found “a new historical epoch.”⁴⁴⁶ It is altogether other solution from which the other remains excluded in the same way as before.

Derrida passes his final assessment on Benjamin’s text not at the colloquium on “Deconstruction and the Possibility of Justice” at Cardozo Law School in October 1989, but a half a year later at the colloquium on “Nazism and the ‘Final Solution’: Probing the Limits of Representation” at the University of California in April 1990, which is included in *Cardozo Law Review* text as “Post-scriptum”; he says:

What I find, in conclusion, the most redoubtable, indeed (perhaps, almost) intolerable in this text ..., is a temptation that it would leave open, and leave open notably to the survivors or the victims of the final solution, to its past, present or potential victims. Which temptation? The temptation to think the holocaust as an uninterpretable manifestation of divine violence insofar as this divine violence would be at the same time nihilating, expiatory and bloodless, says Benjamin, a divine violence that would destroy current law through a bloodless process that strikes and causes to expiate.⁴⁴⁷

Here, Derrida seems to draw his judgement not from the first or the second movement of Benjamin’s text, but from the very ambiguity itself. He adds: “It is the thought of difference between these deconstructions [Benjamin’s] on the one hand and a deconstructive affirmation on the other that has guided me tonight in this reading.”⁴⁴⁸ Nevertheless, Benjamin’s ambiguity is such that this emphasis of Derrida seems to be often overridden and drawn into the very ambiguity of Benjamin’s text, opening it to criticisms from one or the other side of the ambiguity.⁴⁴⁹

In conclusion of Benjamin’s critique of violence, we must say that Benjamin sort of pacifies the radical violence via God before he would have a chance to “deal” with it, and the ambiguity is not here a solution (if to use this word in this context). Therefore, we discard Benjamin’s “solution” to radical violence; next, it is time to return to Arendt’s take on the same problem.

⁴⁴⁶ Benjamin, “Critique of Violence,” p. 300. / Benjamin, *Gesammelte Schriften*, s. 202: “...begründet sich ein neues geschichtliches Zeitalter.”

⁴⁴⁷ Derrida, “The Force of Law,” p. 1044.

⁴⁴⁸ Ibid., p. 1045.

⁴⁴⁹ See, for example, Agamben’s understanding of Derrida’s position as “a peculiar misunderstanding,” Agamben, *Homo Sacer*, p. 64; see also Sinnerbrink, “Deconstructive Justice,” p. 495–6.

5.2 Arendt on the “Principle”

The problem that Arendt faces, after having (re)constructed the situation of radical violence that accompanies the French and the American Revolutions, is where to find authority that would allow founding a republican state. In new circumstances of secularisation and revolution, authority could have not been derived from an absolute, but nevertheless, the “absolute,” as Arendt continued to name it, or the constative, as we would put it, was still absolutely necessary. So, Arendt, and the Founding Fathers after her, found themselves in the situation of “the failure of the very ground they could not disclaim.”⁴⁵⁰ This situation begged for solutions, and as it has been suggested above, Arendt advances a “solution” of her own, claiming that “what saved the American Revolution from this fate [of crumbling as the French Revolution did] was neither ‘nature’s God’ nor self-evident truth, but the act of foundation itself;” in other words, “this ‘absolute’ lies in the very act of beginning itself,” whereby “the absolute from which the beginning is to derive its own validity and which must save it, as it were, from its inherent arbitrariness is the principle which, together with it, makes its appearance in the world.”⁴⁵¹ The question is whether it is a properly deconstructive “solution,” that allows to accept the other (beginning) in the same.

Honig downplays in her account on Arendt the importance Arendt assigns to the role of the “principle” in the founding act, referring to it only in the endnote of her article: “Sometimes Arendt toys with the notion that a ‘principle’ might save ‘the act of beginning from its own arbitrariness’. At other times she concedes that the arbitrariness of beginnings is ‘complete’.”⁴⁵² Honig’s charge of inconsistency in Arendt’s usage makes sense only if the “principle” is understood on the same level as promising, i.e. as an alternative means to promising in stabilisation of action. However, this thesis has redefined the role of promising in relation to action, and even if to concede that the “principle” is stabilising, it cannot be in the manner promising is. In addition, it has been shown that Arendt does not deny the need for the constative dimension, which means that the latter at no point does simply collapse into any internal dimensions of action. To a certain extent, a direct indication to different roles of the “principle” and promising can be found in Arendt’s description of principles as “inspir[ing], as it were, from without,” while promising is internal to action; it is not “applied to action from the outside.”⁴⁵³ Nevertheless, to call Arendt’s references to the “principle” as “toying” might be justified in the sense that Arendt’s elaborations of the concept of the “principle” in *On Revolution* and elsewhere are rather scant.

⁴⁵⁰ See above, p. 89.

⁴⁵¹ Arendt, *On Revolution*, p. 196; p. 212, respectively. See also supra, n. 151.

⁴⁵² Honig, “Declarations of Independence,” p. 112.

⁴⁵³ Hannah Arendt, “What is Freedom,” in *Between Past and Future: Six Exercises in Political Thought* (New York: The Viking Press, 1961), p. 153.

In *On Revolution* the “principle” is above all explicated in the context of the analysis of the American Revolution. In this analysis, Arendt has no illusions about how the American Revolution came to be “grounded” on the “principle”; the Founding Fathers did not propose or somehow consciously follow a theory on principles, but they hit the idea of the “principle” half accidentally in their emulation of traditions of the ancient Roman Republic. The Roman idea was, according to Arendt, to derive the authority of their republic from the possibility of reincarnating and augmenting its very foundation; “authority in this context is nothing more or less than a kind of necessary ‘augmentation,’ by virtue of which all innovations and changes remain tied back to the foundation which, at the same time, they augment and increase.”⁴⁵⁴ It can be said that the “principle” is what constitutes the idea of augmentation, drawing the line between amending and violence.

Though, it must be also noted that even if the “principle” saved the American Revolution, as Arendt says, i.e. it founded a republic, eventually, in Arendt’s opinion, the revolution did not live up to its expectations, and exactly for the reasons that it did not preserve, as supposedly Romans did, such space of freedom that could have induced in people a sense of being part of the founding act or a sense of incarnating it. In case of the American Revolution, it was caused, as Arendt suggests, by insufficient attentiveness to and by the lack of understanding of the very grounds of their revolution in power: “The trouble was that they took this [revolutionary] spirit for granted, because it was a spirit which had been formed and nourished throughout the colonial period.”⁴⁵⁵ As for the French Revolution, such spaces, spontaneously formed in the start of it, were suppressed as the revolution unfolded, for the reason that the French Revolution tried to derive power and authority from the selfsame source, which turned any rivalry with the sovereignty of the state power unthinkable.⁴⁵⁶

In order to understand Arendt’s conceptualisation of the “principle,” it is necessary, however, to distance from the historical manifestations of the “principle” and see how the idea of the “principle” is theorised “as such.” In the following analysis, there is, perhaps, an element that can be called a *vouloir-dire* of Arendt, in the same manner as Derrida describes his analysis of Benjamin in some occasions. This means that to certain extent the analysis also indicates to what could lie behind Arendt’s scarce remarks on the “principle” which does not find a properly elaborated theoretical formulation by Arendt herself. Next, I return to the passages already quoted in passim in the short synopsis of Arendt’s theory in the beginning of the thesis to analyse them in more detail.⁴⁵⁷

⁴⁵⁴ Arendt, *On Revolution*, p. 202; also supra, n. 150.

⁴⁵⁵ Ibid., p. 239.

⁴⁵⁶ See also above, pp. 41–2.

⁴⁵⁷ See supra, p. 45, n. 151.

In a crucial passage on the “principle,” Arendt says: “What saves the act of beginning from its own arbitrariness is that it carries its own principle within itself.”⁴⁵⁸ The beginning’s arbitrariness refers here to the sphere of action; it is free, independent of the constative dimension to start anything, but at the same time, without a constative, without an affirmation or a statement that something has been already started, it would be a fleeting moment disappearing immediately. Furthermore, it is said in this passage that the “principle” that “embodies” the constative dimension inhabits the beginning itself. But at the same time, “beginning and principle, *principium* and principle, are not only related to each other, but are coeval.”⁴⁵⁹ Arendt notes that the “principle” and the beginning in Latin as well as in Greek are etymologically coterminous, and she finds support from Plato whom she makes (by slightly paraphrasing him) to say: “For the beginning, because it contains its own principle, is also a god who, as long as he dwells among men, as long as he inspires their deeds, saves everything.”⁴⁶⁰ To think this “principle” as strictly simultaneous to the beginning would entail two things: the “principle” cannot have any content prior to the beginning; if it were, it would turn into a ground for the beginning. But equally, the “principle” cannot be formed after the beginning, because the beginning has no authority, no constative to come to exist (with some permanence). Hence, the “principle” cannot have any determined content; if it were, it should come to exist prior to or after the beginning.

If it is said that the “principle” has no content, it does not mean, nevertheless, that it can be thought as positing an empty form, because if there was no content to begin with, there is no empty form; what appears, is the beginning, and the “principle,” strictly speaking, does not exist, not as such. Therefore, the “principle” can “exist” only as a possibility of any form, formation, formulation, etc. Using the term borrowed from Hamacher, it could be said that the “principle” is not positing anything, but is mere opening. In that case, the “principle” could be described as a sort of absolute “transparency,” which, however, maintains its being something like a “medium.” The latter is necessary, for otherwise the “principle” would (be) nothingness. It follows that whatever the “principle” is coeval with must shine through it, for the “principle” is pure opening.

The “principle,” as said, is coeval with the beginning, and it “remains apparent as long as the action lasts.”⁴⁶¹ The question is what is entailed in action that shines through the “principle.” Beyond internal dimensions of action, outlined above as speech, space of appearance, power and promising, there is one more element that makes difference – legitimacy. According to Arendt, power is in need of legitimacy: “Power needs no justification, being inherent in

⁴⁵⁸ Arendt, *On Revolution*, p. 212;

⁴⁵⁹ Ibid.

⁴⁶⁰ Ibid., p. 213. See also, Plato, *Laws*, bk. VI, 775.

⁴⁶¹ Arendt, “What is Freedom,” p. 152.

the very existence of political communities; what it does need is legitimacy. ... but it derives its legitimacy from the initial getting together rather than from any action that then may follow.”⁴⁶² On the one hand, this means that legitimacy is not what stabilises power, but it is in the same way as power dependent on the constative side. On the other hand, legitimacy of power, it might be said, is derived from (or has a form of) the difference between accidental coming into contact of people and their getting together “to act in concert.”

So, whatever the initial getting together of people is based upon shines through the “principle” as the principle’s own(most), but (as much as we speak about a differential system without positively determined contents) in the form of difference (or of legitimacy), in differentiating.⁴⁶³ Therefore, whatever shines through the “principle” cannot be thought to replace it, or to simply “be” it (which would reduce the constative dimension into nothingness). The principle’s keeping itself as different, differentiating, so to say, makes every beginning to appear as a repetition, as a repetition of itself. In other words, if whatever shines through the “principle” as the principle’s own(most) arrives as a beginning, it arrives only because it repeats. This turns the beginning into the repetition of repetition or into a repeating repetition, which is to say that in differentiating, the “principle” is not what is repeated, or repeatable, but what causes repetition (or what is repetition). The “principle” differentiates “between” what appears as the principle’s ownmost and what comes to shine through the “principle,” and makes the beginning to be repetition of itself (of its own repetition).

It is not impossible to see the “principle,” on this interpretation, as an *infrastructure*, which would easily chain up, for example, with “infrastructure” yes-yes – the “principle” relates to the beginning affirmatively; every beginning appears in affirmation of and in promise to every other (beginning). Yes-yes, that was also mentioned above in the context of Benjamin, will be explicated in the following chapter.

To certain extent, this reading is supported by Arendt’s account of (an odd) temporality of the beginning. There is an important quote from Augustine in this respect that Arendt repeats in several of her most essential texts over and again: “*Initium ... ergo ut esset, creatus est homo, ante quem nullus fuit*,” which she translates with slight differences always as “that there be a beginning, man was created before whom there was nobody.”⁴⁶⁴ In Arendt’s reading of this quote, Augustine differentiates between the beginning of the world and of the human being; the latter is named *initium* and the former with the word *principium*. Aside from indicating that the creation of the world denotes a less

⁴⁶² Arendt, *On Violence*, p. 52.

⁴⁶³ I will return to this “concept” of legitimacy in the final part of the thesis.

⁴⁶⁴ Arendt, *The Human Condition*, p. 177; see also, Arendt, *On Revolution*, p. 211; Hannah Arendt, *The Life of the Mind*, Vol. 2 (New York and London: Harcourt Brace Jovanovich, 1981), p. 217. See also, Augustine, “The City of God,” tr. Marcus Dods, Bk. 12, Ch. 20: http://en.wikisource.org/wiki/The_City_of_God/Book_XII/Chapter_20.

radical beginning than the creation of the human being, because there was nobody before the latter, whereas before the world was made, there were angels, Arendt points out that “with the creation of man, the principle of beginning came into the world itself, which, of course, is only another way of saying that the principle of freedom was created when man was created but not before.”⁴⁶⁵

In secular terms, Arendt expresses the same thought as follows: “The very capacity for beginning is rooted in natality ... in the fact that human beings, new men, again and again appear in the world by virtue of birth.”⁴⁶⁶ Put bluntly, the sentence seems to be saying that there is a beginning, because there was beginning, but it makes sense if to read it in the context of previous deliberations, as saying that the second beginning (which is in some sense “first”) cannot appear otherwise as repeating, affirming and confirming the first. By words of Arendt: “With word and deed we insert ourselves into the human world, and this insertion is like a second birth, in which we confirm and take upon ourselves the naked fact of our original physical appearance.”⁴⁶⁷ Hence, the first birth arrives only if the second birth has arrived to affirm the first, in a sort of repetition.

Indeed, this strange temporality of beginning suggests a possibility that, for Arendt, starting something new by humans is always already a response to the beginning or beginnings, as it is argued by Patchen Markell:

Arendt’s account of beginning ... shows us that action, as a response to events, is, you might say, always a second step rather than a first: if we can never quite lose our capacity to act altogether, this is because there never ceases to be a fund of doings and happenings – beginnings – in the world to which we might respond.⁴⁶⁸

Arendt herself quite explicitly calls action as also a response; “its impulse springs from the beginning which came into the world when we were born and to which we respond by beginning something new on our own initiative.”⁴⁶⁹ However, for the reasons delineated above, I think that Markell overstates his position when he further argues that “Arendt thus replaces the unanswerable question of how to generate something ... from nothing ... with the more tractable question of how to sustain, intensify, and democratise the beginnings with which we are already confronted.”⁴⁷⁰ Arendt, I would say, does not replace the question of the spontaneous beginning, but indicates that action as a commencement is possible only if it also is, at the same time, a response.

⁴⁶⁵ Arendt, *The Human Condition*, p. 177.

⁴⁶⁶ Arendt, *On Revolution*, p. 211.

⁴⁶⁷ Arendt, *The Human Condition*, p. 176–7.

⁴⁶⁸ Patchen Markell, “The Rule of the People: Arendt, *Arché*, and Democracy,” *American Political Science Review*, Vol. 100, No. 1 (February 2006), p. 12.

⁴⁶⁹ Arendt, *The Human Condition*, p. 176–7.

⁴⁷⁰ Markell, “The Rule of the People,” p. 12.

Nevertheless, there remains an element of *vouloir-dire* in this interpretation, and Arendt's formulations fall short of proper potential of the idea of the "principle." According to the conceptualisation of the "principle" proposed above, it could be said that the "principle" is manifested by or in repetition, but in Arendt, it is manifested by concrete principles:

The manifestation of principles comes about only through action.... Such principles are honour or glory, love of equality, which Montesquieu called virtue, or distinction or excellence ... but also fear or distrust or hatred. Freedom or its opposite appears in the world whenever such principles are actualised.⁴⁷¹

In the case of the American Revolution, the principle was, as Arendt concludes in *On Revolution*, "the interconnected principle of mutual promise and common deliberation."⁴⁷² For Arendt, it seems, that whatever is shining through the "principle" creates the beginning which repeats its beginning in a principle, but not in the "principle" as difference, as a cause of repetition, but as what is repeatable; in that case, the content that comes to shine through the "principle" replaces it as if the "principle" were an empty form, so that the beginning appears as repeating a principle's ownmost content. But the "empty form," as it was said above, is a positing, which already presumes a beginning; it should not be mixed up with "opening." If the "principle" figures like a positing, then it is always already mending the situation of radical violence. It might be said that the situation of radical violence is exposed by Arendt, but her "solution" as if gets situated prior to radical violence, so that radical violence is "pacified" before any need to find a "solution" to it. Insofar as radical violence, as it has been traced in the course of the thesis, is irreducible, then any such exclusion of radical violence does not solve or defeat it, but rather, allows it to become manifest time and again in the worst kind of violence (and in the name of its eradication).

Nonetheless, the rest of Arendt's theory supports understanding of the "principle" as an empty form, which is the same as reducing radical violence into emptiness (which, in fact, merely hides it). In order to maintain an appearance of a solution, it now becomes important to preclude for the content to fully replace an empty form, because otherwise it would just take the role of an absolute. The emptiness starts to be the dividing line between appearing either as another absolute or as a principle that allows repetition. Arendt's explications on the principle do not exactly thematise, how the principle is kept emptying so that the content never quite is able to fill in the empty form, but it does not mean that this logic is not present in her theory. It should be kept in mind that Arendt's approach has its roots in phenomenology, which means, as Majid Yar explains, that "the world of common experience and interpretation (*Lebenswelt*) is taken to be primary, and theoretical knowledge is dependent on

⁴⁷¹ Arendt, "What is Freedom," p. 152.

⁴⁷² Arendt, *On Revolution*, p. 214.

that common experience in the form of a thematisation or extrapolation from what is primordially and pre-reflectively present in everyday experience.”⁴⁷³ So, while Arendt’s aim is not to offer an abstract conceptual theory on the possibility of the founding act, it is necessary to examine her account on the American Revolution in order to recognise the logic of emptying in her theory.

There is an element in Arendt’s analysis of the American Revolution (and applying to all modern revolutions), the importance of which is noted by her, but its theoretical standing remains unclear. It is the process of secularisation, defined by Arendt as “the separation of religion from politics and the rise of a secular realm with a dignity of its own.”⁴⁷⁴ While the significance of revolutions for Arendt comes from the fact that they are “the only political event(s) which confront us directly and inevitably with the problem of beginning,” then secularisation is depicted by Arendt as a defining circumstance of the emergence of modern revolutions.⁴⁷⁵ Arendt argues:

Indeed, it may ultimately turn out that what we call revolution is precisely that transitory phase which brings about the birth of a new, secular realm. But if this is true, then it is secularisation itself ..., which constitutes the origin of revolution.⁴⁷⁶

There are two main features of secularisation as a phenomenon, which can be gathered from Arendt’s account. Firstly, it is a contingent historical occurrence beyond direct human intervention, a result of multiple developments and sources. Perhaps, it can be said that if Arendt depicts revolutions as not being prepared by revolutionists, who “hardly did, or were in position to do, much to advance and direct [them],”⁴⁷⁷ then the same describes also the process of secularisation. Secularisation in this sense defines modern times, but modern times do not consist in fighting for secularisation. Secondly, secularisation can never be completed; it never arrives at its end, meaning that borders between the secular and the political world remain shifting. Consequently, the absolutes are never entirely excluded and secularisation can be even reversed. As long as secularisation remains on the way, an absolute, e.g. God, remains always in a double position as an allure and failure. If secularisation were to be achieved absolutely, so that the allure of the absolute vanishes altogether from the political realm, then the “empty place” of the constative dimension would appear full, for any stabilising content would take the place of the absolute. To what extent Arendt refutes this possibility is seen from a remark that could be said to apply to Benjamin in the same way as to Marx: “Utopian and unfounded promises of

⁴⁷³ Maijda Yar, “Hannah Arendt,” (first published 2001, updated 2005) in J. Fieser and B. Dowden (eds.), *The Internet Encyclopedia of Philosophy*, <http://www.iep.utm.edu/arendt>.

⁴⁷⁴ Arendt, *On Revolution*, p. 26.

⁴⁷⁵ Ibid., p. 21.

⁴⁷⁶ Ibid., p. 26.

⁴⁷⁷ Ibid., p. 259.

a final ‘realm of freedom’ (that), in its Marxian version at any rate, would indeed spell ‘the end of all things,’ a sempiternal peace in which all specifically human activities would wither away.”⁴⁷⁸

It then can be concluded that in this particular historical case, the process of secularisation, i.e. the possibility of initiation of something without any help or tutelage of some “higher” authorities, empties, so to say, the principle from the “absoluteness” of its content and makes for it necessary over and again to repeat itself. In other words it follows, even if it is not thematised theoretically by Arendt, that “gathering together of human beings,” which is the source of power, is not predetermined by anything and is absolutely contingent (which has been also indicated above by phrasing “*whatever* shines through the principle”). This explains how Arendt can describe manifestations of the “principle” as too general for determining specific guidelines for action – it could be said that they become emptied of their specific content.

Thus, Arendt argues that principles “are much too general to prescribe particular goals, although every particular aim can be judged in the light of its principle once the act has been started.”⁴⁷⁹ In this formulation, the “principle,” in some sense, functions as opening, because no action can be judged beforehand; all beginnings are welcomed. Nevertheless, after action is started, some actions can be judged as detrimental to or divergent from the principles that inform the beginning. Hence, Arendt’s principle, on the one hand, allows entrance of every beginning and resistance, but on the other hand, it determines and rejects every resistance that does not conform to the pre-settled idea of amendment. In this way, principles are binding to all subsequent deeds, amendments and resistances, so that the arbitrariness of every beginning, Arendt talks about, gets indeed tamed by a principle. However, principles then are not what they seem to be by their “idea,” but a kind of compromise. A principle allows us to recognise the other – but only as much as possible. Quite in accordance with this, Arendt says: “The way the beginner starts whatever he intends to do lays down the law of action.”⁴⁸⁰ This seems to confirm that the “principle” as opening describes only a sort of “original” action, which lays down terms for every future action, but after the “original” action has performed, there is no action but “deeds that are to follow” by “those who have joined him [the beginner] in order to partake in the enterprise and to bring about its accomplishment.”⁴⁸¹

Such understanding and conceptualisation of the “principle” problematises Arendt’s diagnosis on the final outcome of the American Revolution. As also pointed out above, she thinks that the American Revolution did not live up to its expectations, because “the Revolution, while it had given freedom to the people,

⁴⁷⁸ Arendt, *The Life of the Mind*, p. 216.

⁴⁷⁹ Arendt, “What is Freedom,” p. 152.

⁴⁸⁰ Arendt, *On Revolution*, p. 212.

⁴⁸¹ *Ibid.*, p. 212–3.

had failed to provide a space where this freedom could be exercised.”⁴⁸² It is the space where people under the auspices of a principle relate back to the beginning, and by their actions, keep augmenting it. As much as the Revolution found its authority in the principle, there is, in fact, no good reason why the Founding Fathers disregarded Jefferson’s proposal of incorporation of townships into the Constitution. These “elementary republics” were thought “to permit citizens to continue to do what they had been able to do during the years of revolution, namely, to act on their own and thus to participate in public business.”⁴⁸³ Potentiality of every beginning to be an amendment, rather than revolution, should have allowed such a space of citizen initiative. Arendt explains the failure of the revolution to provide such space by some contingent eventualities, like that the founders’ had an excessive belief into the power of the Constitution (to deliver perhaps the same thing), that they took revolutionary spirit for granted⁴⁸⁴ and that they “failed to understand to what extent the council system confronted them with an entirely new form of government, with a new public space for freedom.”⁴⁸⁵ However, now it can be suggested that this failure was not caused by some accidental miscalculation, but by their very understanding of the “principle” and authority itself: The idea of the “principle” that (as if) informed their founding act, made the beginning repeat a principle. In other words, a law of action was determined in the beginning, but whoever is understood as being under that “law of action,” is already the same, not as an other. Therefore, the beginning (always already) repeats the principle for all (for they are the same), and for deeds that accomplish things set in motion in the beginning, there is no need to specify such space of freedom.

So, it was not some understatement or misunderstanding of the Revolution’s roots in power, but the very nature of the interpretation of the “principle” and authority, that led to such outcome. As much as Arendt does not find any structural cause for the “failure” of the American Revolution, she has no other option as to hope that storytelling will suffice to preserve the lesson for the posterity, as she says on the final pages of *On Revolution*: “There is nothing that could compensate for this failure or prevent it from becoming final, except memory and recollection. ... the storehouse of memory is kept and watched over by the poets.”⁴⁸⁶ (It also reveals that, in some sense, Arendt’s own understanding, at least to some extent, must have extended the exemplary case she uses to bring into light how to found a republic.)

⁴⁸² Ibid., p. 235.

⁴⁸³ Ibid., p. 251.

⁴⁸⁴ Ibid., p. 239.

⁴⁸⁵ Ibid., p. 249.

⁴⁸⁶ Ibid., p. 280.

Chapter 6: Derrida's "Solution" to Radical Violence

The question from which the thesis started to evolve was how a republic could be founded that does not lean upon an extramundane source of authority. Such founding has to preserve its unfoundedness in whatever is founded, because otherwise it would turn itself into an absolute beginning. Therefore, any theorising of such founding has to find a way to think in it a resistance that would not be reduced to repetition of what is already founded, nor excluded as a revolutionary coup; in other words, a totally other beginning must be conceivable in the same or in the already existing. In the previous parts of the thesis, I have pursued approaches of Arendt and of Benjamin (as well as of Honig) on this matter to a conclusion that this task remains uncompleted by them. At the same time, their approaches were analysed from the point of view of deconstruction that (as if) was assumed (in its "proper" form) to be able to get hold of a totally other (beginning). In this sense, different moments of deconstruction have been extracted in the course of the thesis, like the structural condition of undecidable violence, the transcendental condition of justice to come and radical violence as a line of rupture along which deconstructive incision is made, though the incision itself has not yet been theorised. As it was argued above, Derrida's text of "Declarations of Independence" that was the starting point of the analysis does not amount to such incision. In this chapter, these two routes – thinking totally other (beginning) and the incision of deconstruction – are brought together with the aim to explicate the incision of deconstruction, its so-called "arrival" at what it is, i.e. at its second "phase," which also is deconstruction's answer to the problem of thinking totally other (beginning) in the same. These explications, in turn, help to make understandable the argument proposed and developed thereafter that legitimacy can be understood in exactly this role – as being an opening to the other in its alterity, which equally is the incision or inscription of deconstruction in the founding act.

6.1 The Relationless Relation to the Other and the Lesser Violence

As much as thinking is an activity of classifying, simplifying, deciding, etc., then accepting the other as other, "before all critical separation, division, and decision," as Gasché puts it, involves an unavoidable paradox.⁴⁸⁷ The other as other cannot be thought directly, but must remain in thinking as a sort of rupture; otherwise, it would be appropriated as the same. Derrida calls this paradoxical condition of rupture that opens up a relation, following Maurice Blanchot and Emmanuel Levinas in this, a relation without relation:

⁴⁸⁷ Gasché, "On Critique," p. 1131.

This dissociation, the separation is the condition of my relation to the other. [...] That's what some French-speaking philosophers such as Blanchot and Levinas call the *rapport sans rapport*, relationless relation... that's the structure of my relation to the other; it's a relation without relation – it's a relation in which the other remains absolutely transcendent. I can't reach the other, I cannot know the other from the inside.⁴⁸⁸

This paradoxical relation is well summarised by Kas Saghafi:

In order to enter into relation with the other, it is necessary that an interruption be possible and that the relation be “a relation of interruption.” However, this interruption does not simply interrupt the relation with the other; rather it opens the relation to it. In fact, all social bonds and ties presuppose and are made possible by such an interruption. As well as a relation of interruption, there is simultaneously a certain mediation in the relation to the other. In this other experience of mediation not to be confused with a relation of reconciliation and totalisation the other is understood as other in a certain relation of incomprehension. It is necessary that, at a given moment, the other remain as other. ... The relation to the other then is constituted by the two logics of economy (mediation without opposition) and aneconomy (radical alterity), relation *and* interruption of relation, interruption *and* negotiation.⁴⁸⁹

Pointing out Derrida's indebtedness to Levinas in thinking of the impossible relationship or “relationless relation” with the other does not mean to argue that Levinas' and Derrida's understandings entirely coincide on this matter. Levinas argues in one of his key works *Totality and Infinity* that “the relation with the Other, or Conversation, is a non-allergic relation, an ethical relation,” which commands unconditionally, prior to anything else, “to already be for the Other.”⁴⁹⁰ Levinas associates this ethical relation with being Good: “Goodness consists in taking up a position in being such that the Other counts more than myself.”⁴⁹¹ For Derrida, however, such ethical relation, which is intrinsically conditioned by the other, inevitably posits the other as a sort of presence in itself, against which Derrida argues: “There is no ethics without the presence *of the other* but also, and consequently, without absence, dis-simulation, detour, difference, writing.”⁴⁹² Ethics cannot be derived from the assumption of the goodness of the other, for this would mean that the other is determined or

⁴⁸⁸ Jacques Derrida, *Deconstruction in a Nutshell: A Conversation with Jacques Derrida*, ed. John D. Caputo (New York: Fordham University Press, 1997), p. 14.

⁴⁸⁹ Kas Saghafi, “‘An Almost Unheard-of Analogy’: Derrida Reading Levinas,” *Bulletin de la Société Américaine de Philosophie de Langue Française*, Vol. 15, No. 1, Spring 2005, p. 56. Saghafi relies in this passage on Jacques Derrida and Pierre-Jean Labarrière, *Altérités* (Paris: Osiris, 1986), p. 81–2.

⁴⁹⁰ Emmanuel Levinas, *Totality and Infinity: An Essay on Exteriority* (The Hague and London: Martinus Nijhoff, 1979), p. 51.

⁴⁹¹ *Ibid.*, p. 247.

⁴⁹² Derrida, *Of Grammatology*, pp. 139–40.

known already beforehand and it would not be “absolutely other” that emerges in the relation of interruption. If the other might be a violent other, then the unconditional opening cannot *a priori* preclude a (more or less) violent response. Therefore, the relationless relation, which is also opening to the other, is “the origin of morality as of immorality. The non-ethical opening of ethics. A violent opening.”⁴⁹³ This refers to a crucial difference between Derrida’s and Levinas’ interpretations of the relationless relation to the other. This provisional opposition that I drew here between Levinas of *Totality and Infinity* and Derrida of *Metaphysics of Violence* cannot of course do justice to their whole complex relationship, which evolved during their whole lives, but at least it indicates that their uncritical joining is not possible and not intended in this thesis.

The question about the need and possibility to assimilate Levinas and Derrida has induced a wider debate on these authors and on ethics of deconstruction in academic circles. I am not going to enter into this topic here, but as much as violence has been one of the key themes in this thesis, I take up Martin Hägglund’s engagement with the concept of “lesser violence” that forms one aspect of the wider discussion on ethics of deconstruction.

One of the first to address the question of ethics in deconstruction was Simon Critchley, who argues that “Derridean deconstruction can, and indeed should, be understood as an ethical demand, provided that ethics is understood in the particular sense given to it in the work of Emmanuel Levinas.”⁴⁹⁴ Even if he, to a certain extent, later distances himself from this first formulation of his position in *The Ethics of Deconstruction*, he repeats, nevertheless, one of his central claims in a rearticulation of his position five years later: “My claim is that the ethical moment that motivates deconstruction is this Yes-saying to the unnameable, a moment of unconditional affirmation or a categorical imperative that is addressed to an alterity.”⁴⁹⁵ In this formulation, deconstruction is motivated by an ethical concern, i.e. the ethical is prior to deconstruction. In somewhat similar manner, Drucilla Cornell argues that “instead of simply preferring one [Derrida] to the other [Levinas], we need to read Derrida and Levinas together to heed the call to responsibility and to enact a nonviolent relation to otherness.”⁴⁹⁶ Leaving here aside the relation to Levinas, then, what is posited in the formulations of Critchley and Cornell (but also in this line of thinking in general) is an ethical demand on deconstruction to create a non-violent opening to the other.

⁴⁹³ Ibid., p. 140.

⁴⁹⁴ Simon Critchley, *The Ethics of Deconstruction: Derrida and Levinas*. 2nd ed. (Edinburgh: Edinburgh University Press, 1999), p. xiii. See also, *ibid.*, p. 41, 189.

⁴⁹⁵ Simon Critchley, “The Ethics of Deconstruction: An Attempt at Self-Criticism.” *PLI: Warwick Journal of Philosophy*, Vol. 6 (1997), p. 99. (Re-published also in *The Ethics of Deconstruction: Derrida and Levinas*. 2nd ed.) Cf. Critchley, *The Ethics of Deconstruction*, p. 41.

⁴⁹⁶ Drucilla Cornell, *The Philosophy of the Limit* (New York and London: Routledge, 1992), p. 64.

Hägglund has questioned such ethical interpretations in his “The Necessary Discrimination: Disjoining Derrida and Levinas” on the ground that for Derrida, violence is irreducible, and therefore, the non-violent relation to the other cannot be presumed or set for an ideal: “If there is always an economy of violence, decisions of justice cannot be a matter of choosing what is nonviolent. To justify something is rather to contend that it is less violent than something else.”⁴⁹⁷ This highlights the term “lesser violence,” because, as Hägglund says, “the struggle for justice can thus not be a struggle for peace, but only for what I will call ‘lesser violence.’”⁴⁹⁸

The term “lesser violence” is not really thematised by Derrida and mentioned only in few occasions, primarily in “Violence and Metaphysics.” The most quoted passage in this regard is as follows and it can be found in a footnote rather than in the main text: “...*within history* – but is it meaningful elsewhere? – every philosophy of nonviolence can only choose the lesser violence within an *economy of violence*.”⁴⁹⁹ As a way of explanation, we can relate differences of opinion about the importance of the term “lesser violence” for the project of deconstruction to the ambiguity of meaning in this sentence, resulting from different emphases. One possibility is to emphasise the part of this sentence which says that one “can choose the lesser violence.” Above all, this reading can be attributed to Richard Beardsworth, who was the first to bring the term into wider currency in his book *Derrida and the Political* (though it characterises all “ethical” readings of deconstruction as well). The other possibility is to emphasise the final part of the sentence by which any “choice” remains “within an economy of violence.” This view comes from more recent discussions of the term by Hägglund and Haddad, who argue that the lesser violence remains always contaminated by the worst violence, and that the risk of the worst is never superseded by the lesser violence. In the following, I briefly explain what these two readings hold, and then develop my own interpretation, which, perhaps, points to a third possibility of emphasis.

First of all, both readings agree that there is a *possibility* for lesser violence embedded in deconstruction and that this possibility appears through the experience of aporia (of time and law). So, Hägglund notes that “Beardsworth rightly observes that ‘it is in fact only through the experience of the economy of violence that judgments of lesser violence can be made’.”⁵⁰⁰ In this sense, Hägglund and Beardsworth both could find support for their argument from the following passage of Derrida:

⁴⁹⁷ Martin Hägglund, “The Necessity of Discrimination: Disjoining Derrida and Levinas,” *Diacritics*, Vol. 34 (2004), No. 1, p. 48.

⁴⁹⁸ *Ibid.*, p. 47.

⁴⁹⁹ Derrida, “Metaphysics and Violence,” p. 400, n. 21.

⁵⁰⁰ Beardsworth, *Derrida and the Political*, p. 24. Hägglund, “The Necessity of Discrimination,” p. 48.

The irreducible violence of the relation to the other(,) is at the same time nonviolence, since it opens the relation to the other. It is an *economy*. And it is this economy which, by this opening, will permit access to the other to be determined, in ethical freedom, as moral violence or nonviolence.⁵⁰¹

However, as said above, it seems that Beardsworth and Hägglund draw different conclusions from this opening of the possibility of discrimination between violence and nonviolence. Beardsworth seems to say that the recognition of the aporia, or “endurance” of it, leads to less violent decisions: “in recognition of ... [aporia, a relation of interruption] one judges according to the ‘lesser violence’.”⁵⁰² How exactly this happens remains a little obscure in Beardsworth’s account, but the best explanation is perhaps as follows:

The acknowledgement of the prescriptive force of one’s statements may make one more ready to transform the field that is posited by the nature of one’s decision – given that the field, together with its frontiers, is the result of a decision and not the representation of a preceding “real”. This is the argument of a “lesser violence” in a general economy of violence.⁵⁰³

In short, for Beardsworth, the experience of the impossible makes one to realise the prescriptive force of his or her decisions and the possibility of discrimination between “moral violence or nonviolence” itself will drive our choices.

Hägglund’s argument against Beardsworth is that even if the aporia time is recognised, this leads to the lesser as well as to more violence: “The supposed lesser violence may always be more violent than the violence it opposes,” for there are no objective empirical criteria to decide, what is lesser or what is more violence, as Hägglund explains.⁵⁰⁴ For Hägglund, the “lesser violence” refers always to factually less violent outcomes, which would make sense only on the basis of knowledge about what is less violent in every particular situation. To know that, however, is impossible. Therefore, the opening to the other cannot be a priori ethical demand, but “which opens the possibility of every relation.”⁵⁰⁵

Samir Haddad follows Hägglund in many respects and his criticism of Beardsworth is very similar, but he adds an additional turn – while Hägglund keeps the term “lesser violence” to explain the idea of justice, Haddad claims that the “lesser violence” as a concept is in fact altogether redundant:

My claim is thus that the language of “choosing a lesser violence” is out of place in the Derridean analysis of violence. It either names a choice that is either

⁵⁰¹ Derrida, “Metaphysics and Violence,” p. 160.

⁵⁰² Beardsworth, *Derrida and the Political*, p. xiv.

⁵⁰³ *Ibid.*, p. 12.

⁵⁰⁴ Hägglund, “The Necessity of Discrimination,” p. 48.

⁵⁰⁵ *Ibid.*, p. 49.

already made (that of staying within the economy) or a choice that cannot be made (that of a knowledge that would reduce violence within the economy).⁵⁰⁶

According to Haddad, the widespread usage of the term “lesser violence” is not caused by the merit of this term, but by “political” necessity to find an easy way to defend Derrida and deconstructionists from accusations “of relativism, nihilism, sophistry, and so on.”⁵⁰⁷

In order to outline my own view on this matter, I start with quoting a passage from Derrida’s *Specters of Marx*, which seems to counter Hägglund’s and Haddad’s as well as Beardsworth’s interpretations:

No progress of knowledge could saturate an opening that must have nothing to do with knowing. Nor therefore with ignorance. The opening must preserve this heterogeneity as the only chance of an affirmed or rather reaffirmed future. It is the future itself, it comes from there. The future is its memory.⁵⁰⁸

My argument against Beardsworth on the one side and Hägglund and Haddad on the other is that they do not preserve heterogeneity between knowledge and ignorance that Derrida refers to in the quote above; they fall over to one side (knowledge) or to the other side (ignorance). Beardsworth seems to say (and this is how Hägglund and Haddad read him) that out of the experience of aporia there emerges a certain knowledge to judge according to lesser violence. At the same time, when Hägglund and Haddad both agree that “the logic of deconstruction spells out that one cannot finally learn how to negotiate the economy of violence and make less violent judgments,” they highlight ignorance about how to make less violent judgments in particular cases.⁵⁰⁹ But in either case heterogeneity itself is missed, for there is no knowledge, but also no ignorance; there is heterogeneity of the two.⁵¹⁰

⁵⁰⁶ Samir Haddad, “A Genealogy of Violence, from Light to the Autoimmune.” *Diacritics*, Vol. 38 (2008), No. 1, p. 134.

⁵⁰⁷ Ibid., p. 138.

⁵⁰⁸ Jacques Derrida, *Specters of Marx: The State of the Debt, the Work of Mourning and the New International* (London: Routledge, 2006), p. 45.

⁵⁰⁹ Hägglund, “The Necessity of Discrimination,” p. 49.

⁵¹⁰ It should be noted that there are ambiguities in Beardsworth’s and Hägglund’s texts that make their differences of position much more the matter of emphasis, rather than, perhaps, substance. Beardsworth is at some places rather cautious to correlate the recognition of the aporia and the lesser violence. For example, in the following sentence, he argues: “Judgements and inventions which have endured this experience [of the aporia of law (and) time] have greater chance of recognizing difference according to the lesser violence.” (Beardsworth, *Derrida and the Political*, p. 101) Aside from the question what the “endurance” means in this context, for in fact, as also Hägglund remarks, all judgements pass through the experience of the impossible, it is emphasised here that there is a chance for lesser violence, but this is not exact knowing about how one should proceed. On the other side, Hägglund talks about “critical vigilance” in the end of his article, which for sure does not change the fact that anyone is liable “to make mistakes or erroneous judgments in a

The question is how this preservation of heterogeneity is to be understood, and what are the consequences of this for the debate on ethics of deconstruction. In the beginning of this section, it was quoted from Saghafi that the “relationless relation” is interruption and negotiation. However, in the same manner as developed above on the undecidability between the performative and the constative, the interruption and the relation cannot form a “circle,” so that one cancels the other.⁵¹¹ Hence, firstly, in order there to be a relation to the other as other, the other must be other absolutely, and therefore, there must be an interruption with the other. But this results in a sort of “double bind” as concerns the relation, for the relation has to remain truthful to itself as a relation, but being that, it must not interrupt interruption. The relationless relation cannot be a compromise between its two sides. Therefore, secondly, in order there to be a relation, in relationless relation to the absolutely other, the other cannot be as in itself, but only as “othering,” as remaining other to itself. In other words, what “relates” in this relation has to effect the “othering” of the other, making other to appear as other to itself. One might say that in that case the relation is to the infinitely other.⁵¹² This is essentially the same what is also noted by Hägglund: “Every finite other is absolutely other, not because it is absolutely in itself but on the contrary because it can never be in itself. Thus, it is always becoming other than itself and cannot have any integrity as such (for example, as ‘ethical’).”⁵¹³

However, in my interpretation, the view that sees the other not as in itself, but as other to itself, is the lesser violence. The lesser violence means to judge in view of the other as “determined” by other others (oneself among them), i.e. as being always already alien to him- or herself. And in this sense, judging on others is also judging on oneself, and all violence is equally violence against oneself. In other words, it could be said that the relationless relation “comprises” in interruption with the other, in which the other appears as in itself, *and* in a relation to the other, which *must* take the other as other to itself (in order for there could be a relationless relation at all). Perhaps, this “must” in this formulation of the relation can be said to be a “demand,” as also Derrida says in few cases that will be cited below, but it is important to notice that in this formulation where the “demand” is kept analytically separated from the interruption, the word “demand” can be used only as a figure of speech, for in fact it

given situation,” but which also is not entirely compatible with a complete non-knowledge how to arrive at the lesser violence. (Hägglund, “The Necessity of Discrimination,” p. 69) Be it as it may, as much as both of them do not thematise the possibility as hauntology, which I will do next, it is justified to position them as it is done in the text.

⁵¹¹ See above, p. 69. Perhaps, a more exact figure to characterise this logic would be an ellipsis, rather than a circle; see Jacques Derrida, “Ellipsis,” in *Writing and Difference* (London: Routledge, 2006), pp. 371–8.

⁵¹² This “relating difference” or “differing relation” as an “infrastructural movement” will be explicated in the course of the rest of this chapter.

⁵¹³ Hägglund, “The Necessity of Discrimination,” p. 56.

is an immediate necessity (and not an ethical demand). It is immediate because the infinitely other is, by words of Derrida,

an absolute Singularity, Singular because differing..., and always other, binding itself necessarily to the form of the instant, in *imminence and in Urgency*: even if it moves toward what remains to come, there is the *pledge* [gage] (promise, engagement, injunction and response to the injunction, and so forth) ... given here and now, even before, perhaps, a decision confirms it. It thus responds without delay to the demand of justice.⁵¹⁴

Now, however, if this “must” is thought in the formula of “relationless relation,” i.e. as always already affected by interruption, this “must” becomes a possibility. It is indeed possibility for the good and for the bad, as Hägglund and Haddad maintain – out of the experience of the impossible, there emerges a possibility to relate to the other as in itself, which is the possibility of evil, but also there is a possibility to relate to the other understood as being other to itself, which is the possibility of the lesser violence.

In order to unravel this possibility for the good as well as for the bad a little bit further, I distinguish between two aspects in this possibility. Firstly, indeed, this possibility (for the good as well as for the bad) itself is better than no possibility at all in this case, as also follows from the subsequent passage of Derrida:

To be “out of joint,” whether it be present Being or present time, can do harm and do evil, it is no doubt the very possibility of evil. But without the opening of this possibility, there remains, perhaps, beyond good and evil, only the necessity of the worst. A necessity that would not (even) be a fated one.⁵¹⁵

That this possibility, this opening is worth to be maintained, does not yet contradict the argument of Hägglund and Haddad; for even if the possibility to arrive at less violent outcomes is a lottery, there is a 50% chance to hit a lesser violence, which certainly is better than nothing.

But secondly, the possibility as possibility, i.e. even if it is not opposed to necessity, accrues an additional meaning, for the reason that this possibility itself is a necessity. Therefore, it becomes a demand, or demanding, but in a very special sense. Let us concentrate on the following passage from *Specters of Marx*, where Derrida uses Blanchot’s “Three Voices of Marx” to make the point:⁵¹⁶

But the here-now does not fold back into immediacy, or into the reappropriable identity of the present, even less that of self-presence. ... the demand that ... is

⁵¹⁴ Derrida, *Specters of Marx*, p. 37.

⁵¹⁵ Ibid., p. 34.

⁵¹⁶ Maurice Blanchot, “Marx’s Three Voices,” *Friendship* (Stanford: Stanford University Press, 1997), pp. 98–100.

“always present” must implicitly, it seems to us, find itself affected by the same rupture or the same dislocation, the same “short circuit.” It can never be always present, it *can be*, only, *if there is any*, it can be only possible, it must even remain a *can-be* or *maybe* in order to remain a demand. Otherwise it would become presence again, that is, substance, existence, essence, *permanence*, and not at all the *excessive* demand or urgency that Blanchot speaks of so correctly [*justement*].⁵¹⁷

The possibility that emerges from the experience of the impossible is not just between this or that, between more or less violence, but there (is) *can-be*, which haunts every judgement, every this or that, for it is now always possible to choose or judge differently. This *can-be* is not simply knowledge, nor ignorance, it is the very heterogeneity that must be kept, if there were any violence or nonviolence in the moral sense. In this *can-be*, the immediate “must” of the relationless relation returns in a ghostlike form, neither present nor absent, becoming also a demand, demanding a question. In the end of *Specters of Marx*, Derrida asks in a rhetorical manner, “could one address oneself in general if already some ghost did not come back?” – this question derives from this immediate “must” to take other as other to itself; it is this necessity that gathers the ghost while remaining without presence.⁵¹⁸ So it is that before any decision or judgment comes to pass, it is summoned under questioning in itself, making the decision to reflect (and to reflect upon) the possibility of lesser violence, even if there is no prior knowledge what it is or how to reach it in every concrete case; one might or might not succeed in judging with “lesser violence”, it even might be not possible to measure it, but the possibility of lesser violence remains to haunt. (I will return to the question of reflection later in the analysis of Derrida’s text “The Laws of Reflection: Nelson Mandela, In Admiration.”)

This demand cannot be expressed in the form of ontology, or any ethics. Levinas’s ethical ontology is replaced here by Derrida’s hauntology as it is developed in *Spectres of Marx*. Derrida says on specters in general:

It does not belong to ontology, to the discourse on the Being of beings, or to the essence of life or death. It requires, then, what we call, to save time and space rather than just to make up a word, hauntology. We will take this category to be irreducible, and first of all to everything it makes possible: ontology, theology, positive or negative onto-theology.⁵¹⁹

Hence, the possibility to arrive at less violent actions, which emerges out of the experience of the impossible, is not a matter of knowledge, but nor is it non-knowledge; the demand to take the other as other to itself, which defines lesser violence, remains to haunt, and for the same reason, it is demanding.

⁵¹⁷ Derrida, *Specters of Marx*, p. 39.

⁵¹⁸ Ibid, p. 221.

⁵¹⁹ Ibid., p. 63.

In the discussion of the lesser violence, the “othering” of the other, the other as remaining other to itself, which is the key to the relationless relation, was marked out, but nevertheless, left unexplained. In the next section, I will return to this “movement”, which is, as said above, also the incision of deconstruction, its “arrival” at the second “phase” of deconstruction.

6.2 Infrastructural Accounting

As it was established in the previous section, deconstruction aims at “capturing” (without making it thinkable) the other in its otherness, which makes it the task of the incision or inscription of deconstruction to institute –

a relation in the form of a nonrelation, to inscribe rupture in the text, to place the chain of discursive knowledge in relation to an unknowledge which is not a moment of knowledge: an absolute unknowledge from whose nonbasis is launched chance, or the wagers of meaning, history, and the horizons of absolute knowledge.⁵²⁰

This task, if it can be so called, is performed by Derridean “infrastructures,” to which deconstruction arrives in its second “phase.”

In the following, in order to explicate the incision of deconstruction, and as much as the metaphor of a letter opener that cuts open the fold between two sheets (of a book, for example) was already used above in the explication of the conditions of incision of deconstruction, I will briefly turn to the figure of the fold in Derrida’s analysis of Stéphane (Étienne) Mallarmé’s work in “The Double Session.”⁵²¹ With the help of the figure of the fold, and the blank that relates to it, it can be shown how the second movement of deconstruction arrives to “infrastructures” and offers a “solution” to the situation of radical violence. It also serves for demonstrating how the above performed analysis on Arendt’s “principle” over the concept of repetition parallels with Derrida’s analysis of the “blank.”

In the second part of “The Double Session,” Derrida focuses on the “blank” and the “fold,” which are, as he says, “systematically recognised as *themes* of modern criticism” of Mallarmé’s work.⁵²² The blank is “the place where nothing takes place but the place. But that ‘place’ is everywhere; it is not a site fixed or predetermined.”⁵²³ The blank understood in this way corresponds closely to Arendt’s “principle” in the sense of absolute transparency, as it was interpreted above. Derrida’s explications can be divided into two movements (although they take place simultaneously), which, in turn, can be related to two “phases”

⁵²⁰ Derrida, *Writing and Difference*, p. 339–40.

⁵²¹ See above, pp. 95–6.

⁵²² Derrida, “The Double Session,” p. 254.

⁵²³ *Ibid.*, p. 264–5.

of deconstruction – the critical and, let us say, “infrastructural” phase, as they were outlined above.⁵²⁴

The first movement is initiated “through an interruption that suspends the equation between the mark and the meaning,” which is the situation of radical violence in terms of the thesis. This allows us to think of the “blank” as “the place where nothing takes place but the place,” or as absolute transparency. The “blank” appears when whatever shines through it as the “blank’s” own(most), or as Derrida puts it, in Mallarmé’s texts “the ‘blank’ appears first of all, to a phenomenological or thematic reading, as the inexhaustible totality of the semantic valences that have any tropic affinity with it.”⁵²⁵ In terms of Arendtian “principle” (its *vouloir-dire*), we could say that the “principle” “appears” when whatever content (i.e. anything that brings people to act together) shines through the “principle” (and becomes) as its own(most). Derrida further differentiates between two forms how the “blank” appears – it appears in the form of the white, or whiteness, and in the form of the fold; as he says: “the white is marked (snow, swan, virginity, paper, etc.) or unmarked, merely demarcated (the *entre*, the void, the blank, the space, etc.).”⁵²⁶

However, there is a second movement in which the “blank” reduplicates itself:

It *inserts* (says, designates, marks, states – however one wishes to put it, and there is a need here for a different “word”) the blank as a blank *between* the valences, a hymen that unites and differentiates them in the series, the spacing of “the blanks” which “assume importance.”⁵²⁷

This means that the blank marks everything white “*plus* the blankness that allows for the mark in the first place, guaranteeing its space of reception and production.”⁵²⁸ That the “blank” appears in the form of whiteness, indeed, complicates things, because due to this reduplication there will be “white on white;” so, in case of Mallarmé’s texts Derrida concludes:

These veils, sails, canvases, sheets, and pages are at once the content and the form, the ground and the figure, passing alternately from one to the other. Sometimes the example is a figure for the white space on which they are inscribed, that which stands out, and sometimes it is the infinite background behind. White on white. The blank is coloured by a supplementary white, an extra blank that becomes ... a blank open on all four sides, a blank that is written, blackens itself of its own accord, a false true blank sense [*sens blanc*], without a blank [*sans blanc*], no longer countable or totalisable, counting on and

⁵²⁴ See above, pp. 77–8.

⁵²⁵ Derrida, “The Double Session,” p. 260.

⁵²⁶ Ibid., p. 265.

⁵²⁷ Ibid., p. 260.

⁵²⁸ Ibid., p. 261.

discounting itself at once, a blank that indefinitely displaces the margin and undoes ... “the unitary aspiration of meaning.”⁵²⁹

Again, the meaning of this passage perhaps gets clearer when juxtaposed with the “principle” (creating a sort of parallax). It was argued that whatever shines through the “principle” as its own(most) does not somehow replace the “principle,” but the “principle,” at the moment when whatever content shines through it as its own(most) in the form of difference, differentiates from whatever shines through it, forming a repetition before the beginning. The beginning is the repetition of the principle, which is already not one, but in repetition of itself and in itself.

There are (at least) three outcomes that follow from the fact that this repetition is not a matter of choice, but a structural necessity: firstly, as much as there is not one (side) without the other, it can be called an affirmation, an unconditional affirmation for no principle can restrict it (because the affirmation is prior to it) – in other words, prior to the beginning there is an affirmation where the principle is confirmed by itself as an other; secondly, it is a promise (and memory), because this repetition is not a fulfilment through the next turn of repetition, but it has to remain repeating, like giving a promise to remember to return again; and thirdly, as much as there is a difference that does not let the “sides” of repetition to be one, it is a response, a response (or a call) to the other. In line of this, Derrida says:

This affirmation is unconditional, first of all, in its form: it is intractable and excludes itself... But it is again unconditional in its content, as should be every affirmation of this type. It is in effect nothing other than affirmation of affirmation, the “yes” to the originary “yes,” the inaugural engagement of a promise or of an anticipation which wagers, *a priori*, the very future.⁵³⁰

Therefore, the beginning (and the future) is possible only by repeating an affirmation given to an other (beginning), which is altogether other (in so far as it is not graspable by any principle); the beginning “can only affirm itself and engage itself in this repetition. ... there would be no future without repetition,” as says Derrida.⁵³¹ This “self-repetition, self-confirmation in a *yes, yes*” prior to the beginning, which is also a “self-otherness or self-difference (the difference from within oneself),” is “the place of” an *infrastructure*, for example, for *yes-yes*, in which the other as other is accounted without its appropriation.⁵³²

⁵²⁹ Ibid., p. 267.

⁵³⁰ Jacques Derrida, *Archive Fever: A Freudian Impression* (Chicago & London: The Chicago University Press, 1996), p. 74. Originally presented as a lecture June 5, 1994, at a colloquium in London, England.

⁵³¹ Ibid., p. 79, 80.

⁵³² Ibid., p. 78, 79.

I will return to *yes-yes* in a little later, but right now let us follow further the thought on the “blank,” for Derrida also analyses the “blank” as appearing in (the form of) the fold. At the moment the blank appears as the demarcated blank in the fold, like the void, the *entre*, the space, etc., the blank folds over, i.e. “it re-marks itself, marks itself twice.”⁵³³ Now, in order to underline specifically the incision of deconstruction, I recall the example of a fold between two sheets (of a book, for example) that is being cut open by a letter opener. If we observe the incision made in that case, it can be noticed, that this blank-fold opened as the result of the incision, always opens into “another fold,” which re-marks it, so that not only the blank appears inside the fold, but also the fold appears inside the blank; in other words, the fold opens at the same time into the outside and the inside, or as Derrida puts it: “The fold does not come up upon it from outside; it is the blank’s outside as well as its inside. ... The fold folds (itself): its meaning spaces out with a double mark, in the hollow of which a blank is folded.”⁵³⁴

Another illustration of the same movement could be a situation where someone wants to insert a mark, perhaps a word, or punctuation into a text, so as to change its “initial” meaning. In order to do that it has to follow the structure of the text and find a gap, for example, an end of a sentence, a turn of a paragraph (a structural possibility), which allows incision in such a way that it does not disrupt the flow of the text, but nevertheless, displaces it, so that the whole starts to mean something else. Simultaneously, it must be assumed that the text is open, or that the meaning of the text is never complete, so that adding an additional mark cannot ruin the text as such (a transcendental possibility). Indeed, one has to find also a blank, a space of whiteness (a space of incision) to add the mark. But this is not yet the whole story. At the moment of incision, the mark necessarily appears in the text only as marked out by other marks. In other words, in order to appear as something intervening (re-marking) in the text, it has to be re-marked; re-marking has to precede the mark. At the same time, the re-mark is also a repetition, which must take place after the mark has appeared. This refers to an aporia, which is accounted for by the infrastructure “re-mark.”

Perhaps, a more systematic exposition of the re-mark, following in this Gasché’s approach, offers some additional clarity about how aporias are accounted by *infrastructures*. The mark in general is the mark of itself. It means that the mark contains a differential structure in itself; it is double from the very beginning, because it does both: it marks and is marked. But it marks itself as something other, as another mark; only this allows the differential structure. Gasché says:

Because a mark acquires the ideal identity necessary to its iteration as the mark of something other than itself only to the extent that it is constituted by what it is

⁵³³ Derrida, “The Double Session,” p. 265.

⁵³⁴ Ibid.

not, the totalizing semic mark must also inscribe or insert within itself the differential structure of the mark, that which makes the mark possible. The mark must thus be marked, or re-marked, by its own mark (march, margin).⁵³⁵

It can be said that it is possible to divide the structure of the mark in general between a “marking mark” and a “marked mark.” On the one hand, as much as they are in the mark, they are the margins of the mark, which now re-mark the mark. On the other hand, they open up a space or a fold, a differentiation between them. As the mark is inevitably something else than another mark, this space, “the re-marked site of the mark,”⁵³⁶ becomes consequently the true place of the mark, where the mark only can emerge. In this sense, the space between marks, that demarcates them, becomes the space of inscription of the mark. The mark becomes possible by falling into the space of inscription, which is already in the mark. But as soon as the differential structure (re-mark) appears, and the mark starts to stand for itself as another, re-mark has to withdraw; as Gasché says: “By re-marking itself, the mark effaces itself, producing in this manner the illusion of the referent. It effaces itself, disappears in the appearing of what it is not – a proxy of itself.”⁵³⁷ In other words, in signifying something else, the mark appears as a sign. The re-mark makes the totalising mark possible, but at the same time it undermines this totalisation and makes it impossible.

It can be seen that, indeed, besides all conditions of deconstruction delineated above, there still is one additional movement of double opening or marking, for example, *re-mark* (or *yes-yes*) that takes place at the moment of incision, in which, paraphrasing here Gasché, the transcendental conditions of possibilities are put into relation with their structural possibilities.⁵³⁸

The deconstructive “solution” (which is also its incision) that we were looking for remains affected by this “logic” as well. In its first movement and “phase,” the “solution,” that cannot appear in the presence, as it was said above, nevertheless, maintains its future and its past, i.e. its “has yet to be,” but also, its “has already been,” which amounts to the “original” undecidability between, for example, the performative and the constative, from which this thesis proceeded in its analysis. The “solution” is (remains) undecidable. This is also the first “phase” of deconstruction – deconstruction shows undecidability (or contingency) of any content that passes through the “principle;” it is expressed in a certain indifference towards whatever series of whites stands for the blank, or in the phrase “whatever content shines through the ‘principle’.”

But in its second movement, the undecidability or opposition of performatives and constatives, opens itself into “an other undecidability,” which

⁵³⁵ Gasché, *The Tain of the Mirror*, p. 220.

⁵³⁶ Derrida, *Positions*, p. 46. Jacques Derrida, *Positions : Entretiens avec Henri Ronse, Julia Kristeva, Jean-Louis Houdebine, Guy Scarpetta* (Paris: Les Éditions de Minuit, 1972), p. 63: « le lieu re-marqué de la marque. »

⁵³⁷ Gasché, *The Tain of the Mirror*, p. 222.

⁵³⁸ *Ibid.*, p. 163.

precedes it in an a-temporal way. This is undecidability as an “infrastructure,” which is the second movement of deconstruction. Derrida argues in *Memoirs: for Paul de Man* (what he does not do in “Declarations of Independence”) that:

There remains to be thought an other undecidability, one no longer bound to the order of *calculation* between two poles of opposition, but to the incalculable order of a wholly other: the coming or the call of the other. ... *There is no* inside-the-undecidable, certainly, but an other memory calls us, recalls us to think an “act” or “*parole*” (speech), or a “speech act” which resists the opposition performative/constative, provoking at the same time the aporia and movement forward (*la marche*), the relation of one to the other, that is to say, history or the text. But we know ... that this singular memory *does not* lead us back to *any anteriority*. There never existed (there will never have existed) any older or more original “third term” that we would have to recall, toward which we would be called to recall *under* the aporetic disjunction. This is why what resists the non-dialectisable opposition, what “precedes” it in some way, will still bear the name of one of the terms and will maintain a *rhetorical* relation with the opposition. It will be figured, figurable. It will have the figure of opposition and will always let itself be parasited by it. We will call “act,” for example, that act (of speech or not) which precedes the opposition between the language of act and the language of truth, between the performative and the constative.⁵³⁹

In terms of the logic of “principle,” we could say that if a content shines through the “principle” as its own(most) in the form of undecidability, then it remains (not(-))decidable,⁵⁴⁰ which is not one more turn of undecidability, but it is a difference from itself and in itself. This means that one cannot face undecidability without deciding at the same time, i.e. without being in(-)decision-making.⁵⁴¹ Derrida argues in the similar vein in “Force of Law”:

the undecidable is not merely the oscillation or the tension between two decisions, it is the experience of that which, though heterogeneous, foreign to the order of the calculable and the rule, is still obliged – ... to give itself up to the impossible decision, while taking account of laws and rules.⁵⁴²

This second movement is, on the one hand, inseparable from performing the incision, while on the other hand, it is (as if) the result of the incision, and it is called by Gasché as “inscription.” Deconstruction ends, one might say, with

⁵³⁹ Jacques Derrida, *Mémoires: for Paul de Man. Revised edition* (New York and Oxford: Columbia University Press, 1989), p. 137.

⁵⁴⁰ Here it is attempted to assemble different meanings – decidable, not-decidable, not decidable – into one “word.”

⁵⁴¹ For example, Derrida says in “Dialanguages”: “Someone says, ‘I don’t know if I am going to do this or that, I will never manage to decide if it is better to do this or that.’ *This scene betrays decision.*” Jacques Derrida, “Dialanguages,” in E. Weber (ed.), *Points...: Interviews 1974–1994* (Stanford: Stanford University Press, 1995), p. 148.

⁵⁴² Derrida, “Force of Law,” p. 963.

inscription, which evades metaphysical concept of production and generation – there is no contradiction or opposition between what is inscribed and the space or surface of inscription, “it only affirms, but does not produce or constitute,” and this prevents the incision of deconstruction to turn into a creation or generation of deconstruction.⁵⁴³ In next sections, I further illuminate what the deconstructive accounting entails by examining a trap of thinking that lures any engagement with radical violence.

6.3 The Trap

It was shown above that a deconstructive engagement with radical violence takes place over the “relationless relation,” which is opening to the other in its otherness. This also means that what has been formulated above as the problem of radical violence cannot have a solution that is thought (in one way or another) on the basis of the full and self-contained presence, because it would not maintain an aporetic relation to radical violence, and any such solution gets situated “prior to” radical violence, hiding and preserving, rather than dealing with it.⁵⁴⁴ Equally, any resistance thought in this way remains a repetition (or destruction) of the same founding act. Now, as can be seen from cases of Arendt and Benjamin, and some others that will be mentioned below, even if radical violence is recognised, the presence as the ground of a “solution” might return even against author’s explicit intentions to the contrary. This is the sign of a trap for/in thinking, which will be explored more closely below.

Derrida mentions such trap for thinking about radical violence in “The Double Session”:

And yet the structural site of this theological trap is nevertheless prescribed: the mark-supplement [*le supplément de marquee*] produced by the text’s workings, in falling outside of the text like an independent object with no origin other than itself, a trace that turns back into a presence (or a sign), is inseparable from desire (the desire for reappropriation or representation).⁵⁴⁵

There is no short way to explain this passage, therefore, the whole following section will be dedicated to the task. I argue that whoever falls into this trap remains entrapped into the so-called first “phase” of deconstruction and necessarily misunderstands the deconstructive “solution” to the problem of radical violence in “infrastructures” (that maintain the irreducible reference to the Other without turning into the third re-totalising term).

So, Derrida argues in this passage that the mark-supplement, i.e. the blank between valences or whites, i.e. the re-marking fold, can fall “outside of the text

⁵⁴³ Ibid., p. 159.

⁵⁴⁴ See also above, p. 89, 99.

⁵⁴⁵ Derrida, “The Double Session,” p. 265.

like an independent object with no origin other than itself,” turning into a presence that feeds “the desire for reappropriation or representation,” the desire to erect, for example, “the whiteness of the page of writing into the fundamental signified or signifier.”⁵⁴⁶ Following this thought on the basis of the fold, it might be said that the fold folds, but not into a different fold, or into a fold as such.⁵⁴⁷ Derrida says in this respect that because of the reduplication of the fold “that nothing has preceded, there will never be any Blank with a capital B or any theology of the Text;” i.e. for the reason that nothing has preceded, there cannot be any different fold.⁵⁴⁸ Nevertheless, as much as the fold is the blank’s outside as well as its inside, it is possible that the supplementary mark is thought/perceived falling (only) into the outside, or, I would add, only into the inside of the text, turning into an independent object generating desire for reappropriation. Derrida calls it a theological trap.

These two cases of the theological trap (i.e. the mark falling inside or outside) cannot be opposed to each other in the manner like a trap of transcendence would oppose a trap of immanence. If the supplementary mark is thought to fall outside, as it would be in the case of God, as we shall see very soon, then saying that God is transcendent and immanent, means not that the theological trap is avoided, but just that God is “and,” which binds the both. In “Declarations of Independence” Derrida uses this phrase: “*And* is God: at once creator of nature and judge.”⁵⁴⁹ The other case of the theological trap, when the fold folds inside, could be described by the formula “there is neither transcendence nor immanence;” it is “nor” that mediates both, and takes the place of God. In contrast, the Derridean *infrastructure* “is the structure and/or, between *and* and *or*.”⁵⁵⁰ Next, these both cases of the trap will be explicated by the help of some contemporary readings of Derrida.

6.3.1 The Case of Laclau

The case of the trap when the mark-supplement falls inside the text, rather than outside, it could be said, in terms of the fold, that the fold folds into inside, as if a fold in the garment is pushed back and the blank seems to appear only in the inside. In that case, (as the re-marking seems to be impossible) it appears that nothing of the blank (is) nothing as such, though it is merely a trap, because where nothing is to be seen is itself already a content; as Derrida puts it, “from the moment the blank (is) white or bleaches (itself) out, as soon as there is something (there) to see (*or not to see*)...”⁵⁵¹ This case can be illustrated by the

⁵⁴⁶ Ibid.

⁵⁴⁷ For that reason the phrase “another fold” was put into quotation marks at the explication of the blank-fold above.

⁵⁴⁸ Derrida, “The Double Session,” p. 265.

⁵⁴⁹ Derrida, “Declarations of Independence,” p. 52.

⁵⁵⁰ Derrida, “The Double Session,” p. 268.

⁵⁵¹ Ibid., p. 265. (The emphasis is mine.)

theory of hegemony of Ernesto Laclau and Chantal Mouffe. The theory of hegemony has its own terminology and complexity, which can be explicated in much more detailed manner than could be done in the framework of this thesis, but, nevertheless, in the following it is attempted to demonstrate its main logic and problems by concentrating on its relation to deconstruction.

Laclau has elaborated on the relation between the theory of hegemony and deconstruction, above all in books *Deconstruction and Pragmatism*, and *Emancipation(s)*.⁵⁵² In the former, Laclau summarizes his view on this relationship as follows:

Deconstruction and hegemony are the two essential dimensions of a single theoretico-practical operation. Hegemony requires deconstruction: without the radical structural undecidability that the deconstructive intervention brings about, many strata of social relations would appear as essentially linked by necessary logics and there would be nothing to hegemonise. But deconstruction also requires hegemony, that is, a theory of the decision taken in an undecidable terrain: without a theory of the decision, that distance between structural undecidability and actuality would remain untheorised.⁵⁵³

In the context of the idea of deconstruction delineated in this thesis so far, this passage poses a puzzle. On the one hand, there seems to be a place in the “logic” of deconstructive movement that could accommodate the theory of a hegemonic decision. Namely, if put in terms of the “logic” of the “principle” outlined above, the theory of hegemony theorises deconstruction’s “indifference” to what content starts to shine through the “principle.” For example, if in case of Arendt it was said that “whatever the initial getting together of people is based upon shines through the ‘principle’ as the principle’s own(most),” then in concrete political circumstances, there always is one (set of) value(s) or demand(s) around which people are getting together and which passes through the “principle.”⁵⁵⁴ The theory of hegemony explicates how one particular demand, value, or, most generally, content (a signifier) takes a hegemonic position in relation to other equivalent demands, values or contents and determines the beginning (or meaning). One of the main tasks of this project then is to think structurally, how a content in representing the totality of a system is never able to take the position of an absolute (and restore an absolute fullness, order, meaning, etc.). This is theorised on the basis of the concept of contingency, which means that all possible candidates for the role of representation are equivalent to each other and there cannot be any predetermined con-

⁵⁵² Simon Critchley, Jacques Derrida, Ernesto Laclau, and Richard Rorty, *Deconstruction and Pragmatism*, ed. by C. Mouffe (London and New York: Routledge, 1996); Ernesto Laclau, *Emancipation(s)* (London and New York: Verso, 1996).

⁵⁵³ Ernesto Laclau, “Deconstruction, Pragmatism, Hegemony” in *Deconstruction and Pragmatism*, ed. by Chantal Mouffe (New York: Routledge, 1996), pp. 59–60.

⁵⁵⁴ See also above, p. 117.

tent for this position; by words of Laclau, contingency refers to a situation “where no specific content is predetermined to fill the structural gap.”⁵⁵⁵ If all contents are equivalent then one particular content that stands in for the totality remains constitutively inadequate to its task, which is manifested in its appearing as split between the general form of fullness and its own particular content: “on the one hand, it will be its own literal content; on the other ... it will represent a general function of filling that is independent of any particular content ... [i.e.] the general form of fullness.”⁵⁵⁶ In this way, the particular content brings about a horizon of fullness, which it is trying to fill in (but as much as other possibilities are equivalent to the one actually incarnating the fullness, the filling is always ultimately inadequate). On the discursive level, it amounts to production of empty signifiers, for in order to name the absent fullness, a particular content, in taking the role upon itself, has to empty or mitigate (to certain extent) its own particularity, so that it could represent other contents (or demands, etc.). In other words, this process of emptying is what separates any particularity in its role of representation from taking the place of an absolute. The above said finds its shortest expression in the definition of hegemony proposed by Laclau and Mouffe: hegemony is when “one difference, without ceasing to be a *particular* difference, assumes the representation of an incommensurable totality.”⁵⁵⁷

On the other hand, Laclau posits hegemony on the same level as deconstruction in its second movement, but in the second movement, as it has been shown above, deconstruction does not need to be supplemented by a decision – there is no infrastructural undecidability without a decision. Nevertheless, Laclau’s depiction of the relationship between hegemony and deconstruction can be expressed with the following sequence: if there always is one particular content (values, demands, etc.) that determines the act of founding, then it tends to be presented as the only one suitable for the representation (for example, other possibilities might simply be forgotten, sedimented over time). According to Laclau, deconstruction exposes that such claims are unfounded, and every value, demand or content is structurally undecidable and contingent, i.e. there always are other possibilities to begin something. For example, in *Emancipation(s)*, Laclau explains that the undecidability deconstruction generates “should be literally taken as that condition from which no course of action necessarily follows.”⁵⁵⁸ Such undecidability, in turn, highlights the need for a decision, and for a theory to explain how the decision is possible in these circumstances of undecidability. It follows that “the role of deconstruction is ...

⁵⁵⁵ Laclau, *Emancipation(s)*, p. 92. In the introduction to *Hegemony and Socialist Strategy*, where the theory of hegemony is first proposed, Laclau and Mouffe state in this regard that “one of the central tasks of this book will be to determine this specific logic of contingency.” (p. 3)

⁵⁵⁶ Ibid., p. 93.

⁵⁵⁷ Laclau, *Populist Reason*, p. 70.

⁵⁵⁸ Laclau, *Emancipation(s)*, p. 78.

to *reactivate* the moment of decision,”⁵⁵⁹ by revealing “original” undecidability, but the theory of hegemony provides for the logic of the decision, which then as if completes deconstruction. As a result, a clear dividing line between two theoretical moves can be drawn: the first move, deconstruction, is complemented by the second one, hegemony. Laclau has subscribed to this position also in his most recent interviews: “But deconstruction stops ... at the moment of undecidability. A theory of hegemony needs a further step – a theory of the decision – and that is not provided by deconstruction.”⁵⁶⁰

The view that hegemony and deconstruction are complementary theoretical steps has provoked several criticisms. Above all, Aletta Norval insists that deconstruction means something more and different than just a “foregrounding of contingency,” and that the Derridean undecidability should be kept apart from a mere structural openness: “Structural openness points to the essential contestability of all identity and the ultimate impossibility of closure. Undecidability, by contrast, designates a terrain, not of general openness and contestability, but of a regulated tension and of a suspension in the ‘between.’”⁵⁶¹ In this way, Norval’s main charge against Laclau is that he ignores a specific connotation of the Derridean undecidability as an *infrastructure*.⁵⁶² Norval’s critique is also echoed by Lasse Thomassen, who states that “deconstruction and hegemony, undecidability and decision, can neither be temporally separated, nor conceived as different and *complementary* analytical moves.”⁵⁶³

The reason for this reduction of deconstruction to its first “phase,” can be explained by a lure of the theological trap. The gist of the problem is centred on how to account for the absolutely inaccessible, the other in its otherness. If deconstruction thinks, as it was shown above, the openness to the other as other via relation without relation, for “what other means is phenomenality as disappearance,” as Derrida puts it,⁵⁶⁴ then, like also E. E. Berns notes, Laclau rejects the possibility of the relation without relation: “If identities are exclusively relational, then all relation must, by definition, be internal. The concept of an ‘external relation’ has always seemed inconsistent to me.”⁵⁶⁵ Therefore, the “principle,” or the “blank, where “nothing takes place but the place” must appear for Laclau as a sort of transcendental structure. Excluding this possibility, Laclau maintains that “the social terrain is structured, in my view, not as

⁵⁵⁹ Ibid.

⁵⁶⁰ Brian Price and Meghan Sutherland, “Not a Ground but a Horizon: An Interview with Ernesto Laclau,” *World Picture*, Vol. 2 (Aug., 2008), http://www.worldpicturejournal.com/WP_2/Laclau.html.

⁵⁶¹ Norval, “Hegemony after Deconstruction,” pp. 146–147.

⁵⁶² See *ibid.*, p. 141, 145.

⁵⁶³ Lasse Thomassen, “Antagonism, Hegemony, and Ideology after Heterogeneity,” *Journal of Political Ideologies*, Vol. 10, No. 3 (October 2005), p. 291.

⁵⁶⁴ Derrida, “Violence of Metaphysics,” p. 161.

⁵⁶⁵ Ernesto Laclau, *New Reflections on the Revolution of Our Time* (London and New York: Verso, 1990), p. 207. See also, E. E. Berns, “Decision, Hegemony and Law,” *Philosophy and Social Criticism*, Vol. 22, No. 4, p. 77.

completely immanent or as the result of some transcendent structure, but through what we could call *failed transcendence*. Transcendence appears within the social as the presence of an absence.”⁵⁶⁶ In other words, if a system consists of differences (the meaning of an element is determined by its relations to other elements), then the fullness, the closure or the systematicity of the system is unachievable because of the structural inability to signify its limits (which is the moment of radical violence in terms of this thesis), but, as Laclau states, “the impossibility of an object does not eliminate its need: it continues, as it were, haunting the structure as the presence of its absence” (in the political terrain, the guilt for this absence of fullness is attributed to one or other political force or enemy).⁵⁶⁷

To think of the “blank” as a transcendental place waiting there to be filled in with a content certainly diverges from what Derrida had in mind. Derrida says that this “place” “is not a site fixed and predetermined,” but “that ‘place’ is everywhere.”⁵⁶⁸ For that reason, the “blank” (and in the same way, the “principle”) is always already represented:

This surplus mark, this margin of meaning, ... has to be inserted there [as a valence among others in the series] to the extent that it does not exist outside the text and has no transcendental privilege; this is why it is always *represented* by a metaphor and a metonymy.⁵⁶⁹

In the same way, what has been dubbed in this thesis as “radical violence” is itself nothing but a metaphor (or catachresis), and this thesis could have not approached and recognised the radical violence otherwise than on the field of representation. But having located the situation and meaning of radical violence (by recourse to the metaphor), the radical violence interrupts and “suspends the equation between the mark and the meaning.”⁵⁷⁰ In this suspension, it appears that there is nothing prior to radical violence, for which reason the latter is also termed by Derrida as “preethical violence,” or “previolence.”⁵⁷¹ It is here where Laclau’s and Derrida’s trajectories of thinking start to diverge. The suspension means, in terms of the supplementary mark that:

This surplus mark, this margin of meaning, is not one valence among others in the series, even though it is *inserted* in there. [and] we will try to show that this position of the supplementary mark [the structurally necessary position of a supplementary inscription] is in all rigour neither a metaphor nor a metonymy even though it is always represented by one trope too many or too few.⁵⁷²

⁵⁶⁶ Ernesto Laclau, *On Populist Reason* (London and New York: Verso, 2005), p. 244.

⁵⁶⁷ Laclau, “Deconstruction, Pragmatism, Hegemony,” p. 56.

⁵⁶⁸ Derrida, “The Double Session,” p. 264–5. See supra, p. 132, n. 523.

⁵⁶⁹ *Ibid.*, p. 259.

⁵⁷⁰ *Ibid.*, p. 261.

⁵⁷¹ Derrida, “Violence and Metaphysics,” p. 160, 162.

⁵⁷² Derrida, “The Double Session,” p. 259.

In contrast, Laclau and Mouffe place the hegemonic relation on the metaphor-metonymy plane, even if it does not equate with either side in their purity; in “The Politics of Rhetoric” Laclau asserts that “hegemony is always suspended between two impossible poles,” i.e. between metonymy and metaphor.⁵⁷³

For Derrida, what is revealed in this suspension remains not representable, not even as the presence of the absence of fullness – if nothing (has been yet), then what exactly can be absent? For Laclau, on the other hand, “the failure inherent to representability ... becomes itself representable, even if only through the traces of non-representability within the representable.”⁵⁷⁴ This means that, for Laclau, what is revealed in the suspension is accounted for through a distorted representation; a particular content in representing the fullness of a system always appears as split between the general form of fullness and its own particular content, but due to the radical contingency, the particularity can never fill in the general form of fullness. Therefore, as much as “there is no order [no particular content] that can claim a monopoly of the ordering function [i.e. a general function of filling, or the general form of fullness, which functions like a horizon], emptiness is at the heart of the structure.”⁵⁷⁵ Now, this emptiness is here that should represent what is irrepresentable and Laclau proceeds that “‘irrepresentability’ acquires a certain form of discursive presence through the production of empty signifiers which ... name an absent fullness.”⁵⁷⁶ However, the emptiness is never in this formulation, even if it results from the “irrepresentability,” as Laclau says, absolutely empty, but it is an emptiness of fullness, and therefore, it is a content. Hence, the presence of absence also bridges the aporia of irrepresentability, and it cannot be a way to “deal” with it.⁵⁷⁷

The following passage from “The Double Session” seems to catch neatly the difference of deconstruction (in its second movement) from hegemony:

This is why, while it [the mark-supplement] cannot constitute a meaning that is signified or represented, one would say in classical discourse that it always has a delegate or representative in the series: since the blank is the polysemic totality of everything white or blank *plus* the writing site (hymen, spacing. etc.) where such a totality is produced, this *plus* will, for example, find one of these

⁵⁷³ Ernesto Laclau, “The Politics of Rhetoric,” ed. Paul Cohen [et al.], *Material Events: Paul de Man and the Afterlife of Theory* (Minneapolis: the University of Minnesota Press, 2001), p. 239.

⁵⁷⁴ Ernesto Laclau, “Ideology and post-Marxism,” *Journal of Political Ideologies*, Vol. 11, No. 2 (June 2006), p. 105.

⁵⁷⁵ Ernesto Laclau, “Ethics, Normativity, and the Heteronomy of the Law,” ed. Sinkwan Cheng, *Law, Justice, and Power: between Reason and Will* (Stanford: Stanford University Press, 2004), p. 185.

⁵⁷⁶ Laclau, “Glimpsing the Future,” p. 280.

⁵⁷⁷ By words of E. E. Berns, in Laclau’s theory, “a kind of linguism seems to offer resistance to the outsidedness of the outside.” Berns, “Decision, Hegemony and Law,” p. 77.

representatives representing nothing in the blankness or margins of the page. But for the reasons just enumerated, it is out of the question that we should erect such a representative – for example the whiteness of the page of writing – into the fundamental signified or signifier in the series.⁵⁷⁸

In Laclau's case, an empty signifier is the representative that represents/names nothing in the blankness or margins of the page. This inadvertent reliance on the presence manifests in thinking the radical rupture at all levels of the theory of hegemony. On the discursive level, there are three terms that have been proposed to capture the radical exclusion at different stages of the development of the theory of hegemony. In *Hegemony and Socialist Strategy*, "the limit of all objectivity" was expressed by the concept of antagonism in which "the presence of the 'Other' prevents me from being totally myself."⁵⁷⁹ However, Laclau admits in the *Critical Reader* that "antagonism is not equivalent to radical exclusion. What it does is to dichotomize the social space, but both sides of the antagonistic relation are necessary in order to create a single space of representation."⁵⁸⁰

From *New Reflections on the Revolution of Our Time* onward, a more primary exclusion is proposed under the name "dislocation:" "Every identity is dislocated insofar as it depends on an outside which both denies that identity and provides its conditions of possibility at the same time."⁵⁸¹ But, against this prioritisation, Oliver Marchart argues: "The whole point is that, at the very moment we do *encounter* dislocation in our social experience, we have already constructed it in a certain way. Dislocation will therefore always occur within the horizon of being (the social)."⁵⁸² And indeed, Laclau himself says in *New Reflections on the Revolution of Our Time* that "a structure must be there for it to be dislocated. The situation of dislocation is that of a lack which involves a structural reference."⁵⁸³

The third, the latest term for the task is "heterogeneity," which refers to exclusions which "cannot be assimilated to the inclusive exclusion of antagonism," i.e. it refers to all forces "inside/outside" society that have no access to the field of representation.⁵⁸⁴ Now, heterogeneity results from the fact that the empty signifier cannot be entirely empty (in which case the signifying chain would expand infinitely), but it contains a residue of its particular content. Therefore, on the one hand, it is free for all to link itself to the chain (or to

⁵⁷⁸ Derrida, "The Double Session," p. 260.

⁵⁷⁹ Laclau and Mouffe, *Hegemony and Socialist Strategy*, p. 125.

⁵⁸⁰ Laclau, "Glimpsing the Future," p. 319. See also, Thomassen, "Antagonism, Hegemony and Ideology after heterogeneity," pp. 296–8.

⁵⁸¹ Laclau, *New Reflections on the Revolution of Our Time*, p. 39.

⁵⁸² Oliver Marchart, *Post-Foundational Thought: Political Difference in Nancy, Lefort, Badiou and Laclau* (Edinburgh: Edinburgh University Press, 2007), p. 153 (n. 5).

⁵⁸³ Laclau, *New Reflections on the Revolution of Our Time*, p. 43.

⁵⁸⁴ Laclau, "Glimpsing the Future," p. 319.

access to the field of representation), in the sense that any demand (value, content, political force) can create a link to the existing chain of equivalences (i.e. demands, values, contents, etc.), if it subscribes to the opposition to the antagonistic other (it is the condition to create the link, in so far as this opposition creates the chain). But on the other hand, “some new links would simply be incompatible with the remainders of particularity.”⁵⁸⁵ This is not then much different from Arendt’s position described above in that it ultimately thinks what is conformable with principles of the field of representation, rather than what is radically inaccessible, or what is the other in its otherness. We might say that the inability to account for the radical rupture on the discursive level is due to the thinking that relies on the presence as its ground.

Above all, however, the decision itself that the theory of hegemony is proposed to theorise remains haunted by the presence in the form of the subject of the decision. On the one hand, Laclau recognises that the decision cannot be made by a pre-constituted subject, in which case there were no decision but simply a calculation,⁵⁸⁶ but on the other hand, there is no other means in the theory of hegemony for depicting the moment of the decision as an instance of “impersonating a God,” “we ‘mortal Gods’ ... simulating being Him and replacing with the madness of our decisions an omniscience that will always elude us.”⁵⁸⁷ Rubenstein aptly remarks that “‘acting as if’ one were a subject is tantamount to ‘being’ a subject, insofar as the myth of subjectivity has *always* been a myth.”⁵⁸⁸ Also, Derrida argues in response to Laclau’s text in *Deconstruction and Pragmatism* that: “The decision announces itself from the perspective of a much more radical alterity,” which means that “I decide in the name of the other ... the other is the origin of my responsibility without it being determinable in terms of an identity.”⁵⁸⁹ In other words, hegemony requires deconstruction, not because the latter only reveals contingency, but because it thinks, how the decision and the beginning is possible without recourse to absolutes (or any presence). In this way, the relationship between deconstruction and hegemony is not describable as a succession of phases, but deconstruction permeates hegemony in its very functioning.

The radical violence is thinkable in the framework of hegemony only as a repetition. This means that the radical violence would manifest in the systematics of Laclau’s theory not when a particular content fails to fulfil the role of incarnation of the general form of fullness, but when a particularity, emptying of its content, arrives to the position of representation of the fullness

⁵⁸⁵ Ernesto Laclau, “The Death and Resurrection of the Theory of Ideology,” *MLN: Modern Language Notes*, Vol. 112, No. 3 (1997), p. 321.

⁵⁸⁶ See also, Jacques Derrida, “Remarks on Deconstruction and Pragmatism,” in Chantal Mouffe (ed.), *Deconstruction and Pragmatism* (London and New York: Routledge, 1996), p. 84.

⁵⁸⁷ Laclau, “Deconstruction, Pragmatism, Hegemony,” pp. 55–7.

⁵⁸⁸ Rubenstein, *Strange Wonder*, p. 149.

⁵⁸⁹ Derrida, “Remarks on Deconstruction and Pragmatism,” p. 85.

of the system (forming a possibility of the beginning), nevertheless fails to “initiate” (or uphold) the horizon of fullness (which at the same time is absolutely necessary). If the general form of fullness is always already presumed, even if not as a transcendental ground, but as formed in splitting up of the particularity when it takes the role of representation, then the radical violence cannot be accounted. It is the same as said on *infrastructures* (that also account for the suspension), “one cannot think the trace – and therefore, *différance* – on the basis of the present, or of the presence of the present.”⁵⁹⁰ Perhaps, this recalls Gasché’s question on the theory of hegemony of how the empty place is recognised: “What is it that makes it possible for all particularities to relate to this empty place as the place of the universal, a place with respect to which they themselves come to understand themselves.”⁵⁹¹ In response to this question, Laclau shifts the emphasis on the actor who performs the act of filling, and then is able to state that this question makes no sense, because “the act of *filling* a lack and the act of *recognising* the actor performing it as a true filler, are one and the same operation.”⁵⁹² I would say that the question of Gasché was not about “a true actor,” but about the horizon of fullness, which perhaps cannot be presumed as an inevitable outcome of some internal logic.⁵⁹³

In conclusion, it could be said that in case of the theory of hegemony, the supplementary mark, being reduced to one valence among others and mixed up with the emptiness, falls into the inside of the fold as an independent object feeding the desire for reappropriation. In the case of Laclau, this reappropriation means the decision that should bridge undecidability, or in other words, if the theory of hegemony theorises the decision to supplement deconstruction in its second movement, then it starts to function as an attempt of reappropriation of the aporia of undecidability. The bridging problem is aptly summarised by Mary-Jane Rubenstein:

A number of scholars (Kearney, Laclau, Critchley) ... supplement a “strictly” Derridean undecidability with something else (“an ethics of judgement,” hegemony, substitution) in order to account for the transition or passage between undecidability and the decision. Each of them, in other words, decides to provide a second, con-structive movement as a counterbalance to deconstruction’s first, de-structive movement.⁵⁹⁴

⁵⁹⁰ Derrida, “Différance,” p. 21.

⁵⁹¹ Rodolphe Gasché, “How Empty Can Empty Be?: On the Place of the Universal,” in Simon Critchley and Oliver Marchart (eds.), *Laclau: A Critical Reader* (Abingdon and New York: Routledge, 2004), p. 32.

⁵⁹² Laclau, “Glimpsing the Future,” p. 284.

⁵⁹³ It might be argued, perhaps, that this critique of Laclau’s and Mouffe’s theory is, first and foremost, a critique of its Lacanian elements, but this line of thought is not developed further in the framework of this thesis.

⁵⁹⁴ Mary-Jane Rubenstein, *Strange Wonder: The Closure of Metaphysics and the Opening of Awe* (New York: Columbia University Press, 2008), p. 163. See, for example, Laclau’s

But, as said already above, there is no such gap, infrastructural undecidability presumes decision, or as Rubenstein puts it: “the height of undecidability and the ground of decision inhabit the same spatiotemporal instant.”⁵⁹⁵

What the suspension of the mark and the meaning should have revealed is that beyond the lack of fullness understood as the presence of emptiness in the structure lies the lack of fullness understood as the not-yet-fullness, which cannot be represented by any presence.⁵⁹⁶ To treat the latter for the former means to fall into the theological trap, which is to take the emptiness of the fold for the radical rupture in the meaning, while the emptiness is part of the content (for nothing is seen) that shines through the “principle” as its own(most).

6.3.2 The Case of Horwitz

It was mentioned above that there also is another possibility of entrapment when the mark-supplement falls into the outside of the text; the mark-supplement falls “outside of the text like an independent object with no origin other than itself,”⁵⁹⁷ which means, in terms of the fold that the fold folds into a different fold, or into a fold as such. One of the more recent texts that seems to fall into this trap is Noah Horwitz’s “Derrida and the Aporia of the Political, or the Theologico-Political Dimension of Deconstruction,” which also focuses on the founding act in the elaboration of its argument, and draws from Derrida’s “Declarations of Independence,” but also from “The Laws of Reflection: Nelson Mandela, in Admiration.”⁵⁹⁸

On the one hand, Horwitz perceptively outlines all the movements of the deconstructive intervention; he educs the structural possibility by pointing out an inherent instability (or “structural undecidability”) in the founding act, due to the fact that “the event of foundation must always have recourse to something heterogeneous to what it founds,”⁵⁹⁹ he also points out the transcendental condition of possibility, which he develops on the basis of “the irreducible non-

phrasing about deconstruction: “This first movement is immediately balanced by another one of the opposite sign.” Laclau, *Emancipation(s)*, p. 79. See also chapter 6.1 above on Critchley about ethics of deconstruction.

⁵⁹⁵ Rubenstein, *Strange Wonder*, p. 177. See on undecidability also above, p. 137.

⁵⁹⁶ Perhaps, there is something similar here to what Žižek in his criticism of Laclau tries to express in the following way: “the opposition of two logics, that of antagonism and that of difference, is the deployment of a logically preceding term, of the inherent ‘pure’ difference, the minimal difference which marks the non-coincidence of the One with itself. ... “The primordial gap is ... the minimal gap between an element and itself, the Void of its own place of inscription.” Slavoj Žižek, *The Parallax View* (Cambridge, MA and London: the MIT Press, 2006), p. 36.

⁵⁹⁷ Derrida, “The Double Session,” p. 265. See also supra, n. 545.

⁵⁹⁸ See, Jacques Derrida, “The Laws of Reflection: Nelson Mandela, in Admiration,” in P. Kamuf and E. Rottenberg (eds), *Psyche: Inventions of the Other, Volume 2* (Stanford: Stanford University Press, 2008), pp. 63–86.

⁵⁹⁹ Horwitz, “Derrida and the Aporia of the Political,” p. 162.

closure of context,” that Derrida speaks about in *Limited Inc.*, which refers to a certain unconditional openness that is another name for justice to come,⁶⁰⁰ and finally, he also brings out the aporia as an “experience of impossibility and non-passage” to which deconstruction has to arrive and which “must be endured as interminable in order for experience to take place.”⁶⁰¹ Eventually, he concludes that “deconstruction takes its force and motivation from this unconditionality ... as it does from structural undecidability and aporia.”⁶⁰² Nevertheless, after bringing out all these moments, he states, in the very similar manner to Benjamin, that God “names not only an ultimate instance but also the very aporia of the act.”⁶⁰³ Giving to God this double status, Horwitz has no problem to maintain that “this transcendent reference opens up and informs the very aporia of political, making it always a theologico-political event. ... In this way, what is founded always has in itself a religious dimension.”⁶⁰⁴

However, if God names both, i.e. it names the radical aporia of deconstruction (as Horwitz says: “it is precisely this reference to an ultimate instance that betrays the ... abyssal structure of the act”⁶⁰⁵) and it names the ultimate instance without which no founding is possible, then it is God that binds everything, that remarks everything, remaining itself the outside(-fold). There is a pertinent passage in Derrida’s article “Différance,” which clearly shows, in view of deconstruction in its second “infrastructural” movement, the inadequacy of God’s position in Horwitz’s argument:

If it [*différance*, or any “infrastructure”] is unnameable, it is not provisionally so, not because our language has not yet found or received this *name*, or because we would have to seek it in another language, outside the finite system of our own. It is rather because there is no *name* for it at all not even the name of essence or of Being, not even that of “*différance*,” which is not a name, which is not a pure nominal unity, and unceasingly dislocates itself in a chain of differing and deferring substitutions. “There is no name for it”: a proposition to be read in its platitude. This unnameable is not an ineffable Being which no name could approach: God, for example.⁶⁰⁶

Horwitz’s misreading also manifests in mistaking what seems to be the ontological difference for a deconstructive undecidability.⁶⁰⁷ Drawing from

⁶⁰⁰ Ibid., pp. 163–4.

⁶⁰¹ Ibid., p. 158.

⁶⁰² Ibid., p. 165.

⁶⁰³ Ibid., p. 174.

⁶⁰⁴ Ibid.

⁶⁰⁵ Ibid., p. 173.

⁶⁰⁶ Derrida, “Metaphysics and Violence,” p. 26.

⁶⁰⁷ For example, the ontico-ontological difference, a difference between beings and Being as developed (in a preparatory form) by Martin Heidegger in *Being and Time*, clearly reverberates in the following summary by Horwitz: “The [particular] event opens up a field of possibilities and also allows one to see the general structure of the event that is irreducible

Derrida's discussion of acts of revelation in *Politics of Friendship*, Horwitz marks out the need to theorise an undecidability that "arises between a particular event opening up a field of possibilities and what allows for a field of possibilities *as such*."⁶⁰⁸ One might agree with this setting up of the problem, because it might indeed be said that beyond structural undecidability there is "another undecidability," as it was already pointed out in reference to Derrida's text *Mémoires*.⁶⁰⁹ But the undecidability that is proposed to be analysed is immediately closed in the next sentence, where he argues further that "this undecidability is best formulated ... in terms of the undecidability between an event of revelation and a general structure of revealability and phenomenality."⁶¹⁰ This undecidability is then described as a "play between the particular event and the general structure," in which the particular "event precedes the general structure in priority; however, given that this general structure cannot be reduced to the event, the general structure also seems to have priority."⁶¹¹ But clearly, this is simply one more turn of the so-called "structural undecidability." In depicting it as an deconstructive undecidability, Horwitz misses Derrida's qualification in a footnote at the very place quoted by him, where Derrida says:

What I called elsewhere *iterability* might not dissolve this alternative but might at least give access to a structure of experience in which the two poles of the alternative cease to oppose one another to form another node, another "logic," another "chronology," another history, another relation to the order of orders.⁶¹²

This also relates well to what Derrida says in "Différance" about the ontological difference: "Since Being has never had a 'meaning,' has never been thought or said as such, except by dissimulating itself in beings, then *différance*, in a certain and very strange way, (is) 'older' than the ontological difference or than the truth of Being."⁶¹³ Thinking the undecidability on the level of the ontological difference is a sign of entrapment into the theological trap.⁶¹⁴

In conclusion, perhaps, Horwitz's interpretation of (and similarly, Laclau's approach to) "undecidability" in terms of a particular event of revelation and a

to and transcends the particular event." Horwitz, "Derrida and the Aporia of the Political," p. 171.

⁶⁰⁸ Ibid.

⁶⁰⁹ Supra, n. 539; Derrida, *Mémoires*, p. 137.

⁶¹⁰ Horwitz, "Derrida and the Aporia of the Political," p. 171.

⁶¹¹ Ibid.

⁶¹² Derrida, *Politics of Friendship*, p. 25.

⁶¹³ Derrida, "Metaphysics and Violence," p. 22.

⁶¹⁴ Surprisingly, however, Horwitz shows in a comment placed in the footnote that he is aware of the theological trap, but understands it to mean that the theological is "part and parcel of the aporetic structure of the event." Horwitz, "Derrida and the Aporia of the Political," p. 176, n. 13. However, as it has been shown, the theological trap is a trap in the literal sense of the term and nullifies, in fact, the aporia of deconstruction.

general structure of revealability can be judged in the same way as Jean-Luc Marion evaluates Heidegger's *Being and Time*:

We thus end up with a double, paradoxical conclusion. On the one hand ... *Sein und Zeit* does know an "ontological difference." On the other hand ... *Sein und Zeit* does not yet think the ontological difference due to the simple fact that it names an "ontological difference."⁶¹⁵

In other words, the "another undecidability" that Horwitz as if opens but does not think aporetically, proves to be one more turn of undecidability, inseparable from a desperate need for an ultimate decider, God.⁶¹⁶

In both cases of entrapment, whether fold folds inside or outside, whether immanence and transcendence is bound by *neither* or *and*, deconstruction is understood as what it is in its first "phase," i.e. as opening a possibility for critique. This affects Horwitz's reading of Derrida's text "The Laws of Reflection: Nelson Mandela, in Admiration" in the same article explored above (i.e. "Derrida and the Aporia of the Political"). It is because the text of "The Laws of Reflection" moves beyond the scope of "Declarations of Independence" and marks out what the incision (or inscription) of deconstruction, as being different from mere opening a possibility of a critique, means in the political sphere. In the following, on the one hand, I point out Horwitz's limited analysis of "The Laws of Reflection," but on the other hand, the analysis of Derrida's text on Mandela serves also as a bridge to the next section, in which the marked out "site" of deconstructive incision in "The Laws of Reflection" is thought on the basis of legitimacy.

The question Horwitz poses to deconstruction in his analysis of "The Laws of Reflection" is when the incision of deconstruction is justified. Apparently, Derrida's formulations in his essay on Mandela give a good ground for such a question. Recalling themes analysed in the text "Declarations of Independence," namely that every state is founded on a certain "*coup de force*," a self-authorisation, Derrida argues in the text on Mandela that the coup of force which established the state of South Africa "*remained a coup de force*, thus, a bad blow – the failure of a law that is unable to establish itself. Its authors and beneficiaries were only the particular wills of a part of the population, a limited number of private interests, those of the white minority."⁶¹⁷ In other words, the founding violence could not be hidden by a constative fable and remained visible: "In the case of South Africa, certain 'conventions' were not respected,

⁶¹⁵ Jean-Luc Marion, *Reduction and Givenness: Investigations of Husserl, Heidegger, and Phenomenology* (Evanston: Northwestern University Press, 1998), p. 135.

⁶¹⁶ For a critique of other similar theological accounts of deconstruction, like those of John Caputo, Hent de Vries, and Richard Kearney, see Martin Hägglund, *Radical Atheism: Derrida and the Time of Life* (Stanford: Stanford University Press, 2008), especially pp. 107–163.

⁶¹⁷ Derrida, "The Laws of Reflection," p. 67.

the violence was too great, *visibly too great*, at a moment when this visibility extended to a new international scene, and so on. The white community was *too* much in the minority, the disproportion of wealth *too* flagrant.”⁶¹⁸ This description allows for Horwitz to put up a problem:

Derrida wishes to argue that the coup of force remains constantly visible and undercuts what has been brought into being. But given that such a coup of force is found in all events of foundation, by what right does Derrida call into question the South African state in particular? ... how is it that the coup of force in this instance can be contested whereas elsewhere it remains forgotten? ... by what right does one judge that in a particular case a minority is *too* much a minority, especially if a coup of force is necessarily at work in any event of foundation?⁶¹⁹

The answer Horwitz proposes is that if a coup of force produces a declaration, then the latter contains in itself inevitably a legal fiction, a set of principles (like “a state of and for all”) that has to be honoured by all subsequent acts, but “if the prescriptive value of its [the state’s] founding act is not respected, then this coup of force will remain visible and never fully dissimulated.”⁶²⁰ Hence, on the one hand, the incision of deconstruction is always possible due to the constitutive discrepancy between a legal fiction and an actual state of affairs, but on the other hand, if the discrepancy is judged small then the founding violence is forgotten and if it is judged as big then it remains visible, in which case an argument can be made against legitimacy of the state. However, the judgement itself, which also is the incision of deconstruction for Horwitz, remains “a matter of judgement,” as he says himself: “The decision to hear and answer to this unconditional opening and to recall the coup of force at the event of foundation remains a matter of judgement.”⁶²¹ As deconstruction cannot offer any a priori rule to make this judgement (about making a judgement), it remains “a political decision to recall the coup of force,” which, in Horwitz’s mind, “undercuts the relevance of deconstruction for politics.”⁶²²

The truth is that such exposition of the matter does not do justice to the aporia of the founding act. The founding declaration is possible only on the assumption that it is not perceived as directly violent against those whose freedom it seeks to establish. Therefore, there cannot be such situation where visibility or non-visibility of *founding* violence is decided after the coup of force has already founded a state with its prescriptive legal fiction, as Horwitz seems to argue. If such decision is thought possible, then it can take place only on the level of undecidable violence, which concerns deconstructive intervention only in its first “phase” as a critique of an already existing system. In

⁶¹⁸ Ibid.

⁶¹⁹ Horwitz, “Derrida and the Aporia of the Political,” p. 166, 167.

⁶²⁰ Ibid., p. 169.

⁶²¹ Ibid.

⁶²² Ibid., 169, 165.

line with this, Horwitz argues that “the aporia of the political, that is, ... the structurally undecidable declarative act ... offers the resource for critique and questioning.”⁶²³ This is indeed correct, but if the whole aporia of the founding act and deconstructive intervention is thought on the level of the first “phase” of deconstruction, then Horwitz really is not asking about the incision of deconstruction, but merely when one is entitled to a critique (to say that South Africa has excluded groups that has to be included); the answer is: always, of course. It is absurd to think that excluded groups (as much as they are groups) do not know about their exclusion, though, perhaps, it is possible that on certain circumstances, those who are left outside the field of representation (unable to link to the chain of equivalences, put in Laclau’s terminology) abide to reasons produced to justify their exclusion (so that they believe their lot to be the natural course of things, for example). But deconstruction is always already in progress, creating through undecidability between the performative and the constative, between a creation and a confirmation of freedom incessantly possibilities for critique, and this is, indeed, what Horwitz explicates by referring to “the prescriptive value of a legal fiction and the unconditionality of the very aporia of the political,” which is understood as a structural undecidability by him.⁶²⁴ However, as it was argued above, deconstruction has to pass through the first critical “phase,” and does not coincide with it.

The result of Horwitz’s analysis is expected, as the text on Mandela is understood in the framework of the text on the Declaration, but in fact, the former moves beyond the scope of the latter. First of all, one should pay attention to the context of the text – it is homage to Nelson Mandela, to his resistance to the regime of apartheid of South Africa. Derrida follows Mandela’s resistance and intervention into the law, and he argues that Mandela’s questioning of the law is deconstructive; he repeats in several places in the text that Mandela’s reflection brings “the invisible into visible,” which is the same formula used in *Of Grammatology* in pointing out that the task of deconstructive reading in producing *infrastructures* is “to make the not-seen accessible to sight.”⁶²⁵ So, strictly speaking, the deconstructive incision in this text is Mandela’s, not Derrida’s. This changes the context of the question of visibility of founding violence. Derrida does not say that the founding violence as violence remained visible for those for whom the state was founded, i.e. for the white minority; it is exactly the task of Mandela’s reflection to make “visible what was no longer even visible in the political phenomenality dominated by whites... It tries to open the eyes of whites.”⁶²⁶ But for Mandela, who was among the excluded, the violence was visible without saying. It relates to what Derrida says on states that are founded on genocide or quasi-extermi-

⁶²³ Ibid., p. 169.

⁶²⁴ Ibid., p. 170.

⁶²⁵ Derrida, “The Laws of Reflection,” p. 71. Derrida, *Of Grammatology*, p. 163.

⁶²⁶ Derrida, “The Laws of Reflection,” p. 70.

nation, where violence cannot be forgotten, and the state, remaining mistrustful of its fables of rightfulness that go with all acts of founding, has to “imitate right in a legislative apparatus,” which, however, always leads to contradictory results.⁶²⁷

So, by stressing visibility of violence, Derrida merely says that the scene is set for a deconstructive critique and intervention, because the undecidable violence is always already undoing the system of hierarchy. In this sense, what makes Mandela’s case exemplary for Derrida is that Mandela’s resistance did not consist only in critiquing the regime for excluding those who should have been included (by, let us say, pointing out the discrepancy between a legal fiction and the state of affairs), nor he proposed to replace the existing law or founding act with another in a revolutionary action, but Mandela wanted to bring (or to make it possible to bring) altogether different (beginning) into the same, which is attested as much by his following of the Freedom Charter,⁶²⁸ which, by words of Derrida, “does not annul the founding act of the law, [but] intends to refund it” than by his trial (his defence speech).⁶²⁹

The most defining moment in respect to Mandela’s actions lies in his (and his people’s) experience of non-response from the state; we might imagine that in situations of hesitation, of potential misreading one asks guidance, but in case of South Africa, such questions (his correspondence with the state) were not responded; by Derrida’s rendering of Mandela’s words:

For white power does not content itself with not answering. It does worse: it does not even acknowledge receipt. ... Not to acknowledge receipt is to betray the laws of civility but first of all those of civilization: a primitive behaviour, a return to the state of nature, a presocial phase, *before the law*. Why does the government return to this non-civilised practice? Because it considers the majority of the people ... to be non-civilised, before or outside the law. By acting in this way, by interrupting the correspondence in a unilateral fashion, the white man is no longer respecting his own law.⁶³⁰

So, the state gave orders, but did not respond; therefore, and this is important, as there was no response of law to follow, they followed their conscience, the call of conscience. Derrida quotes from the defence speech of Mandela:

⁶²⁷ Ibid., p. 67. For inability of the apartheid regime to keep the outside/inside distinction see, Aletta Norval, “Social Ambiguity and the Crisis of Apartheid,” E. Laclau (ed.) *The Making of Political Identities* (London and New York: Verso, 1994), pp. 115–137.

⁶²⁸ The Freedom Charter was the statement of core principles of the South African Congress Alliance (the African National Congress, the South African Indian Congress, the South African Congress of Democrats and the Coloured People’s Congress), which demanded for a non-racial South Africa, and included principles concerning democracy, human rights, land reform, labour rights, and nationalization. The Charter was officially adopted on June 26, 1955 at a Congress of the People in Kliptown. See, <http://www.anc.org.za/show.php?id=72>.

⁶²⁹ Derrida, “Laws of Reflection,” p. 69.

⁶³⁰ Ibid., p. 77.

All lawful modes of expressing opposition to this principle had been closed by legislation, and we were placed in a position in which we had either to accept a permanent state of inferiority, or to defy the Government. We chose to defy the law.⁶³¹

But something important is here revealed – it shows that law starts from response; without it, there is no law to follow; hence, the response is the source of law and prior to law. At the same time, following their conscience, defying the law and resorting to (limited) violence in order to overthrow the regime of apartheid, they still remain bound to law, as they aimed at only bringing the law to respond.

For this demand for a response, which itself can be dubbed as law of laws, to appear, to intervene into a law, it cannot be thought as becoming itself another law prior to responding; therefore, it can only appear in answering to the law, i.e. reflecting on itself before the law: “this conscience presents itself, gathers itself, collects itself by reflecting itself before the law,” as Derrida puts it. This appearing in front of law is a paradox at least for two reasons. First, it poses a problem, how one can answer (to be answerable) to the law that does not respond, that does not exist (or for whom you do not exist). Secondly, showing up in answering to such law inevitably involves risks for them who are summoned, because they remain outside the law and all acts of conscience by them are reduced to criminal acts. And indeed, Mandela was summoned to appear before the law, at his trial, at so-called The Rivonia Trial that took place in South Africa in 1963–64, in which leaders of the African National Congress were tried for acts of sabotage.

So, how he appears in the court – by understanding of Derrida, Mandela appeared in the court in admiration of law; not of the law of South Africa, but “a higher law, the one he declares to admire and before which he agrees *to appear*.”⁶³² In this way, “he will thus be able to speak to them [his judges], while speaking over their heads.”⁶³³ As much as the law he responds to, does not exist yet – either he stands in front of the law that does not exist or prior to the law, Mandela’s response takes the form of reflection; “Mandela lets himself be *fascinated* by what he sees being reflected in advance, by what is not yet to be seen, what he fore-sees.”⁶³⁴ This means that, on the one hand, he sets up an ideal law for his people, which accords with his conscience, against the existing law, on the other hand, he reflects (keeps, suspends, accounts for) his own position before the law, which is the position of altogether other beginning. For that reason, we could say that he reflects, reflecting the law of laws, or reflecting a law that would reflect law of laws. Reflecting on himself, in giving

⁶³¹ Ibid., p. 84. See also Nelson Mandela’s full defence speech, <http://www.historyplace.com/speeches/mandela.htm>.

⁶³² Ibid., p. 74.

⁶³³ Ibid., p. 81.

⁶³⁴ Ibid., p. 72.

account of himself for his people, he (and his admiration and fascination) makes law to differ in itself, of itself; the law of laws becomes then as if law-law, so that the law that appears in responding, nevertheless, cannot appear as having responded already, because the response cannot be given once and for all, but it is the promise to respond again (in yes-yes) whoever might ask for an altogether other law to come: “his reflection lets us see ... the promise of what has never yet been seen or heard.”⁶³⁵

In that way, by setting “himself against the code in the code, by reflecting the code, and thereby making visible what the code in force makes unreadable,” Mandela marks the place or movement of responding not only to this or that, but to the other in general, in which the law appears.⁶³⁶

Keeping in mind present day political developments, I think it is appropriate to finish this analysis of Derrida’s “The Laws of Reflection,” in a call to reflect, with the following quote from Derrida:

Thus the exemplary witnesses are often those who distinguish between the law and laws, between the respect for the law that speaks immediately to conscience and submission to positive law (historical, national, instituted). Conscience is not only memory but promise. The exemplary witnesses who make us think about the law they reflect are those who, in certain situations, *do not respect* the laws. They are sometimes torn between their conscience and the laws; at times they let themselves be condemned by the tribunals of their country. And there are witnesses of this kind *in every country*, which proves that the place of appearance or formulation is for the law also the place of the first uprooting.⁶³⁷

Derrida marks out these reflections that take place prior to any law with a proper name, Nelson Mandela. Gasché remarks: “‘Mandela,’ as the proper name of the Law of reflection, stresses that all synthetic accounting [*via infra-structures*] begins as response. It takes place in admiration of the Other.”⁶³⁸ A proper name might or might not (be sufficient to) replace an *infrastructure* – the question that is not addressed here – but the following chapter proposes an alternative route over the (deconstructed) concept of legitimacy to account for this “place,” which in Derrida’s text, I would say, is *marked out* by the name of Nelson Mandela.

6.4 Legitimacy as Resigning

This chapter will be a continuation of a Derridean reading of the “principle,” which was already started above as the *vouloir-dire* of Arendt’s theory. Above all, I focus on the idea of legitimacy, because the way legitimacy is brought into

⁶³⁵ Ibid., p. 83.

⁶³⁶ Ibid., p. 79.

⁶³⁷ Ibid., p. 83.

⁶³⁸ Gasché, “Inventions of Difference,” p. 19.

Arendt's theorising, allows us to develop, what I call, a post-structuralist, or deconstructed "concept" of legitimacy.

First of all, in order to see the place of legitimacy in Arendt's theorising, I recall how Arendt relates different dimensions of action with each other, i.e. the space of appearances, power, and promising. It is possible to construct the following sequence: people gather together in the space of appearances, which is kept in existence by power that is produced by the togetherness of people acting in concert and the latter is assured by the force of promising.⁶³⁹ Now, in addition to this, Arendt says that power needs legitimacy, which is derived from "the initial getting together rather than from any action that then may follow."⁶⁴⁰ By the latter, Arendt asserts her non-foundationalist paradigm and excludes the possibility that legitimacy could be educed from the value or content established in reference to a transmundane source.

Thus, she states that legitimacy resides with power and shares with power its inherent fleetingness, and as such, it also becomes part of what has been called an "ineradable potentiality" of action, or its transcendental condition of possibility. However, on closer inspection, this leaves the concept of legitimacy into a peculiar position in Arendt's theory. The question is what legitimacy exactly refers to if its function in relation to power is to be something different than is promising, for the task of promising is to potentiate the possibility of power by ensuring the togetherness of people, or as Arendt puts it: "The power [is] generated when people gather together and 'act in concert.'"⁶⁴¹ But then it remains unclear in Arendt's formulations, what role is left for legitimacy.

Developing further the possibilities that Arendt's theorising perhaps entails, it might be argued that power needs legitimacy in the sense that any inadvertent proximity of people is not sufficient condition for making promises; in other words, power remains impotent when people rather than to *gather* together meaningfully, only encounter each other accidentally. So it seems that, on the one hand, as much as legitimacy also is not some predetermined principle (which would mean a kind of stabilisation before the fact), its function can only be to mark this difference between meeting (or being together) accidentally and getting together to act in concert.

However, on the other hand, if consider the matter fully, the difference between gathering together and accidentally being together is not discernible prior to the beginning, because the fleetingness of all action hides the difference from sight – as much as all action is possible (as potentiality) only for a fleeting moment (i.e. without a constative to guarantee some perpetuity), then the possibility to discriminate between accidental and purposeful gathering together can appear only after something has already been founded (with support of a constative). As a result, there emerges an aporia; power requires a differen-

⁶³⁹ See above, pp. 81–3.

⁶⁴⁰ Arendt, *On Violence*, p. 52; see supra, p. 117–8, n. 462.

⁶⁴¹ Arendt, *On Human Condition*, p. 244.

tiation between gathering together and meeting in accident for the act of founding could be possible (for power is constitutive of the transcendental condition of possibility), and at the same time, this differentiation cannot be made before the beginning has taken place.

In that case, legitimacy cannot be situated neither on the side of transcendental nor structural conditions of possibility of the (republican) founding act, but as a “place” (or a “blank”) where these conditions themselves are made possible, i.e. legitimacy can only be thought as itself producing the difference, as differentiation within “gathering” itself. This differentiation makes every value underlying the gathering (i.e. what gathers) to be (its own) repetition, so that the difference between gathering and an encounter would be an effect of the beginning.

If to follow Derrida’s thinking on the supplementary mark delineated above, the “logic” of the “blank” and the fold, then it could be said that legitimacy marks, while differentiating, all principles that the beginning is based upon, but also their “space of reception and production.”⁶⁴² In other words, it “occupies the position of a supplementary valence, or rather, it marks the structurally necessary position of a supplementary inscription that could always be added to or subtracted from the series.”⁶⁴³ Then, legitimacy “is” what “prevents any semantic seriality from being constituted, from being simply opened or closed,” but at the same time it “actually liberates the effect that a series exists; in marking itself out, it *makes us take* agglomerates for substances,” i.e. it allows us to take accidental encounters for meaningful gatherings, though, as said, without lending any full meaningfulness or meaninglessness to them.⁶⁴⁴

In contrast, legitimacy as correspondence to (the repetition of) the value that gives stability to a performative is simply a manifestation of the “theological trap” as it was explained above; it is as if legitimacy as a supplementary mark is thought falling inside or outside the fold as an independent object demarcating the desire for binding together what is separated, for reappropriation. This becomes apparent if we once more evoke different movements or “phases” of the founding act in the context of Arendt’s “principle.”

Arendt’s argument was that the “principle” is coeval with the beginning, which was taken to mean that the content (or the value) that underlies the gathering together of people and that shines through the “principle” as its own(most) appears as what the beginning always already repeats. But if attention is paid only to this movement, then it would mean that legitimacy (as a difference) is taken to be as part of the content that shines through the “principle;” for example, as in Arendt’s case who makes it part of the transcendental condition of possibility (and which does not allow for Arendt to develop a more radical take on the “principle” and on legitimacy in line with the post-struc-

⁶⁴² Derrida, “The Double Session,” p. 261.

⁶⁴³ Ibid., p. 259.

⁶⁴⁴ Ibid., p. 261.

turalist thought). In that case, legitimacy is understood as an accord between the act of founding (and any act thereafter) and the value or principle that brings about stability and creates the possibility of the founding act. This follows non-foundationalist course of thinking, but nevertheless, it would correspond to deconstruction in its first movement only, because the content that shines through the “principle” replaces the “principle” as an empty place, introducing the presence into the thought that aims to think the other in its otherness (and makes it fail in its attempt).

By understanding legitimacy as a differentiation, we arrive at another movement that precedes in an a-temporal way the movement described: the principle at the moment of appearing in whatever shines through it, differentiates from itself, i.e. from whatever shines through the “principle.” This creates repetition outside temporality, which “takes place” prior to (in a-temporal way) the split between the performative and the constative dimensions, and makes the beginning possible (by creating repetition). The beginning turns now to be not a repetition of the principle, but the repetition of repetition, whereas this a-temporal repetition and differentiation is legitimacy itself. In this sense, legitimacy is not a repetition of some long ago happened beginning (or a settled principle), but takes place in one moment (as if outside time), creating possibility of the beginning and withdrawing from it at the same moment.

“Legitimacy” as a term has its definite history and baggage of meanings and associations related to it, which hold its deconstructed version hidden. For that reason, next I relate legitimacy to the other trajectory also outlined in this thesis – to the signature, and I argue that the structure of legitimacy is *resigning*, i.e. that deconstructed legitimacy is *resigning*. Still, before I show how *resigning* would capture legitimacy’s paradoxical “nature,” a small detour must be made to consider the usage of the same concept by Thomas L. Dumm in his article “Resignation,” which to certain extent notices and conceptualises the same movement in “resignation” that I am going to relate to legitimacy.⁶⁴⁵

His starting point is an act of resignation, for example, from an office. He uses Richard Nixon’s resignation from the Office of President of the United States in 1974 as an example. Taking resignation as an act, allows him to understand resignation on the same level as the founding act; he says, “resignation mirrors founding,” but it does it in an inverted form: “The resignation inverts the fabulous character of the founding act; it is parting that attempts to achieve its end by an assertion which repeats that of founding, namely, that all that has gone before is to be of no account for the future.”⁶⁴⁶ His guiding question is: “how does resignation operate in the world?”⁶⁴⁷

It seems to be quite a different approach compared to the one developed in this thesis, but in the course of his text, Dumm, to certain extent, arrives at the

⁶⁴⁵ Thomas L. Dumm, “Resignation,” *Critical Inquiry*, Vol. 25 (Autumn 1998), pp. 56–76.

⁶⁴⁶ *Ibid.*, p. 63.

⁶⁴⁷ *Ibid.*, p. 57.

point very similar to what will be developed below as *resigning*. He argues that “every resignation marks a rupture, a quitting, the ending of something, that places someone Nowhere in respect to where they were before.”⁶⁴⁸ This Nowhere is taken from Stanley Cavell’s philosophy and marks, as he cites from Cavell, “the central secular place, in which the human wish to deny the condition of human existence is expressed; and so long as the denial is essential to what we think of as the human, scepticism [the place of Nowhere] cannot, or must not, be denied.”⁶⁴⁹ Dumm, analysing resignation on the level of an act, finds a way to say that this experience is something that brings the *nowhere*, the radical rupture, or, we could say, radical violence, into every moment of the presence:

Resignation might be understood as an act that gives shape to an important onto-political category, that is, as an act that connects different aspects of human existence to each other, that constitutes public and private spaces through the institutions it helps to shape and break down and through the moods it encourages and elicits.⁶⁵⁰

In the course of the text, he outlines different undecidable meanings of resignation that problematise its univocal meaning – it is a private but also a public act,⁶⁵¹ it means taking control of your fate but also accepting “the fate that has meted out to one,”⁶⁵² it is a singular act, but also a plural act, happening all the time because promises are made in public as well as in private life, and this reveals that resigning entails both, resigning to office as well as resigning from office.⁶⁵³ Eventually, he arrives at the situation, where resignation cannot not to take place, because it would mean a resignation to not to resign, which is a certain reconciliation with the situation, a passivity, “an unsigned resignation.”⁶⁵⁴ Explicating his thought by recourse to Henry David Thoreau’s book *Walden; or, Life in the Woods*,⁶⁵⁵ which describes a life in solitude in the woods (a sort of resignation), he claims that this kind of situation of exclusion of resignation would be a sign of closing “oneself upon oneself [but] a self so enclosed substitutes consumption for experience, and is less than fully alive.”⁶⁵⁶

⁶⁴⁸ Ibid.

⁶⁴⁹ Ibid. See also, Stanley Cavell, “The Philosopher in American Life (Toward Thoreau and Emerson),” in his *In Quest of the Ordinary: Lines of Scepticism and Romanticism* (Chicago and London: The University of Chicago Press, 1988), p. 5.

⁶⁵⁰ Dumm, “Resignation,” p. 62.

⁶⁵¹ Ibid., p. 61–2, 64.

⁶⁵² Ibid., p. 66.

⁶⁵³ Ibid., p. 67–8.

⁶⁵⁴ Ibid., p. 72.

⁶⁵⁵ See, Henry D. Thoreau, *Walden. 150th Anniversary Edition* (Princeton and Oxford: Princeton University Press, 2004).

⁶⁵⁶ Ibid., p. 73.

So it is that resignation (like Thoreau's), "the practice of resignation out of necessity," is the very condition to be alive.⁶⁵⁷

Nevertheless, in his account, resignation remains thought on the basis of the presence, because eventually, for him, resignation is always a resignation to language, which "gives us a sense of return, a turning back to that which we may try to repudiate in our traumatic dislocation."⁶⁵⁸ This return is guaranteed for us already ahead. In that case, Nowhere that resignation should preserve for us, acquires a certain positive value, which manifests in Dumm's celebration of waiting and stillness, from which, miraculously, "we return to lead new lives, to come over to the condition of thinking and acting that might mark us as the bearers of something better than what we were before."⁶⁵⁹ In this, I think, Dumm's approach on the level of an act reveals its limits, and it remains different from the ideas proposed in this thesis. I would say that resignation, if it is to bring us to the experience of Nowhere, generates a sense of urgency and responsibility, which disrupts all stillness and waiting, and resignation, from within.

My approach to *resigning* diverges from Dumm's in that it proceeds from linguistic properties of the word, i.e. it pays attention to the stem of the word – "sign" and signing. In the following, first, I situate the question *resigning* in the framework of the thesis, after which I outline its specific "logic."

The problem of the signature takes us back to the text of "Declarations of Independence," which ended with the question marking the radical rupture in the founding act – "who signs?;" there is a signature under the Declaration, but as God fails to (counter)sign conclusively, then the signature as if falls out of the text or into the text, and is unable to sign the declaration; everything stands in suspension.⁶⁶⁰ This situation reveals what has been called in this thesis as radical violence, "nothingness or pure non-sense."⁶⁶¹ As shown above, any thinking of deconstructive resistance has to be able to account for this radical violence, because it also is what disrupts the return of the same (and opens up a possibility for altogether other (beginning) to come). At the same time it has to be done without recourse to the presence, which posits every "solution" to radical violence as if prior to it, pacifying it beforehand. Deconstruction accounts for the radical violence via "infrastructures," some of which have been mentioned already above, like *iterability*, *undecidability*, *re-mark*, *hymen* (*blank, fold*), *yes-yes*. *Infrastructures* do not solve the aporia of radical violence; they do not bridge undecidability that they contain while accounting for radical violence – rather, its maintenance is its "solution."

Infrastructures can be said to form chains of substitutability, in which no *infrastructure* represents the whole chain or takes precedence over any other

⁶⁵⁷ Ibid.

⁶⁵⁸ Ibid., p. 74.

⁶⁵⁹ Ibid., p. 76.

⁶⁶⁰ See above, p. 99.

⁶⁶¹ Derrida, "Violence and Metaphysics," p. 162. Also *supra*, n. 369.

infrastructure; rather, their relation to each other is described by their another “name” – “non-synonymous substitutions.”⁶⁶² Now, as much as each *infrastructure* is bound to a specific context, these chains are constitutively open, and I argue that *resigning*, the deconstructed “concept” of legitimacy, adds itself to the infrastructural chain with *différance*, *re-mark*, *iterability*, *yes-yes*, etc.⁶⁶³ Next, in the concluding part of the thesis, I will outline the “logic” of *resigning*, pointing out some overlaps and intersections with a “non-synonymous substitution” *yes-yes* at the same time. *Yes-yes* is developed in Derrida’s text on James Joyce’s *Ulysses*, “Ulysses Gramophone: Hear Say Yes in Joyce,” and it well relates to signatures and declarations that are the theme of this thesis.⁶⁶⁴

In order to trace all the same movements in *resigning* that were outlined in the context of legitimacy, it is necessary to return to the moment of suspension of the signature. In the context of the analysis of the Declaration, it was shown that the signature delays and reveals its inadequacy to itself; it turns to be insufficient to sign the text, or as Derrida puts it “writing out one’s name is not yet signing.”⁶⁶⁵ Nevertheless, it might be said that the signature first “appears” (in this suspension) as just a mark, a name written down, or a content suspended in passing through the “principle,” which then is like “the minimal, primary *yes*, the telephonic ‘hello’ or the tap through a prison wall, [that] marks, before meaning or signifying: ‘I-here’, listen, answer, there is some mark, there is some other. Negatives may ensue, but even if they completely take over, this *yes* can no longer be erased.”⁶⁶⁶

In order for a name to turn into a signature (i.e. for a signature to appear in fact), it requires re-signing, i.e. as if “another signature,” which reads or stitches the signature back to the text; in other words, it needs to be signed anew. This movement corresponds to the idea of legitimacy taken back to its Latin root “*legere*” (*legō*, *lēgī*), which means, among other things, “to collect, gather, bring together; read (aloud), recite,” and to its Ancient Greek’s cognate *λέγω* (*legō*), meaning “I gather, pick up, collect, count, tell.”⁶⁶⁷ These meanings allude to the traditional function and place of legitimacy, i.e. to bring together, to read

⁶⁶² Derrida, *Of Grammatology*, p. 184.

⁶⁶³ For “open nature” of infrastructural chains, see, Derrida, *Positions*, p. 38.

⁶⁶⁴ Derrida, “Ulysses Gramophone: Hear Say Yes in Joyce,” in *Acts of Literature*, ed. Derek Attridge (New York and London: Routledge, 1992), pp. 253–309.

⁶⁶⁵ *Ibid.*, p. 279.

⁶⁶⁶ *Ibid.*, p. 298.

⁶⁶⁷ See “*Legō*, -ere;” “*Lēx*, *lēgis*” in *Etymological Dictionary of Latin and the other Italic Languages*, ed. Michiel de Vaan (Leiden and Boston: Brill, 2002), pp. 332–3, 337. See also, “*Legere*;” “*Legitimus*;” “*Lex*” in *Mediae Latinitatis Lexicon Minus: Lexique latin médiéval – Medieval Latin Dictionary – Mittellateinisches Wörterbuch*, eds. J. F. Niermeyer, C. van de Kieft (Leiden and Boston: Brill, 2002), pp. 778–80, 786; *Glossarum Latino-Estonicum*, eds. Richard Kleis, Ülo Torpats, Lalla Gross, Heinrich Freymann (Tallinn: Valgus, 2002); “*λέγω*” in *A Greek-English Lexicon*, Vol. 2, eds. H. G. Liddell, R. Scott and H. S. Jones (Oxford: Clarendon, 1940), pp. 1033–4.

together or unite the “signature” and the text. Derrida puts the same movement in “terms” of *yes-yes* as follows:

You sign when the gesture with which ... you inscribe your name again, takes on the sense of *yes*, this is my name, I certify this, and, *yes, yes*, I will be able to attest to this again. I will remember later, I promise, that it is really I who signed. A signature is always a *yes, yes*, the *synthetic* performative of a promise and a memory conditioning every commitment.⁶⁶⁸

However, it is not that the second *yes*, which is in some sense the first *yes*, makes the second *yes* possible in all its absolute identity:

With or without a word, taken as a minimal event, a *yes* demands *a priori* its own repetition, its own memorizing, demands that a *yes* to the *yes* inhabit the arrival of the “first” *yes*, which is never therefore simply originary. We cannot say *yes* without promising to confirm it and to remember it, to keep it safe, countersigned in another *yes*, without promise and memory, without the promise of memory.⁶⁶⁹

This means that there is not simply one *yes* to another, but *yes-yes*, which divides every *yes* from the beginning, while making it possible to say *yes*. Gasché puts it as following: “The *yes* of response, by answering the call, remains and, while enabling the system of identity, resists its own identification by it. ... It is intelligible, but of an intelligibility that includes undecidability.”⁶⁷⁰ In terms of the signature, we could say that, at the moment of its appearance by re-signing, the “re-signature” has to withdraw, to resign, because it does not replace the signature by itself, by “re-signature.” Re-signing signs the void between the text and the signature, and in doing that, it erases the necessity for itself. Therefore, *resigning* never “is:” it never arrives (though, it still is absolutely necessary that it will come). This is its paradoxical synthesis: *resigning* re-signs, signs again, but at the same time, it resigns, it withdraws, from what it has made possible.

So if *resigning* does not produce a resignation, then the signature has to sign itself twice (with/in the same signature). It is the “re-” of the *resigning* that prevents, in the same way as “the two sign” in *yes-yes*, “the signature from gathering itself together.”⁶⁷¹ The signature, the *yes* “can only call up another *yes*, another signature. And, on the other hand, one cannot decide between two *yeses* [or signatures], that must gather together like twins, to the point of simulacrum, the one being the gramphony of the other.”⁶⁷² This points to a

⁶⁶⁸ Derrida, “Ulysses Gramophone,” p. 279.

⁶⁶⁹ Ibid., p. 304–5.

⁶⁷⁰ Rodolphe Gasché, “Yes Absolutely,” in *Inventions of Difference: On Jacques Derrida* (Harvard: Harvard University Press, 1994), p. 225–6.

⁶⁷¹ Derrida, “Ulysses Gramophone,” p. 308.

⁶⁷² Ibid.

certain undecidability between passivity and activity – on the one hand, *yes* repeats itself in a certain automatism, in the same way as the signature signs itself again, (as if) without interference, but *yes* (or the signature) is also divided in itself and lets an other to affirm with *yes*, to sign itself. For that reason, the repetition before the beginning, or *resigning* before (and also after) the signature “appears monotautological or specular, or imaginary, because it opens up the position of the *I*, which is itself the condition for performativity.”⁶⁷³ But nevertheless, “the self-positing in the *yes*,” or in the resigning, “holds open the circle that it institutes. In the same way, it is not yet performative, not yet transcendental, although it remains presupposed in any performativity, *a priori* in any constative theoricity, in any knowledge, in any transcendentality.”⁶⁷⁴

As much as *resigning* withdraws from what it makes possible, in differentiation in itself, it amounts to an “infrastructure;” being necessary and impossible at the same time. This aporetic nature of legitimacy proves that legitimacy should be subtracted from the same semantically associated series of terms with law and legality. And as it can be seen now, this “concept” of legitimacy explains well the observation made in the beginning of the thesis and in which the thesis found its impetus – that it withdraws from what it makes possible.

6.5 In Conclusion (of the argument)

Conclusions are written in the end and they have to return to the beginning to give account of what has changed about it, what new perspectives were invented, what problems solved. However, having arrived at the end of the argument by demonstrating legitimacy as an infrastructure, as *resigning*, yet, I have arrived not at the end, but at the beginning, for everything said was said in suspension of the beginning, to show what precedes (in a-temporal way) every beginning, every founding. Thus, there cannot be any returning, and in this sense, the “concept” of legitimacy as *resigning* cannot change much *about* this beginning. In the beginning of the thesis the relevance of legitimacy was exemplified by cases of crises, where enforcement of laws was perceived as violence. Legitimacy as *resigning* does not return to show how legitimacy and order can be restored in this or that particular crisis, or how governments can be more *legitimate* in general (and more forgetful about it at the same time, for every time when legitimacy is believed, or known, to be in place, it is forgotten, allowing for takeover of a self-possessed order or system of laws). However, this does not mean that *resigning* does not intervene, for if in the end we are arriving at the beginning, it cannot be also the same beginning we started with: if something previously not apparent was made apparent as preceding (and in a way conditioning) every beginning, it cannot leave the beginning untouched; it creates the possibility (a haunting possibility) for another future (and another

⁶⁷³ Ibid., p. 300.

⁶⁷⁴ Ibid., p. 302.

past and present). It can be said that if legitimacy as *resigning* cannot change anything *about* the beginning, it changes *everything* about the beginning – it changes or overwrites the very beginning itself.⁶⁷⁵

What this different beginning (and also an answer to the “vicious circle”, which was the paradox we found describing every republican foundation) looks like is to certain extent anticipated by Honig’s reading of Rousseau and Freud in her *Democracy and the Foreigner*. According to Honig, “the lawgiver of Rousseau’s *Social Contract* is a foreign-founder,” for it should come from outside the community; he should not be one of the people in order to maintain impartiality and preserve equality of the people before the law.⁶⁷⁶ Honig’s point is that the law produced by such a lawgiver cannot avoid a “sense of the law’s alienness,” but this alienness must not be suppressed or healed, because:

The positive side of “alienation” is that it marks a gap in legitimation, a space that is held open for future refoundings, augmentation, and amendment. That gap is closed by those who read alienness out of Rousseau’s text (whether by ignoring or domesticating the foreignness of the lawgiver), are blind to the haunting opacity of the people to one another in Rousseau’s polity, and are inalert to the ambiguity of the law that both is and is not the product of the General Will, produced both by public deliberation and by silence, generated by the people but also imposed by the lawgiver.⁶⁷⁷

The phrase Honig uses in the text that the founder’s “alienness is a poorly kept secret,” reflects quite well the “solution” to the “vicious circle” that is entailed in the “concept” of legitimacy developed in this thesis.⁶⁷⁸ Indeed, under this “concept,” the “vicious circle” remains vicious in that the violence of the founding is never quite overcome, but it needs not be. It maintains a certain vigilance, which is presumed by any decision.⁶⁷⁹ We might link this to the thought of Derrida on the decision of the other in me:

⁶⁷⁵ Following the structure of triple repetition in this thesis, we might agree with Gilles Deleuze that the third repetition “takes time out of ‘joint’ and, being itself the third repetition, renders the repetition of the other two impossible. ... the first two repetitions do not return, ... they occur only once and for all, and that only the third repetition which turns upon itself returns for all times, for eternity.” (Gilles Deleuze, *Difference and Repetition* (New York: Columbia University Press, 1994), pp. 296–7.) The third repetition of resigning does not return to the previous repetitions, or to the beginning (where legitimacy is inducing political order to repeat itself differently, with a difference only). The third repetition repeats only itself.

⁶⁷⁶ Bonnie Honig, *Democracy and the Foreigner* (Princeton and Oxford: Princeton University Press, 2001), p. 18.

⁶⁷⁷ *Ibid.*, p. 31.

⁶⁷⁸ *Ibid.*, p. 39.

⁶⁷⁹ See on Derrida’s usage of the term vigilance Derrida, “Metaphysics and Violence,” p. 146.

In the case of culture, person, nation, language, identity is a self-differentiating identity, an identity different from itself, having an opening or gap within itself. ... It is because I am not one with myself that I can speak with the other and address the other. That is not a way of avoiding responsibility. On the contrary, it is the only way for me to take responsibility and to make decisions.⁶⁸⁰

Thus, the decision of the other (in me and for me) will not exonerate me from any responsibility for this decision, which I must make mine (to be able to decide in the first place). It follows that, in some sense, people co-found the state even if the founding act appears to be prior to the identity of what is founded, and given or declared by a foreigner, for in all our decisions, it is the other who decides first, which, however, does not mean that this exonerates us from any responsibility for it.

On the “concept” of legitimacy as *resigning*, that goes further than “a gap in legitimation” admitted by Honig,⁶⁸¹ this responsibility does not mean the responsibility before the government or to an order of things (which would be the situation of the same beginning, the beginning we started from), but responsibility which is more like conscience, haunting us after every decision of oneself (and of the other), neither entirely the matter of knowledge nor totally of non-knowledge. In that way, this co-founding (of the rulers and subjects alike) becomes also the formula of the lesser violence. It is because *resigning*, as the “structure” of legitimacy, means that legitimacy is never present – it is suppressed into one moment; it is a momentous “thing,” which means that it happens, it has to happen, but it does not exist; it does not extend over time; it exists only in disappearing. On the one hand, there must be legitimacy, and procedures that somehow mediate it, but after these procedures are performed, there is no legitimacy transferred over to rulers, who cannot claim in no point of time to own legitimacy, though, of course, there has to be legitimacy.

In other words, neither rulers can be said to be able to possess legitimacy over time nor can the people rely in their contentions against governments on dreams of the final and ideally perfect legitimacy: legitimacy cuts in both ways. No ruler can have a position (of legitimacy) to demand from the people to act responsibly *as they are supposed to*. In this way, this concept of legitimacy responds to worries that have become more and more pertinent in recent times that democracy has been hijacked by corporate interests and party bureaucracies that make decisions in their back rooms, excluding all public discussion, for under this “concept” of legitimacy there can be no presumed legitimacy of decisions without responding, without discussion and discourse. But equally, if rulers do not possess it, the people have no more power to restore it. This, in turn, does not lead to an inevitable agreement with the state of affairs, for there is no legitimate state of affairs in itself to agree with. At the same time, there

⁶⁸⁰ Derrida, *Deconstruction in a Nutshell*, p. 14.

⁶⁸¹ Honig seems not to take her argument to its logical conclusion, but stays on the ground of “legitimacy” that needs to be augmented, amended.

must be legitimacy, for the people in its entirety cannot rule over themselves without any mediation, or representation (if this were the case, there would be but a rule of everyone over oneself only). In sum, legitimacy as *resigning* keeps “legitimacy” in suspension, in-between, and lets it be there, which can be related to the law of reflection, which Derrida speaks about in his text on Mandela; this suspension is what makes us reflect (with urgency), and this reflection, in turn, can be associated with the workings of the public sphere, the sphere of responding in discussion (and action). One might say that actual recognition of the value of the idea of the public sphere is sustainable on legitimacy “made” into a law of reflection (by suspending it) – and this law concurs with accepting the other in its otherness, which always entails the possibility to take other as other to itself, i.e. with lesser violence. By revealing legitimacy as “resigning,” this thesis sets up an “imperative” to live under “the experience of the impossible,” which makes all decisions and judgements to be haunted by the possibility of lesser violence.⁶⁸²

If we started in the beginning from legitimacy that arises as a question when something is wrong, and is forgotten in situations where everything is well, then, under this different “concept,” legitimacy becomes differently relevant – as much as it cannot be known or determined for certain, but also not ignored entirely, legitimacy remains to haunt incessantly. It cannot be lacking or missing, but it cannot be present. Under these conditions, legitimacy does not return to the same beginning we started with, but by way of haunting, it grounds the possibility for something entirely different.

If this “concept” of legitimacy is to intervene into the worldly affairs, then it occurs not primarily by explaining, but by procuring an understanding. The thesis attempted, by its reasoning, if it is to hold, to make a contribution to bringing about (a possibility for) a change in awareness of both citizens and rulers – towards “responding responsibly” (which is not an application of some ethical ideal, but the very possibility of any ethical principle) and towards an appreciation of the value of the free public sphere (which is not the same as the space of protestations and demonstrations, which always are to some extent expressions of impotence and disability).

So, having been not able to conclude, I really finish the thesis with a summary that re-states what has been said so far.

⁶⁸² See also above, pp. 129–31.

Chapter 7: Summary

This thesis was an investigation into the concept of legitimacy. It proceeded from an observation of a peculiar behaviour of legitimacy in political life: when legitimacy is considered not present in some particular political circumstances, it is immediately demanded as a constitutive attribute of a system of laws or a political order, but when it is present, it withdraws from what it makes possible, so that what appears is simply law and order. This “movement” remains unaccounted by any theory of legitimacy in so far as its starting point is the question “what is legitimacy?,” for it reduces the aspect of non-presence in how legitimacy functions to a presence (i.e. it excludes the question altogether). According to the argument of the thesis, if legitimacy is to be something more than just an evaluative concept that intervenes after the fact, but something that “underlies” all political life as its condition, the movement of self-erasure of legitimacy must be brought to bear on the concept of legitimacy, which this thesis has tried to accomplish by forging what was called a post-structuralist “concept” of legitimacy.

This new “concept” of legitimacy could not have been thought to replace a traditional concept of legitimacy as a more complete concept (again submittable under the question “what is?”), but it had to be demonstrated (or inscribed) as already working in it, without at the same time abolishing it. For that reason, the strategy employed in this thesis was that of deconstruction, rather than that of re-grounding legitimacy by a direct critique, and it consisted in a sort of displacement of the ground on which legitimacy has been thought.

Following the fact that prior to any incision of displacement or of deconstruction, that which is to be revealed in the displacement, being already in operation in what will be displaced, manifests itself in aporias and paradoxes, the thesis focused on the most obvious paradox of legitimacy that has accompanied it from the very moment it turned into a political problem in the 17th century – the so called “vicious circle.” The paradox draws attention to the fact that there are no subjects who could have authorised a republican founding act prior to its having taken place; i.e. the legitimacy of the founding of such a state always appears as if retrospectively. This, in turn, raises the problem of how and by whom the unavoidable violence of the founding act is simulated, in order for the founding could occur in the first place. The paradox can be considered as an inevitable result if legitimacy is understood via the question of “what is?,” for it reduces legitimacy into an addendum that presumes an agent of the last resort to guarantee its possibility, like God, nature, subject, etc. But in the case of the republican act of founding, there is no such source assumed to exist, which leaves us an aporia with regard to how legitimacy and authority of a founding act becomes possible.

The thesis examined two seminal accounts that propose their interpretations on how a republican founding act could deal with the “vicious circle” – these accounts were that of Hannah Arendt in *On Revolution* and Jacques Derrida in

“Declarations of Independence.” Their approaches have in common that they both unfold in the non-foundationalist perspective, and also, that they both proceed in their analyses from the American Declaration of Independence as a first and exemplary case of the republican founding act that needed to solve the paradox of the “vicious circle.”

Arendt and Derrida both also take a stance in relation to the concept of legitimacy, though, in *passim*, and for both, in some sense, legitimacy does not play any role in their “solutions” to the “vicious circle.” What made these accounts interesting for the purposes of the thesis was that there still is a discernible difference in their view on legitimacy: while Derrida clearly treats legitimacy together with law, legality, prescriptions, rules, etc., Arendt relates legitimacy to power (which is still in need of stabilisation to be able to establish law of laws). This makes possible the strategy of the thesis, which is to play, in close reading, these accounts against each other in such a way that the inadequacy of their takes on the “vicious circle,” each on its own way, would become apparent, allowing, at the same time, to demonstrate how their exclusion of legitimacy could explain the inadequacy or incompleteness of their approaches. This, in turn, allowed us to educe an unaccounted role of legitimacy in thinking of the political.

The thesis was divided into two parts: in the first part, Arendt’s theory was read to displace Derrida’s account, and in the second part, it was done in the opposite way. After the first preliminary overview of Arendt’s and Derrida’s accounts of the Declaration and the “vicious circle” in the second chapter, the first substantial discussion of these accounts was introduced via Bonnie Honig’s comparison of these authors.

On the first hand, the thesis followed Honig in establishing a common ground of comparison between these authors on the concepts of performatives and constatives. In this regard, the second chapter also explicated John Austin’s theory of performative and constative utterances, which discriminates between utterances that perform an action and utterances that describe a state of affairs. Derrida’s account on the Declaration utilises this distinction by describing the declaration and the signature that signs it as a performative in its intention. However, the second chapter also delineated Derrida’s objection to the possibility of such pure distinction between performatives and constatives on the ground of the “logic” of iterability, which is always already in progress in this distinction. Therefore, as much as performatives and constatives remain always contaminated by each other, the declaration, for Derrida, cannot come to exist or found a state without some recourse to a constative statement that describes the people as already independent and free. This statement, simultaneous with the performative declaration, needs a guarantor, the best of which, as Derrida says, is God: by grace of God, the people are already independent and the declaration merely confirms that freedom.

Although this thesis agreed with Honig on the need of the common ground, it also disagreed with her translation of this conceptual framework on Arendt’s

theory, because for Honig, Arendt's "solution" for the "vicious circle" is a theory of pure performativity: what makes the Declaration of Independence of the American Revolution unique, is that it draws all authority from the act of founding itself. Honig's account, although emphasising the non-foundationalist character of Arendt's theory, contrasts Arendt and Derrida. But if the task of the thesis was to displace Derrida's take on the Declaration on the basis of Arendt's interpretation of it, then Honig's reading of Arendt clearly counteracted against this aim. Therefore, the thesis took Honig's account under critical examination, which showed that in her interpretation of Arendt's concepts of "augmentation" and resistibility, these concepts did not measure up to the task they were supposed to accomplish. The theme of resistance arose here because theorising of the republican founding act that does not rely on any absolute outside of the human realm, requires thinking the possibility of resistance in it, for otherwise the founding act would turn itself into an absolute beginning. If Arendt's idea was that the possibility of augmentation in the founding act preserves the spirit of its first initiation (which is also a resistance), then the thesis shows that Honig's interpretation of it does not think the resistance radically, as equal to the founding act, but it remains in the service of the existing founding act.

Honig's resistance, it was argued, indeed reveals violence in the founding act, but this violence is undecidable, and in fact, it does not intervene into the founding act, but is part of it. Such violence is always re-interpretable whether it is used against "us," or against "them" (outsiders, enemies, etc.). This concept of violence was elucidated in the chapter 3 on the basis of Walter Benjamin's critique of violence.

On the basis of these considerations, the thesis situated Honig's deconstructive intervention into the first "phase" of deconstruction, which amounts to a critique rather than deconstruction. Inadequate theorisation of the concept of resistance in the founding act prompted the thesis to move on with another take on Arendt as well as to look for another concept of violence that is presumed by thinking on resistance.

The next chapter offered a reinterpretation of Arendt's account of the Declaration. The reinterpretation started with locating Arendt's concept of "promising" as one of the internal dimensions of Arendt's theory of action, i.e. in addition to speech, space of appearance, and power. It followed that action, an ability to start something new, always exists, but it remains a fleeting moment, if it does not find a stability in authority, i.e. in a constative dimension. Hence, even if Arendt rejects the possibility that the republican founding act could rely on absolutes (e.g. God, Nature), it nevertheless, does not mean that she does not recognise a need for a constative dimension. By this, the thesis has brought Arendt's account closer to Derrida's so that the former could displace the latter. This interpretation also allows us to see that Arendt addresses the question of what I call "radical violence," i.e. a violence that, if thought in the founding act, does not permit any resistance to return to the service of the same existing founding act. The radical violence was situated in her reading of the

American Revolution in the situation where absolutes were perceived as violent because they are compelling without reasoning, but their function (of stabilisation) remained absolutely necessary to uphold the revolution and the founding act.

This reinterpretation of Arendt allowed (re)locating the radical violence in Derrida's analysis of the Declaration in the aporia of time. The latter relates to the so-called countersignature of God, which creates the simultaneity of proclaiming and confirming the independence of a people. It was shown that God, by guaranteeing that the people are already free, creates in the same instant the eternal time of the people, which divides the instant and delays it. Now it appears that God's signature does not sign conclusively and the question "who signs?" marks the suspension of the entire founding act. While explicating the thought of the delay of the signature, the thesis simultaneously traced conditions of possibility of the deconstructive intervention, in order to show that the question "who signs?" in marking out radical violence, designates the line of rupture along which deconstruction can be incised, but the incision itself, the inscription of deconstruction was not completed in this text (or by this question).

Having established the possibility of an alternative route in thinking on legitimacy inside the deconstructive approach, the second part of the thesis, starting with chapter 5, examined possible "solutions" to the radical violence. In chapter 5 and 6, Benjamin's and Arendt's theories were re-examined in view of how they address the problem of radical violence. Deconstruction proceeds from an understanding that the relation to the absolutely other (beginning, for example) cannot be thought on the basis of the presence, which would be an appropriation of the other, i.e. the other (beginning) is accepted not as other (in its otherness), but as the same (founding act, for example). The analysis of Benjamin's and Arendt's accounts on radical violence revealed that they inadvertently bring the presence to their attempts to "deal" with the radical violence, and therefore, they reduce it to the undecidable violence, in which case, the resistance in the founding act remains in the service of the existing founding act. In Benjamin's case, the radical violence was located in his concept of "divine violence," but as it was shown in the analysis, in Benjamin the radical violence becomes pacified in God, who not only guarantees the possibility of a solution to the problem of radical violence, but also the radical violence itself. This means that God unites all sides and becomes a fate, which falls under the concept of undecidable violence.

For Arendt, the solution to the radical violence and to the "vicious circle" consisted in drawing authority from the "principle," which she characterises as coeval with the beginning. In this chapter, it was delineated how the "principle" could be read in a post-structuralist manner, interpreting it as a "pure" opening (to the other), but nevertheless, it was eventually argued that Arendt's theory does not support this interpretation, and Arendt understands the principle as an empty place, which is filled in by various concrete principles that start to control

every subsequent action and resistance. In that case, again, the radical violence is thought on the basis of the presence and is eventually reduced to undecidable violence.

The last chapter of the thesis demonstrated how deconstruction meets this challenge of thinking the other in its alterity. Briefly, this is done by way of forging the so-called *infrastructures* in the second “phase” of deconstruction. With the help of the analysis of the “blank,” the “fold,” and the “principle,” the thesis explicated the so-called second movement of deconstruction consisting in a certain reduplication, remarking, or differentiation, which “takes place” before the beginning. In regard to the “principle,” which was brought from Arendt’s account but expanded and developed further in a deconstructive fashion, it was put as follows: at the moment when whatever shines through the “principle” (understood as pure opening) in the form of difference, the “principle” differentiates from whatever shines through it, forming a repetition before the beginning. This movement was then exemplified by “infrastructures” like *remark* and *yes-yes*. Deconstruction was further explicated by marking out a trap of thinking which allures thinking to reduce deconstruction to what it is only in its first “phase.” The workings of the trap were explicated with reference to Ernesto Laclau’s and Noah Horwitz’s takes on deconstruction.

The final section of the thesis, drawing on all previous stages of the argument, proposed what was called as the post-structuralist “concept” of legitimacy. In the previous chapters, on the one hand, an unfinished route of thinking on legitimacy inside deconstruction was revealed that offered a possibility of an alternative take on legitimacy. On the other hand, Arendt’s ideas of the “principle” and legitimacy, although inadequately theorised by Arendt, offered a possibility of deconstructive interpretation. In this section, these two lines of thought were combined together, and the idea of legitimacy as a Derridean *infrastructure* was developed. It was argued that the deconstructed “concept” of legitimacy is best captured in the “logic” of *resigning*, which synthesises in a deconstructive manner signing anew by re-signing and withdrawing by resigning – with this, however, the thesis has explained and answered its initial observation on the behaviour of legitimacy that it is present in its non-presence.

It was concluded that under this “concept,” legitimacy becomes a momentous affair, so that legitimacy, on the one hand, has to be brought to existence by different procedures that mediate its transfer, but on the other hand, if these procedures have been performed, no legitimacy has been delivered; no ruler can rely on it as its possession for however short a time. This is a law of responsible responding and reflection.

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SUMMARY IN ESTONIAN

Post-strukturalistlik legitiimsuse „kontseptsioon”

Antud väitekirja käsitleb legitiimsuse mõistet, mis kõige üldisemas tähenduses märgib kellegi õigust valitseda. Uurimisprobleemi püstitus on ajendatud tähelepanekust legitiimsuse omapärasest toimimisest poliitilises elus: kui mingis poliitilises olukorras tekib kahtlus, et poliitiline kord ei ole legitiimne, siis otsekohe kerkib üles nõudmine legitiimsuse järele, just kui legitiimsus oleks poliitilise korra konstitutiivne element. Samas, kui ollakse veendunud, et poliitiline kord on legitiimne, siis mis kehtib, on poliitiline kord oma seaduspärasustes ning legitiimsus ei ilmne mingil nähtumuslikult äratuntaval viisil. Legitiimsus just kui teeks midagi võimalikuks ning seejärel kustutaks end selles, mille ta tegi võimalikuks.

See dünaamika jääb traditsioonilistes legitiimsuse teooriates tähelepanuta, kuna lähtudes küsimusest, „mis on legitiimsus?”, nad välistavad legitiimsuse mitte-kohalolu legitiimsuse mõistest. Sellise lähenemise tulemusel taandub legitiimsus omaduseks, mis „lisandub” poliitilisele korrale, kui leitakse, et see vastab teatud paikapandud tingimustele. Seega, ühelt poolt, legitiimsuse olulisus tuleneb sellest, et seda käsitletakse kui tingimust poliitilise korra tekkimiseks, samas, teiselt poolt, küsimuse „mis on?” aluselt kontseptualiseeritud legitiimsus ei suuda seda rolli täita, eeldades poliitilise korra olemasolu, millele ta rakendub tagantjärele. Käesoleva uurimistöö väite kohaselt peaks selleks, et legitiimsus osutuks poliitilise korra esmaseks tingimuseks, legitiimsuse kontseptsioon sisaldama endas legitiimsuse n-ö enesekustutust. Sellist legitiimsuse kontseptsiooni, mille välja töötamine on käesoleva väitekirja eesmärgiks, nimetatakse selles töös post-strukturalistlikuks legitiimsuse „kontseptsiooniks” (niivõrd kui seda saab kontseptsiooniks nimetada).

Tulenevalt probleemiasetusest on antud uurimuse lähenemine dekonstruktiivistlik. Kuigi uurimistöö seab eesmärgiks jõuda teistsuguse legitiimsuse „kontseptsioonini” ei saa see asendada traditsioonilist legitiimsuse kontseptsiooni kui rohkem täielikum kontseptsioon (mis jällegi alluks küsimusele, „mis on legitiimsus?”), vaid seda saab ainult mõista kui midagi, mis alati juba töötab traditsioonilise legitiimsuse kontseptsiooni sees, tekitades selles paradokse ja apooriaid, aga samas ilma et ta seda täielikult hävitaks. Dekonstruktiivne analüüs sobib antud uurimisprobleemile, kuna võimaldab apooriate esile toomise kaudu nihestada dominantne legitiimsuse diskursus, näidates selle sõltuvust sellest, mida ta välistab või mis ei mahu tema loogika alla.

Käesolevas väitekirjas keskendutakse ühele põhilisele paradoksile, mis on saatnud legitiimsuse mõistet alates 17. sajandist, mil ta kerkis esile poliitilise probleemina – nn. „nõiaringi” paradoksile, nagu see on saanud tuntuks Abbé Emmanuel Sieyès'i töödest Suure Prantsuse revolutsiooni päevilt. See paradoks seisneb selles, et igasugune riigi asutamisakt, mis ei toetu metafüüsilisele autoriteediallikale, näiteks vabariiklik iseseisvusdeklaratsioon, osutub illegitiim-

seks, kuivõrd see akt alles loob poliitilise (id)entiteedi, mis võiks legitimeerida selle asutamiskti. Seega saab selline riik olla legitimeeritud ainult tagantjärele, mis tõstatab küsimuse, kuidas ja kelle poolt asutamiskti vägivald neutraliseeritakse sellisel viisil, et asutamiskti saaks toimuda.

Töö võtab aluseks kaks kesket kaasaegset käsitlust „nõiaringi” paradoksist, mis pakuvad oma lahenduse küsimusele, kuidas vabariiklik asutamiskti ületab selle paradoksi. Esimene neist kuulub Jacques Derridale, kes on dekonstruktiivselt analüüsinud vabariiklikku asutamiskti ja selle paradoksi, kuid viisil, mis asetab legitiimsuse ühele poolele seaduse, legaalsuse, ettekirjutuste, reeglitega, s.t tõlgendades legitiimsust seaduse poolel, mis vajab dekonstruktsiooni, mis on dekonstrueeritav. See komplitseerib uurimistöö ülesannet, kuivõrd töö peab suutma leida alternatiivse lähenemise dekonstruktiivse analüüsi sees. Teine käsitlus „nõiaringi” paradoksist, mis pakub uurimistöö seisukohast huvi kuulub Hannah Arendtile. Arendti analüüs seostab legitiimsuse võimu tekkimisega (kuid mitte selle püsimisega), mis mõnes mõttes haakub paremini uurimistöö eesmärgiga, kuid lähenedes küsimusele fenomenoloogilise traditsiooni pinnalt, ei leia legitiimsuse mõiste sellist edasiarendust, et antud töö saaks sellele otsest toetuda. Mõlemad käsitlused võtavad aluseks Ameerika Iseseisvusdeklaratsiooni kui ühe esimese juhtumi, kus riigi asutajad seisavad (suuremal või vähemal määral) teadlikult silmitsi vajadusega ületada „nõiaringi” paradoks saavutamaks legitiimsust.

Töö strateegia seisneb Derrida ja Arendti lähenemiste võrdlemises selliselt, et Arendti käsitlus seab küsitavaks Derrida legitiimsuse asetamise ühele pinnale seadusega ja samas Derrida dekonstruktsioon seab küsitavaks Arendti fenomenoloogilise käsitluse. See tähendab, et töö jääb ühelt poolt derridaliku dekonstruktsiooni pinnale, aga jõuab legitiimsuse kontseptsioonini, mis lahkneb Derrida omast. Teiselt poolt jääb töö Arendti legitiimsuse kontseptsiooni pinnale, kuid arendab seda edasi dekonstruktivistlikult. See viib võimaluseni näidata, et mõlemad käsitlused jäävad tegelikult lõpetamata ja Arendti legitiimsuse kontseptsiooni ja derridaliku dekonstruktsiooni kokku viimise ja edasi arendamise tulemusel on võimalik jõuda teistsuguse legitiimsuse kontseptsioonini.

Post-strukturalistliku legitiimsuse „kontseptsiooni” võimalikkuse tõendamiseks käsitleb töö peale Arendti ja Derrida veel mitmeid erinevaid teemasid ja kõrvalautoreid. Uurimistöö esimeseks ülesandeks on leida ühine alus Derrida ja Arendti käsitluste võrdlemiseks. Selles järgib töö Bonnie Honigi eeskuju, tõlgendades mõlema autori käsitlust performatiivide ja konstatiivide terminites. Väitekirja teine peatükk selgitabki John Austini performatiivide ja konstatiivide teooriat, mille järgi performatiivid on lausungid, mis teevad midagi ja konstatiivid on lausungid, mis sedastavad midagi. Samas toob väitekirja välja ka Derrida kriitika sellele eristusele tema puhtal kujul. Seejärel analüüsib töö Bonnie Honigi võrdlust Arendti ja Derrida vahel, mis tõlgendab Arendti teooriat kui puhast performatiivsust. Ehk teisisõnu, Honigi käsitluses seisneb Arendti lahendus „nõiaringi” paradoksile vabariikliku iseseisvusdeklaratsiooni perfor-

matiivsuses (asutamisakti kogu autoriteet tuleneb asutamisaktist enesest), samas kui Derrida jaoks sellist puhast performatiivsust ei ole olemas ja lahendus „nõiaringi” paradoksile seisneb selle otsustamatuses – pole üheselt selge, kas iseseisvusdeklaratsioon loob iseseisvuse või ainult kinnitab juba tegelikult (näiteks Jumala armust) olemasolevat iseseisvust. Honigi käsitluses seisab Arendt ja Derrida vahel vastuolu.

Uurimistöö ei nõustu Honigi Arendti tõlgendusega ja selle põhjendamisel tõuseb kesksele kohale vastupanu ja vägivalla teema. Töö argumendi loogika kohaselt saab sellest teemast üks legitiimsuse post-strukturalistliku „kontseptsiooni” ülesehitamise põhitelgi, sest teooria, mis selgitab „nõiaringi” paradoksi ületava asutamisakti võimalikkust sõltub sellest, kuidas see mõtleb vastupanu asutamisakti sees – see vastupanu ei saa olla sama asutamisakti teenistuses ega olla välistatud sellest kui asutamisakti asendada püüdev revolutsioon. Vastupanu selline mõtestamine on hädavajalik, sest vastasel korral võtaks asutamisakt ise absoluudi rolli, millest ta samas püüab end distantseerida. Teisisõnu, vastupanu küsimus tähendab küsida, kuidas mõelda Teist (algust) või võõrast teisena (võõrana), ilma taandamata Teist endale, esimesele, või samale (algu-sele). Seetõttu on teiseks oluliseks teemaks, mida jälgitakse kogu uurimistöö jooksul, dekonstruktsioon ise, tema sekkumise tingimused, sest sellelt aluselt näidatakse lõppkokkuvõttes, kuidas dekonstruktsioon mõtleb Teist teisena ning milles seisneb selle erinevus Hannah Arendti ja Walter Benjamini lähene-mistest.

Analüüsides kriitiliselt Honigi teooriat tuuakse sisse Walter Benjamini vägivalla kriitika. Honig teoretiseerib vastupanu kui midagi, mis toob nähtavale asutamisakti vägivalla, kuid antud väitekirj näitab, et Honigi vägivalla kontseptsioon ei ole radikaalne, vaid „otsustamatu,” mis jääb asutamisakti teenistusse. Seda vägivalla kontseptsiooni selgitatakse Walter Benjamini vägivalla kriitika abil. Seega kui jääda Honigi tõlgenduse pinnale, ei suudaks Arendt teoreti-seerida radikaalset katkestust, mitte-kohalolu, asutamisakti sees. Käesolev uurimistöö pakub teistsuguse Arendti tõlgenduse, mis näitab, et kuigi Arendt välistab asutamisakti toetumise absoluudile (näiteks Jumal), siis see ei tähenda, et ta ei peaks vajalikuks konстатиivi olemasolu, mis seda stabiliseeriks. See annab Arendti käsitlusele teise suuna ja võimaldab näha, kuidas Arendt püstitab küsimuse asutamisakti radikaalsest katkestusest (või vägivallast). Pärast Arendti ümbertõlgendust tõstab uurimistöö Arendti küsimuse asutamisakti vägivallast Derrida käsitluse konteksti ja näitab, et Derrida oma „Iseseisvusdeklaratsioonide” tekstis küll püstitab radikaalse vägivalla küsimuse, kuid ei paku seejuures selle „lahendust.” See avab võimaluse alternatiivseks legitiimsuse käsitluseks dekonstruktsiooni pinnalt.

Töö jõuab viimases osas välja post-strukturalistliku legitiimsuse „kontseptsioonini” võttes vaatluse alla viisi, kuidas dekonstruktsioon „mõtleb” radikaalset katkestust asutamisaktis. Ühelt poolt analüüsitakse Arendti ja Benjamini lahendusvariante ja näidatakse nende ebapiisavust, teiselt poolt selgitatakse dekonstruktsiooni „loogikat,” kritiseerides seejuures Ernesto Laclau ja Noah

Horwitzi tõlgendusi sellest. Kõige lõpuks, viies kokku dekonstruktsiooni ja Arendti idee „printsibist” pakutakse välja legitiimsuse „kontseptsioon,” mille võtab kokku infrastruktuur „resigneerimine” – ühes „mõistes” või „liikumises” on sünteesitud tähendused „uuesti signeerima” ja „resignatsioon” ehk omaenda kustutus selles, mis on tehtud võimalikuks.

Sellise legitiimsuse „kontseptsiooni” kohaselt on legitiimsus ühelt poolt absoluutselt vajalik ja peab eksisteerima koos kõigi protseduuridega, mis seda vahendavad, aga teiselt poolt, kuigi poliitilise korra legitiimsus just kui on kinnitatud vastavate protseduuride läbimise kaudu, siis poliitiline kord ei ole pärast seda rohkem legitiimne selles tähenduses, et sellest saaks tuletada õiguse mingile konkreetsele käitumisele. Keegi ei saa legitiimsust omada, sest legitiimsus „eksisteerib” ainult hetkes.

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