

Between Violence and Law, Is There a Place for Justice?

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For this law is allotted to men by Zeus, son of Kronos: fish and beasts of the wild and birds that fly in the air eat one another, since Justice has no dwelling among them: but to men he gives Justice, which is the greatest of blessings¹
Hesod, 'An Exhortation to Justice.'

The interrelationship between violence, law and ultimately justice is bound by the relationships between individuals, between individuals and the state, between collectives and groups. A regulative force emerges through these structures. The links between violence, law and justice have been theorised throughout history. One of the earliest renditions is articulated by Hesod as *Zeus* and *Themis* (the goddess of divine justice) gave birth to *Dikē* (justice), placing her on Earth empowering her as the guardian of human justice. This interrelationship derives from the Greek, embodied in *Dikē* related to the law, the *nomos*, the underlying set of laws that structure societies. *Nomos* refers to the universe, providing the underlying schema for understanding all law; it is the law of law.² *Nomos* is not revealed in statute, that one society has one set of regulations different from others, but through the fact that regulations exist. The distinction of the individual nature of a set of laws, of participating, being a part of society, stems from the regulative force of *Dikē*. Justice, human justice, is the hori-

zon between violence and law.³

Giorgio Agamben presents a detailed analysis of the regulative force of the *nomos*. This is developed through Pindar, fragment 169, which states that the link is bound between violence (*Bia*) and justice (*Dikē*).⁴ This tension composes the *nomos*. According to Agamben's reading of the translation of this fragment into German by Hölderlin, the *nomos* is grounded stronger than law; it is the "meditation that grounds knowledge."⁵ Hence, *nomos* is central to any understanding of violence, law and justice. *Nomos* represents the state of nature, whereby law is thought of as "being-in-potentiality [*l'essere-in-potenza*] ... the law's self presupposition as 'natural law'."⁶ This underlying current of law, as *nomos*, is central to the law's positioning in relation to justice and violence. The subject has a central role to play in any theorisation of violence, law and justice. The subject feels the effect of violence and law. Hence, in order to obtain justice the corporeal subject, the body that feels violence, needs to be considered. This consideration is centred upon the difference inherent within bodies in order to develop an embodied notion of justice, akin to that manifest in *Dikē*. Therefore, the central concern is how justice can be brought about from the inter-relationship between violence and law. This is a glimpse of its horizon. In tracing this thought, Hannah Arendt sees the origin of violence as bound to the relationship between violence and law. This initial condition of violence – its temporal-spatial element – provides a point of departure.

Law is linked to violence through Walter Benjamin and opens up the possibility to conceptualise violence outside of legal terms. Benjamin, by breaking the nexus of legality, positions the role of violence and the law as conceived through the distinctions of mythic and divine violence. These elements both demand something from the subject. Their interaction moves us closer to an attempt for justice that is not bound by violence. Yet in overcoming this, Jacques Derrida, in his reading of Benjamin, states that justice has at its heart difference. For Derrida justice is deconstruction. This is presented through the tension he develops in his three *aporias* in the "Force of Law." His condition of justice is presented through this *aporetic* structure. By juxtaposing Derrida's condition for justice with Kafka's account and Derrida's subsequent reading, the project and topography of the law is opened. The issue then becomes to identify the position of the subject that attempts to access the law. Through this, the possibility of the subject becomes central to understanding any notion of justice. This is revealed through positioning *aporia* with *chora*. It is *chora* which enables an opening for justice that has the body, represented through the inherent different of sexed bodies, at its core.

Violence and the Condition of Justice

In *On Violence*, Hannah Arendt explores the interrelationship between violence and power.⁷ Arendt outlines her distinction between violence and power, but also the conditions that enable violence to be thought of as a constitutive part of the state. Violence is placed in opposition with power. Arendt presents an outline of violence and power, noting that their definition is not rigid. Power is the “human ability not just to act but to act in concert.”⁸ Power is not the domain of an individual; it is always, according to Arendt, wielded by a group and is sustained by the continuation of the group.⁹ Violence however, is instrumental in character. Arendt associates it as phenomenologically closer to strength, which by its nature is always wielded by an individual and can be overcome by the many.¹⁰ Violence is instrumental, “like all means it stands in need of guidance and justification through the end it pursues.”¹¹ Violence is outside the realm of legitimacy, which is contingent on an appeal to history, because its justification is to the future – that which is to come.¹² What is the interaction between power and violence? Arendt states that while power and violence are distinct they always appear together.¹³ Violence is the call towards the future, “power needs no justification, being inherent in the very existence of political communities; what it does need is legitimacy.”¹⁴ The most pressing claim of Arendt’s text is the origin of power. The basis of power is that it “springs up whenever people get together and act in concert, but it derives its legitimacy from the initial getting together rather than any action that then may follow.”¹⁵ Hence, the fundamental notion of power is tied to the concept of an original condition which is always-already grounded in space. There is no point in time that can enable power to be marked out in history. The collective is always- already brought into being. As such, akin to the *nomos*, Arendt’s conception of power sees it as the regulative force that emerges from people acting in concert. It provides an underlying regulative notion that mediates violence.

The composition of power leads to the question of the political community – the *polis*. For if power is the ability for a collective to act in concert, then the fundamental regulative principal is that power has to have a space where it can be enacted. The formulation of power that emerges in an always-already state can be linked to the regulative aspect of language. Language enables the binding of the community, conceived as *nomos*. The question now becomes who is engaging in the *polis*. The *polis* positions itself as a movement away from nature, defined as the essence of biological life (*zoe*), which is the zero degree of the human and personified in the bodies of women and slaves as labour.¹⁶ The formulation of the political

appears to exclude the body for the privileging of language, the removal of the body from the public sphere. Julia Kristeva in her reading of Arendt states: “the body never transcends nature; it avoids the world so it can remain exclusively a sphere of privacy.”¹⁷ The role of the body becomes central if power exists to overcome violence. What justice can be obtained within the exclusionary *polis*? Does justice deny the body? Kristeva adds that Arendt’s attempt to formulate the body is problematic due to her failure to engage with the feminine. Had Arendt

tried her hand at contemplating femininity, she would have put the female body at the forefront, that is, at the heart of the natural process from which human beings must extract themselves if they wish to transform *zoe* into *bios*. Is it not the case that the political realm, the only noble realm that exists, is designed to fight against the biological life, against women and slaves?¹⁸

Arendt’s articulation of the formation of the political presents an opening to the interaction between violence, law and justice. Kristeva opens an avenue whereby the body can be positioned in relation to the development of a conception of justice. I will return to her work later in the essay.

Walter Benjamin’s inquiry into the connection between violence and law opens a new way to conceptualise the interrelationship. Jacques Derrida’s response enables the opening up of justice, justice as deconstruction, which is situated near violence and law. Benjamin’s “Critique of Violence”¹⁹ and Derrida’s response “Force of Law,”²⁰ provide an insight into the interaction of violence, law and their end – justice. Benjamin presents the figure of violence and how it has been linked to law. He attempts to circumvent the process whereby violence and law are traditionally bound together. Derrida on the other hand, attempts to locate the sphere of justice by searching for a justice that is free from violence. Benjamin’s text is a radical attempt to rethink the notions of justice and law. His text presents a departure from the traditional binds of legal theory; that is the opposition between natural and positive law. Natural law is concerned with ends, while positive law is concerned with means. Benjamin breaks open the means/ends distinction in order to free the notion of violence from the domain of legal judgement. Before any discussion about “The Critique of Violence,” it is important to note what Benjamin means by *violence*. There is a shift in meaning in the English translation from the original word *Gewalt*. As *Gewalt* does not only mean violence, it can also mean “‘legitimate force,’ authorized violence, legal power, as when one speaks of *Staatsgewalt*, state power.”²¹ Hence, the notion of violence (*Gewalt*) that is articulated by Benjamin has a multifaceted meaning, which must be kept in mind.

In establishing a critique of violence, Benjamin opens up the established boundaries of legal reasoning – natural and positive law. There is a natural opposition between the two positions, which have resulted in natural law as only being able to criticise ends and positive law that of means. Benjamin's text attempts to break through the means/ends distinction stating: "if justice is the criterion of ends, legality is that of means."²² Both schemas of legal argument are used to *justify* their dominion. In order to reconceptualise the nature of violence and its relationship with law, then the horizon of thought needs to be outside the boundary of both natural and positive law, outside both means and ends. Benjamin sketches a *philosophico-historico* view of law, rupturing open the nature of law.²³ Violence is misconceived in natural law through its justification based upon its ends. While in positive law, all violence must have proof of its historical origin.²⁴ Violence is bound within the structure of law. Central to developing a condition of justice is breaking free from violence.

Benjamin develops throughout the "Critique of Violence" the limitations of the means/ends distinction, realising that both natural and positive law permit violence in one way or another. This violence is entwined with law.²⁵ What violence exists that is not already caught within the logic of the law? The condition now becomes one of "just ends attained by justified means [and] justified means used for just ends."²⁶ Violence sees however, that justified means are irreconcilable with just ends.²⁷ This tension leads Benjamin to attempt to break through the structure of legal reason. He searches for a different space for violence. "It is never reason that decided on the justification of means and the justness of ends: fate-imposed violence decided on the former, and God on the latter."²⁸ It is the establishment of *mythic* and *divine* violence that can enable the nature of violence to be founding and preserving – opening the space between law and violence.

Mythic and divine violence present a space that enables a movement beyond the legal rendering of violence, opening up violence at the origin. Benjamin develops mythic violence through the tale of *Niobe*. "Niobe's arrogance calls down fate upon her not because her arrogance offends against the law but because it challenges fate – to a fight in which fate must triumph and can bring to light a law only in its triumph."²⁹ The figure of violence is *Niobe* succumbing to fate, revealed in the nature of the law making power that is mythic violence. Violence as mediated by fate becomes central to law. When positioned in relation to the struggle of seeking justified means and just ends, through law, the tension that exists between power and justice needs to be noted. For Benjamin "lawmaking is powermaking, assumption of power, and to that extent an immediate manifestation of vio-

lence. Justice is the principle of all divine endmaking, power the principal of all mythic lawmaking.”³⁰ It is “the violence that posits law and the violence that preserves it.”³¹ This account sees violence as central to the law and any attempt to break through the means/ends distinction are equally bound within the law.

Mythic violence is founding and preserving operating through both means and ends. Benjamin states that divine violence is that which can overcome mythic violence:

If mythic violence is law making, divine violence is law-destroying; if the former sets boundaries, the latter boundlessly destroys them; if mythic violence brings at once guilt and retribution, divine power only expiates; if the former threatens, the later strikes; if the former is bloody, the latter is lethal without spilling blood.³²

Blood is the relationship between the mythic and the divine. Both have a call in relation to blood, played out upon life. Through blood “mythic violence is pure power over mere life for its own sake; divine violence is pure power over all life for the sake of the living. The first demands sacrifice; the second accepts it.”³³ Mythic violence calls life into question through subsuming the body to the law, in contrast to divine violence, which has its subject preserved. This preservation is lethal for the living. The subject is bound within the nexus of the mythic and the divine faced with the prospect of whether to shed blood. Blood that flows is the body, realised in the life of the subject, in the body. However, it is not just the “mere life” of the subject that is at issue according to Benjamin, the structure that demands sacrifice of the living for the preservation of the mythic is *guilt*.³⁴ Guilt turns life into the sacred, as represented through blood, the price that ensures that mythic violence regulates the body through law. The divine attempts to break through the body, realising it as lived, not a sacred life, but life itself. Can the possibility of justice for the body be opened through the cycle of sacrifice, judgement and redemption? A justice that incorporates the body as opposed to a justice that demands the body. The space for the body emerges from breaking the cycle of mythic violence. This rupture, conceiving the life of the living as life itself enables the opening to the horizon of justice.

Jacques Derrida presents the reconceptualisation of justice in the first section of “Force of Law,” his response to Benjamin. There are two distinct approaches in exploring the connection between violence and law, the first is *critique*, represented by Benjamin, and the other is *deconstruction*.³⁵ Derrida’s call is for justice as deconstruction and that “*deconstruction is justice*.”³⁶ The development of such as position reveals justice as the refer-

ence point, whereby its tension is an incalculable that *commands* calculation.³⁷ “Force of Law” contains many lines of thought; however, I will focus on how Derrida sees a movement towards a deconstructive notion of justice that is underwritten by *aporia*.

Deconstruction is the essence of justice; it articulates itself between the two extremities of a law that “claims to exercise itself in the name of justice” and a justice that “demands for itself that it be established in the name of a law that must be put to work.”³⁸ Hence, this oscillation between justice and law enables the structure of *aporia* to present itself as a conceptualisation for how we can think of justice as deconstruction. Derrida presents three *aporias* that reveal this tension, yet also rupture the two positions that can give space for justice – justice *through* deconstruction. The first Aporia – *the epokhē of the rule* – concerns itself with the nature of the decision-making process that determines justice. It is centred upon the work of the judge in their role of interpreting the law. However, the condition for this is that they must be free to exercise their judgement. Then with this freedom, the interpretation of any law and creating any criterion for justice, in judgement is reduced to specific interpretations. As “each case if other, each decision is different and requires an absolutely unique interpretation, which no existing, coded rule can or ought to guarantee absolutely.”³⁹

The second *aporia* – *the haunting of the undecidable* – invokes the nature of justice as decision as something that “cuts and divides.”⁴⁰ A rupture, the undecidable appears. The nature of undecidability is related to the need to calculate in order to reach a decision. The nature of the decision is something that approaches the undecidable. Justice is caught within this structure; it is wrapped up, following from the first *aporia*, the role of the judge to interpret the law in order to make a decision, one that can never fully elicit justice. For this decision is something that can never “be said to be presently and fully just.”⁴¹ This is based on the condition that the decision has not either been made according to a rule or that there is no point of reference. How can we ascertain whether justice has been delivered?

Derrida's third *aporia* – *the urgency that obstructs the horizon of knowledge* – is the condition whereby justice needs to be enacted immediately. The horizon is “both the opening and the limit that defines either an infinite progress or a waiting and awaiting.”⁴² In order to realise justice, one must have a decision and invested within this decision, is a “finite moment of urgency and precipitation,” not the result of reflection of theoretical or historical knowledge.⁴³ The condition reveals that there is an instantaneous moment for the just decision – one that must be rendered in time and defy dialectics.⁴⁴ This development calls for the nature of justice to be associated with the performative act. However, Derrida states that the only condi-

tion that can enable a performative to be seen as just is through grounding itself on conventions, other performatives, in order to maintain itself with an interruptive violence.⁴⁵ The frontier of justice then, is the future, it is always what is to come – it presents the very opening of time – a future present.⁴⁶

The tension that emerges from Derrida's structuring of the frontier of justice is *différance*. The forcing of an act, such as the calculation of the incalculable, opens up the difference of difference, in the attempt to circumvent violence. A violence that is inscribed in law, in both its means and its ends. It is the opening of *différance* abandoning all references to a centre, a subject or an origin.⁴⁷ Justice now becomes the space in which steadfast relationships are problematised, an *aporetic* structure that has at its core the notion of deconstructive practice. Yet two questions present themselves; the first: does an *aporetic* structure for justice incorporate difference represented through the body? I will return to this question later. The second: what is the nature of justice that presents itself in opposition to violence?

Nancy Fraser takes issue with Derrida's call for a deconstructive justice, alongside his reading of Benjamin. She calls for a political critique of the notion of justice as opposed to the call for justice as deconstruction. Her claim takes issue with the fact that Derrida fails to discuss an intermediary position, "such as those derived from the Aristotelian conception of *phronesis*, which understand judgement as neither application of an algorithmic decision procedure nor the exercise of an irrational will."⁴⁸ Due to the failure to consider these elements, the *aporetic* structure is flawed. This reduction of judgement and following from this justice, fails to comprehend the totality of violence. However, Frazer continues by adding her most serious objection to Derrida, that he "directs our attention to a level of so-called violence in law that is constitutive and inescapable."⁴⁹ This attempt to return to a rendering of violence on a purely political level, such as that wielded by criminals and armies, does not explore the specific nature of violence that is brought about in the very conception of the political. Violence has a direct element that founds and maintains the law; this is what justice seeks to cut through. Frazer fails to address the question of the negotiation of violence in the foundation of the political. Her call to the practical wisdom of judgement attempts to drive us back into the realm whereby a result to any calculation would not acknowledge the incalculable. While *aporia* may not be the perfect structure for the horizon of justice, it enables the possibility of transcending established boundaries, the physical, and the problematic nature of violence that is political. *Aporia* opens up justice by creating a time and a space for its emergence, while recognising that violence is the constitutive element of law.

Elizabeth Grosz posits that the interruption of violence is time. While Frazer sees Derrida's conception as a quick jump to futility, Grosz presents a subtler rendering which enables the emergence of justice outside violence. Justice is enabled through time, more specifically through the act of giving the gift of time. When seeking a call for justice, the embodiment of justice, the juxtaposition of violence with time opens up the possibility of the frontier, such as breaking the cycle of the mythic with the divine. Time presents the possibility to be free of violence. Yet there has to be space for time. This is the deliberated decision. Derrida's "politics is not the espousal of a position but rather an openness to a force, the force of difference that disperses meaning, defers a final position, and indefinitely delays its own identity."⁵⁰ Hence, as opposed to not thinking the political, as claimed by Frazer, Derrida drills into the heart of the political using force in an attempt to sketch out a frontier of justice. While the relationship between violence and law can be thought of as a political problem, the practice of deconstruction enables the opening of a space to allow the circumvention of violence but not an escape. Derrida attempts this by opening up the space that violence permeates, most pertinent being that of the founding:

The spaces between this manifestation and dissimulation are the very spaces that make both deconstruction necessary and impossible, the spaces that deconstruction must utilise, not to move outside the law or outside violence (to judge them both from outside – which is impossible), but to locate its own investments in both law and violence.⁵¹

This space is the site of the decision, the position that is interruptive, yet undecidable. Grosz, through Derrida, sees the notion of undecidability as that which attempts to break the means/ends distinction, as Benjamin stated, breaking the mythic through the divine. What then is opened up through this space? According to Grosz, the counter of violence is *the gift*.⁵² But not just any gift, it is the gift of time. Through the gift of time one steps outside of the dominion of law, which is bound with violence, in order to realise justice.⁵³ This opening is glimpsed in the open space of the *aporia*, a space that can enable the gift.

While presenting a space that can enable a frontier of justice – justice as deconstruction – through the structure of *aporia*, I wish to attempt to open up the space further. The rendering of the *aporetic* position by Derrida enables a reconceptualisation of justice, which is revealed through time. However, in opening up the concept of *aporia*, I would like to consider it in light of another Platonic space that reveals itself, that of the receptacle, *chora*. *Chora* can be likened to Derrida's use of *aporia* but is more subtle

and nuanced. *Chora* provides the possibility to incorporate the lived experience of difference – the sexed body. Before commenting on how *chora* can shape justice, the location and positioning of subjects in relation to the law needs to be considered. In positioning the subject, a short tale from Kafka will enable the development of what is at stake for the subject when seeking justice through the law.

Before the Law

Franz Kafka's tale "Before the Law"⁵⁴ presents us with a representation of law that is spatial, mediated and corporeal. The tale enables a structure, whereby law can be thought in relation to the representation of its appearance and spatial dimension. Kafka's tale explores the entry to law, the individual engagement with it and its ultimate effect upon the body. From the text, two important ideas need to be considered. The first is the engagement that the individual, the man from the country has with the law. The second is the representation of the law, and this is the unique structure as it represents the law in a tangible manner, akin to the embodiment of *Dikē*. If one was to consider the notion of the doorkeeper, the guardian of the law, with "his fur coat, with his big sharp nose and long, thin, black Tatar beard" one can see that this embodiment of the *protector* of law is revealed in a character that has the potential to inflict violence. He is the first of many doorkeepers, each one more powerful than the preceding, so much that when the doorkeeper speaks of the third doorkeeper he is "already so terrible that even I cannot bear to look at him." If the countryman were to overcome the doorkeeper then he would continue on a path of escalating terror, in order to access the law. The representation of the law, as presented for the countryman, is numerous insurmountable obstacles, yet as he pleads with the doorkeeper, it is also waiting, a deferral. Hence, the law is always a deferred, it is never obtainable. If justice was sought through law then the path towards it is marred by violence. Hence, the impassable contradiction that one cannot at once enter and access the law, but the unique individuality of the situation as to what is represented. It is deferment of a potentiality that may emerge but is never realised. The conclusion of this story, presents us with a second key element in about the law. The countryman could still not access the law after appealing to the doorkeeper for many years, after waiting, imploring the fleas for assistance, waiting until his death. He had spent his life attempting to access the law. The countryman sought clarification as to why he could not be admitted as in the time he had sought access he is the only person who has begged for admittance. The doorkeeper responded to the countryman's claims: "No

one else could ever be admitted here, since this gate was made only for you. I am now going to shut it."⁵⁵

The tale of the countryman is retold to Joseph K. in the cathedral in Kafka's *The Trial*, another text that deals with a continual deferment. This opening of the temporal element is to defer the future, which could also be related to the giving of time, which according to the Grosz, can be placed at the opposite point of violence. In *The Trial* Kafka states that "postponement is the only hope of the accused man only if the proceedings do not gradually turn into judgement."⁵⁶ Both the countryman and Joseph K. are continually bound up within the logic of deferral, hence, whilst not being able to understand that which they do not know, or cannot gain access to. Instead, in order to approach and realise the law, the only constant is that it is unobtainable. Benjamin states that the articulation of law, as revealed in Kafka's work, is that while the courts have the law codified, no one is allowed access, with laws and defined norms remaining unwritten in the prehistorical world.⁵⁷ Instead, the law can be transgressed without knowledge and what transgresses becomes a subject of atonement. This "transgression in the sense of the law is not accidental but fated, a destiny which appears here in all its ambiguity."⁵⁸ Transgression is revealed through fate, a fate without knowledge, which echoes the tale of *Niobe* and the juxtaposition between the mythic and the divine. A notion of deferral, relates strongly to the space that is opened up time for justice. Derrida's reading of this tale is an attempt to position the law as a quasi-object. This object may not be able to be held but it is one whereby an attempt can be made to see it from one, or any angle.

Agamben, however, sees the positioning of both the countryman and Joseph K. as that which represents the originary structure of the *nomos*.⁵⁹ It is the tension that the door, which both includes and excludes the countryman, has to language. This holds "man in its ban insofar as man, as a speaking being, has always already entered into language."⁶⁰ Being part of a discourse community, where language's tension is coterminous with the *nomos* and as such the formation of the *polis*, has a problematic undercurrent. On the development of Agamben's reading of *The Trial* he states that there becomes an indeterminacy between the life and law, that the "existence and the very body of Joseph K. ultimately coincide with the Trial; they become the Trial."⁶¹ The position of the countryman before the law emerges through the final act of shutting the door as it is the closure of all law, but was only open for him.⁶² Agamben positions the countryman and his relationship to the law by drawing on Kurt Weinberg's interpretation with the figure of the "thwarted Christian Messiah."⁶³ The representation of the Messiah seeks to overcome the problem of law in monotheism, by con-

summing it, rendering it in a singular moment. However, if the force of law is already in operation, there is no escape outside of its structure, one must either look for ways to penetrate it or live through it. The law cannot be realised through the singular notion that this is all law and the countryman is the only person before the law. As opposed to the door being opened up for the countryman, as his door, which is the only door that is opened and closed, instead we can posit that there is a multiplicity of laws, each one having its own reflection upon the subject of its operation. What does not stop the countryman's experience as being his alone as the torchbearer for the totality of law? The door and its keepers are the countryman's unique interface with the impenetrability of the law. Instead of the Messiah figure, there is a subtler, uniquely subjective and distinct experience for the countryman as there is for Joseph K.

Derrida presents a different reading of Kafka's tale, in his piece of the same name "Before the Law." He states that "there is a singularity about relationship to the law, a law of singularity which must come into contact with the general or universal essence of the law without ever being able to do so" – the paradox of "being before the law."⁶⁴ Derrida's reading teases out of Kafka's text both the topological structure of the law that contains the countryman, the doorkeeper and the law, but also how they are interrelated. Derrida develops the interrelationship of the law, as espoused by Kafka to be positioned with Benjamin's call to justice. In rendering the law as a narrative, as represented by the countryman, there is always this attempt to "approach the law," "to enter it and become *intrinsic* to it."⁶⁵ There is the revealing of the law as a site that can be approached and engaged by and through the body, presenting itself in a tangible form. However, Derrida sees that the structure of the text and as such the nature of being *before the law* contains a tension. The location of law is uncertain, what is it that is tangible as the law? Derrida suggests that it is possible to be "a nothing that incessantly defers access to itself, thus forbidding *itself* in order thereby to become something or someone."⁶⁶

Derrida sees that this nothingness opens up a space, whereby law is presented as absolute and detached from origins, appearing as something that does not appear throughout history.⁶⁷ This space is entwined with the notion of what it means to access this law, to access a nothing space. The countryman becomes the subject of the law by appearing before it, being neither under nor in the law.⁶⁸ He is present *before* the law awaiting access, yet continually deferred, until death, at this law without origin. What becomes central then is the space to enable permission to enter the prohibited. This tension here is revealed in the emergence of a topographical system that prescribes "two inverse and adverse positions."⁶⁹ The country-

man's attempt to enter is delayed as an attempt to approach "the origin of différance: it must not be presented or represented and above all not penetrated. That is the law of law."⁷⁰ *Différance* enables time that enables the deconstruction of justice. If there were a nexus to penetrate – the law, as difference – what would it be? The sexed body is one of difference that can present a limit enabling law to re-figure itself in relation to violence and justice. If one is then to approach the law with the demand of justice, how might one be able to enter, to penetrate the law in the attempt to realise justice? Derrida states that the site of law is a space that is neutral, but keeping in mind the concept of deconstructive justice, the law is also the one, the many, the one, the plural:

Here one does not know the law, one has no cognitive rapport with it; it is neither subject or object *before* which one could take a position. Nothing holds before the law. It is not a woman or a feminine figure, even if man – *homo* and *vir* – wants to enter or penetrate it (that, precisely is its trap). Nor yet is the law a man; it is neutral, beyond sexual and grammatical gender, and remains thus indifferent, impassive, little concerned to answer *yes* or *no*.⁷¹

The law, as presented above is free from gendered embodiment. It steps outside the bounds of gendered relationships and as such liberates itself. Yet Derrida invokes the grammatical gender of the law in relation to its naming. English has no grammatical gender, in German the law is neutral, *das Gesetz*, while in French the law is feminine, *la loi* and *elle*.⁷² I wish to move beyond the neutrality of gender in relation to the law as feminine. This refers back to the figure of justice, the god of human justice – *Dikē*. As such, there are two representations of justice. The first, is the Kafka's door-keeper, the second is the Goddess that sits blindfolded atop the courthouse, blind justice. From this, there is a correlation between the embodiment of law and the body as the subject of law. The body, as it is figured in relation to justice can be understood to through the appeal to the basic nature of difference inscribed on bodies, that is the difference of sex/gender.

The Place of Justice

When a subject is positioned *before the law*, what is the avenue to justice? What is justice for the individual that is naked, stripped and vulnerable before the law? It is to get *inside* the law. The law is a unique experience for each individual as revealed through Kafka. It is this individual experience of a permeating law that envelops, contains and holds sway over the body – that each body is inscribed its own law – that each body *governs*.

However, this only emerges through relations of bodies that mediate their corporeality. Returning to Derrida's call for justice as deconstruction enables the opening of a third space as revealed in the *aporias*. From *aporia*, I wish to consider the concept of *chora*, which first appeared in Plato's *Ti-maeus* and has featured in the work of Derrida and Kristeva. *Chora* presents us within an opening to justice akin to *aporia*. It is another way to connect to the notion of justice as a deconstructive practice. The centrality of *chora* is that it represents an *ordering*, a regulative concept that is not law that is reserved for the symbolic, but a meditation.⁷³ The nature of *chora* is that it represents "the becoming of a sign system that is always-already in progress."⁷⁴ The *chora* stands for a "rhythm of articulations" centred upon the "difference between charges and stases by the repeated interruption of drives."⁷⁵ The identity of the *chora* is that it is bound by difference.

Chora has difference at its centre and as such can enable the reconceptualisation of justice that is embodied, taking as its centre not the problem of the *aporetic* structure, but opening a space for the body, thought as difference. This space, *chora*, according to Grosz contains an "irreducible, yet often overlooked connection with the function of femininity, being associated with a series of sexually-coded terms."⁷⁶ In Grosz's development of Plato's *chora*, she sees it as providing the ground to open up an indeterminate category, a third space.⁷⁷ This space, *chora*, can only be designated as the feminine, it is a space that "has neither existence or becoming" it is a formless space in service to the masculine.⁷⁸ However, within *chora* a point of transgression can be sought, although marginalised by phallogentrism. That which is owed to *chora* is that it constitutes the "most primordial of all spaces, the maternal space from which all subjects emerge."⁷⁹ In moving towards a reconceptualisation of *chora*, which has as its forefront the feminine, the possibility for justice that has difference at its centre can be opened. In order to develop this, we must move from the space of the *polis*, the topography of the law and construct place. Place must be conceived as different from space. Space is bound within the logic of penetration, domination and colonisation. While place is a site of dwelling and occupation.⁸⁰ This creation of place, a place that is lived in, established overtime, can enable the movement towards a place of justice that is not entwined with the space of law, the public, masculine, space of the *polis*.

According to Judith Butler, Derrida and Luce Irigaray state that the figure of the receptacle is presented within *chora* and as such it cannot be identified with the feminine. She states that "the feminine exceeds its figuration, just as the receptacle does, and that this unthematizability constitutes the feminine as the impossible yet necessary foundation of what can

be thematized and figured.”⁸¹ This enables a distinction between the concepts that have been emergent in both the work of Kristeva and her appropriation of *chora* and its confluence with the feminine. The central figure is that the representation of the receptacle/*chora* represents the point where “matter redoubles itself as a proper and improper term, differentially sexed, thereby conceding itself as a site of ambivalence, as a body which is no body, in its masculine form, as a matter which is no body, in its feminine.”⁸² Whatever place is rendered for the body, the creation of a sphere whereby matter and the body are convergent enables the extension of difference. This leads to a rupture in the lining of *chora* that can enabled the construction of a place for justice.

Kafka’s tale positions the subject in relation to the law and also enables a way to call for justice. What would be at stake when space is subsumed and both the doorkeeper and the countryman penetrate the totality of law? This would entail getting inside and obtaining knowledge of the unknowable – the law cannot be controlled as a thing, an object that yields to the subject’s demands. That the law is individual for each subject only appears when the mere fact of law is that it can never be obtained. The attempted act of penetration, of wielding the objectification of law is never realised. Yet, if penetration is possible, then what is the conception of how it is enacted? Penetration gives rise to the notion of sex, which is fundamental in shaping bodily difference. What then becomes of penetration? Butler sees the prohibition of accessing the law as securing

the impenetrability of the masculine as a kind of panic, a panic over becoming “like” her, effeminated, or a panic over what might happen if a masculine penetration of the masculine were authorised, or a feminine penetration of the feminine, or a feminine penetration of the masculine or a reversibility of those positions – not to mention a full-scale confusion over what qualifies as “penetration” anyway.⁸³

Hence, the development of the notion of justice as an incalculable event is akin to attempting to overcome the threshold of signification that is bound up within the construction of sex/gender. Any representations of the law, of the realm of social interaction – the public sphere – are already regulated through the privileging of the masculine. This representation *must* always be accounted for when attempting to examine the interrelationship between law and justice.

Language is the foundation of any sense of collectivity. As the voice of the female is coterminous with herself, she is ascribed a marginalised sense within the *public* order, the public *space*. As Irigaray states:

What she says is never identical with anything, moreover; rather it is

contiguous. *It touches (upon)*. And when it strays too far from that proximity, she breaks off and starts over at “zero”: her body-sex.⁸⁴

It is the equating of body-sex that renders the voice of the feminine, difference that is ascribed through the physical body that has rendered the role of her as constantly being other, being outside of the *polis*, yet not that far away as to not feel the effects of law upon her body. In breaking open *chora*, but associating it as a development from *aporia*, enables the possibility that the envelope of justice that is created in place. The structure of language is centred upon the masculine; any notion of the subject of law, the subject of rights is always-already prefigured around the discourse of man. If there is to be an escape from the bonded order any attempt towards the refounding of justice must account for language.

Peter Fenves sees a connection that flows through Benjamin’s “Critique of Violence” and the work of Irigaray. This connection is realised through the understanding of difference. This difference, which for Irigaray is centred upon sexual difference, is developed for Benjamin in the figure of Niobe. Niobe is caught within the structures of mythic violence, which demands and perpetuates itself through blood, the sacrifice of the living. However, what Irigaray seeks to find is to work through the notion of “*reine Mittel*: pure means, unmediated middleness and immediate mediacy.”⁸⁵ Irigaray’s thought is developed through the medium of bodily fluids, specifically *mucous*, which, Fenves states, is due to its correspondence to *reine Mittel*. *Mucous* is associated with the feminine. The opening of pure means is contingent on mucous, not blood, to developing a place that is fluid incorporating difference. It would be a place for justice. A location that is pure, fluid and flexible, that has embodiment at its core – the body reflected through its difference. This justice would not have blood or violence as its founding and preserving structure but would be a place that opens up the idea of justice, away from distinctions mediated by law and judges, into the openness of a plain of difference. A fluid, flexible site that is always open. A justice that is permeable, envelops, accepts and receives – is timeless. It is a place that is outside the bounds of space and time, a place that is all and neither. Justice is fluid. Justice is the liquid spaces that flow within the body; it is all bodies in their individual corporeality and their connection, which preserves difference. A place for justice can be sought through the body.

A Final Place

The subject must remain at the centre of any exploration of the interaction between violence and law in relation to justice. This is especially

evident in the call for a justice that is fluid, has no centre, no origin. A justice stripped of all reference points but the subject. The call of justice as deconstruction, deconstruction as justice enables the opening of the space enabled by blood and the body by rupturing the mythic and divine, there is the realisation of a third space, a place. A place for justice or more poignantly, place as justice.

While the law is presented in its strange figure – the countryman who seeks it, the doorkeeper who defers it – the law does not equate to justice. Violence underpins all law; there can be no law without violence and no violence without law. Any justice to emerge through the law still has violence at its core. Yet the opening of violence and law creates a space where justice can be considered. The development of space into place through the gift of time opens up the horizon of justice. It is this horizon whereby, the body thought of as difference resides and creates dwelling.

Dikē, the original embodiment of justice, represents an ordering. It is not through her flesh that justice is obtained, she brings violence and enables the regulative sphere of the *nomos*. Law emerges from violence through its appeal to justice. Benjamin commenced the fundamental theorising of justice by breaking through the boundary of legality. It is Derrida's call for justice as deconstruction which provides an avenue to continue the critique of the law, searching for a condition that enables justice. The body presents a possibility for justice. The body is the location of violence and different bodies come together forming the basis of regulation. Justice is found in the *place*, a place that is outside law and violence. The body provides a point of departure in creating the place for justice.

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NOTES

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² Walter J Jones, *The Law and Legal Theory of the Greeks: An Introduction* (Oxford: The Clarendon Press, 1956), 34

³ For a detailed analysis of the relationship between Greek mythology and law, see Jones, *The Law and Legal Theory of the Greeks* (esp Ch 2).

⁴ Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*. Trans. Daniel Heller-Roazen (Stanford: Stanford University Press, 1998), 30.

⁵ Agamben, *Homo Sacer*, 33.

- ⁶ Agamben, *Homo Sacer*, 36.
- ⁷ Hannah Arendt, *On Violence* (New York: Harcourt Brace & Company, 1970).
- ⁸ Arendt, *On Violence*, 44.
- ⁹ Arendt, *On Violence*, 44.
- ¹⁰ Arendt, *On Violence*, 44.
- ¹¹ Arendt, *On Violence*, 51.
- ¹² Arendt, *On Violence*, 52.
- ¹³ Arendt, *On Violence*, 52.
- ¹⁴ Arendt, *On Violence*, 52.
- ¹⁵ Arendt, *On Violence*, 52.
- ¹⁶ Julia Kristeva, *Hannah Arendt*, trans Ross Guberman (New York: Columbia University Press, 2001), 177.
- ¹⁷ Kristeva, *Hannah Arendt*, 177.
- ¹⁸ Kristeva, *Hannah Arendt*, 182.
- ¹⁹ Walter Benjamin, "Critique of Violence," in *Walter Benjamin: Selected Writings Volume 1*. Eds Marcus Bullock and Michael W Jennings (Cambridge, MA: Harvard University Press, 1996), 236-52.
- ²⁰ Jacques Derrida, "Force of Law: The Mystical Foundations of Authority," in *Acts of Religion*, ed Gil Andidjar (London: Routledge, 2002), 228-98.
- ²¹ Derrida, "Force of Law," 262.
- ²² Benjamin, "Critique of Violence," 237.
- ²³ Benjamin, "Critique of Violence," 238.
- ²⁴ Benjamin, "Critique of Violence," 238.
- ²⁵ Benjamin, "Critique of Violence," 247.
- ²⁶ Benjamin, "Critique of Violence," 247.
- ²⁷ Benjamin, "Critique of Violence," 247.
- ²⁸ Benjamin, "Critique of Violence," 247.
- ²⁹ Benjamin, "Critique of Violence," 248.
- ³⁰ Benjamin, "Critique of Violence," 248.
- ³¹ Agamben, *Homo Sacer*, 63.
- ³² Benjamin, "Critique of Violence," 249-50.
- ³³ Benjamin, "Critique of Violence," 250.
- ³⁴ Benjamin, "Critique of Violence," 251.
- ³⁵ Nancy Frazer, "The Force of Law: Metaphysical or Political?," in *Feminist Interpretations of Jacques Derrida*, ed Nancy J Holland (University Park, PA: The Pennsylvania State University Press, 1997), 159
- ³⁶ Derrida, "Force of Law," 243, emphasis added.

- ³⁷ Derrida, "Force of Law," 257.
- ³⁸ Derrida, "Force of Law," 251.
- ³⁹ Derrida, "Force of Law," 251.
- ⁴⁰ Derrida, "Force of Law," 252.
- ⁴¹ Derrida, "Force of Law," 253.
- ⁴² Derrida, "Force of Law," 255.
- ⁴³ Derrida, "Force of Law," 255.
- ⁴⁴ Derrida, "Force of Law," 255.
- ⁴⁵ Derrida, "Force of Law," 256 .
- ⁴⁶ Derrida, "Force of Law," 256.
- ⁴⁷ Jacques Derrida, *Writing and Difference*, trans Alan Bass (London: Routledge, 1978), 286.
- ⁴⁸ Frazer, "Force of Law," 159.
- ⁴⁹ Frazer, "Force of Law," 160.
- ⁵⁰ Elizabeth Grosz, *Time Travels: Feminism, Nature, Power* (Crows Nest: Allen and Unwin, 2005), 58.
- ⁵¹ Grosz, *Time Travels*, 63.
- ⁵² Grosz, *Time Travels*, 67.
- ⁵³ Grosz, *Time Travels*, 68.
- ⁵⁴ The quotations from "Before the Law" by Kafka come from the reproduction printed in Derrida's 1992 text "Before the Law" in *Acts of Literature*, ed Derek Attridge (London: Routledge, 1992), 181-220.
- ⁵⁵ Derrida, "Force of Law," 184.
- ⁵⁶ Walter Benjamin, "Franz Kafka: On the Tenth Anniversary of his Death" in *Walter Benjamin Selected Writings Volume 2*, eds. Micheal W. Jennings, Howard Eiland and Gary Smith, trans. Harry Zorn. (Cambridge, MA: Harvard University Press, 1999), 807.
- ⁵⁷ Benjamin, "Franz Kafka," 797.
- ⁵⁸ Benjamin, "Franz Kafka," 797.
- ⁵⁹ Agamben, *Homo Sacer*, 50.
- ⁶⁰ Agamben, *Homo Sacer*, 50.
- ⁶¹ Agamben, *Homo Sacer*, 53.
- ⁶² Agamben, *Homo Sacer*, 55.
- ⁶³ Agamben, *Homo Sacer*, 56.
- ⁶⁴ Derrida, "Before the Law," 187.
- ⁶⁵ Derrida, "Before the Law," 191.
- ⁶⁶ Derrida, "Before the Law," 208.
- ⁶⁷ Derrida, "Before the Law," 194.

- ⁶⁸ Derrida, "Before the Law," 204.
- ⁶⁹ Derrida, "Before the Law," 201.
- ⁷⁰ Derrida, "Before the Law," 205.
- ⁷¹ Derrida, "Before the Law," 207.
- ⁷² Derrida, "Before the Law," 206ff.
- ⁷³ Julia Kristeva, "Revolution in Poetic Language," in *The Kristeva Reader*, ed Toril Moi (Oxford: Basil Blackwell, 1986), 94.
- ⁷⁴ Juliana de Nooy, *Derrida, Kristeva, and the Dividing Line: An Articulation of Two Theories of Difference* (New York, London: Garland, 1998), 100.
- ⁷⁵ de Nooy, *Derrida, Kristeva, and the Dividing Line*, 101.
- ⁷⁶ Elizabeth Grosz, *Space, Time and Perversion* (Crows Nest: Allen and Unwin, 1995), 112.
- ⁷⁷ Grosz, *Space, Time and Perversion*, 114.
- ⁷⁸ Grosz, *Space, Time and Perversion*, 115.
- ⁷⁹ Grosz, *Space, Time and Perversion*, 121.
- ⁸⁰ Grosz, *Space, Time and Perversion*, 123.
- ⁸¹ Judith Butler, *Bodies that Matter: On the Discursive Limits of "Sex"* (New York: Routledge, 1993), 41.
- ⁸² Butler, *Bodies that Matter*, 49.
- ⁸³ Butler, *Bodies that Matter*, 51.
- ⁸⁴ Luce Irigaray, *This Sex Which is Not One*, trans. Catherine Porter (Ithaca: Cornell University Press, 1985), 29.
- ⁸⁵ Peter Fenves, "'Out of the Order of Number': Benjamin and Irigaray Toward a Politics of Pure Means," In *Diacritics* 28.1 (Spring, 1998), 52.