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FORTRESS EUROPE AND ITS METAPHORS: IMMIGRATION AND THE LAW

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Fortress Europe and its Metaphors: Immigration and the Law

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In France, the 1990s were marked by a whole series of heated debates whose common denominator was the word "immigration." The media regularly focused on such key words as immigrants, refugees, illegal immigrants as new laws were discussed, while new social movements mobilized different constituencies. In 1993, the so-called Méhaignerie and Pasqua laws had considerably limited the rights non only of recent immigrants but also of those who could have been eligible for naturalization (Naïr 1994, 1997). The Pasqua laws imposed an increasingly repressive and restrictive philosophy, turning the illegal immigrant into the enemy of the state, the national scapegoat. Naturally, since no dominant ideology remains completely unchallenged, this tendency was opposed and questioned, especially during what was called the "affaire des sans-papiers de Saint Bernard" where the French, for the first time perhaps, had the opportunity to hear the voice of those demonized illegal immigrants (Diop 1997). In 1996, approximately 300 African men and women occupied several Parisian public spaces, including the Saint-Bernard church, and defied the government for months, determined as they were to demonstrate that the law was so flawed both in its principle and in its application that a case-by-case treatment of their situation was the only valid option.

A few months later, another much publicized wave of public protest greeted the preparation of a new bill of law (the so-called Debré bill that would have pushed the

logic of the Pasqua laws even further). At the very moment when Vitrolles, the fourth Southern town to elect a National Front mayor, was becoming the symbol, not only of the rise of the Far Right in France but also of the will to resist displayed by other portions of the population, the "affaire des Sans-Papiers de Saint-Bernard" was replaced, on the front pages of national newspapers, by a new sensitive case, the "affaire Deltombe." Jacqueline Deltombe is a French citizen who was arrested, tried and convicted for having allowed an illegal immigrant from Zaire to stay with her. When Le Monde covered her story, fifty nine film directors reacted publicly, appearing on television where they read a manifesto, urging the French to refuse to "obey inhumane laws" and claiming the right to break such laws (Saga 1997). The text was subsequently amended but Jacqueline Deltombe lost her appeal.

The 1997 Chevènement law, which I will be discussing today, was thus conceptualized and elaborated as the tail end of a whole series of conflictual events. It was prepared by the Socialist government that had defeated the Right immediately after the Deltombe affair, and this law had been announced, during the campaign, as the text that would radically change the governmental logic and replace the Pasqua laws. The word used in French was "abrogate" and the verb resonated for a long time, raising hopes for some, triggering anger in others. After asking Patrick Weil, a political scientist, to prepare a report on immigration, the minister of the Interior, Jean-Pierre Chevènement, defended his project at the National Assembly and a new set of texts entered the Journal officiel as the new law number 98-349 of May 11, 1998 that regulates the entrance and stay of foreigners as well as the rights of asylum seekers.

It is in that context that I would like to listen, obliquely, to two types of discourse that tend to ignore each other: first I want to listen to the legal discourse that manifests itself in this new immigration law, then I also want to listen to a simultaneous layer of discourse, a popular discourse made of images, metaphors, and quotable quotes that constitute a vast reservoir of seemingly spontaneous thoughts on immigrants and their presence in France. I would like to position myself at the intersection between those seemingly incompatible discourses. I would especially like to check to which extent the second type of discourse (those popular images that are so often devalued as a language) do not constitute a second type of law, a law that is sometimes even more rigid that the official one.

So, instead of examining the official legal discourse as if it were a self-contained universe, a text that can be read as a finished product, I would like to concentrate on what happens before and after that drafting of the bill. I would like to focus on the ways in which such texts are written, prepared, argued (what happens upstream if you will), but also how the text is read and interpreted. Let's see if a law on immigration is part of everyday life, if it finally turns into everyday life or if as I will suggest, it reflects what already exists in everyday life and in our culture.

Legal texts apparently hate metaphors and they don't present themselves as texts that make even a minimalist effort to be seductive to its readers. We never find, in a bill of law, any reference to familiar popular images about immigrants. Nor does the final law know how to incorporate memorable sound bites such as Jacques Chirac's declarations that "the noise and smell" of immigrants would drive their neighbors crazy. It does not comment on Giscard d'Estaing's suggestion that we are witnessing a gradual

move from immigration to invasion. Neither will you find any allusion to the possibility that immigrants are "an opportunity for France" to adapt Bernard Stasi's title. The law does not talk about generosity or hospitality, it talks about the law, that is about itself.

On the one hand, the fact that the legal texts does not wish to sound "generous" for example may appeal to those who prefer to talk about "rights" and who are frightened by the level of inhospitality and xenophobia exhibited in the quotable quotes that I have just referred to. Why not trust the impersonal rhetoric of Rights that, theoretically at least, does not have to count on the generosity of powerful hosts (nations or individuals) and that defines the immigrant as a clearly identifiable subject to whom certain rights and certain duties are attributed by a language that makes our emotions off limits.

Bills of law exist within, and at the same time create a certain notion of reality. For example, if I look at the volume published by the Ministère de la Justice and entitled Nationalité Française: Textes et documents, I discover that reality is fragmented, atomized into articles and numbered paragraphs that are all so abstract that it would be difficult to imagine to whose life they relate (transparency 1). Such fragmentary aesthetics has nothing with literary experiments *à la* Roland Barthes: the law is not postmodern, at least not deliberately so even if it remains a very difficult text to read.

Another characteristic of these legal texts is that they are not easily available. They are difficult to find even if one searches for them. That is not the case of other types of political messages such as posters or campaign slogans and speeches that are widely distributed by the media or through individual militants' initiatives. Recently, thanks to the internet, it is slightly more reasonable to hope that non-specialists will some day have access to relevant legal texts. When Patrick Weil released his report, Le

Monde's web page gave its readers access to the full text, and the web site maintained by the "sans-papiers" movement publishes an electronic version of the "Chevènement law." Still, overall, it takes a specialist to be able to find one's way through the labyrinth of multiple "codes," and endless lists of application decrees, and to understand whether your situation corresponds to what is described on paper.

I am tempted to say that the texts claiming the "legal" label are prisoners of their own desire to be sacred and final. They have to invent themselves as the last bastion of Cartesian logic, a shield against doubt and ambiguities. Yet, even they cannot forget or hide that the cultural universe within which they are written is more chaotic than Cartesian. First published in 1985, revised in 89 and 96, the monumental volume published by the Ministère de la Justice testifies to the fact that the law is in constant evolution and that it is even illusory to make sure that we are familiar with the latest developments. The electronic version of the Chevènement law looks like episode number 2001 of a television series with its innumerable references to repealed paragraphs, old decrees, new regulations.

Now, what I am not suggesting here is that the Law should be turned into a more popular genre, should be translated into a cartoon-like publication or TV units. But I do wonder why our culture grant these texts the right of being illegible. I am not even saying that they are too sophisticated for uneducated reader (that problem has never been solved and a quick look at eighteenth-century philosophers offer a sobering perspective on the issue, Godwin 1970, 1971). I am not suggesting that bills should become more literary or better narratives (I am not trying to read one discipline with the tools forged by another one). But just as it would be futile to read a bill from an exclusively literary

perspective, I wonder why the law authorizes its own self-containment. In the bill, immigrants are neither an asset nor a liability, they are not said to be responsible for unemployment, they are not portrayed as undesirable delinquents but they are certainly not guests that France, like a good Samaritan, wants to rescue from poverty or persecution. In the bill, the immigrant is called "l'étranger," whose rights and duties are supposedly clearly identifiable according to which article of law corresponds to his or her situation.

And yet, the way in which a stranger is here defined is caught up in a vicious and illogical circle: when an administration has to decide whether or not a "stranger" has a right, for example to a work permit, or to certain benefits, that administration, implicitly or explicitly, is interpreting a text. And when a stranger must prove that his personal narrative can be viewed as "similar" to the narratives proposed as examples of the criteria adopted by the texts, his or her task is, typically, to bring more documents into the equation, to add a new layer of texts that will start functioning like supposedly straightforward evidence (documents that prove your nationality, your birthplace etc. are supposed to be perfectly legible). Those documents requested by each administration involved in the application of a specific text are similar to the law in that they represent a supposedly non metaphorical, non literary, non narrativized form of discourse.

But if you have read Sembène Ousmane's "Le Mandat" (where a character fails to transform an international money order into cash because he cannot produce such supposedly straightforward papers as a birth certificate), or if you have ever tried to force international administrations to compare notes on their own understanding of texts, even a birth certificate is, in fact, interpretable.

Similarly, in France, when the government recommended that mayors check the validity of the "Certificats d'hébergement" (a document to be produced by families residing in France and who wished to have their relatives stay with them), strange phenomena started occurring: for example, officials started visiting people's homes and measuring the size of rooms. Certain mayors requested more documentation than others, others systematically denied their authorization claiming that all requests were fraudulent. It soon became clear that it is not so easy to turn an individual's generous gesture (inviting one's family to stay over) into an official legal text that the administration could accept or reject. Many other narratives, beyond the "certificat" in question explained why certain authorizations were denied.

I. "Applying" the Law: Downstream Ghosts

Paradoxically, for the legal text to manifest itself within culture, for its authority to be turned into decisions, it must first let itself be possessed, inhabited by a spectral presence, a ghost which is, I would argue, its real identity. I suggest that what has been called "the spirit of the law" (vs the letter), is not a sort of extra-textual layer that exists beyond the text and is, at times, betrayed by those who apply it. I suspect that what we call the "spirit" of the law is linked to the other meaning of the word 'spirit': it is a ghostly presence, a spectral layer.

The legal text imagines itself as the last frontier, the bedrock on which democracy rests. But it can only become real if it accepts to lend itself to new interpretations, in spite of the fact that it defines itself as the final stage of previously debated ideas, previously expressed democratic opinions. I suggest that whenever someone tries to

invoke a law, there is an element of conjuring. The spirit of the law is summoned. And that spirit is a form of language but a language that is not part of itself, that is not, somehow hidden within its own recesses and that could be discovered (it is not the "unconscious" of the text). What I call here the "spirit of the law" is another type of discourse, a language made of images, of metaphors, of quotable quotes, that we tend to consider as precisely the opposite of what makes the law. We tend to view this other discourse as weak, subordinate, hysterical, irrational, devoid of respectability. I argue, perhaps polemically, that the idea of "applying" the principle of a law, of "enforcing" a law is a mental shortcut that masks the presence of the ghost, of that other discourse that never completely disappears.

Let me give you an idea of what I have in mind. When Chevènement, who knew (or hoped) that the bill that had just been passed constituted a revolutionary move away from the Pasqua and Méhaignerie laws, he felt the need to prepare his administration and to supervise the application of the new regulations. He called a meeting with the Prefects on December 16, 1997. Journalists from Le Monde quote him as having said:

> Il importera que l'équilibre de cette loi, à la fois humaine et ferme, se retrouve dans son application. Votre responsabilité et celle de vos collaborateurs sont à cet égard essentielles. L'esprit d'ouverture qui inspire certaines dispositions ne doit pas être contredit par une application tatillonne. (Fabre et Montvallon 1997, my emphasis)

> It is important that the balance between humanity and firmness that characterizes this law should be found in its application Your role and your collaborators' is crucial in this regard. The spirit of openness that inspires certain articles should not be betrayed by a rigid application.

Compared with the fastidious precision of the legal texts, their attention to details, note our the metaphoric notion of "openness" is vague and weakly defined although it represents the strong rhetorical articulation of the sentence. Chevènement invokes a certain "esprit d'ouverture" [openness] and at one level, we all know what he means but only because the phrase has become a cliché. I wonder why we can get away with such vague political concepts at crucial moments when the legislation changes. Who is "open"? And who benefits by this "openness"? Which degree of openness are we talking about? And what is this "spirit" that has inspired the law? Is "inspiration" the right word here? Do we conceptualize the writing of the legal text as a romantic endeavor that depends on the presence of the Muse?

I also wonder what the Minister means when he uses the adjectives "humane" and "firm" as if the two concepts were naturally opposed: why is it not possible to request, firmly, more humanity, more generosity, (i.e., precisely, more excess, a more radical departure from the norm, the status quo?) The Minister seems to be afraid of betrayal, he is afraid of a rigid [tatillonne] interpretation of the legal text. But isn't his fear misplaced? A rigid interpretation of a generous law can be generous too: when a judge refuses to detain an illegal immigrant because his or her arrest was not done according to procedures. This is what happened towards the end of the most public phase of the

"sans-papiers de Saint-Bernard" affair in August 1996. Few were regularized but few were deported. When applied "firmly," rigidly, a law can be even more generous than its own spirit. Often, this is dismissed and criticized as a technicality, a legal nicety, not as a "firm" interpretation. Yet, the same rigidity that Chevènement seems to fear is at work in that case.

It is clear, however, that the Minister's fear, his suspicion that the Prefects would be hostile to what he thinks is the "spirit" of the law is strategically crucial because it is performative: by worrying about interpretation, Chevènement admits in so many words that a law does not exist unless it is interpreted, that "applying" the law may be the equivalent of betraying the law. Except that I am tempted to reformulate his statement in the following way: if I suspect that administrations will, generally speaking, be hostile to immigrants, I recognize that, far from being the "guardians" of the law, they will function as a sort of unavoidable Derridean supplement, an extra layer that gets superimposed over its logic. In other words, the imaginary pre-existing spirit of the law really starts existing downstream, after the law is written and voted. And this afterwards, this downstream point if you like, is the cultural location where all the little images I talked about proliferate freely: that is the place where icons of fortresses and invasion, the allusions to smell and noise reappear like the return of the repress. Expelled from the legal text, those images come back to haunt the series of numbered articles and their cut and dry series of recommendations.

II. Authoring the Law: Upstream Ghosts

I have talked about the ghosts of anti-immigrant rhetoric conjured up at the moment when the legal text is applied but I should perhaps insist that the same phenomenon is likely to occur upstream, when the legal text is being slowly created, discussed, drafted. The moment of the elaboration of the legal text is haunted too.

Let's talk about the word "abrogation": when the media uncovered the substance of the Weil report, many left-wing voices protested, denouncing what was perceived as a betrayal. After promising to "abrogate" the Pasqua laws, the government was apparently happy to reform them.

Naturally, a theoretical issue is being debated here the question would be, who has the power and or knowledge to determine whether or not a text constitutes a revolution or a reform. What is the difference between a difference that makes a difference and a difference that does not. Which adjective, which comma authorizes someone to say that a text is sufficiently different from itself (or another text) for it to be described as "different." In academic and literary circles, the worry is more that texts are going to be too similar (rather than not different enough). The horizon of plagiarism orients our thoughts around what is too similar rather than around what is too different. But the question remains: when does a legal text introduces a radical discontinuity, a change? It is clear that lay people are almost exclusively interested in the everyday repercussions that the law will have on their daily practices and that the vast majority of those who are likely to be satisfied or dissatisfied with governmental policies are not equipped to judge all the different versions, all the historical changes of legal texts that, more likely than not, they have never actually read for themselves.

So when the Green (les Verts) accused the government of betrayal because they were not longer talking about "abrogating," were they fetishizing a verb without seeing that the government's tactic was to attempt a (symbolic) revolution without using the word? Or were they quite right to insist on the performative nature of the word "abrogate": a law is not repealed until a law is not repealed just like a marriage is not a marriage unless two people pronounce the magic words, just as a war is not declared until such words have been uttered.

During the discussions at the National Assembly, here is what becomes of this theoretical issue: the Minister of the Interior

> ... s'en est pris directement aux Verts, en dénonçant ceux qui ont "préféré faire dans le registre de l'angélisme." "Les démons ne sont rien d'autre que des anges déchus," a-t-il lancé. (Montvallon 1997)
>
> took the Greens to task, denouncing those who preferred the "angelic register": "Demons are nothing but fallen angels" he exclaimed.

The word "angelic" was heard, commented and sometimes repeated ironically. It is an interesting choice because the Minister seems to refer to an implicit law of human moderation: "faire dans le registre de l'angélisme" seems to mean, here, to insist on such a "pure" position that it constitutes an almost inhuman set of ethics. This is a sort of hubris, an excess of hospitality that, in the end, is not the equivalent of salvation but of a religious or a divine downfall. A curious variation on the accusation of demagogy, the concept of "angelic" register does not even accuse the opponent of cynicism: demagogy

connotes self-promotion, one suspects self interest, electoral maneuvers. Being angelic is being innocent, refusing compromises, being guilty only of not switching between what Derrida calls the ethics of hospitality and the politics of hospitality (Derrida 1997, 45). The Minister of the Interior is implicitly threatening the Greens with exclusion. Satan will be expelled, damned. Angelism is political hubris, a way of not changing disciplines. One wonders of course if the Minister of the Interior intends to play the part of a wrathful God in that scenario

To conclude, I would like to suggest that what we call "Rights" is always the result of a series of discursive interventions that belong to many different disciplines. Allusions to sacred myths and more specifically to a Christian mythology, are not inherently part of the political problematic discussed in a French secular state. Yet, they are used, not necessarily for their meaningfulness or their relevance, but rather because of their effectiveness and power of persuasion.

The duplicity of such cultural icons and their power come from the fact that they do not claim to be recognized as valid by the legislator. No deputy in their right mind would insist on inserting words such as 'angelism' into a legal text. Yet, those cultural icons are powerful mediators that appear both when the law is being drafted, usually in the midst of heated debates, and later, when administrations transform the law into everyday decisions that will affect the life of people who have had no say in the preparation of the legal text. This discipline or discursive operation that transforms the text into reality (or to be more accurate, that writes new narratives while pretending to be simply reading and obeying others) does not really have a name. I could call it

"metaphorology" but I think it is more accurately defined as the art to transport one metaphor from one discursive formation to another.

Legal texts have metaphoric shadows but like Cartesian beings who do not believe in ghosts, they underestimate their effects. Powerful images govern our thinking about immigration. We think of national borders as closed or open doors (which means that we also imagine the immigrant as a guest, and such constructions have serious and unexamined consequences of the way in which they are treated by the "host"). Even scientific discourses insist on comparing immigrants to water: immigration is a flow ("flux migratoire"), a tide, a flood.

Laws, supposedly, are immune from the effects of such metaphors. But precisely because the link between laws and metaphors is never articulated, I worry that the images I have just listed may have two immediate and complementary effects: first, they insidiously impose the discursive building blocks with which the immigrants' identity is culturally constructed. And then, as soon as this identity becomes recognizable, it implicitly recommends certain actions, a certain type of behavior. I like Didier Fassin's remark that:

> Les mots ne servent pas seulement à nommer, qualifier, ou décrire. Ils permettent aussi de fonder les actions et d'orienter les politiques. En désignant comme 'clandestins' les étrangers en situation irrégulière sur le territoire français, on les classe dans une catégorie qui mobilise des images—le travailleur entré illégalement dans le pays—et justifie des mesures—pour prévenir et réprimer cet état de fait—images et mesures

> qui sont en quelque sort incluses dans la façon même de dire les choses. (Fassin, 77)

> Words do not only name, qualify or describe. They found actions and orient policies. By calling 'clandestins' those foreigners who are on French soil and in an irregular situation, we place them in a category that conjures up certain images - for example, that of the worker who has illegally entered the country - and justifies policies preventing or repressing such acts of transgression. These images and policies are in some way fashioned after our process of naming. (Fassin, 77)

To say that the word “invasion” presides, as a ghostly presence, over the preparation of bill of laws by the government, is very difficult to demonstrate but it is crucial not to dissociate politics from discourse analysis and to forge the intersdiciplinary tools that will make political discourse analysis a valid project. I would not want to assume either that such works do not already exist. For example, when she presented her new book L'injustifiable: Les politiques françaises de l'immigration (The Injustifiable: French immigration policies), Monique Chemillier-Gendreau explained that certain supposedly innocent expressions encourage paranoid narratives in a devious and sneaky manner. When Debré’s bill was being discussed, Chemillier pointed out that his prose routinely talked about “maîtriser l'immigration” (curb immigration). And she adds:

> On ne cherche à maîtriser que ce qui est dangereux. Rien ne démontre l'existence de ce péril, mais le langage fonctionne dans ce sens. Et on accumule les tours de vis successifs. On n'obtient aucun résultat parce qu'on reste sur une mauvaise problématique. Et l'on s'absout de ces mauvais résultats en amplifiant le discours sur le danger. (Bantman 1997)

> We try to subdue only that which is dangerous. Though there is no evidence of this peril, such is the logic of language. The screws become tighter and tighter, but we obtain no results because the problem has been misconstrued. And then, we absolve ourselves of responsibility for our poor results by amplifying the discourse on danger.

I respect Chemillier's attention to words and to their consequence and I suggest that critical vigilance, in this case, is the equivalent of checking for hiding places in the bottom of a cultural suitcase that is brimming with images and cliches. In that hiding place, unspeakable ideas can be smuggled. Of course, even after its existence is revealed, the hiding place and its contents continue to exist but it is less likely for critics and perhaps for voters, not to at least check the contents of the suitcase.[1]

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[1] This version of "Fortress Europe" has benefitted from the help of many of my friends and colleagues and I would like to thank them here. First of all, thank you to Gilles Bousquet for inviting me to deliver the paper at the Center for European Studies at the University of Madison. A French version of this argument was presented at the Annual

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Conference on French Studies at the University of Melbourne, Australia, and a slightly modified English version was delivered at Old Dominion University. I want to thank Amanda MacDonald, Jane Warren, Frederic Lubich and Cindy Marker for organizing these events. Thank you very much to Cindy for her help with the translation of the quotations. A revision of the paper in French will be published in Studien zur Literatur und Geschichte des Maghreb 4: Die Kinder der Immigration/Les enfants de l'immigration (Ed. Peter Ruhe). I want to thank him for his permission to publish this first version here.

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