

Deconstruction

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Introduction

Deconstruction is a mode of philosophical thinking that is principally associated with the work of the French philosopher Jacques Derrida. Considered from the perspective of the history of philosophical thinking, the crucial move that Derrida's way of thinking makes is to shift the focus of inquiry away from a direct engagement with the cognitive content of ideas put forward in a text in order to focus, instead, on the way in which the text produces a privileged framework of meaning while excluding others. Instead of engaging in a debate with other philosophers – contemporary or past – about the ideas they articulated in their texts, Derrida commenced to launch inquiries into the way their texts relied on dominant modes of writing (and reading) to produce a certain semantic content and intent while excluding other modes of reading and, consequently, other possible meanings of the text.

By focusing on the *textuality* of texts – instead of on their *semantic content* – Derrida's thinking endeavoured to pay attention, not only to that which the text does not say, but also that which it cannot say. The explanation that follows will show that the “method” of deconstruction does not just consist in finding that other meanings of the text are possible or plausible, but, more importantly, in demonstrating that the possibility or plausibility of other meanings – suppressed by the organisation of the text – alerts one to the infinite potentiality of meaning that necessarily exceeds the margins of the text and remains unsayable. In other words, by pointing out the instability of the dominant meaning organised by the text, deconstruction alerts one to the unsayable as such, that is, to that which *no* text can say but on which all texts remain dependent for being able to say what they manage to say. In other words, textual meaning only becomes possible by way of a selection of meaning from multiple possibilities of meanings. Deconstruction interrogates this selection of meaning. It does not do so to replace this selection with another. It does so simply to show that any claim to exclusive meaning – a claim that invariably accompanies the privileged meaning of the text – is spurious. And it does so in order to “reactivate” the infinite potentiality of meaning that the organisation of the text seeks to “deactivate.”

Texts “deactivate” the full potentiality of meaning by privileging one reading and marginalising and suppressing others. Deconstruction “reactivate” the potentiality of meaning by exposing the instability and precariousness of this marginalisation and suppression. It allows the margins of the text to enter the body of the text again. It does not do so to choose the margin instead of the body, for by doing so it would itself select a meaning and “deactivate” the unsayable, that is, “deactivate” the infinite potentiality of saying that its very aim is to “reactivate.” It allows the margin to re-enter the body of the text so as to put body and margin in play with one another. It arranges a “show down” between them. This “show down” is enough to precipitate an awareness in the reader that there is much more to say about what is said in the text than that which the text actually says or will ever be able to say.

What happens next, happens. The “show down” may end with the return and reconstruction of the meaning that was dominant from the start. Or it may end with the rise to prominence or dominance of meaning that has hitherto been marginalised

or suppressed. This rise to prominence or dominance of previously excluded meaning may be fortunate or unfortunate. Deconstruction is not concerned with this eventual fortune or misfortune. It is concerned solely with the precipitation of an *event* that offers an opportunity for a dominant discourse to either re-assert itself firmly or for a new language to take its place. Deconstruction is not concerned with privileging one of the terms in a binary opposition, but in the *unstable interim* or *interval* that becomes manifest when the conventional settling of the tension between the oppositional terms – through privileging one at the cost of the other – becomes unsettled.¹ It is not difficult to see that this re-assertion or renewal could be beneficial, to see how it could effect a certain invigoration of a semantics that may have become stale. It is also not difficult to see how this re-assertion or renewal could turn out to be calamitous. Deconstruction – *Derridean* deconstruction, in any case – is not particularly concerned about any of these outcomes. It is motivated by the poetic obsession with the infinite scope of meaning and action that opens up when texts are unsettled and multiple meanings compete for the stakes of resettlement; for it is here – in the drama of the event – that the linguistic closures of regular discourse open up to the precipice of the unsayable. It is tempting to attribute to deconstruction a laudably progressive politics because of its obvious aspiration to “shake things up.” But if deconstruction is political, it is definitely not “party” or “programme” political. Derrida’s personal political position could be described as significantly “left of centre” (more or less in line with that of Jürgen Habermas, as transpired from the warm relations between them during the last years of Derrida’s life²) but he would have been the first to acknowledge and stress that one does not need deconstruction to articulate this political position.

To the extent that deconstruction can be said to be “political,” its politics would consist in the poetic retreat from the staleness of readily available political programmes. In times that are indeed marked by the tedious and lifeless repetition of more or less empty political slogans aimed at securing the vested interests of the status quo, this poetic politics may well offer an emancipatory potential. It is not difficult to grasp that the demise of significantly refreshing political imaginations is bound to reduce the political arena to a hollow façade that at best serves as a screen for the naked power play behind it. In this regard Derridean deconstruction may well have something significant to say in response to the dominance of the neoliberal political language of our time that is no longer only spoken by the “conservative right”, but also by (what used to be) the “progressive left.” But any idea that this political response can be translated into any specific political programme would be misguided. The politics of deconstruction is a meta-politics. One may rely on it in the hope to revitalise a political system that has fallen prey to a deadening securocracy. But one cannot co-opt it for any specific political programme without betraying its undeniably anarchic thrust and its poetic fascination with an unruly eventfulness, the consequences of which it refuses to censor or sanction in advance.

The difficulty related to co-opting deconstruction for a political programme also raises serious questions regarding its usefulness for legal theory. It is in the very nature of law to propose a closed system of norms for the resolution of conflicts that can be identified as *legal conflict*. The softening of the closed system of legal norms

¹ See Jacques Derrida, *Positions* (Chicago: University of Chicago Press, 1981) 41-42.

² See Jürgen Habermas, *Ach Europa* (Frankfurt a.M., Suhrkamp, 2008) 40 – 46.
for a telling testimony.

that constitute a legal system through recourse to rules of equity or equitable considerations does not open up that system. Nor does it unsettle it or render it unstable. Recourse to rules or principles of equity render the system of law more applicable and more effective. It stabilises the systemic closure of the law and thus contribute to the legitimacy of a very specific normative programme. Any attempt to co-opt deconstruction for purposes of enhancing the rules or principles of equity that stabilise law would be deeply miscued. The coherence of such an attempt to make deconstruction a source of equity and better legal justice would have to depend on the extent that it can domesticate or simply ignore the radically subversive, anarchic and non-normative thrust of the mode of intellectual or philosophical inquiry that has come to be known as Derridean deconstruction.

Due regard for the spuriousness of any attempt to co-opt Derridean deconstruction for any project aimed at ameliorative law reform that would make the law “more just” does nevertheless not mean that legal theory should not take careful notice of it. A good understanding of deconstruction and of the aims that it pursues will surely also deepen one’s understanding of both the limits and limitations of law, on the one hand, and the unique achievement of a well-functioning legal system, on the other. One also surely gains sound insight into the aims and achievements of well-functioning law by developing an acute regard for the aims that it cannot and should not pursue. Law becomes law, might one argue in this regard, by turning away from deconstruction. Deconstruction is deconstruction because of the way it turns away from established law. This is the elementary instruction that we received from Derrida when he equated deconstruction and justice, on the one hand, and insisted that law is not justice, on the other.³ One can infer from this instruction that law and deconstruction move in opposite directions. Their respective trajectories take them away from one another instead of bringing them closer to one another. The best way of grasping their opposite trajectories is to maintain a due regard for the negative thrust of *de*-construction and the positive constructive thrust of law and legal theory.

As far as legal theory is concerned, deconstruction has thus far mostly been associated with the endeavour of the *Critical Legal Studies* movement to destabilise the key concepts and principles of “mainstream” – that is, positivist, formalist, and conceptualist – jurisprudence (for one of the classical statements, see Unger 1986). However, seen from the vantage point of Derrida’s rigorous insistence on the non-traversable divide between law and deconstruction, the question may well be raised whether the constructivism of Hans Kelsen’s pure theory of law does not make it the more appropriate legal theoretical “counterpart” to Derridean deconstruction. Consistent Kelsenian constructivists and Derridean deconstructivists can be argued to belong together for reasons of the clarity with which both their respective theoretical orientations reflect a decisive methodological regard for the necessity to take leave of one another. And were this argument to hold water, it would of course make all of them “theoretical opponents” of Carl Schmitt, who in contrast to both their orientations evidently entertained the idea that law is and should be considered a process that constantly deconstructs itself as new friend-enemy constellations emerge (and aspects of whose work were well received by some CLS exponents for this very reason⁴).

³ See Jacques Derrida, *Force de Loi: Le ‘Fondament Mystique de L’Autorité’* (Paris: Galilée, 1994) 35 – 38 .

⁴ See Duncan Kennedy, ‘A Semiotics of Critique’ [2001] *Cardozo Law Review* 1164.

The explanation of key aspects of Derridean deconstruction that follows seeks to facilitate a clear understanding of the non-normative, anarchic and subversive thrust of this mode of inquiry that renders its co-option for legal theory highly implausible. It does so by situating it in the context of philosophical inquiry from which it emerged. It highlights in this regard the inseverable link between deconstruction and the critique of the history of Western metaphysics that Derrida and many of his contemporaries inherited from the seminal work of Martin Heidegger (*The Critique of the Metaphysics of Presence*). It then moves on to explain why the centrality of this critique of metaphysics in Derridean deconstruction prevents one from interpreting it as a quasi-Kantian concern with normative progress (*The Possibility of the Impossible*). The section that follows then turns to the key role that the critique of textuality played in Derrida's thinking (*There is nothing outside the Text*). This section also shows how Derrida's concern with textuality took leave of the philosophy of consciousness that was still central in Edmund Husserl's phenomenology and explains why this shift of focus from *consciousness* to *text* was crucial for his project of deconstruction. The last section (*Deconstruction and Legal Theory*) then restates the claim that the legal theoretical engagement with deconstruction should focus on the way in which law and deconstruction move in opposite directions. It should accordingly avoid interpretations of deconstruction that turns it into a method that can be employed to improve the law or make it law "more just."

The Critique of the Metaphysics of Presence

What can be said within the history and traditions of philosophy belonged and would always belong, according to Derrida, to that mode of thinking which the German philosopher Martin Heidegger had commenced to call *the metaphysics of presence*. Heidegger considered the whole history of Western metaphysics to be dominated by a mode of thinking that took the essence and truth of all forms of existence to consist in a fully realised positivity that is generally associated with present tense predication, that is, the mode of predication that asserts or states the way things really and essentially are. The history of metaphysics, Heidegger claimed, is a history of fundamental statements about fully realised existence in terms of present existence. This fully present existence could also belong to the past or future. Metaphysical thought often projected the fully realised truth of existence to a distant past or future. The idea of a lost paradise or one that would be realised in the future – the fullness of wisdom to which Plato's philosopher once belonged and to which he might return again after a life of spiritual dedication to the ultimate Idea of the Good; the innocent existence of Adam and Eve before their fall into sin; the glorious existence in the presence of God to which the redeemed will return on the day of his final judgment – are typical examples of such fully "present" pasts and futures. The influence of Heidegger's work on Derrida – and the close proximity of the former's project of the *destruction* to the latter's *deconstruction* of metaphysics is crucial for an incisive understanding of Derridean deconstruction. In his readings of Heidegger Derrida would nevertheless stress that Heidegger himself repeatedly fell back into a metaphysics of presence in his own texts by asserting that the abyssal absence of a ground of existence (that his critique of metaphysics stressed) is the home or abode of authentic human existence (*Dasein*). Derrida's own work can be said to have stressed again the abyssal groundlessness of existence that Heidegger's thinking underlined, but he understood well that this groundlessness offered human existence nothing that

one could call a “home.” This critique of Heidegger already commenced in his seminal essay “*Différance*”⁵ and would recur often in his work.⁶

It is important to note that the notion of the fully present truth of something could also come to the fore in the form of a fictitious or fictional assumption. This is why Immanuel Kant’s articulation of an ultimate reconciliation of nature and reason (and thus of natural inclination and moral duty) in terms of a *summum bonum* can be considered to present another chapter in the history of the metaphysics of presence. Kant conceived of the *summum bonum* as a regulative idea – that is, something that cannot be proved to exist but must be assumed to exist in order to make sense of the moral imperative to which human conduct is subject. Kant obviously did not consider the *summum bonum* in terms of some future reality that will become present one day. He considered it nothing more than a thinkable idea with reference to which the logical conclusion that any commitment to comply with moral duty is futile and therefore meaningless – considering that it involves an eternal struggle between nature and reason and an eternal failure of reason to overcome nature – can be avoided. This methodological assumption of the *summum bonum*, without which he considered his idea of moral duty incoherent, evidently has a fictional status. But that which is fictionally assumed in the process is the possibility of a moral perfection from which nothing would be absent or lacking; a moral reality, in other words, that would be fully present were it to materialise.

A Derridean or deconstructive reading of Kant’s text would much rather turn Kant’s logic on its head. It would much rather endeavour to show that the *summum bonum* is not the thought that renders the moral imperative possible and meaningful, but exactly the idea that destroys it and renders it completely meaningless. It would consider the endeavour to comply with moral duty as an option of human existence that is conditioned by the regard for its impossibility. Derrida once observed that we do nothing unless we do the impossible.⁷ Full of paradox as it is – and deconstruction may well be considered as an obsessive concern with the paradoxes of human existence – this statement alerts one to the insight that an ethics that would always only be committed to doing that which evidently can be done, would never allow for a significant act or action. In other words, the commitment to comply with moral duty is something that becomes possible because of its irreducible impossibility. For the Derridean reader of Kant, the problem of futility that induced Kant to contemplate the *summum bonum* is the key *aporetic* moment that renders his text – his contemplation of morality – possible. In other words, for a Derridean reader of Kant’s text, the *aporia* of futility renders Kantian morality possible, not impossible. From this Derridean perspective, it is quite to the contrary the methodological contemplation of the *summum bonum* through which Kant seeks to banish futility from his text that renders Kantian ethics impossible.

The contemplation of a possibility that renders impossible and an impossibility that renders possible goes to the heart of the deconstructive ethics that Derrida would articulate in his later works. It is to this ethics that we turn now. It is important, however, to keep in mind how this ethics ties in with the project of the critique of the metaphysics that Derrida took over from Heidegger. The key insight at stake here

⁵ See Jacques Derrida, *Marges de la Philosophie* (Paris: Les Éditions de Minuit, 1972) 1 – 29.

⁶ See especially Derrida, *De l’esprit* (Paris, Galilée) 1987.

⁷ See Jacques Derrida, *Manifeste pour l’hospitalité* (Grigny: Éditions Paroles d’Aube 1999) 141.

concerns the way in which all the founding ideas of metaphysics entertained notions of the ultimate truth of existence in terms of a full presence that lacks nothing. As such, these metaphysical conceptions of truth also signified ideas of moral perfection that supposedly guided human conduct and thus rendered ethics and morality possible. From the perspective of the Derridean ethics explained below, any such conception of an achievable or thinkable moral perfection – whether it arrives from an ontological or theological foundation (such as the eternal Idea of the Good or the eternal goodness of God) or a methodological assumption (such as Kant’s *summum bonum*) necessarily ruins the possibility of moral conduct or ethics, instead of sustaining it. Derrida therefore also stressed that his thought regarding the *democracy to come* (*la démocratie à venir*) that he developed in texts that are widely regarded as constitutive of the “political turn” in his work, should not be understood in terms of a Kantian regulative idea.⁸

The Possibility of the Impossible

The contemplation of the possibility of the impossible was one of the guiding thoughts in Derrida’s oeuvre, as he himself observed in his acceptance address when he received the Adorno prize in 2001.⁹ This thought nevertheless remains one of the most perplexing elements of his thinking and it is important to look more closely into it in order to avoid the wide scope for misunderstanding that can easily come to burden it. It is for instance tempting to interpret the idea of an “impossibility that conditions the possible” as something akin to a Kantian regulative idea or an ideal of impossible perfection that allows one to persistently raise levels of moral perfection as far as human beings are capable of doing so. The key political terms of to which Derrida would resort to articulate the thought of the impossible that renders possible the possible – the gift, justice, friendship, hospitality and forgiveness – can all too easily be interpreted in this way. The impossibility of justice which Derrida invoked in his essay *Force of Law* can easily be understood in terms of an ideal of perfect law that would do justice to everyone involved. And although justice thus conceived as perfect law may then duly and quite realistically be understood as impossible because of the imperfection that burdens all human institutions, one might still want to argue that adherence to the ideal of perfect law will at least see to it that lawmakers continue to improve the law as far as humans can indeed hope to do so.

One could similarly understand the impossible gift that Derrida contemplate in his response to Marcel Mauss’ *Essay on the Gift* in terms of an unachievable generosity to which one should strive in order to sustain the highest levels of generosity of which humans are capable.¹⁰ The impossible hospitality that he contemplated in response to the work of Emanuel Levinas could likewise be understood as an unachievable hospitality the consciousness of which guides and inspires one to become as hospitable to others as one can possibly afford to be.¹¹ And the impossible forgiveness that would forgive the unforgivable could then similarly be understood as an ideal to which we should remain faithful in order to become more forgiving towards those who have wronged us. And the notion of the impossibility of real friendship could

⁸ See Jacques Derrida, *L’autre cap* (Paris: Les Éditions de Minuit, 1991) 125.

⁹ See Jacques Derrida, *Fichus* (Paris: Galilée, 2002) 19-20.

¹⁰ See Jacques Derrida, *Donner le temps 1. La fausse monnaie* (Paris: Éditions Galilée, 1991).

¹¹ See for example Jacques Derrida, *Manifeste pour l’hospitalité* (Grigny: Éditions Paroles d’Aube, 1999)

likewise be interpreted as a regulative idea that constantly requires friends to strive to become better friends.

If this were all that these key thoughts of Derrida had to offer, one may well have had reason to wonder what all the fuss about deconstruction is or was about. One could have been forgiven to think that the formidable oeuvre of works that Derrida contributed to the history of philosophy contained little more than a restatement of a rather simplistic or common sense Kantian ethics. But Derrida stressed consistently that the distinction between justice, the gift, hospitality, friendship and forgiveness, on the one hand, and law, affordable generosity, generous but affordable accommodation of strangers, generous friendship and the magnanimous willingness to pardon the understandable imperfections of those who have harmed us, on the other, concerns something more profound and significant than the perfection denoted with the former set of terms and the remaining levels of imperfection associated with the latter set. At issue for him was an unbridgeable categorical divide or heterogeneity that allowed for no translation of the former set into the latter. And this categorical divide that Derrida contemplated should rather alert us to the possibility that Kant himself may have had something more significant and incisive in mind than the facile Kantianism that is often associated with his thought, instead of also reducing the unique thrust of Derrida's work to such a facile Kantianism.

The categorical divide at stake here requires that one consider these key terms of Derrida's ethics of deconstruction as spectral concepts that signal the need for an ethical response, without guiding that response or indicating what is demanded of it. They have no body or substance that offers determined criteria for the ethics they demand and therefore cannot figure as measures of ultimate perfection that may inspire persistent amelioration. They are absolutely undetermined and for this reason remains irreducibly disconnected from any determined response to them. Their complete indeterminacy renders them absolute and for this reason impossible to grasp in any positive terms, let alone impossible to realise. They simply open a register of absolute impossibility that has absolutely nothing to do with the determined possibility or impossibility of any conceivable response to them, the impossibility that results, for instance, from incidental human frailties and imperfections. But the opening of this spectral register of impossibility cannot be circumvented. It demands a response (or non-response) and thus conditions the possibility of response that is worthy of the word *response* and *responsibility*. For this is the key insight on which deconstructive ethics would consistently turn: A response that responds in terms of available and determined criteria cannot be consider a response in the strict sense of the word.

The key terms of the ethics of deconstruction – justice, friendship, hospitality, forgiveness, and gift – thus remain outside any determined response to them. They do not enter the response or become part of it. This is the categorical divide that is at stake in them. Their complete indeterminacy constitute a certain “nothingness” that comes to haunt human language and human conduct, as if from nowhere. They remain outside whatever ethical discourse they solicit, but they nevertheless remain this irreducible source of solicitation, the origin of which is indeterminable and unnameable. They haunt, as if from nowhere. They constitute, in the final analysis, the non-existing “outside of the text” with which Derrida was already concerned in

the very early stages of his career. It is to this categorical nothingness “outside the text” to which we turn now.

There is nothing outside the Text

The “categorical divide” at stake in Derrida’s work can best be approached by returning to the key shift in focus from the semantic content or meaning that texts claimed to communicate, on the one hand, to the textuality of the text, on the other. The latter, argued Derrida with recourse to a vast array of deconstructive readings of philosophical and literary texts, most often rendered the former unstable. The most famous example from Derrida’s early works was the exposure of the paradoxical way in which Plato and Rousseau’s arguments about the primacy and superiority of spoken language and the derivative and inferior status of written language depended on well-established traditions and codes of writing. These traditions and codes of writing, argued Derrida, produced the meaning of texts, also in the case of oral communication. They did not just record or register meaning that was already available in a pre-textual, directly or immediately cognisable format. Writing, Derrida argued in response to Plato and Rousseau, is the real source or “origin” of meaning, not its subsequent recording and archiving.¹² Archiving precedes the archived, it does not follow in its wake, another famous text would claim in similar fashion.¹³

Derrida thus began to develop a philosophical argument regarding the ubiquitous textuality that organises the production of all meaning and communication and allows for no circumvention and no immediate access to immaculate knowledge or meaning that is untouched by the textuality that conditions it. This argument would find one of its most salient expressions in the assertion that “the text has no outside” – *il n’y pas de hors-texte*.¹⁴ The purport of this statement – and the whole concern with a textuality that does not allow scope for a cerebral circumvention that would produce non-textual, text-free and therefore pure meaning – cannot be grasped properly without taking the philosophical debate and background from which they emerged. This background is well captured by Michel Foucault’s phrase, *the thinking of the outside; la pensée de dehors*.¹⁵ Along with Foucault and other prominent French thinkers of his generation, Derrida’s work responded to an insight that especially Husserlian phenomenology and the structural linguistics of Ferdinand de Saussure would make the point of departure of a significant part of twentieth century philosophy, hermeneutics and broader social theory. At issue was the regard for the *general horizon or world of meaning that conditions all specific instances of meaning*. This development severed the referential relation between language and the world of things outside language and relocated linguistic reference in the interplay between the different elements and components of language.

The regard for a horizon or world of meaning – more precisely: the shared intersubjectivity of a lifeworld – outside of which no meaning is possible, became the pivotal concern in Edmund Husserl’s later works. This turn in Husserl’s thinking was well-prepared by the implicit emphasis in his early work that *consciousness has no outside*. Husserl’s early works already stressed that the modern epistemological

¹² See Jacques Derrida, *De la Grammatologie* (Paris: Éditions de Minuit, 1967).

¹³ See Jacques Derrida, *Mal d’Archive* (Paris: Éditions Galilée, 1995).

¹⁴ Jacques Derrida, *De la Grammatologie* (Paris: Éditions de Minuit, 1967) 227.

¹⁵ Michel Foucault, *La pensée de dehors* (Montpellier, Fata Morgana, 1986).

concern with immaculately objective knowledge that would not be distorted by the subjectivity of the subject of knowledge was fundamentally miscued. He insisted that the way in which phenomena appeared in the consciousness of the subject of knowledge was the only cognitive reality to which human subjects could ever have access. The aim of the search for true knowledge should therefore not be to rid knowledge of the subjectivity of the subject of knowledge, but to purify this subjectivity by ridding it of natural preconceptions that distorted the appearance of phenomena in the consciousness of the subject of knowledge. This could be done, claimed Husserl, through recourse to the rigorous phenomenological reductions – the transcendental and eidetic reductions – that he developed in his work. This was what the phenomenological method was all about: not stripping knowledge of subjectivity, but ridding conscious of all the undue habits of perception and thinking that distorted the pure subjectivity that makes knowledge possible. Husserl never took leave of this method in his later works. What was new in his later works was only the regard for the way in which this subjectivity is always an inter-subjectivity that shares a common world of meaning. His key contention was still that the phenomenological method could rid this common world of meaning – the lifeworld, as he called it – from undue distortions.

A similar transformation of the “outside of the text” into the “internal” structural and referential play between the linguistic components of the “the text” was underlined by developments in the field of structural linguistics in which the work of Ferdinand de Saussure played a key role. Saussure stressed that the referential relation between linguistic signs and that which they signified did not consist in the “mirroring” of a reality outside language. That which is communicated by the linguistic sign, or signified by the signifier, he stressed, is the product of the referential relations between linguistic signs. There is, in other words, no direct relation between the signifier and the signified. The signified is the “secondary” result of the referential and differential play between signifiers. The word “cat,” for example, has its specific meaning because of the way it can be distinguished from the words “dog” and “mouse.” The letter “a” becomes a functional linguistic sign because of the way it can be distinguished from the letters “b” and “c” and thus allows – because of these distinctions – for an interplay with “b” and “c”. The aim of structural linguistics was – in many respects similar to the aim of Husserlian phenomenology – to identify the rules that govern the “correct” interplay between linguistic signs that stabilise linguistic meaning despite the fact that it has no anchor outside language.

It should be clear from the above that both phenomenology and structural linguistics had the effect of confining the possibility of knowledge, meaning and understanding to the internal play of language, the inside of language, and thus to the “inside” of the text. Derridean deconstruction came to be understood as part of a (broader) post-phenomenological and “poststructuralist” development in French philosophy because of the way that it endeavoured to sustain a regard for the outside of the text, without betraying the fundamental insights of phenomenology and structuralism that did not seem to allow any significant circumvention at the time (and still do not seem to do so today).

The “thinking of the outside” in the case of Derrida concerned a resistance to the phenomenological reduction of human cognition and experience to the censored or purified interior of consciousness or the common consciousness that Husserl in the

final analysis attributed to the inter-subjectivity of the life world, as well as a resistance to the structural linguistic endeavour to stabilise the referential play of the text. Close study of texts, he insisted, destabilise instead of stabilise the meaning proposed by the text, and it is *via* this insight – by highlighting the unruly textuality of texts – that he would also put forward his formidable critique of the philosophy of coherent consciousness that informed Husserl’s phenomenology. His statement that there is “nothing outside the text” can be understood as an ingeniously double-edged gesture that confirmed the impossibility of transgressing the boundaries of consciousness, on the one hand, and resisted it, on the other hand, by confronting consciousness with its irreducible textuality. The statement that the text – the common text or texts through which human societies fabricate meaning – has no outside asserts the impossibility of any transcendence or transgression that would escape from this text. This should already be clear in view of the explanation above. The statement that the confrontation of the text with its very textuality also embodies *a resistance* to the impossibility of transgression or transcendence demands further explication. Why can it be argued that the mere regard for the confining limits of textuality also offers an opportunity for some kind of resistance to those limits?

The answer to this question lies in the irrepressible unruliness of textuality that has already been mentioned in passing above. An acute regard for textuality alerts one to the fault lines and seams of textuality that consciousness generally manages to erase, repress and ignore. Consciousness – especially as dominantly conceived in the wake of the Enlightenment – is generally inclined to experience itself as a fully coherent, seamless and transparent cerebral and cognitive capacity. It is most uncomfortable with the slightest contradiction, paradox or opacity that could threaten its sense of seamless coherence and full transparency. That is why it is generally inclined to repress and ignore any such threat to its sense of coherence and transparency. And because of the fluidity of its medium, it generally manages to erase the signs or marks of contradiction, paradox and opacity with a liquid forgetfulness. This cannot be done so easily in the case of written texts. Written texts generally show the marks of the fabrication that went into the *construction* of textual coherence. It only takes an acute and careful reading to expose these marks and *deconstruction* is, in the final analysis, little more than the acute reading that highlights these marks. It highlights the *traces* of the erasures and the added *supplements* that were needed to establish an adequate semblance of the seamless coherence and transparency to which the text aspires. That consciousness as such is also marked by these rhetorical strategies of textuality was already highlighted by Sigmund Freud. Freudian psychoanalysis illuminated the rhetorical strategies through which consciousness suppressed and rendered subconscious whatever was not reconcilable with its sense of complete coherence and self-transparency. Freud, claimed Derrida, showed well that consciousness is already a text produced by various modes of writing.¹⁶ From a psychoanalytic perspective, the transcendental reductions from which Husserl sought to extract pure subjectivity could themselves be considered strategies of textual suppression.

What was the motive behind this deconstructive exposure of the fault lines of textuality? The exposure of the fault lines of textuality surely did not give deconstructive readings of texts access to the outside of this text. After all, deconstruction, we saw above, was itself adamantly claiming that there is nothing

¹⁶ Jacques Derrida, *L'Écriture et la différence* (Paris: Éditions du Seuil, 1967) 293 – 340.

outside the text. The most it could do in view of its own fundamental (phenomenological or structural linguistic) point of departure was to show that the text is never as comfortably contained inside its own boundaries as it pretends to be when it offers itself as a coherent and seamless whole. The confrontation with its limits – its traces of erasures, its supplements – could at best alert the text to the exteriority of a limit that could not be named, since naming would just add more text and more textual interiority. “Nothing” or “nothingness” or “absence of an outside” are of course already names or quasi-names and Derrida would constantly sense the need to erase them again and to supplement them with other such quasi-names for purposes of sustaining the consistency of the thought that he was endeavouring to think. *Spectrality* would become another of these quasi-denotations of exteriority after the publication of *Spectres de Marx* and can be considered as one of the most effective of the operative concepts to which he would take recourse, for it would perhaps give us the most acute expression of the motive of deconstruction, namely its desire to see to it that the texts that produce the common consciousness of humanity remain haunted by its outside, that is, by the spectrality – the sheer ghostliness – of an outside that it cannot name. *Haunting* would indeed also become a key term in Derrida’s work with the publication of *Spectres de Marx*.¹⁷

Why this deconstructive obsession to alert the consciousness of humanity – or at least of Western humanity – to a spectral exteriority that this humanity has always preferred to ignore and suppress? Very humanistic readings of Derrida’s texts that would especially come to the fore in legal theoretical engagements with his work would mostly stress the potential for progressive social transformation that the deconstructive confrontation with hitherto excluded possibilities of meaning would open up.¹⁸ It is not necessary to argue here that Derrida was averse to such humanistic readings of his work and readers who are intent on combing his work for evidence of such a concern with social progress would probably find enough material to make a forceful point in this regard.¹⁹ Such readings of Derrida’s texts could plausibly take his concerns with an impossible justice, impossible gifts, impossible hospitality, and impossible forgiveness as simple concerns with more justice, more generosity, more magnanimity, etc., as pointed out above. But in doing so they would take Derrida’s work for a common sense Kantianism that fails to appreciate the deeply disruptive thrust of the deconstructive critique of Western consciousness that Derrida developed in his works.

By focussing predominantly on the progressive social transformation that deconstructive readings of the dominant texts of Western consciousness may bring about, such Kantian or humanist engagements with Derrida’s work would effectively remain concerned with the present, past or future interiors of this *text of the West*, this Latin-Christian text that Derrida would also come to call a global Latinisation or globalatinisation (*mondialatinisation*).²⁰ They would have to ignore a significant element of Derrida’s work that simply disrupts and takes leave of the normative concerns of this text for purposes of contemplating the *nothingness outside the text* for

¹⁷ See Jacques Derrida, *Spectres de Marx* (Paris: Éditions Galilée, 1993) 89.

¹⁸ See for instance Jack Balkin, ‘Deconstructive practice and legal theory’ [1987] *The Yale Law Journal* 743 – 786.

¹⁹ See for instance Jacques Derrida, *Force de Loi: Le ‘Fondament Mystique de L’Autorité’* (Paris: Galilée 1994) 62.

²⁰ Jacques Derrida, *Foi et Savoir* (Paris: Éditions du Seuil, 1996) 48.

its own sake, and not for the sake of improving or transforming the inside. Humanist readings of Derrida's text would have to ignore two key concepts that guided his thinking, which – unlike “justice”, “hospitality”, “gift” and “forgiveness” – do not lend themselves easily to humanistic reductions. They would have to ignore Derrida's deep concern with *the event*, and with it, the concern with *différance* that guided his thinking throughout his life. The concepts of *différance* and *the event (l'événement)* denoted for him the untameable disruptiveness that could always and at any time cut into the text, as if coming from the outside, to disrupt it and render it inoperative.²¹

Derrida did not *value* these eventful and differential or *différential* disruptions of the text for reasons of their beneficial effects. He did not value them because he had no doubt that they could not be valued or evaluated. They did not themselves have any value that they could offer and they would not necessarily add value to the evaluative systems or frameworks that they would come to disrupt. They were invaluable, not invaluable in the sense of “extremely valuable,” as we often understand this word, but literally and simply invaluable, that is, completely impervious to all evaluative endeavours. And Derrida had no doubt that they could be hugely destructive as far as existing values systems are concerned. Hospitality to the event, he wrote in *Spectres of Marx*, entails the willingness to risk the materialisation of evil.²²

Deconstruction and Legal Theory

Legal theoretical engagements with Derrida's work have thus far made little effort to make sense of the notion of a seemingly reckless hospitality to the potentially hugely destructive eventfulness of existence. The legal theoretical engagement with his work has thus far largely focused on other key terms of his work such as justice, hospitality, forgiveness, friendship, and the gift. These terms would seem to be more employable for the normative purposes of legal theory but they only seem so as long as one ignores the fact that Derrida considered all these terms synonymous with the mad hospitality to the disruptiveness of the event. This disruptiveness of the event is evidently less amenable to co-option by the normative concerns of legal theory than the notions of justice, hospitality, friendship and forgiveness. Justice, the most legal-sounding or the apparently most relevant among these terms as far as legal theory is concerned, is no less insane, according to Derrida, than the mad hospitality to the event that would risk the most destructive consequences for the law as we know it.²³ The conception of justice that he developed in his work, would seem to suggest, as forcefully as Foucault did (although in terms of a truthfulness and even masculine truthfulness that Derrida may well have found difficult to digest), that the way from man to the true man passes through the mad man” (*de l'homme à l'homme vrai le chemin passe par l'homme fou*).²⁴ If legal theorists would continue to deem it important to engage seriously with Derridean *deconstruction* for purposes of distilling from it *constructive* insights for the normative concerns of legal theory, they would either have to admit to relying only on a highly tamed and domesticated

²¹ For a concise and telling statement of this pervasive theme that runs through most if not all of his works, see Jacques Derrida, ‘The Deconstruction of Actuality’ Interview with *Passages*, translated and reprinted in [1994] *Radical Philosophy* 31.

²² Jacques Derrida, *Spectres de Marx* (Paris: Éditions Galilée, 1993) 57, 111-112.

²³ See Jacques Derrida, *Force de Loi: Le ‘Fondament Mystique de L’Autorité’* (Paris: Galilée, 1994) 56.

²⁴ Michel Foucault, *Histoire de la Folie à l'âge classique* (Paris: Gallimard, 1972) 544.

understanding of Derrida's work that ignores large parts of it, or they would need to break new ground to show what the radically disruptive potential of his work might mean for legal theory.

Neil MacCormick once responded to the "deconstruction wave" in legal theory with some concession to its transformative and innovative potential, but insisted on the need for "reconstruction" after "deconstruction."²⁵ It is doubtful whether MacCormick fully grasped the vertiginous depths of disruption that Derrida contemplated, for if he did, he may well not have allowed it into the vaulted halls of jurisprudence at all. But he sensed enough of the disruptiveness of deconstruction to insist that the real task of legal theory and jurisprudence would always consist in retreating from it. The task of jurisprudence would always consist in reconstructing the coherence and certainty of the law in the wake of the sense of indeterminacy and uncertainty that may have passed through it as a result of "deconstruction." MacCormick's response to the wave of legal theoretical "deconstruction" taking hold in law schools around him gently, but acutely and accurately, sent out the message that the really important work of jurisprudence and legal theory lies elsewhere. Taking this response as one's cue, one may even want to go so far as changing its title from "Reconstruction after Deconstruction" to "Reconstruction and Deconstruction," thereby severing them more clearly, but also suggesting that something significant might be learned from simply juxtaposing them. Legal theory can gain from deconstruction the duly painful regard that the limits and limitations of law disqualify it from responding to the Orphic desire for that of which the visible world only offers a retreating glimpse before it vanishes into irretrievable nothingness. The law may well have that glimpse sometimes, and may well want to weep for it, but it cannot attempt to articulate it without endeavouring to become the poetry that it is not and is probably also not meant to be.

References

- Balkin, J. M, 1987, "Deconstructive practice and legal theory," *The Yale Law Journal* 743-786.
- Derrida, J, *De la Grammatologie*, Paris: Éditions de Minuit, 1967.
- Derrida, J, *De l'esprit*, Paris, Galilée, 1987.
- Derrida, J, *Donner le temps 1. La fausse monnaie*, Paris: Éditions Galilée, 1991.
- Derrida, J, *Fichus*, Paris: Galilée, 2002.
- Derrida, J, *Foi et Savoir*, Paris: Éditions du Seuil, 1996.
- Derrida, J, *Force de Loi: Le 'Fondament Mystique de L'Autorité'*, Paris: Galilée, , 1994.
- Derrida, J, *L'autre cap*, Paris: Les Éditions de Minuit, 1991.
- Derrida, J, *L'Écriture et la différence*, Paris: Éditions du Seuil, 1967.
- Derrida, J, *Mal d'Archive*, Paris: Éditions Galilée, 1995.
- Derrida, J, *Manifeste pour l'hospitalité*, Grigny: Éditions Paroles d'Aube, 1999.
- Derrida, J, *Marges de la Philosophie*, Paris: Les Éditions de Minuit, 1972.
- Derrida, J, *Positions*, Chicago: University of Chicago Press, 1981.
- Derrida, J, *Spectres de Marx*, Paris: Éditions Galilée, 1993.
- Derrida, J, "The Deconstruction of Actuality" Interview with *Passages*, translated and reprinted in 1994 *Radical Philosophy*, 28-41.
- Derrida, J, *Voyous*, Paris: Galilée, 2003.

²⁵ Neil MacCormick, 'Reconstruction after Deconstruction' [1990] *Oxford Legal Studies* 539 – 558.

- Foucault, M, *Histoire de la Folie à l'âge classique*, Paris: Gallimard, 1972.
- Foucault, M, *La pensée de dehors*, Montpellier, Fata Morgana, 1986.
- Habermas, J, *Ach Europa*, Frankfurt a.M., Suhrkamp, 2008.
- Kennedy, D, "A Semiotics of Critique," 2001 *Cardozo Law Review* 1162-1190.
- MacCormick, N, "Reconstruction after Deconstruction," [1990] *Oxford Legal Studies*, 539-558.
- Unger, R, *The Critical Legal Studies Movement*, Cambridge, Ma: Harvard University Press, 1986.