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# DERRIDA ON LAW; OR, POSTSTRUCTURALISM GETS SERIOUS

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**I**N THE WAKE of the Paul de Man controversy nearly a decade ago, Jacques Derrida delivered a lecture on the “Force of Law.”<sup>1</sup> It had only recently come to light that de Man, an intimate of Derrida and high-profile practitioner of deconstruction, had collaborated with fascism in wartime Belgium.<sup>2</sup> Derrida’s work and the poststructuralist movement with which it was associated had long been suspected of—perhaps unwittingly and unintentionally—promoting nihilism and authoritarianism. *L’affaire de Man* rendered these charges more plausible than ever before.

I suggest that the “Force of Law” lecture and subsequently published essay is an apologia, a response to critics, a manifesto on deconstruction and poststructuralism, in the midst of this crisis.<sup>3</sup> To be sure, it is hardly a straightforward declarative statement of purpose or principles. Rather, it demonstrates by example, by action—through “performance,” one might say—poststructuralism’s understanding of enlightenment, learning, law, and justice. In fact, I argue that Derrida’s essay pursues an expository strategy centered around three less than obvious performances, overlooked or misrecognized by both friendly and critical interpreters: (1) Derrida’s restaging of the trial of Socrates, with himself cast in the starring role; (2) his repositing, in the two “testaments” of the essay, the Greek versus Hebraic tension at the core of the so-called Western tradition; and (3) Derrida’s deliberate

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mischaracterizations of, and misassociations with, the thought of Walter Benjamin. Largely as a result of this less than transparent mode of presentation, even careful readers interpret the essay as a clear capitulation by Derrida himself, and poststructuralist thought generally, to dangerously ecstatic or vitalist proto-totalitarian categories.<sup>4</sup>

Here, somewhat against my own initial inclinations, I argue that on closer inspection, Derrida moves further and further away from these kinds of associations the more carefully one reads "Force of Law" along lines described above. On the basis of this interpretation, I distance Derrida from charges indiscriminately—if sometimes appropriately—leveled against his earlier work and the poststructuralist left. Moreover, I point to the exhilarating interpretive possibilities opened by Derrida's text. These possibilities are perhaps more normatively and even practically robust than those induced by contemporary forms of "alternative" reading and writing fixated on "the esoteric" and "the aporetic." Furthermore, I suggest that liberal and social-democratic guardians of the Enlightenment might learn something from Derrida's reconstructed notions of law and justice more fully purged of blood-violence.

### DECONSTRUCTING POLITICAL PHILOSOPHY

From the very start, "Force of Law" reveals itself to be an ambitious, if often deeply implicit, deconstruction of the history of the Western political tradition from Plato's *Republic* to the Holocaust. The essay has been received as the moment when Derrida finally reveals, either deliberately or by letting his guard down, the decisionism that his work had harbored for decades. Decisionism emphasizes the ultimately ungrounded nature of human choice such that all action is rendered irredeemably arbitrary and divorced from reason. The moment or fact of decisions to act takes precedence over their justification or quality. At its most alarming, the enabling of decisions to exert power without rational explanation to or interaction with those over whom power is exercised facilitates naked arbitrary force. This disposition as attributed to Derrida in the essay purportedly shares affinities with the philosophical and political decisionisms of, respectively, Martin Heidegger and Carl Schmitt.<sup>5</sup>

According to critics, Derrida and deconstruction undermine the possibility of rational justification or interaction and aesthetically celebrate moments of groundless decision in dangerous ways. Consequently, deconstruction threatens to subvert the rationalism of the "West" or the Enlightenment tradition in ways reminiscent of the two most famous intellectual spokesmen for Nazism mentioned above. However, Derrida's deconstruction of the Western

political tradition in “Force of Law” proves to be quite different than a Heideggerian or Schmittian *Destruktion* of that tradition. Derrida takes up the issue of philosophical inquiry and force in a way not antagonistic to the “Western tradition”: he engages in something like a dialogue on justice and even puts his approach on trial. However, Derrida does not extricate himself from associations with authoritarian theory and practice by cozying up to “the tradition.” Rather, he points out the authoritarianism latent in Western political philosophy and eventually raises the possibility of a justice even *less* decisionistic than the purportedly rational one elevated by the Enlightenment.

Derrida begins part 1 of the almost book-length treatise with a complaint over obligation, even compulsion: Derrida is compelled to speak in a language, English, that is not his own and on a topic, justice, which he did not choose (FL 3). This obligation is necessitated by several imperatives that come to mind: the rules of the Cardozo Law School conference at which the paper is delivered, the need to be understood by the audience, presumably the desire to publish a volume from the conference, not to mention the general hegemony of the United States and the English language throughout Europe and the world after WWII.<sup>6</sup> Derrida raises the specter of an “ill-tempered speaker” who might contest in terms of “rhetoric,” in an “unjust” way, and in “bad faith,” the mode of discussion of the topic at hand (FL 3-4). However, Derrida is quick to transgress the protocol of this arrangement by reverting to French before the end of the very first page and throughout the first part of the essay (FL 5). He also makes reference to the fact that the lecture is being presented at night (FL 5).

All of these elements rather furtively direct the reader to Book I of the *Republic* in which Socrates is compelled by force, albeit friendly force, to discuss justice rather than enjoy himself during a festive evening out.<sup>7</sup> The continuity of the ensuing Socratic dialogue is disrupted by the outburst of Thrasymachus, the violent rhetorician who asserts that justice is the rule of the strong. The theme of transgression is evoked repeatedly as justice is discussed throughout the *Republic*. Derrida’s discourse soon takes up themes from Platonic dialogues like the *Republic* and those subsequent to it. The lecture becomes an apologia for deconstruction and its relationship to justice, a form of apology like Socrates’s own on behalf of philosophy in relationship to the city. The Cardozo conference and the volume on deconstruction and justice—organized by *lawyers* of self-understood *democratic* stripe—become the *trial* of deconstruction.

Derrida proceeds to defend deconstruction against the conventional tradition of political thought. The latter, like Socrates’s students in the *Republic* and, later, the legal authorities of the Athenian democracy, demands that Derrida and deconstruction “foreground” the question of ethics or politics.

Derrida's essay struggles with the injunction by critics of deconstruction to arbitrarily commit to, to "decide" over, to take a stand on, ethical/political matters. By *not* deciding, Derrida is supposedly guilty of nihilism because he thereby allows arbitrary force to remain unidentified as wrong, as unjust. Again, critics such as Lilla or Wolin read into such reluctance to decide an implicit acquiescence in a decisionism of Heideggerian/Schmittian sort. Without explicit ethical or political intervention, deconstruction allows what is decided everyday to pass as what is just—or worse, it apparently revels in that which does not conform to conventional norms, without offering a viable or preferable alternative. In response, one of the essay's central claims is that the unreflective collapsing of what is *legal* and what is *just* in such an intervention, in what would be a decision, is *itself* a surrender to nihilism. Simply because Derrida refuses to mechanically collapse the legal and the just in an immediately practical or programmatic way does not mean that his deconstruction forsakes justice.

After all, the tradition itself does not resolve these questions definitively. It certainly tolerates forms of arbitrary force and in fact perpetuates them—legally and philosophically. Derrida shows this most immediately by pointing out the forced conjunction of deconstruction with justice as the topic of the lecture, which itself raises other leitmotifs of Western political thought. The constraint imposed by the topic, according to Derrida, is a fearful, violent, inquisitorial, and tortured imposition (FL 4). The conditions of Derrida's speech are soon explored through successive definitions of justice that have been explicated historically in European political theory: majority rule, will of the strongest, openness to a foreigner or lack thereof, a self-imposed set of rules, love, the contract (FL 5). Derrida's exercise, thus far, most vividly raises the issue of the coercion, or force, tolerated by his critics; force that exists *before* the topic of law can even be broached.

Force or coercion are necessary components of law, its establishment as well as its subsequent enforceability, but they are also obvious threats to justice. The establishment of a system of justice itself presupposes a moment of violence that could not have been sanctioned by arrangements agreed on by those over whom the violence is exercised. Hence, law and legitimacy depend on the illegal and illegitimate to establish themselves. Postfounding, more generally, how can the everyday regular applicability of law be just if it entails force? Have Derrida's critics been sufficiently successful at purifying this violence or diminishing its exercise that they should throw stones at those who raise such questions? Is deconstruction really *more* guilty of "nihilism" in this regard than the tradition from which it purportedly departs? If it has been raising the question could deconstruction really have been negligent with respect to justice?

Derrida implies through comparison to other authors—like Kafka, author of a book on a trial, for instance—that “discourses on double affirmation, the gift beyond exchange and distribution, the undecidable, the incommensurable or the incalculable, or on singularity, difference and heterogeneity” are “obliquely” concerned with justice (FL 7). Deconstruction’s apparent affirmation of what conventional philosophy tries to reconcile, or make commensurable, or “solve” is precisely the holding out hope for a justice that is not ultimately eradicating or annihilating. Justice beyond force. If justice participates in eradication or annihilation, how just can it really be? On the contrary, the exposing of the aporias and the margins of the traditional is an act of resistance and an openness toward the future. The future is a possibility of transcending violence, a possibility already aspired after in the tradition itself. After all, this aspiration shares important concerns with Enlightenment approaches to justice:

By destabilizing, complicating, or bringing out the paradoxes of values like those of the proper and of property in all their registers, of the subject, and so of the responsible subject, of the subject of law (*droit*) and the subject of morality, of the juridical or moral person, of intentionality, etc., . . . such a deconstructive line of questioning is through and through a problematization of law and justice. A problematization of the foundations of law, morality and politics. This questioning of foundations is neither foundationist nor anti-foundationalist. Nor does it pass up opportunities to put into question or even to exceed to the possibility or the ultimate necessity of questioning, of the questioning form of thought, interrogating without assurance or prejudice the very history of the question and of its philosophical authority. For there is an authority—and so a legitimate force in the questioning form of which one might ask oneself whence it derives such great force in our tradition. (FL 8)

The Enlightenment privileges its formulation of justice because it is purportedly the result of critical questioning rather than arguments from authority, or arbitrary assertion and imposition. Derrida carries forward this enlightenment pursuit of justice by continuing to question *everything*, even the imperative to question. Can enlightenment be approached if authority remains unexamined and its existence, as force, challenged? The dynamic of questioning implies that enlightenment is never really a finished project, or even in some sense, an adequately *started* one. The essay itself partly illustrates this issue through Derrida’s frequent remarks along the way that he has yet to “even begin” his analysis (FL 5, 10, 15). Rather, his analysis is presented as persistent provisionality and a continual prologue to enlightenment and the establishment of justice.

Some, students of Leo Strauss, for instance, might argue that this open-ended mode of questioning invoked above is precisely that practiced in

the “founding” texts of Western political philosophy by Plato.<sup>8</sup> Strauss’s students, especially since 1989, have been more active in advancing this interpretation of Plato—one that takes better account of the dialogical structure of his works.<sup>9</sup> The dialogues should not be interpreted as expository or declarative arguments that ultimately appeal to the absolute of the Forms. Strauss, according to this new emphasis, suggests that the dialogues point up the irreconcilable aporias, the permanent problematization, of reason, experience, justice, and so forth. But the question prompted with great “force” by the long quote above from Derrida is: What then is the intended purpose of the more conventionally read layer of Plato’s argument, the one that promotes the “myths” of the Ideas and Forms? Is the literary structure of the dialogues intended as a social filter, a gatekeeper, to make sure that the “wrong people” do not get through to the more aporetic and purportedly more dangerous layers of the argument? This would be a form of social violence through hierarchy-construction and enforcement. In fact, this “open-ended” reading of Plato conforms neatly with a neoconservative agenda that views any attempt at advancing justice beyond the narrow confines of criminal law as dangerous and aggressive social engineering. Such “philosophy” dictates that the imperfections of the status quo are preferable to the atrocious unintended consequences that might result from zealous efforts at progressive change. In other words, it inverts the actual hierarchies of violence as they exist in the contemporary world in a way that decidedly serves oligarchy.<sup>10</sup>

Derrida’s essay might be accused of promoting such a position: deconstruction has been deemed salon leftism for the Reagan-Thatcher era. However, unlike Plato and, in fact, unlike Heidegger, Derrida seeks the ruthless questioning that does not capitulate to the socially coercive and hierarchy-preserving imperative that results from a philosophic unconcealing that is also simultaneously a political concealing. This is, in itself, a “practical” if limited resistance of force. Platonic revealing to “the philosophic” is a concomitant concealing to the “unphilosophic,” notably the demos. Deconstruction, as Derrida defends it here, pursues the unceasing interrogation of the authority of *all* opinion, conventional or political, even those of philosophers. It does so in a way that seeks *not* to cover its tracks with *new* myths as responses to the fear of populist or egalitarian—and hence purportedly unphilosophic—sociopolitical ramifications that might emerge from such questioning.<sup>11</sup> In this sense, Derrida’s deconstruction moves decidedly closer to what is often called critical theory and away from Platonism in its Greek and German forms.<sup>12</sup> The “literary” aspect of Derrida’s text must then be interrogated to reveal what is more *progressive* and *egalitarian* about the aporetic renderings of his own critique.



Proceeding then with this immanent critique of the Western political-philosophic tradition in part 1 of his essay, Derrida continues to question the force presupposed or perpetuated by law. He devotes his most extensive analysis to the antinomies of law in his "own" tradition, that is, the French language tradition of Pascal and Montaigne (FL 11-15). Of course, the biographical details of Derrida's life as an Algerian, colonial, bourgeois of Jewish descent problematize a ready identification of him with this tradition.<sup>13</sup> In any case, the criticism of the language of law in this intellectual-linguistic tradition suggests Derrida's resistance to the affirmation of a chauvinistic nationalism. Such nationalism might be legitimated as a response to the perceived violence imposed by a more threatening linguistic other in the context of this essay: the hegemony of English.

However, a response to violence with a violence in kind is unacceptable to Derrida. Less violent forms of interaction must be attempted. For Derrida, speaking in another's language might first be cast as a surrender, even a sacrifice. But then he considers it the condition of all possible justice, even though it may entail appropriation and assimilation, even though it may be experienced as an "ordeal" (FL 16-17). In this work, Derrida takes on the language of Western political philosophy for the first time at the prompting of institutional-legal authorities. He implies that he cannot really discuss justice without such force. But more than just the kind of gentle coercion that prompted Socrates to discuss justice, the impositions that the form of dialogue or discussion entails is the *basic* violence that makes justice possible. Thus, pace the suspicions of communicatively concerned critics, for Derrida, justice indeed depends on mutual interaction and mutual understanding. But he requires an acknowledgment of the violence executed in the process. Moreover, more substantive justice requires conditions even more free of force than advocates of "deliberation" may imagine.<sup>14</sup>

In other words, interlocutors must fully consent to the terms of the discourse. At the Cardozo conference, Derrida speaks English and takes on the "language" of traditional political philosophy by restaging the trial of Socrates. But really, is this the free engaging in conversation through someone else's language so as to promote justice, or an outright surrender to greater force, or is it the passive-aggressive exposé of that other's authoritarian ways? Is it noncoercive interaction, cowardly capitulation, or sarcastic deception? The allegorical or performative form of the essay raises these questions more subtly than might a straightforward expository argument. Answering them is, of course, exceedingly more difficult, and there remains the possibility that the answer, for Derrida, is "all three." The fact that the essay has been received in such a different manner than my reading suggests is a testament to the fact that Derrida falls somewhat short of fully promoting



mutual understanding himself. The success of Derrida's essay as well as my interpretation of it depend in large part on demonstrating the compatibility of allegorical or performative reading/writing with general enlightenment, even democracy.

At this point in the essay, Derrida invites us to dwell at length on the more cynical view of the imperative to speak in another's language. The national language of law in each of the European "Great Powers" has meant the establishment of wider interaction across larger geographical territories but also the obliteration of local cultural particularity, the elimination of specific linguistic traditions, and the nationalizing of local identities. French itself only became a national language by supplanting provincial tongues, a diplomatic language by setting aside other European ones, a colonial language by imperializing "non-European" ones. Derrida reminds us that the imposition of language on someone, particularly a national or ethnic minority, is violence (FL 21). In this tradition, language is too often a sacrifice, signs in place of something else that facilitate other kinds of representation, the swapping of one for another, the sacrificing of one for the other. In the European state-building tradition, those who would resist national consolidation are explicitly described as sacrifices who must be offered up so that the rest of the population may live in peace and justice. For Derrida, this kind of "representation" of the few for the whole implies death and life, the double quality of blood: Derrida speaks of the cannibalism, the "sacrificial" quality of eating meat, retained in all nursing, love, mourning, or all representation—all putting in place one thing for another (FL 19). Both nurturing and coercion depend on such representation. Community, interaction, exchange, and justice make the preservation and perpetuation of life possible but also entail, depend on, or point to the opposite. To free himself from charges of nihilism, Derrida demonstrates how we might better distinguish life-affirming representation or sacrifice from coercive or lethal forms. Again, he does so *not* through a five- or ten-point plan that would necessarily be at once undifferentiated and incomplete. Rather, the performance of the trial of Socrates reveals the coercive *and* constructive aspects of representation: allegories and metaphors may be less coercively instructive or revealing than, on one hand, programs that purport to speak for everyone or, on the other, intentionally equivocal modes of procedure that are intended to speak to the few.

Thus, Derrida's apparent suspension at this point between the more "just" speaking in another's language and the "unjust" compulsion to do so does not entail an abandonment of ethical or political concerns, a relativist indifference to one or the other: "what is currently called deconstruction would not correspond (though certain people have an interest in spreading this confusion) to a quasi-nihilistic abdication before the ethico-politico-juridical ques-

tion of justice and before the opposition between just and unjust" (FL 19). Again, to arbitrarily commit, to decide, as Derrida's critics demand, by conflating what is legal and what is just is a compromise with nihilism. The possibility of justice, for Derrida, depends on leaving open as unresolved the tension between justice and law—at least provisionally. Justice, for Derrida, is "infinite, incalculable, rebellious to rule and foreign to symmetry, heterogeneous and heterotropic," while law is "right, legitimacy, legality, stabilizable and statutory, calculable, a system of regulated and coded prescriptions" (FL 22). Deciding in an unconsidered manner to equate law and justice in a particular instance is certainly as "dangerous" as is the permanent dissociation of the two from each other. Derrida eventually reveals himself to be doing neither.

Derrida concludes this first part of his treatise with three aporias of law that were raised by Schmitt and that are prominent more recently in the "indeterminacy of law" approach of critical legal studies (CLS), the preeminent representatives of poststructuralism in legal theory.<sup>15</sup> Schmitt and CLS resolve indeterminacy arbitrarily, respectively, in regressively or progressively coercive manners.<sup>16</sup> Derrida, who coolly distances himself from CLS here, deliberately leaves open for now—coercively, one might say—the aporias (FL 9). The aporetic dilemmas are as follows: (1) judges apply previously established rules, on one hand, yet create law freshly in the moment of decision. As a result, they conserve yet destroy the law; they function in one way as machines but in another as founders. Legitimacy is threatened because, on one hand, each case is different and should be treated as such, and, on the other, consistency is required to prevent arbitrariness. (2) Derrida emphasizes the undecidable, that which cannot be sublated under a rule or even, for that matter, a prudential decision. It "haunts" not only hard cases but, as if a ghost, even routine cases. Finally, (3) there is the imperative of urgency, the fact that a decision must be rendered *now* and cannot be put off. Derrida observes that there is a "madness" to this aspect of the decision (FL 23-28).

By *not* attempting to resolve these dilemmas, critics charge, Derrida undermines law and justice, and, moreover, allows someone assuredly *unjust* to resolve them for him, and for us. But traditionally rational attempts to resolve them, Derrida implies, have fooled themselves with respect to the residue of arbitrary force that remains in the resolution. This is hardly an "enlightened" orientation. Neither is the other alternative: some have sought to deliberately cover up or divert attention from such latent violence. This is, for instance, the cold war Straussian imperative: "at least set forth a *myth* of justice to resolve these dilemmas if you cannot do so yourself in good faith." Or, 'tis better to promote a noble lie than an invitation to the unmediated rule

of the strong.” But it is not clear that appeals to Platonic *myth* themselves satisfactorily forestall violence, especially in its most brutal form: domination by the strong. It is necessary at this juncture only to mention the political engagement of many of Strauss’s students and their role in the American “virtue-industry” designed to distract citizens from, or turn them against, the responsibility of social and economic justice.<sup>17</sup> For his part, the great instigator of liberal embarrassment over these dilemmas, Schmitt, was engaged in mythmaking as well as the facilitation of unjust domination.<sup>18</sup> But if Derrida avoids Schmitt by not deciding authoritatively in favor of one or the other side of these dilemmas and avoids Strauss by not resorting to bubbemeyzes about how they can be resolved, is he nevertheless copping out? Liberalism may underestimate the extent of violence left unmediated in the law, but it does try to purge law of arbitrary violence by delimiting better and worse forms of violence. Is deconstruction passively complicitous in the rule of force by not specifying how to evaluate different kinds of force normatively? Without such delimitation there can be no justice in the world as we know it.<sup>19</sup>

For Derrida, the posing of these dilemmas does not mean that law is inherently corrupt, or justice an *impossibility*. After all, he suggests, this tradition of law inaugurated the rights of man, the abolition of slavery, and so forth, all of which Derrida “decides” in favor of now. In this context, Derrida avers, “nothing seems to me less outdated than the classical emancipatory ideal” (FL 28). By “classical,” Derrida presumably means eighteenth century, and that means the Enlightenment at its most optimistic and perhaps most naive. But this is not his last word on the matter. This is not an *unreasoned* or *final decision* in favor of the Enlightenment tradition of law. The first part of his essay shows that Derrida is no more indulgent of force than the Enlightenment tradition of law, whose goals he espouses. In fact he is less so. But if this is to have any resonance beyond an abdication of responsibility to engage politics a little more explicitly, Derrida will have to offer an alternative. But, as we see in the next section, this alternative lies not beyond the “Western tradition.” In fact, it is an ethical strain immanent to that tradition: this shows that (1) Derrida never believed the “tradition” to be as homogeneous as he described it earlier; and (2) he is sincere in his attempt to contribute to the traditions constituting the Enlightenment, and the “classical emancipatory ideal” after which it aspires.

### AN-OTHER TRADITION AND MYSTIC VIOLENCE

Part 2 of Derrida’s essay is somewhat less conciliatory toward the juridical-philosophic tradition of the West than the conclusion of part 1 might sug-

gest. In fact, part 2 hinges on the possibility of another violence, a violence that is both part of but different from the tradition of the West: Jewish messianic violence. The kind of law discussed in part 1 depends on the violence of foundings and governing. It was Schmitt who emphasized the extralegal prepolitical moment and, more important, raised the possibility of it being continually invoked *after* the foundation of government as moments of refounding in executive and judicial decisions. Schmitt sought to recall the violence of originary decision, reminders, in a hyper-Machiavellian and hyper-Hobbesian sense, of the fear and terror of the pre-political and the constructive violence that established order by eradicating the chaos that came before it.<sup>20</sup> In a footnote to this second part of his essay, Derrida identifies this kind of violence as Greek, as enlightenment, and later, as “mythic” (FL 63, n. 6). This is the violence that undergirds the kind of law that Derrida discussed in the first part, a legal tradition whose progressive achievements he did not impugn even as he explored its latent injustices. This tradition at its best sought to render “legitimate” the violence to which it necessarily resorts. At its worst it paid lip service to efforts at legitimizing or making rational such violence and resorted to it with relish or perfunctory gestures to necessity. What might *further* render this law less arbitrary and less violent?

Derrida turns to Walter Benjamin’s “Critique of Violence” to question this kind of law and violence.<sup>21</sup> Benjamin, who, like Derrida, is quite often too readily associated with Schmitt,<sup>22</sup> explored this violence and, more important, sought to keep open the possibility of another kind altogether. Benjamin’s oft-noted fascination with Schmitt’s theories of the exception and sovereignty is taken to be a flirtation with, or even surrender to, the mythic form of violence. One might say that Benjamin is accused of allegiance with Schmitt in much the same manner that Derrida is with Schmitt and Heidegger. In Derrida’s essay, mythic violence is inherent to the Greek tradition from Plato through Machiavelli and Hobbes, then the French Enlightenment, and most pathologically manifested in Schmitt: this violence eradicates the chaos of the prepolitical by establishing the political, yet nevertheless violently resorts back to founding power in its self-maintenance. Derrida remarks that Benjamin’s text is haunted by this kind of violence. After all, it is something like the vortex of mythic violence in its most evil form, as theorized sympathetically by Schmitt and Heidegger—the eradicating, annihilating and exterminating violence of Nazism—that consumed Benjamin’s life (FL 64, n. 6). Benjamin’s essay holds out the possibility of a different kind of violence suggested by another, perhaps *the* other, tradition of “Western” political thought: the messianic mystical, violence of the Jewish tradition—mystical violence. This violence may cleanse without the bloodletting so central to the Greek, mythic, form of violence (FL 64, n. 6).

One might assume that Christianity is deeply collusive in mythic violence on the basis of Derrida's/Benjamin's distinction. This is borne out by Derrida's invocation of a word of particular importance to both Aristotle and John the Evangelist: *logos* (FL 10). The Gospel of imperializing love—as well as, it should be added, nascent anti-Semitism—begins with this same notion as Aristotle's reflections on the polis.<sup>23</sup> For Christianity and classical rationality, “the word” is that which can stand in for, be identified with, respectively, the divine or humanity. Whatever their differences, the most Greek testament of the Bible, like the Greek philosophic tradition, privileges “the word” or “reason” in a way that is potentially idolatrous from the standpoint of Judaism. If such “logocentrism” is not fully idolatrous, it certainly has homogenizing, imperializing or coercive tendencies.

On the basis of this distinction, we may now think of the structure of Derrida's text in a new way: the Greek testament, part 1, comes first; while this, the more Hebraic one, part 2, is the newer or more recent testament. Is this reordering an attempt to give the latter the last word this time around? I deal with this issue in subsequent paragraphs.<sup>24</sup> For now, let us note that without overt engagement, in a performative manner, Derrida has so far implicitly invoked and grappled with at least four pillars of the Western political tradition: the Platonic, the French Enlightenment, the Christian, and the Judaic. They all, especially the latter two, continue to engage each other throughout the essay.<sup>25</sup>

In this context, a context that raises the issue of Graeco-Christian violence, Derrida proceeds to explore a redefinition of love. Is there a love apart from universal love—love of the abstract and eternal—Platonized Christian love? Is there a love of what is precisely mortal and finite (FL 44)? Do the inscrutable motivations of God in Judaism provide a way by which to save “love” from its reified status in Platonist Christianity? But it is not immediately clear whether Derrida's testament is the attempt to mechanically promote Jewish mysticism at the expense of Christianity—an attempt to boldly reclaim Jerusalem from its Greek appropriations—as it might first seem. Such a reclamation would indeed emphasize something other than the “universal love” that actually renders violence mythic through aggressive representation and homogenizing imperatives (FL 44). But this is not the alternative that Derrida has in mind: the very impulse to “retake” this imaginary city, even in an anti-imperialist effort, would be a succumbing to the very nationalism or colonialism against which Derrida's essay is largely directed. Derrida's reappropriation of Jerusalem must have another motivation behind it and objective ahead of it.

So what actually characterizes the messianic or mystical violence mentioned above? What is this alternative to mythical, Greek, and Christian vio-

lence tied up with universal love and rationality and that motivates the authoritarian tendencies of law alluded to in part 1? Benjamin was attracted to the worker's right to strike—the state's sanctioning a form of violence to something *other* than an extension of itself (FL 34). And, of course, the violence of the general strike is qualitatively *different* than the violence of the state; it is action that is the *cessation of activity*, not the physically harmful exercise thereof. Violence like that of the strike raises alarm without the threat of blood (unless the power of the state or capital threatens it . . .). This holds a clue for an understanding of messianic violence. The violence of the strike, passive violence, nonphysical violence, is hence akin to Messianic violence for Benjamin. Recalling Machiavelli's "return to beginnings" and Hobbes's "natural condition," mythic founding violence is terrifying not only due to the physical suffering of torture and crime that accompanies them but also the sheer epistemological, psychological uncertainty and anxiety that they entail (FL 35). The strike may shock and evoke awe but not in a way that threatens or beguiles or manipulates.

But Derrida is careful not to identify too closely with Benjamin's idiosyncratic Hebraic-philosophic outlook. He cautions that Benjamin, like many Jewish-Germans at the time, was too close in thinking to the right wing, to the militarist, to the nationalist side in Weimar Germany (FL 35; 64, n. 6). Yet, Derrida may be "unjust" himself in directly identifying Benjamin, as well as Hannah Arendt for that matter, with Hermann Cohen and Franz Rosenszweig in this sense.<sup>26</sup> This raises a question concerning many of Derrida's treatments of Benjamin in the essay: are they straightforward or performative? At times, it seems as if such descriptions are rhetorically intended to make possible a reading that reveals the justice of Benjamin's political philosophy without Derrida's own assertion of it or crude apology for it. Whereas conservatives like Cohen and Rosenszweig might have endorsed the imposition of state authority, even coercively violent authority, in the name of "order," Benjamin endorses a different kind of violence, authority, and order altogether. Derrida's reading of Benjamin points in this direction but then reverses. As a result, his own judgment of Benjamin becomes nondecisive, nondeclarative, nonviolent as a "defense" of Benjamin. Like the general strike, is this a glimpse at mystic violence in action? I return to this below.

Derrida evokes some of the classic motifs of realist political thought in the West to illustrate the stakes involved in mythic founding as opposed to messianic-mystical violence: the founder/legislator as criminal; the transference of unmitigated violence from the state of nature/war to the regulated violence of "peaceful" society; the place of compulsory military service; the fact of crime-making on the part of the police rather than crime-prevention or punishment (FL 40-41). Founding, mythic, violence always leaves the residue of



death in the order that it founds and then conserves. But mystic violence raises the possibility of an order that will *structure* without physical violence, without blood, without death. "Order" and "structure," in fact, seem like inappropriate words to describe it. The general strike is constituted by negative violence that potentially founds a new order without setting out to do so in an instrumental, means-ends fashion. It is a restructuring without structure in the authoritarian, impositional sense. No regime, no order, has yet been founded in such a way. This in itself, however, does not rule out its possibility. But before we can follow Derrida's reluctant promotion, through Benjamin, of mystical, messianic violence, we must be sure that we have more fully thought through mythic, founding violence—its costs and benefits, if you will.

Certainly, it must be admitted that founding violence is somewhat tempered when conserved in the rituals that repeat the founding (FL 41). Rituals are often gentler than a founding "murder" or its actual recreation. Rites, law, and even eighteenth-century war may be ways of routinizing or ritualizing mythic violence in regular and less brutal ways. In the act of representing, violence may have a place in such rituals—religious, legal, or political—but not in a manner that fully revives the founding moment. To differentiate strains within the "tradition," herein lies the difference between Schmitt, on one hand, and Hobbes and Machiavelli, on the other. The latter would represent beginnings as *reminders*, while Schmitt would recreate them wholesale or, at least, seems to offer no way of halting their actual recreation, their recurrence.<sup>27</sup> A return to beginnings and/or a natural condition is a past, however real or metaphoric, that can be allegorically represented in a ritual in the present. The "exception" suggests a ground-zero starting again, a moment when the distinction between friends and enemies is reinscribed, when real blood must be spilled. What other "action" could accompany the sovereign's "decision"? More pressing for the topic at hand, does Derrida's contrast of this founding violence with a mystical violence that no one has seen but only aspired after in a strand of unorthodox Judaism actually affirm the former? Does Derrida uncritically reinforce mythic, sovereign violence by not distinguishing better and worse forms of it but merely juxtaposing it with an unattainable alternative?

Well, as critics charge, Derrida does echo, for instance, Schmitt's discussion of sovereignty in a seemingly uncritical way. But I would suggest that he does so in ways that tacitly emphasize the *difference* between his concerns and those of Schmitt and, thereby, the difference between mythic and mystic violence. Schmitt notoriously argued that the welfare state intruded into society more extensively than did the state of the absolute monarchs. In similar terms, Derrida observes how founding violence now permeates society more



thoroughly through police activity than under the absolutist regimes. The police, for Derrida, are an unrepresented presence, a specter; a spiritual, not natural, reminder of the presence of death; bearers of the death penalty (FL 45). But Schmitt's logic justified state intervention into society that purportedly secured a stable relationship between the two, that is, state-motivated exceptional-dictatorial action or regular police activity. Schmitt criticized law as an *obstacle* to a security state; Derrida does so to underscore how the law *facilitates* a police state. The one encourages lethal force to proliferate; the other abets its diminution. To my mind, Derrida uses a Schmittian analogy in the essay to *criticize* a law-and-violence paradigm reminiscent of Schmitt. For Schmitt, welfare-state intervention was initiated by society—society not understood in terms of nonviolent and legal attempts to ameliorate socioeconomic injustice but rather as grabby and aggressive brigandage against private property and the state. In short, this contrast suggests that any facile association of Derrida and Schmitt on the basis of “Force of Law” would blatantly misunderstand the different types of force that they sympathize with, respectively, mystical and mythical violence.

In the midst of such considerations on the police state, Derrida also seems to conflate Benjamin's critique of parliamentary democracy with Schmitt's.<sup>28</sup> Again, we must ask if this is the whitewashing of Schmitt and the besmirching of Benjamin that some critics charge, or is it rhetorical and performative? According to Derrida, Benjamin's critique is “reactionary” as much as revolutionary because it holds democracy up to the standard of its Greek name, which is necessarily a return to origins (FL 46). In this way, Benjamin's critique winds up being mythical, sovereign, or foundational because it suggests a refounding of sorts and thus invokes mythic violence in action, or at least in representation. It is a Schmittian move if only a qualified one. But Schmitt's critique was *disingenuous*, which is not the same as performative; he held parliamentarism and democracy up to standards in which he himself did not believe.<sup>29</sup> Benjamin, on the other hand, wished to retain elements of rational self-determination espoused by advocates of these institutions.

Here and elsewhere, Derrida makes Benjamin's critique more Schmittian: he draws from Benjamin's text the argument that parliamentary compromise is complicitous in—no, generative of—the public disorder encouraged, not defused, by the police. This is, according to this line of thought, an active forgetting on the part of parliaments of the founding violence from which they emerged (FL 47). Derrida's version of Benjamin at this juncture is precisely Schmitt's critique of parliamentarism with added metaphysical language. But just as Derrida overdrew the connection between Benjamin and Weimar Jewish conservatives, he overextends an affiliation with Schmitt: Benjamin's concern here is not, like Schmitt's, with order per se, social order secured by

police or military violence. Unlike conservatives like Cohen and Rosenszweig or reactionaries like Schmitt, Benjamin is sensitive to the dangers of the state's encouragement of social disorder, of state law breaking and top-down coups. Therefore, the reestablishment of order is not "pure" for Benjamin, as it is in the self-delusion of conservatives, but rather tainted with violence and injustice. Benjamin wants parliament to be replaced with something beyond violent and unjust order.

Derrida's treatment of both Benjamin and Schmitt continues in this odd manner as the essay proceeds. Besides painting Benjamin too much like figures on the right and apparently minimizing Schmitt's radical tendencies, Derrida greatly exaggerates the relationship between the two of them. In this vein, Derrida mentions a correspondence between Schmitt and Benjamin when only one letter exists. One would think that they had been faithful pen pals! Is Derrida just factually incorrect, or is he creating a dialogue and dispute where they should have existed? Or is he forcing an identification that itself demonstrates a dissociation? Derrida remarks on conceptual *distinctions* that bring Schmitt and Benjamin *together* (FL 48), yet this part of the essay itself is a forced conjunction of the two that only further drives them apart. Is this Derrida's demonstration, contra critics and in distinction from Schmitt, of how deconstruction discusses justice? Is it a further manifestation of mystic violence?

If so, this affects the opening of the essay as restagings of the *Republic* and the trial of Socrates. The progressive lawyers who organized the Cardozo conference *forced* deconstruction into proximity with justice. Derrida first dissociates the two, or keeps them in suspended separation from each other, to expose certain injustices of the reigning "legal" authorities—those both within and without the confines of the conference. Deconstruction is no more guilty of arbitrary violence than the tradition, democratic or philosophic, that Derrida is accused of repudiating. But this point is not made to equalize all violence, hence rendering it all legitimate. Only after making such an effort can Derrida more appropriately and less brutally than the "legal" authorities illustrate what a relationship between deconstruction and justice might actually be. An immediate and straightforward acquiescence in the agenda setting of the conference's institutional authorities would be tantamount to drinking hemlock. Such a response by Derrida would have entailed not only the "death" of the philosopher but the effective murder of the possibility for the continued education and enlightenment of the demos. Plato's Socrates, with other options yet open to him,<sup>30</sup> sacrificed himself through suicide so as to keep philosophy from the demos—in other words, to forestall the universalization of enlightenment. Benjamin, with no choice left to him, took his

life rather than surrender to the lethal power of a “democratic” regime that was legitimated by gross philosophic misenlightenment. Socrates, at least according to interpretations dominant in academic political theory, remains the exemplar of insufficient philosophical engagement with democracy, Benjamin, the reluctant martyr to its continued enlightenment and pacification. Socrates apparently reaches a compromise with Thrasymachus, with arbitrary force, by the end of *The Republic*; Benjamin holds out the hope for the latter’s genuine persuasion through his writings that survive.

For his part, Derrida continues to pursue questioning rather than readily capitulate to the terms of legal authority (the conference’s or a tradition’s or a regime’s) or flee democracy for the internal exile of death so as to protect “philosophy.” The dizzying pursuit of both these alternatives is, of course, rampant in contemporary political philosophy through, on one hand, the moribund policy analysis and policy prescription of so much “applied” democratic theory and, on the other, the too-often self-referential and elusive character of contemporary interpretive theory, Straussian *or* poststructuralist. One panders to democracy; the other, notwithstanding cover stories or self-delusions, undermines it. On the contrary, at this juncture, Derrida continues to question by immanently criticizing, by mimicking, by imitating, and so exposing the injustices of any authority—political or philosophic—that would identify and equalize what is different. In short, Derrida instructs us about the differences between Schmitt and Benjamin by running the risk of appearing to commit the injustice of mutually identifying them, of collapsing their respective positions into each other. We can only intuit that mystic violence “operates” in a similar manner.

Derrida comes close to admitting that he practices such a mode of procedure when he implies that Benjamin understood something fundamental that Schmitt did not: liberalism only poses language in opposition *to* violence but does not understand the violence *of* language itself: language as representation; language as means (FL 49). Schmitt’s *Liberalismuskritik* focuses on the one but exacerbates the latter. It points out the instability of a politics that thinks it can replace force with discussion. There is certainly something potentially idolatrous in the liberal or communicative-socialist reification of language for Derrida. The first part of his essay exposed the violence that inheres in language. But, unlike Derrida, Schmitt lapses into a domination *through* language when he takes up the representative narrative of sovereignty. The sovereign person, the *Reichspräsident*, is said to *represent* a whole people, “ready for action,” and as such, his word is law.<sup>31</sup> But this is a representation that does violence to “the people” in any sensible understand-

ing of them. Is there a violence that doesn't represent at all? One that does not act for the law, a people, a state?

Benjamin holds out for a violence like the general strike that does not found a state but undermines it *without* triggering the chaos of the very civil war predicted or promised by realists like Schmitt. Benjamin attempts to make way for—not actively or instrumentally in the sense of programs and strategies but passively and negatively in the sense of preparing to receive—the messianic arrival of a world without structure, without coercion. In such a world, relations would be governed like diplomatic ones, only the relations would be even more free of force than those of diplomacy; relations not only beyond national law but also beyond asymmetries of interstate *power* (FL 49). People would behave toward each other as diplomats do, with civility, respect, recognition, equity, only absent the disparities of national power that underlie even the most genteel and civilized interactions of diplomacy. Such interactions are not *violent* in any conventional sense of the concept.

At this point in the essay, we can better appreciate how the aporetic legal dead ends, the indeterminacies of adjudication that conclude part 1 of the essay, result from law understood and narrowly deployed as means. For Benjamin and perhaps Derrida, God's violence, messianic or "destinal" violence, is revealed to abide beyond means—at least when God is thought of as wholly other, as He is in Judaism. This divinity takes no human form, cannot be represented by humanity so that the latter might be redeemed. This God is also different from the reason that informs Montaigne's and Pascal's conception of law. Derrida does not want to make too much of the fact that this may result from their status as nominal Christians, but it is significant. Language in the Judaic tradition is originally not a means, not a mode of communication, it only becomes such after the fall, after sin (FL 50). Christianity, particularly in the most Greek gospel, affiliates God, man, and language *prior* to the fall. The fall and the Christian messianic coming then become means to something else in the salvation narrative. Benjamin's interpretation of the Jewish notion of language attributes the development of good and evil to the "babble" of instrumental language, not the fruit of the tree. The universalization/instrumentalization of language and the linguistic definition of good and evil stand counterposed to God, who alone can decide "the legitimacy of means and the justice of ends," which may be different in every single case (FL 51).<sup>32</sup>

But then Derrida intimates that Benjamin's invocation of God is concomitantly an invocation of decision. Is this not an accusation of Schmittianism?

By equating God's miracle with the decision of the sovereign, is Schmitt not the same as Benjamin? No. Only superficially so. Benjamin's/Derrida's God acts out of anger; that force that is beyond means and ends: "it has no object other than to show and show itself" (FL 51). Divine anger is "disinterested, immediate and uncalculated" (FL 51). Mythic violence of "the gods" or the Christian God has a purpose. It is strategic, seeking to instill fear, manipulate humans, serve as exemplar, save humanity, create a state. Schmitt's God/sovereign acts with the purpose of restoring an order; and in the attempt to suppress those seeking justice in the Weimar context, it is a decidedly unjust order. Such interventions are seldom, if ever, carried through without blood sacrifice. The anger of the Jewish God is *not* sated by blood sacrifices as are these other, more or less pagan, more or less Greek, divinities. The distinction between Greek mythic violence and Hebraic mystic violence is rendered most stark by Derrida in the following passage:

Instead of founding *droit*, it destroys it; instead of setting limits and boundaries, it annihilates them; instead of leading to error and expiation, it causes to expiate; instead of threatening, it strikes; and above all, this is the essential point, instead of killing with blood, it kills and annihilates without bloodshed. Blood makes all the difference. (FL 52)

Mythic violence lets blood and sacrifices blood for its own sake, while divine violence eliminates life for the sake of the living, not at its expense, which the shedding of blood always is. A comparison of crucifixion and circumcision might come to mind here.<sup>33</sup> In secular terms, the mythic sacrifices to the building of the regime—from the dismembering of Remirro in Machiavelli and the subduing of the proud in Hobbes to the invocation of homogeneity in Schmitt—are to give way to this other, mystical, kind of sacrifice, perhaps even the overcoming of sacrifice. Benjamin's divine decision cannot be performed by proxy or represented by a human sovereign, whether Prince of Peace, *il principe*, Mortall God-Leviathan, or *Reichspräsident*, because this means sacrificing justice (FL 55-56). The aporetic legal dead ends of part 1 are now shown to be susceptible to the blood sacrifice of justice to the law. Yet, absent a Messianic arrival whose coming can never be induced, according to Derrida, we cannot abandon the "classical" emancipatory understanding of law and justice. In fact, the hopes and aspirations of the Enlightenment are not incompatible with mystic-messianic justice, even if its means and ends may be quite anathema to it. The presence of mystical violence in the essay may now, however, enable us to evaluate as more or less bloody, more or less violent, different arrangements of the mythical law/justice tension here and now.

## AN ULTIMATE DECISION AND FINAL SOLUTION?

In his postscript to the two-part essay, Derrida attempts to come to terms with National Socialism and the final solution. At its most stylized, the critique of Derrida and deconstruction raises the specter of these kinds of ramifications following from their practice. But Derrida does not mechanically defend himself by pointing out that these phenomena are more the result of the "tradition" itself than Derrida's departure from or critique of it. Derrida reduces neither Nazism nor the Holocaust to founding mythical violence. Indeed, he avers that Nazism and the Holocaust cannot be fully identified with *each other*. Yet, he speaks of the two in terms that intimate mythic violence's attempt to wipe out divine or messianic violence, the permanent forestalling of the possibility of nonrepresenting, noninstrumental, nonblood-letting violence (FL 60), the Graeco-Christian eradication of the Hebraic, if you will. Following Benjamin, in whose name Derrida here posthumously conducts this analysis (FL 57), Derrida insists that he is not *forcing* this distinction. Moreover, Derrida repeats that he is not renouncing the Enlightenment, imbued as it is and had to be, with mythic violence.

In fact, Derrida breaks with Benjamin in fear of settling for any compromise between the two violences that might render the Shoah, vice versa, an uninterpretable, unrepresentable form of *mystical* violence. If he were to succumb to this "temptation," he would have to reserve judgment on the Holocaust as a result of the apparent "bloodlessness" of the mechanical mass death at its core.<sup>34</sup> Moreover, Derrida rather abruptly accuses Benjamin's text of being "too Heideggerian, too messianico-marxist or archeo-eschatological for me" (FL 62). One is compelled to ask with an appropriate colloquialism, is Derrida putting us on? In this instance, Derrida collapses three very different strands of thought—disallowing their differences, certainly—in the worst way. Why the "forced" interpretation? What are we to think when a theorist who insists on dismantling forced identities participates in the crude construction of what ought to be dealt with in a more differentiated manner?

Here it is again important to raise the question of whether Derrida has vindicated Benjamin by *not* rehabilitating him in a "positive" sense that may ultimately do "injustice" to his thought. Derrida's treatment of Benjamin, like Benjamin's of the general strike, may be a clearer view of nonmythic violence in practice. In other words, better to bring Benjamin nearer to the danger of being remotely complicitous in the very constellation that impelled him to take his own life. Better to suggest his affinity with some vitalist, or broadly speaking "antiliberal," tradition such that the readers might come to see this difference themselves; such that Benjamin—or "Walter," as he signed his own essay—might speak for himself. "Jacques's" abrupt abandon-

ment of Walter toward the end of the work allows the two *not* to be mutually identified and allows the latter to serve as a witness for himself. In this light, Derrida may seem “soft” on Schmitt in the essay, as critics charge, but only in some superficial way that, in fact more subtly, more unobtrusively, more “negatively,” yet no less “decisively,” overcomes Schmitt and the tradition that it is fair to say he represents. To be sure, one cannot overcome a fascist through interpretation alone, but one can neutralize the violence of his language by *not* resorting to polemical language in kind. Socrates never shouts at Thrasymachus or even overtly refutes him; instead, Socrates induces him to blush.

I must reemphasize that Derrida’s mode of reading/writing here need not correspond with “esotericism.” On the contrary, rather than imperiously impose on a text a reading preordained by an orthodox and perhaps sinister agenda—an imposition all the more insulting because it claims to speak in an author’s real, secret, hidden voice—Derrida here allows the author and a text to speak for themselves. The textual performance, for Derrida, is the overt *point* of his essay, a presentation of its meaning, not an act deliberately intended to keep others out and invite some in. Any ensuing misunderstandings of his interpretation remain the *responsibility* of the reader, not the result of an interpreter’s intentional diversions and mendacities. Nor should Derrida’s approach in the essay be too readily identified with conventional “aporetic” readings fashionable today and, purportedly, indebted to Derrida himself. Through an aporetic approach, texts are often shown to say almost anything that their interpreters care to draw from them—an affirmation not of the interpreter’s authority, as in Straussianism, but rather of their playful cleverness—practiced always in the service of a self-understood progressive sociopolitical agenda. The one kind of hermeneutics conforms with a fairly coercive political orientation, the other, with an orientation of well-intentioned inefficacy. I hope to have shown that Derrida’s essay points to something else, something more.<sup>35</sup>

My reading of “Force of Law,” admittedly “violent” as it is at times, hopefully reveals the deathly seriousness of its subject matter *and* the form of inquiry adopted to pursue it. My sense is that the potential violence of my interpretation is necessary given the contemporary milieu: one in which any mode of presentation that does not conform to an Anglo-Saxon declarative, or Kantian analytic, expository style, is often deemed “antiliberal” or “dangerous.”<sup>36</sup> Am I therefore founding a mythically sovereign interpretation and justifying it through the familiar “realist” appeal to *necessity*? Does this reading make space, clear territory, conquer hermeneutic “aboriginals,” let blood, so that the “politically serious” Derrida may settle in? Does it merely “dis-



place" violence rather than genuinely open the possibility of overcoming it?<sup>37</sup> Would Derrida find this appropriate?

Indeed, such a reading might be appropriately criticized for succumbing to the logic of mythically sovereign violence: to "save" Derrida, or impose "order" on the chaotic, or unjust, readings of his text, I strike out at others and resort to a violently positive reading of Derrida that is diametrically opposed to his own of Benjamin. The following is meant as neither a copout nor a last word on the matter nor as a substitute for further discussion but rather as a temporary acknowledgment of the limitations of this analysis: *mea culpa*. As mitigating factors, I can only respond—no doubt unsatisfactorily but perhaps in a way that reemphasizes the strengths of "Force of Law"—with the following questions: Would it be more just *not* to undertake such an interpretive enterprise? In terms of Derrida's lecture, would it have been better *not* to carry out the violence necessary to abolish slavery? Would it have been preferable *not* to enforce the rights of man? Derrida's essay suggests, if not enunciates, answers to these questions. To never act and simply wait for the messianic mystical would indeed entail complicity in all kinds of contemporary injustice. To muscle ahead with an unconsidered agenda, however progressively intended, is also unjust and a kind of violence. Here and now, we can dispense with neither disposition. Derrida's essay points to the fact that we must act with certain kinds of violence today but never rules out the possibility that we may do without violence altogether tomorrow. This is something quite different from the "decisionism" described at the outset of this exercise. On the contrary, part of it is the practice of enlightenment.

### CONCLUSION

In "Force of Law," Derrida restages a dialogue on justice and replays the trial of Socrates within the confines of the Cardozo conference to show that the convenors—representatives of democracy and the law—are perpetrators of violence. But unlike Socrates, Derrida does not commit suicide; that is, depending on one's perspective, he neither protects the authorities from the supposedly corrosive power of critique, nor hordes philosophic pleasure away from the demos. Because Derrida adheres to the elimination of violence as an historical possibility, he attempts to educate legal and democratic authority to this potential. Rather than a transcendental appeal to eternal forms, however, Derrida derives from the very tradition that he is supposed to have undermined two kinds of violence: mythical and mystical. The one is a concrete past and present, the other a wholly different future immanent to that

past and this present. Mythic violence is easy to define theoretically and illustrate historically, mystic violence much less so.

In this spirit, Derrida relies on Benjamin's example of the general strike as cessation of activity. But the rest of the essay further demonstrates mystical, negative violence in action: Derrida opens a way for Benjamin's work to speak for itself from beyond the divide of violent death and without the imposition of a heavy-handed hermeneutic rendering. But what about ramifications that transcend textual interpretation and performance? What about the place of mystical violence in social critique or political practice? Does Derrida offer more than a fancy-pants "harm to others" standard? Does Derrida offer the study of law anything more than salon radicalism and pre-tentious obscurantism?

The essay reminds us that the ceaseless questioning of force must be part of any agenda that aspires to justice. The questioning of force—legal or otherwise—must not be violently shut down by those who claim to bear the authority of a justice already attained. This questioning of force and law—a questioning for which Socrates and Derrida were both "tried" in some regard—demonstrates that justice has not been achieved definitively. But rather than encouraging nihilistic behavior, as critics charge, this questioning emphasizes what justice *without force* might really be. "The Force of Law" encourages us to *wait* for justice, *not* by shirking responsibility or reveling in arbitrary violence but rather by living a life according to *law*. Derrida demonstrates that a world without violence is our most enlightened aspiration, if not an instrumentally attainable goal. But this insight encourages us to think about living according to law formulated and enforced in less violent ways.

On this basis, perhaps more resolutely and more subtly than many representatives of the poststructuralist left, Derrida refuses to abandon the Enlightenment element of mythic law and thereby is much less susceptible to its excesses. In the sphere of law, CLS, mentioned above, quite often rejects much of the liberal Enlightenment so explicitly, embraces as definitive some leftist version of the Enlightenment so unreflectively, and perhaps shrugs off the question of force so irresponsibly that it winds up far more *unfaithful* to the Enlightenment than does Derrida.<sup>38</sup> His poststructuralist enlightenment might approximate something like the following: enlightenment must pursue nonviolence as justice. However, it can never address injustices without recourse to violence of one kind or another. Still it can remain faithful and responsible to the former imperative by never taking the latter as the last word; that is, we can never confuse the forms of violence that ameliorate contemporary injustice for justice itself. This is, of course, very difficult to do. Many excessive practitioners of the Enlightenment have been willing to defer

to the future, defer to history, defer to the revolution, defer to the market, more serious attention to nonviolence as they perpetuated unprecedented violence in the name of justice here and now. Derrida may do no more than offer yet another moment's pause in this dynamic. Yet, that would be no mean accomplishment.

A constant trope in the study of law throughout the many socioeconomic and political changes of the past several centuries is the opposition of law and violence, law, on one hand, and "the way of beasts," as some authors put it, on the other. We may not be able to escape the fateful logic of this opposition today: for law to deter violence, or exact retribution for it, law must itself be backed by force. This force ought to be better justified *morally* and executed more *efficiently* than the arbitrary or wanton violence that it is meant to address. In other words, legal force must be both legitimate and effective. The mystic intuition about overcoming law and force works in ways that impel us toward more legitimate and effective law today and the possibility of their disappearance tomorrow. Let me conclude with an example that touches on both moments of this aspiration.

One aspect of the media coverage of the protests against the WTO and the IMF in Seattle last winter was particularly striking. The fact that some protesters had broken Starbucks' windows was considered more *violent* and more *unlawful* than the behavior of companies like Starbucks and the regimes that support them throughout the world. I am thinking here of the violence exercised in developing parts of the globe through, for instance, wage slavery, nonconsensual extraction of natural resources, and the use of "aid" to extort a "fiscal responsibility" that results in gutted social services. Until we accommodate our views on law and violence to these prevailing kinds of violence and injustice throughout the world, our legal attempts to redress them will remain insufficiently legitimate and effective. The contrast of mythic and mystic violence makes us ponder these events: what is the difference between sitting in peaceful protest, on one hand, and the aggressive policing of protesters, on the other? Or, defacing property representing global capital versus acquiescence in the latter's emiseration of over half the world?<sup>39</sup> To engage in a kind of violence and speak for Derrida here: in the midst of these events, nothing is less out of date than the classical emancipatory ideal.

## NOTES

1. Derrida presented the first part of "Force of Law: The 'Mystical Foundations of Authority' " at the conference, "Deconstruction and the Possibility of Justice," convened at the Benjamin N. Cardozo School of Law, 1-2 October 1989. The second part was discussed on that

occasion but not officially presented until the following April at the conference, "Nazism and the 'Final Solution': Probing the Limits of Representation," University of California, Los Angeles. The full-length essay first appeared in the *Cardozo Law Review* 11, nos. 5-6 (July/August 1990): 919-1045; and subsequently in the conference volume, *Deconstruction and the Possibility of Justice*, ed. Drucilla Cornell, Michel Rosenfeld, and David Carlson (New York: Routledge, 1992), 3-67. I cite the latter as FL in the text.

2. See James Atlas, "The Case of Paul de Man," *New York Times Magazine*, August 28, 1988, 36-37, 60, 66, 68, 69; as well as the letters by Peter Brooks, Andrew Ward, Stanley Corngold, and Louis Simpson on page 10 of the 25 September 1988 issue.

3. Deconstruction is the literary theory wing of poststructuralism, a roughly described antifoundationalist intellectual movement originating in France in the 1960s. The volume *The Structuralist Controversy*, ed. Richard Macksey and Eugenio Donato (Baltimore: Johns Hopkins University Press, 1970), is still one of the best introductions to the concerns of this approach, generally, while Michel Foucault's *Discipline and Punish*, trans. Alan Sheridan (New York: Vintage, 1979), is the most widely known social scientific example of this scholarship. I avoid use of the term *postmodernism* in reference to Derrida's work, as it seems to be the recourse of poststructuralism's worst informed opponents as well as its most uncritical adherents. Notable exceptions, one empirical, the other theoretical, are David Harvey's *The Condition of Postmodernity* (Oxford, UK: Blackwell, 1989); and Stephen K. White, *Political Theory and Postmodernism* (Cambridge: Cambridge University Press, 1991). Harvey situates the rise of poststructuralism in massive transformations of political economy over the past three decades, while White explores its ramifications for normative theory.

4. Most prominently, Mark Lilla, "The Politics of Jacques Derrida," *The New York Review of Books* 45, no. 11 (25 June 1998):36-41; and Richard Wolin, "Derrida on Marx, or the Perils of Left Heideggerianism," in *Labyrinths: Explorations in the Critical History of Ideas*, ed. Wolin (Amherst: University of Massachusetts Press, 1995), 231-40; Wolin, "Derrida as Political Romantic" (paper presented at the annual meeting of the American Political Science Association, Boston, 27-30 August 1998); Wolin, "Down By Law: Deconstruction and the Problem of Justice" (unpublished manuscript, History Department, CUNY Graduate Center, 2000). In an encyclopedic work that painstakingly reconstructs the argument of virtually every major or recent contribution to the field of legal scholarship, Jürgen Habermas quickly dismisses "Force of Law" as an "aesthetic" approach to law; see Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge, MA: MIT Press, 1996), 538, n. 21.

5. On the link between the decisionist theoretical positions of these authors and the authoritarianism of the notorious regime they both endorsed, see Christian Graf von Krockow, *Die Entscheidung: Eine Untersuchung über Ernst Jünger, Carl Schmitt, Martin Heidegger* (Frankfurt a. M.: Campus, 1990).

6. The essay was originally published by the *Cardozo Law Review* with Derrida's own French text alongside the English version of his translator, Mary Quaintance.

7. Plato, *The Republic*, trans. G.M.A. Grube (Indianapolis, IN: Hackett, 1997).

8. See Leo Strauss, "On Plato's Republic," in *The City and Man*, ed. Strauss (Chicago: University of Chicago Press, 1990), 50-133.

9. The most formidable cases are made by Catherine H. Zuckert, *Postmodern Platos* (Chicago: University of Chicago Press, 1996); and Steven B. Smith, "Leo Strauss's Platonic Liberalism," *Political Theory* 28, no. 6 (December 2000): 787-809.

10. If Straussians point to these incommensurabilities as caveats against programmatic social change, poststructuralists tend to dwell on them or even celebrate them, aesthetically, if professedly in the service of a less than clearly defined progressive agenda. I hesitate to contrib-

ute to gratuitous "po-mo" bashing rampant in many circles today; but if I must provide an exemplar of the kinds of deficiencies of poststructuralism that I criticize here, I suppose that the later writings of Richard Rorty serve that purpose. See, for example, Rorty, *Contingency, Irony and Solidarity* (Cambridge: Cambridge University Press, 1989).

11. I do not, of course, think that the question of Plato's relationship to democracy is closed. I merely grapple here with the interpretation of Plato that has been dominant in American political science for the past two generations. For an alternative to the narrowly oligarchic reading of Plato, see S. Sara Monoson, *Plato's Democratic Entanglements* (Princeton, NJ: Princeton University Press, 2000).

12. Thus, this interpretation of "Force of Law" suggests that the essay signals the kind of turning to radical *Ideologiekritik* in Derrida's oeuvre that Foucault's "What Is Enlightenment?" portended for his own. See Foucault, "What Is Enlightenment?" in *The Foucault Reader*, ed. Paul Rabinow (New York: Pantheon, 1984), 32-50. The question of whether Derrida can be "judged" to have successfully followed through on the kind of turn that mortality prevented Foucault from fully pursuing would depend on an evaluation of Derrida's recent work, especially *The Politics of Friendship*, trans. George Collins (London: Verso, 1997). Space constraints prevent me from undertaking such an evaluation here, but a provisional investigation in this vein is Richard Beardsworth, *Derrida and the Political* (London: Routledge, 1996). Richard J. Bernstein argues that a substantive moral agenda has always pervaded Derrida's work: see "Serious Play: The Ethical-Political Horizon of Derrida," in *The New Constellation: The Ethical-Political Horizon of Modernity/Postmodernity*, ed. Bernstein (Cambridge, MA: MIT Press, 1992), 172-98.

13. See Christopher Norris, *Derrida* (Cambridge, MA: Harvard University Press, 1988).

14. See James S. Fishkin, *Democracy and Deliberation: New Directions for Democratic Reform* (New Haven, CT: Yale University Press, 1993); Habermas, *Between Facts and Norms*; Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge, MA: Harvard Belknap, 1996); and James Bohman, *Public Deliberation: Pluralism, Complexity, and Democracy* (Cambridge, MA: MIT Press, 1997).

15. This less than coherent movement is well reflected by the following: James Boyle, "The Politics of Reason: Critical Legal Theory and Local Social Thought," *University of Pennsylvania Law Review* 133 (April 1985): 685-780; J. M. Balkin, "Deconstructive Practice and Legal Theory," *Yale Law Journal* 96 (March 1987): 743-86; Claire Dalton, "An Essay in the Deconstruction of Contract Doctrine," *Yale Law Journal* 94 (April 1985): 999-1114; Gerald Frug, "The Ideology of Bureaucracy in American Law," *Harvard Law Review* 97 (April 1984): 1276-388; Duncan Kennedy, *A Critique of Adjudication: fin de siècle* (Cambridge, MA: Harvard University Press, 1997); Mark Tushnet, "Critical Legal Studies: A Political History," *Yale Law Journal* 100 (1991): 1515-44; and Roberto M. Unger, *The Critical Legal Studies Movement* (Cambridge, MA: Harvard University Press, 1986). Excellent critical accounts include Andrew Altman, *Critical Legal Studies: A Liberal Critique* (Princeton, NJ: Princeton University Press, 1990); and Mark Kelman, *A Guide to Critical Legal Studies* (Cambridge, MA: Harvard University Press, 1987).

16. See John P. McCormick, "Three Ways of Thinking 'Critically' about the Law," *American Political Science Review* 93, no. 2 (June 1999): 413-28.

17. See Shadia Drury, *Leo Strauss and the American Right* (New York: St. Martin's, 1997).

18. John P. McCormick, *Carl Schmitt's Critique of Liberalism: Against Politics as Technology* (Cambridge: Cambridge University Press, 1997), chaps. 2 and 6.

19. Nancy Fraser levels a version of what I would call the "insubstantial" or "inefficacious" critique against the essay. It differs from the straightforward "nihilism" critique by emphasizing Derrida's inability to criticize actual practice from such a high level of abstraction rather than accuse him of culpability in the unjust practices that he fails to adequately criticize. See Fraser,

"The Force of Law: Metaphysical or Political?" *Cardozo Law Review* 13 (December 1991): 1325-31.

20. See Niccolò Machiavelli, *The Discourses on Livy*, trans. Peter Bondanella (Oxford, UK: Oxford University Press, 2000), III.1; and Thomas Hobbes, *Leviathan*, ed. Richard Tuck (Cambridge: Cambridge University Press, 1996), XIII. Studies of Machiavelli and Hobbes that pose challenges to my prioritizing of this aspect of these authors are Maurizio Viroli, *Machiavelli* (Oxford, UK: Oxford University Press, 1999); and Richard Tuck, *Hobbes* (Oxford, UK: Oxford University Press, 1989).

21. Walter Benjamin, "Critique of Violence" (1921), in *Reflections*, ed. Peter Demetz (New York: Harcourt, Brace & Jovanovich, 1978), 277-300.

22. Ellen Kennedy, for instance, is generally accused of exaggerating this connection; see Kennedy, "Carl Schmitt and the Frankfurt School," *Telos* 71 (spring 1987): 37-66.

23. See *The Gospel According to John* 1:1, in *The New English Bible* (Oxford, UK: Oxford University Press, 1976); and Aristotle, *The Politics*, trans. and ed. Peter Simpson (Chapel Hill: University of North Carolina Press, 1997), I.2.

24. The version of the Greek-Hebraic distinction most familiar to students of political theory is likely Strauss's invocation of the tension between Athens and Jerusalem. See Strauss, *Studies in Platonic Political Philosophy*, ed. Thomas Pangle (Chicago: University of Chicago Press, 1983). Strauss reputedly adopted it from Jacob Klein; see Klein, *Lectures and Essays*, ed. Robert B. Williamson and Elliott Zuckerman (Annapolis: Saint John's College Press, 1985). Other formulations of the opposition include Matthew Arnold, "Hebraism and Hellenism," in *Culture and Anarchy*, ed. Arnold (New Haven, CT: Yale University Press, 1994), 86-95; and George Steiner, *The Death of Tragedy* (New York: Knopf, 1961).

25. It is certainly surprising that the kinds of rhetorical or performative strategies that Derrida deploys in the essay have not been noticed and elaborated on in the poststructuralist literature. On the other hand, Straussians would seem to be the best equipped interpreters outside the poststructuralist community to recognize and engage the immanent—but not esoteric—expository strategy of Derrida's essay. In this regard, the most likely and capable candidate, Zuckert's *Postmodern Platos*, proves to be something of a missed opportunity in her treatment of Derrida on Plato. Thus, despite an ever-increasing preoccupation with what they call postmodernism, Straussians have failed to fully explore the affinities and differences between the deconstructive and esoteric hermeneutic methods. Perhaps a superficially familiar expository method suggests deeper, more substantive affinities between "postmodernism" and Straussianism than many adherents of the latter can bear to consider. From the Straussian perspective, poststructuralism trumpets as progressive and liberating the very same "nihilism" that Straussians had worked so hard to maintain as the preserve of a philosophic class. The former would disperse the lovely but socially corrosive pearls of nihilism among the swinish general population. Their own fixation on, but seldom real engagement with, this movement betrays the sense in which contemporary Straussianism can be understood as "don't ask, don't tell" postmodernism.

26. One would have thought that Arendt's place in the political-philosophic quest for a notion of freedom far removed from authoritarian taint had been secured by now. See George Kateb, *Hannah Arendt: Politics, Conscience, Evil* (New York: Rowman & Littlefield, 1987). But the recent conflating of the philosophical positions of Arendt with those of her teacher, Heidegger, have inspired renewed demonstrations of her commitment to enlightenment and of her differences with Heidegger: see Richard J. Bernstein, "Provocation and Appropriation: Hannah Arendt's Response to Martin Heidegger," *Constellations* 4, no. 2 (1997): 153-71; and Seyla Benhabib, "The Personal Is Not the Political: The Public Life of Hannah Arendt's Private Life," *Boston Review* 24, no. 5 (October/November 1999): 42-49.



27. See Carl Schmitt, *Der Hüter der Verfassung* (Tübingen: J.C.B. Mohr [Paul Siebeck], 1931); *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab (Cambridge, MA: MIT Press, 1985); and *The Concept of the Political*, trans. George Schwab, ed. Tracy Strong (Chicago: University of Chicago Press, 1996). For a discussion of these aspects of Schmitt's thought, see McCormick, *Carl Schmitt's Critique of Liberalism*, chaps. 3 and 5.

28. See Carl Schmitt, *The Crisis of Parliamentary Democracy*, trans. Ellen Kennedy (Cambridge, MA: M.I.T. Press, 1985).

29. On this aspect of Schmitt's critique of parliamentarism, as well as a comparison of his theory of representation with that of Benjamin, see John P. McCormick, "Feudalism, Fascism, and Fordism: Weimar Conceptions of Representation and Their Legacy in the Bonn Republic," in *From Liberal Democracy to Nazism: Political and Legal Theory in the Weimar Republic*, ed. Peter C. Caldwell and William E. Scheuerman (Atlantic Highlands, NJ: Humanities Press, 2000).

30. For a fresh interpretation of the Socratic-democratic predicament, see Fonna Dubin, "Why Socrates Stayed" (paper presented at the Conference for the Study of Political Thought on "Cosmopolitanism," Madison, Wisconsin, 6-8 November 1998).

31. Schmitt, *Der Hüter der Verfassung*.

32. Two recent attempts to understand law through the prism of Hebraic law generally are Arthur J. Jacobson, "The Idolatry of Rules: Writing Law according to Moses, with Reference to Other Jurisprudences," *Cardozo Law Review* 11, nos. 5-6 (July/August 1990): 1079-132; and George P. Fletcher, *Our Secret Constitution: From the Gettysburg Address to the Politics of Compassion* (New York: Norton, 2000). The former was, in fact, presented at the same conference as Derrida's essay.

33. The pagan quality of crucifixion iconography is fairly obvious. Freud's study of Moses suggests, on the contrary, the rationalizing function of circumcision: *Sigmund Freud, Moses and Monotheism*, trans. Katherine Jones (New York: Alfred Knopf, 1939). Although, as we will see below, Derrida's analysis points to the abolition of any practice that involves bloodletting, including the eating of meat, and presumably, circumcision. See also Derrida's "Circonfession," in Geoffrey Bennington and Jacques Derrida, *Jacques Derrida*, trans. Geoffrey Bennington (Chicago: University of Chicago Press, 1993): 65-66. The political significance of circumcision, particularly in the distinction between Judaism and Christianity, is discussed in William E. Connolly, "Memory Traces, Mystical States and Deep Pluralism," manuscript, Johns Hopkins University (Summer 1999), and Anne Norton, *Blood Rites of the Poststructuralists: Word, Flesh and Revolution*, (monograph, University of Pennsylvania, 2001).

34. Here, Derrida seems to signal a reluctance to fetishize blood: he refuses to adhere firmly to a blood-fixed criterion for evaluating violence. (It should be noted that he curiously foregoes a consideration of historical-empirical evidence that dispels any notion of the Holocaust as a "bloodless" phenomenon.) This opens the possibility of Derrida's essay contributing to the critique of kinds of violence that are ostensibly "bloodless," such as those that are operationalized through injustices of distribution and status. I return to this point in the conclusion.

35. But why have so many misinterpreted Derrida's essay, if obfuscation—whether unsavory or aesthetic—is not its purpose? Certainly, there are sufficient indications on the surface of Derrida's text to make plain the main thrusts of his account and point to the more allegorical and performative elements that would further underscore them. Unfortunately, a "love it or leave it" climate has dominated academic debates over the Enlightenment in the late eighties and throughout the nineties, such that works and authors must be approved as "for or agin us" by liberals and their critics. They must be identified and claimed as liberal or anti-, modern or post-, and so forth. The complexities and possibilities of a text such as "Force of Law" do not stand much of a chance for a fair hearing and unbiased consideration in such an environment. The work



has been unreflectively consigned to one side of the debate. There are, of course, many reasons why one might write political or social theory in a less than straightforward manner: see James Miller, "Is Bad Writing Necessary? George Orwell, Theodor Adorno, and the Politics of Literature," *Lingua Franca* 9, no. 9 (December/January 2000): 22-33.

36. Over the past decade or so, Stephen Holmes and Richard Wolin have been the most tireless liberal and social democratic watchdogs of the Enlightenment in this regard: see Holmes, *The Anatomy of Antiliberalism* (Cambridge, MA: Harvard University Press, 1992); and Wolin, *Labyrinths: Explorations in the Critical History of Ideas*.

37. On the trajectory of such arguments, see Bonnie Honig, *Political Theory and the Displacement of Politics* (Ithaca, NY: Cornell University Press, 1993).

38. For criticisms of CLS along these lines, see McCormick, "Three Ways of Thinking Critically about the Law." For an elaboration of the differences between CLS and Derrida, see McCormick, "Schmittian Positions on Law and Politics? CLS and Derrida," *Cardozo Law Review* 21, no. 1 (June 2000): 128-30. The present essay is partly motivated by a belief that left-poststructuralist scholars, when faced with these kinds of arguments, are capable of responding like Derrida when confronted with l'affaire de Man. Like Derrida, and Thrasymachus for that matter, I think that most poststructuralists would blush if confronted with certain political ramifications of their philosophical/pedagogical practices. I am, obviously, less confident that the capacity for shame required to blush under these circumstances inheres in many adherents to the other hermeneutical school criticized in this essay. This, of course, raises the enormous question of possibly "persuading the unpersuadable," which ranges far beyond the confines of this essay.

39. Derrida, in fact, calls for the development of international strategies against global violence and injustice in *Specters of Marx: The State of the Debt, the Work of Mourning, and the New International*, trans. Peggy Kamuf (New York: Routledge, 1994). For an account of the possibilities and limits of this vision, see Moishe Postone, "Deconstruction as Social Critique: Derrida on Marx and the New World Order," *History and Theory* 37, no. 3 (October 1998): 370-87.

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