

A Law unto Himself: Derrida and the Force of Justice

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Abstract

This chapter examines Derrida's distinction between law and justice, looking at the heritage of Pascal and Montaigne and examining issues of ethical and political responsibility in the process, taking some examples from contemporary American political discourse

One of the strongest criticisms aimed at the project of Jacques Derrida in particular, and indeed at literary and cultural theory in general, is the relativistic and apolitical nature of its epistemological position. Derrida has been seen as a nihilist and a relativist and as someone for whom anything goes in terms of ethics and politics. One of the most celebrated examples of this was the Cambridge affair where Derrida's putative award of an honorary doctorate from Cambridge University became a point of contestation among the fellows of that college, and later among the wider academic community. In a series of flyers, supporters and critics set out their arguments and among the reasons offered for the non-awarding of this degree, the following were set out:

Despite occasional disclaimers, the major preoccupation and effect of his voluminous work has been to deny and to dissolve the standards of evidence and argument on which all academic disciplines are based What determines us to oppose this award is not just the absurdity of these doctrines but their dismaying implications for all serious academic subjects By denying the distinction between fact and fiction, observation and imagination, evidence and prejudice, they make complete nonsense of science technology and medicine.

In politics they deprive the mind of its defences against dangerously irrational ideologies and regimes.¹

Derrida has referred to this debate in *Points*, a series of interviews, and has quoted what may seem the most damning assertion, namely that his style is obfuscatory in the extreme and when this is finally penetrated, ‘it becomes clear that where coherent assertions are being made at all, they are either false or trivial.’²

The purpose of this paper will be to examine Derrida’s attitude to issues of law and justice in order to see whether the allegations of triviality, or of his work being an instance of the barbarians at the gate of ‘serious academic disciplines’, are in fact valid. This paper will argue the contrary, namely that Derrida’s work is in fact an example of the power of critique within the socio-political realm to enable the inception of an emancipatory discourse. I will argue that Derrida’s work can trace a lineage back to the Enlightenment and that in the field of ethics and law, he has made significant contributions to the reconception of issues of justice within culture. However, this is achieved very much on his own terms. The series of concepts, non-concepts and neologisms associated with Derrida can be seen to participate in an ongoing epistemological strategy where the individual thought or concept under discussion is always situated within an ever expanding contextual framework wherein its meaning can be traced. In this case that context is a ‘juridico-ethical-political’ one.³

One of the main reasons offered for the citation of deconstruction as a relativist and textualist discourse is Derrida’s famous dictum: ‘*Il n’y a pas de hors-texte*’ (there is nothing outside the text’).⁴

This has been taken to mean that all communication is confined to textuality, that there is no outside

¹ “*Non Placet* Flysheet”, *Cambridge University Reporter* (1992), pp. 685-688, p.687

² J. Derrida, *Points...Interviews, 1974-94*, Elisabeth Weber ed., transl. Peggy Kamuf *et al.* (Stanford: Stanford University Press, 1995), p.420.

³ J. Derrida “The Force of Law: ‘The Mystical Foundation of Authority’ ” in *Acts of Religion*, edited and introduced by G. Anidjar (London Routledge, 2002), pp.228-298, p. 232

⁴ J. Derrida, *Of Grammatology*, transl. G. C. Spivak (London: Johns Hopkins Press, 1976), p.158.

reality or that the connection between text and the real world is non-existent. In fact, what he was suggesting was that knowledge is a social and linguistic construct and that all such knowledge could be interpreted as a form of textuality. Six years after this sentence had appeared in *Of Grammatology*, and after much discussion and argument, Derrida reconceptualised this dictum in the following phrase: ‘*Il n’y a pas de hors contexte*’ (there is nothing outside of context).⁵ This developed position suggests that all meaning is socially created, and that there is a context that every utterance, in every discourse, needs to be located within a specific context. In other words that meaning is never simple or pure but is haunted by an interaction of text and context. Thus the present discussion of justice will take place in the context of a further discussion on politics, ethics, the law, religion and the notion of the future and the role of the other.

In this sense, these phrases are further enunciations of his earlier notion of difference, a neologism whereby the differential and deferred nature of meaning in language is outlined:

Every concept is inscribed in a chain or in a system, within which it refers to the other, to other concepts, by means of the systematic play of differences. Such a play, *différance*, is thus no longer simply a concept, but rather the possibility of conceptuality....*Différance* is the non-full, non-simple, structured and differentiating origin of differences.⁶

In a way, this view can be seen as paralleling the rhetorical figure of anastomosis, as cited by J. Hillis Miller in *The Ethics of Reading*, in terms of notions of ‘penetration and permeation’. Miller is also speaking about the relationship between text and context, and sees this notion of context as hovering ‘uneasily’ between ‘metonymy in the sense of mere contingent adjacency and synecdoche, part for whole, with an assumption that the part is some way genuinely like the whole’.⁷ It is here that he cites the trope of anastomosis, adverting to Mikhail Bakhtin’s view of language as a social philosophy

⁵ J. Derrida, *Limited Inc.*, transl S. Weber and J. Mehlman (Evanston, Illinois: Northwestern University Press, 1988), p136.

⁶ J. Derrida, *Margins of Philosophy*, transl. A. Bass (Chicago: Chicago University Press, 1982), p.11.

⁷ J. Hillis Miller, *The Ethics of Reading: Kant, de Man, Eliot, Trollope, James, and Benjamin.*, the Welleck Library Lectures (New York: Columbia University Press, 1987), p.6.

which is permeated by a system of values ‘inseparable from living practice and class struggle’.⁸ One could just as easily see ‘con-text’ as a similar case, with one word, ‘text’ penetrating or permeating the other, ‘context’. Here both words intersect and interfuse, but perform the dialectical action of remaining separate as well as blending.

What we see are what Hillis Miller, in his discussion of anastomosis, terms a variety of ‘crossings, displacements, and substitutions, as inside becomes outside, outside inside, or as features on either side cross over the wall, membrane or partition dividing the sides’,⁹ and I will argue that such transgressive and transgenerative crossings of frontiers are a central feature in Derrida’s discussion of law and justice. Indeed, Derrida, in ‘Living on: Borderlines’ probes the epistemology of the border between text and context in a broadly analogous manner, as he talks about borders in terms of permeability, noting that no context is ‘saturatable any more’, and that ‘no border is guaranteed, inside or out’.¹⁰ In other words, meaning is always permeable and each instance needs to be analysed critically: it consists of the modality of the maybe, to refer to the title of this chapter. Each instance is an example of singularity and of a particular response to a particular call. In a way, this could be seen as a further definition of Derrida’s project. Hillis Miller has made the telling assessment that deconstruction is ‘nothing more or less than good reading’,¹¹ and in a recent book on Derrida, Julian Wolfreys goes on to amplify this by suggesting that ‘good reading’ may well be reading which ‘never avoids its responsibility, and which never falls into reading by numbers’.¹²

The concept of responsibility is one which has become increasingly important in Derrida’s writing and, in conjunction with ethical issues, it is woven through his discussions of the law and justice. For Derrida, major socio-cultural issues such as justice and democracy are based on a sense of responsibility. He has spoken a number of times about the importance and open-endedness of

⁸ I. Myers, and M. Simms, *Dictionary and Handbook of Poetry* (London: Longman, 1985), pp.6-7.

⁹ Hillis Miller, *loc. cit.*, p.7

¹⁰ J. Derrida, ‘Living on: Borderlines’ in *Deconstruction and Criticism*, H. Bloom, P. de Man, J. Derrida, G.Hartman, J. Hillis Miller (New York: Continuum Press, 1987), pp. 75 – 176, p.78.

¹¹ Hillis Miller, *loc. cit.*, p.10.

¹² J. Wolfreys, *Deconstruction • Derrida*, Transitions Series (London: Macmillan, 1998), p.16.

responsibility, and about the temporal nature of such responsibility. In an interview with the web-journal *Culture Machine*, Derrida spoke about the demand for justice, a demand couched in the future tense:

Inseparable from the thinking of justice itself, unconditional hospitality nevertheless remains impracticable as such....Thus the political task remains to find the best 'legislative' transaction, the best 'juridical' conditions to ensure that, in any given situation, the ethics of hospitality is not violated in its principle - and that it is respected as much as possible. To that end, one has to change laws, habits, phantasms, a whole 'culture'. That is what is needed at this moment. The violence of xenophobic or nationalistic reactions is also a symptom. The task is as urgent today as it is difficult: everywhere, particularly in a Europe that tends to close itself off to the outside to the extent that it claims to open itself within (the conventions of Schengen). The international legislative demands a re-casting. The concept and the experience of the 'refugees' in this century have undergone a mutation which makes politics and the legal system seem radically archaic. The words 'refugee', 'exile', 'deported', 'displaced person' and even 'foreigner' have changed their meaning; they call up another discourse, another practical response and change the entire horizon of 'the political', of citizenship, of belonging to a nation, and of the state.¹³

It is immediately clear here that for Derrida, justice, ethics, politics, meaning are connected through this process of anastomosis. For him, justice is a matter of being prepared to change a culture to cope with the demand of the future and of the other who may arrive as part of that future. So too Derrida sees justice as intimately connected with notions of responsibility to the 'absolute singularity of the other',¹⁴ and to an 'endless promise' to the future.¹⁵

In *Specters of Marx*, Derrida's recent intervention into the legacies of Marx offered a similar possibility: a chance now to call for justice:

¹³ J. Derrida interview with Thomas Assheuer, *Culture Machine* (2002)
http://culturemachine.tees.ac.uk/Cmach/Backissues/j002/Articles/art_derr.htm.

¹⁴ J. Derrida, "On Responsibility", interview with J. Dronsfeld, N. Midgley and A. Wilding. *Responsibilities of Deconstruction: PLI – Warwick Journal of Philosophy*, J. Dronsfeld and N. Midgley, eds, volume 6, Summer (1997), pp.19-36, p25.

¹⁵ J. Derrida, *Acts of Literature*, D Attridge ed (London: Routledge, 1992), p.38.

Not for calculable and distributive justice. Not for law, the calculation of restitution, the economy of vengeance or punishment not for calculable equality therefore, not for the symmetrizing and synchronic accountability or imputability of subjects or objects, not for a rendering of justice that would be limited to sanctioning or restituting, and to doing right, but for justice as incalculability of the gift and singularity of the an-economic ex-position to others.¹⁶

I would argue that such a view of justice as central to political, national and economic interaction represents the radical potential for dissident thought within the debt debate. The possibility of a socialist ethics that erupts through the discreet boundaries of bourgeois disciplinary and cognitive categories such as the political, the economic, and the ethical, echoes the legacy of Adorno, Benjamin and Bataille. To try to think of justice in this way, without simple idealism requires a messianic attitude. I would suggest tentatively, that this represents the other legacy of Marxism. The messianic redemption narrative. This belief in revolution - in the revolution as a process and as a future, only visible as the radical potential within capitalist society, (identifiable as the struggle of the workers for control of their lives) and at the same time absolutely radically, different, permits, however tenuously, the thought of difference.

I have deliberately chosen the adjective ‘messianistic’ as opposed to ‘messianic’ to describe his position and Derrida differentiates between these terms himself. For Derrida, speaking at Villanova University in 1994, the messianic structure is ‘a universal structure’,¹⁷ which is defined by waiting for the future, by addressing the other as other, and hence, by refusing to base notions of the present and future on a lineal descent from a particular version of the past. He goes on to note that the messianic structure is predicated on a promise, on an expectation that whatever is coming in the future ‘has to do with justice’.¹⁸ What he terms messianism, on the other hand is culturally and temporally limited

¹⁶ J. Derrida, *Specters of Marx: The State of the Debt, the Work of Mourning & the New International*, transl. P. Kamuf, introduced by B. Magnus and S. Cullenberg (London: Routledge, 1994), pp.22-23.

¹⁷ J. Derrida, *Deconstruction in a Nutshell: A Conversation with Jacques Derrida*, edited with a commentary by J. D. Caputo (New York: Fordham University Press, 1997), p.22.

¹⁸ *Ibid.*, p.23

and constrained to the 'determinate figures' of 'Jewish, Christian, or Islamic messianism.' He goes on:

As soon as you reduce the messianic structure to messianism then you are reducing the universality and this has important political consequences. Then you are accrediting one tradition among others, and a notion of an elected people, of a given literal language, a given fundamentalism.¹⁹

According to Derrida, the term messianism refers predominantly to the religions of the Messiahs - specifically the Muslim, Judaic and Christian religions. These religions proffer a Messiah of known characteristics, and often one who is expected to arrive at a particular time or place. The Messiah is inscribed in their respective religious texts, and in an oral tradition that dictates that only if the other conforms to such and such a description is that person actually the Messiah. Of course, in the context of the present discussion, the advent of the Messiah, in any religion, is also the advent of the coming of justice to a culture as that is part of the structural role of the Messiah.

However, Derrida's call to the wholly other, his invocation and incitation for the wholly other 'to come', is not a call for a fixed or identifiable other of known characteristics, as is arguably the case in the archetypal religious experience. His wholly other is indeterminable, and can never actually arrive. Derrida more than once recounts a story of Blanchot's where the Messiah was actually at the gates to a city, disguised in rags. After some time, the Messiah was finally recognised by a beggar, but the beggar could think of nothing more relevant to ask than: 'when will you come?'.²⁰ Even when the Messiah is 'there', they must still be yet to come, and this brings us to the distinction between the messianic and the various concrete and historical messianisms. The messianic refers predominantly to a structure of our existence that involves waiting - waiting even in activity - and a ceaseless openness towards a future that can never be circumscribed by the various horizons of significance that we

¹⁹ *Ibid.*, p.23.

²⁰ *Ibid.*, p.24.

might attempt to bring to bear upon that possible future. In other words, Derrida is not referring to a future that will one day become present, but to an openness towards an unknown futurity that is always already involved in what we take to be 'presence', and hence also renders it 'impossible'.

However, it is also worth observing that in another of his recent texts, Derrida enigmatically suggests that this type of messianic structure refers to 'a sort of relationship without relation'.²¹ In practical terms, Derrida applies this perspective to his inauguration of a new doctoral programme in the department of philosophy in Villanova University in 1994. Derrida sees the moment of inauguration as crucial in its singularity. On being asked about the role of deconstruction within the academy, Derrida says that the life of any institution implies that 'we are able to criticize, to transform, to open the institution to its own future'. He goes on to talk about the paradox of the moment of inauguration of any institution, which, while starting something new, is at the same time true to a memory of the past, and to things received from the culture, adding that such a moment must 'break with the past, keep the memory of the past, while inaugurating something absolutely new'. Derrida, looking at the notion of inauguration, notes that there are no guarantees, and 'we have to invent the rules'.²²

He goes on, in this context, to make a keynote statement about the operative mode of deconstruction, something which, as is clear from his 'Letter to a Japanese Friend', he has often been at pains to avoid. Speaking about the moment of inauguration, he suggests that:

There is no responsibility, no decision, without this inauguration, this absolute break. That is what deconstruction is made of: not the mixture but the tension between memory, fidelity, the preservation of something that has been given to us, and, at the same time, heterogeneity, something absolutely new, and a break.²³

²¹ J. Derrida, *Monolingualism of the Other; or, The Prosthesis of Origin*, transl. P. Mensah (California: Stanford University Press, 1996), p.71.

²² Derrida, *Deconstruction in a Nutshell*, *loq. cit.*, p.6.

²³ *Ibid.*, p.6.

This tension is a trope which carries through in all of his answers, and in his discussion of the aporetic relationship between law and justice. On discussing Greek philosophy, Derrida notes that what he looks for is the heterogeneity in the texts, how the *khôra*, for example, is incompatible with the Platonic system, before going on to speak more broadly about how a specifically Greek philosophy had within it an opening, a potential force which was ready to cross the borders of Greek language, Greek culture'.²⁴ From this discussion, he progresses to the concept of democracy, a further thread in the ethical theme of these answers, making the point that while the concept of democracy is a Greek heritage, it is a heritage that 'self-deconstructs...so as to uproot, to become independent of its own grounds'.²⁵

His discussion of justice is similarly contextualised. He immediately distinguishes between justice and the law, and makes the point that the law can be deconstructed. In an argument that follows logically from his view of inauguration as both a break with, and a continuation of, a tradition, he goes on to speak of the legal system as a history of transformations of different laws:

You can improve the law. You can replace one law by another one. There are constitutions and institutions. There is a history, and a history as such can be deconstructed. Each time you replace one legal system by another one, one law by another one, or you improve the law, that is a kind of deconstruction, a critique and deconstruction. So the law as such can be deconstructed and has to be deconstructed.²⁶

This perspective is completely in line with the already outlined practices of deconstruction. The single concept of 'law' is situated within a system and each part of the system, in a process of anastomosis, crosses the borders of other parts of the system in an ongoing play of *différance*. Thus

²⁴ *Ibid.*, p.9.

²⁵ *Ibid.*, p.10.

²⁶ *Ibid.*, p.16.

Derrida will stress that ‘justice is not the law’ and goes on to add that ‘justice is what gives us the impulse, the drive, or the movement to improve the law, that is, to deconstruct the law’.²⁷

In “The Force of Law”, Derrida offers his most probing analysis of the concept of the law and how it operates. Tracing his thoughts through a *pensée* of Blaise Pascal and the work of Montaigne, he stresses the aporetic relationship between the law and justice, using the Kantian dictum of ‘no law without force’ to syncretise these positions.²⁸ Clearly, the sense that law is used by a dominant social class to ensure that its hegemonic position is engraved in statute is what is at stake here, and Derrida is not averse to discussing the *Realpolitik* of such legal discourses. He discusses Pascal’s rhetorical conflation of justice and strength: ‘Justice, force – It is right that what is just should be followed; it is necessary that what is strongest should be followed’, and goes on to cite the rest of the text:

Force without justice is tyrannical. Justice without force is gainsaid, because there are always offenders; force without justice is condemned. It is necessary then to combine justice and force; and for this end make what is just strong, or what is strong just.²⁹

The general view is that Pascal wrote this passage with the work of Montaigne in mind. Montaigne made the point that laws are ‘not in themselves just but are rather just only because they are laws’, and he goes on to speak about ‘the mystical foundation of the authority of laws’ as being simply custom.³⁰ Clearly, part of the signification of the title of this essay for Derrida is that law as societal construct, deriving from this mystical foundation of authority, can only be law through its enforcement: ‘no law without force as Immanuel Kant recalled with the greatest rigour’.³¹ Here the force is the threat of punishment if the law is violated – the mailed fist held within the velvet glove. Here the force is socio-economic and hegemonic and is a way of enforcing inequality through a series of written discourses which can be punitively enforced. Looked at from such a theoretical

²⁷ *Ibid.*, p.16.

²⁸ Derrida, ‘Force of Law’, *loq. cit.* p. 233.

²⁹ Derrida, ‘Force of Law’, *loq. cit.* p. 238.

³⁰ Derrida, ‘Force of Law’, *loq. cit.* p. 239.

³¹ Derrida, ‘Force of Law’, *loq. cit.* p. 233.

perspective, the discourse of law functions very much as an example of what Louis Althusser termed an ISA or Institutional State Apparatus. These are the socio-cultural devices which allow for the enculturation of the next generations into the norms and default positions of the hegemonic group which controls the society. RSAs, or Repressive State Apparatuses, such as the police, courts of law and the military, are the ground on which compliance is enforced, but the ISAs – education, media, religion – are more subtle in their operation as they draw people’s assent to the hegemonic standards that are in force. In this sense, the identification with a cultural artefact, such as literature, can have a huge effect on the aspirational identity of different groups, races and genders.³² The same is true of law which is able to enculturate subjects into believing that socio-economic inequality is a given, and not to be questioned as it is the law.

Derrida points to the aporia that most laws must have been created through an act of violence (another example of the force of law) whereby control and power were won:

How to distinguish between the force of law [*loi*] of a legitimate power and the allegedly originary violence that must have established this authority and that could not itself have authorized itself by any anterior legitimacy so that, in this initial moment, it is neither legal nor illegal, just or unjust.³³

Here the irony is that an act which may have been foundational in terms of setting up a law, the taking of a country, or a province by war, will later be seen as illegal when referred to the law which was enacted after the original act of violence. In other words, when one group uses violence to overthrow another, it then, on achieving power, invariably makes such actions illegal. In Irish history for example, in 1916, a number of members of the political party Sinn Fein, without any democratic mandate or ethical warrant, undertook an armed rebellion against the British government. Under the invocation of martial law, the British authorities executed sixteen of the rebel leaders for treason. Six

³² L. Althusser, *Lenin and philosophy and other essays*. Second edition. (London: New Left Books, 1977), pp.121-173.

³³ Derrida, ‘Force of Law’, *loq. cit.*p. 234.

years later, some of those same insurgents, now members of the first native Irish government, executed former comrades in a bitter civil war over the future of the country, using the self-same martial law which executed a number of the leaders of 1916 six years earlier. Here the force of law is repeated and very obvious. Clearly, there is a problem associated with points of origin. The foundation of a legal code can be seen as a *terminus a quo* from which a new dispensation is practised, but paradoxically it may, through its enforcement, punish acts which are identical to its own foundational moment.

There are numerous examples of how societies use the law as a device to uphold hegemonic power and how notions of justice are inscribed from within the discourse of economic power. In *King Lear*, after the eponymous Lear attains his moment of anagnorisis, he makes some points about law and power that are germane to this discussion. Noting that power brings obedience regardless of worth – ‘a dog’s obeyed in office’³⁴ – he goes on:

Through tattered gowns small vices do appear;
Robes and furred gowns hide all. Plate sin with gold,
The strong lance of justice hurtless breaks;
Arm it in rags, a pygmy’s straw does pierce it.³⁵

Lear’s point is that power equals obedience and this can often be seen as the enforcement of justice, or a version of Derrida’s title, the force of law. In all cultures, the law becomes part of what Althusser terms *Ideological State Apparatuses*, and thereby influence the identity of each individual within that particular society.³⁶ So, in Nazi Germany, laws of racial purity ensured that Nazi ideology became enshrined in German law and racial purity became an issue of legal action. Thus the disenfranchisement of the Jews became legal as the ‘mystical foundation of authority’ was now seen to reside in the Reich’s sense of *Blut und Boden*. Here the law was basically and structurally

³⁴ W. Shakespeare, *King Lear*, Signet Classics edition, edited Russell Fraser (New American Library, New York, 1963), IV (vi), 161.

³⁵ Shakespeare, *King Lear*, IV (vi), 166-169.

³⁶ Althusser, *Lenin and philosophy and other essays*, *loq. cit.* p. 152.

‘the law of the strongest’.³⁷ The same was true of the Apartheid laws in South Africa, where issues of racial ideology again became enshrined in law and thus to be black meant that one was a lesser legal entity. In these, and in numerous other legal jurisdictions, the connection between law and issues of justice would seem to be tenuous in the extreme. The adequation of hegemonic attitudes towards racism, with a legal codification of those attitudes, seemed to enshrine the views of the strong with the law. As Derrida puts it, in this context: ‘laws are not just in as much as they are laws’³⁸ and he also makes the connection with La Fontaine’s fable of ‘The Wolf and the Sheep’ according to which ‘*La raison du plus fort est toujours la meilleure*’ [the reason of the strongest is always the best – i.e., might makes right].³⁹ In cultures without number, the law has been used as an instrument of almost genteel oppression, a ‘masked power’,⁴⁰ which allows one elite group in society to retain hegemonic influence. And when harnessed in tandem with restricted access to education, this then becomes a self-perpetuating oligarchy which is able to mask oppression by the suasive application of the law as an instrument of equality and fairness.

So it would seem that law and justice are pragmatically related and the standard readings of Montaigne and Pascal are correct. However, for Derrida, the ‘force of law’ can, perhaps (and this ‘perhaps’ is an important qualification) be seen in a different, more ethical relationship. While Pascal’s final equation of strength with justice seems to draw from Montaigne, and while the general reading of both writers is in terms of a relativist and sceptical position, Derrida offers a different possible interpretation. He sees in both thinkers the beginning of a contemporary critique of juridical ideology: a ‘desedimentation of the superstructures of law that both hide and reflect the economic and political interests of the dominant forces of society’. He goes on to probe how the very emergence of justice and law, the ‘instituting, founding and justifying moment of law implies a performative force, that is to say always an interpretive force and a call to faith’: not in the sense, this time, that law

³⁷ Derrida, ‘Force of Law’, *loq. cit.*p. 232.

³⁸ Derrida, ‘Force of Law’, *loq. cit.*p. 240.

³⁹ Derrida, ‘Force of Law’, *loq. cit.*p. 241.

⁴⁰ Derrida, ‘Force of Law’, *loq. cit.*p. 241.

would be in the service of force or the prevailing ideology but that instead it would maintain a ‘more complex relation to what one calls force, power or violence’.⁴¹ For Derrida, the founding moment of law, in a society or culture, is never a moment ‘inscribed’ in the history of that culture since it ‘rips it apart with one decision’, a decision which Derrida sees as a ‘*coup de force*’, a ‘performative and interpretative violence’ which is in itself ‘neither just nor unjust’.⁴²

The violence here is one of interpretation, I would argue. It is logical to assume, and some of the examples outlined have made this clear, that the mystical foundation of authority is exercised, in terms of custom and community, by those in positions of power – both forceful and discursive – in that culture. By taking their power and writing it into statute, it would seem that law is, in the Pascalian sense, adequating rules with strength. However, the chimera of justice haunts the law and here, the seeds of deconstruction are sown. As Derrida puts it ‘deconstruction takes place in the interval that separates the undeconstructability of justice from the deconstructability of law’, and he further asserts that justice can be seen as the possibility of deconstruction.⁴³ The moment that a set of rules, precepts, codifications are written as text, they lose the force of authority and instead become open to the force of interpretation and hermeneutic analysis. So, if the original violence, the force of law, that inaugurates a law attempts to set out the conditions through which that law is to operate, or be enforced, the interpretative force of law allows for this intention to be deconstructed in the interests of ‘the possibility of justice’,⁴⁴ and through that jurido-ethical field which has already been cited as the context for discussion on the force and value of law. In other words, the codification of law is not a structural machine which grinds the subject through its machinations. Instead, each individual instance requires a singular performative event, where the case is debated by lawyers, before a jury, and a judge, and where the individual circumstances of each protagonist are taken into account. In this case, there is a strong element of the undecidable to be found. Just as the law

⁴¹ Derrida, ‘Force of Law’, *loq. cit.*p. 241.

⁴² Derrida, ‘Force of Law’, *loq. cit.*p. 241.

⁴³ Derrida, ‘Force of Law’, *loq. cit.*p. 243.

⁴⁴ Derrida, ‘Force of Law’, *loq. cit.*p. 249.

addresses itself to the polis, to the generality of the citizens of a state, so each case is about a single individual, and his or her case is interpreted on its own merits. So just as the force of law is general, the force of justice is particular: 'one must know that this justice always addresses itself to singularity, to the singularity of the other, despite, or even because, it pretends towards universality'.⁴⁵

His analysis of democracy and ethical responsibility have already been mentioned and through the anastomosis already referred to, this analysis has strong parallels with his deconstructive critique of justice. In *The Politics of Friendship*, Derrida teases out the different responsibilities that obtain within the epistemological structure of democracy. He notes that the idea of democracy involves responsibility to the individual members of the *demos* as well as to the universality of the democratically sanctioned law before which all citizens are equal.⁴⁶ This critique suggests a new concept of democracy as democracy to come, a concept where the actual democratic actions is always subject to a call from a more ideal democracy to come. Similarly in terms of responsibility, in *The Gift of Death*, Derrida speaks of the different types of responsibility which have ethical calls on us. He uses the story of Abraham's being asked by God to sacrifice his only son, Isaac, and of the struggle between Abraham's responsibility to the call of the transcendent, to the call of his own family, to the call of his future (in the sense of his son carrying on his genes), and of his responsibility to his community. For Derrida, there is no programmatic right or wrong decision here: Abraham is at the same time, the most moral and the most immoral, the most responsible and the most irresponsible'.⁴⁷ For Derrida, an ethical decision is one which must make an 'undecidable leap' beyond all prior preparation for that decision.⁴⁸ Abraham can never be sure whether his decision is right or wrong, and yet he must make the decision: he is in that aporia that exists between the force of justice and the force of law:

⁴⁵ Derrida, 'Force of Law', *loq. cit.*p. 248.

⁴⁶ J. Derrida, *Politics of Friendship*, translated by George Collins (London, Verso, 1977), p.22.

⁴⁷ J. Derrida, Jacques, *The Gift of Death*, translated David Wills (Chicago: University of Chicago Press, 1995), p.72.

⁴⁸ Derrida, *Gift of Death*, *loq. cit.*p.47.

I am responsible to anyone (that is to say, to any other) only by failing in my responsibility to all the others, to the ethical or political generality. And I can never justify this sacrifice What binds me to this one or that one, remains finally unjustifiable.⁴⁹

In real terms this means that the force of justice is an ethical, singular and individual one, rooted in a call of an impossible future: 'justice remains *to come*, it remains *by coming*'.⁵⁰ Each individual case is an event not governed by the past applications of the rules of law but by a present and future interpretation based on singularity. For Derrida, the force of justice can never be served by a mere application of the rules in a machine-like way: if the force of law 'simply consists of applying a rule, of enacting a programme, or effecting a calculation, one will perhaps say that it is legal, that it conforms to law'.⁵¹ He goes on to add that to call this a decision is incorrect as such application is mechanical and therefore neither a decision nor just. He then goes on to explain the force of justice:

To be just, the decision of a judge for example, must not only follow a rule of law or general law, but must also assume it, approve it, confirm its value by a reinstating act of interpretation, as if, at the limit, the law did not exist previously – as if the judge himself invented it in each case. Each exercise of justice as law can be just only if it is a 'fresh judgment' This new freshness, the initiality of this inaugural judgment can very well – better yet, must very well – conform to a preexisting law.⁵²

The sense of justice as an inaugural act is one which recalls his comments in the Villanova Roundtable, where the act of inauguration is both a preserving and a break, and the force of justice allows for this. So just as law has been seen as an ideological tool of the powerful hegemonic groups in society, so law when responding to the call of justice to come, to the force of justice, can become a deconstructive lever which allows those less-powerful to unhinge some of the structures of power in society.

⁴⁹ Derrida, *Gift of Death*, *loq. cit.*p.70.

⁵⁰ Derrida, 'Force of Law', *loq. cit.*p. 256.

⁵¹ Derrida, 'Force of Law', *loq. cit.*p. 251.

⁵² Derrida, 'Force of Law', *loq. cit.*p. 251.

Thus, Clare Callan, an 85-year-old former congressman from rural Nebraska has taken president George Bush's decision to go to war in Iraq before the U.S. Supreme Court, by attempting to prove that the President had no legal authority to go to war. That the most powerful politician on the planet can be forced to defend his political decisions before the supreme court is itself an example of the deconstructive force of justice. That a private citizen can use the law to achieve this is evidence of the possibilities when laws are interpreted with a view towards ethical responsible decisions.

Callan bases his case on the fact that when Congress passed the Iraq Resolution in October 2002, the legislators specifically made it subject to the War Powers Resolution of 1973, known as the War Powers Act. The Iraq resolution was definite: 'nothing in this joint resolution supersedes any requirement of the War Powers Resolution.' To justify going to war, the War Powers Act sets out several criteria. Most important of these is 'clear' evidence of an 'imminent' threat to U.S. security. The words 'clear' and 'imminent' are used repeatedly to describe situations where U.S. military force is permitted.⁵³

That Callan, as a single citizen, can take such a case is an example of the deconstructive force of justice, a force which must 'preserve the law and also destroy or suspend it enough to have to reinvent it in each case, rejustify it'.⁵⁴ Here the law that would protect hegemony is in fact becoming an emancipatory tool for the dislodgement of such hegemonic imperatives. And the same is true of other cases in the United States. Thus, a powerful state official like Newt Gingrich can be fined \$300,000 for allegedly lying and Bill Clinton, the most powerful man in the western world, came within an inch of impeachment. George Bush and his political associates are also being queried by the force of law in connection with the whole issue of weapons of mass destruction, and with the

⁵³ IPS-Inter Press Service International Association

⁵⁴ Derrida, 'Force of Law', *loq. cit.*p. 251.

outing of CIA agent Valerie Elise Plame Wilson who was identified as a CIA operative in a newspaper column by Robert Novak on July 14th, 2003. The ensuing political controversy, commonly referred to as the Plame affair, or the CIA leak scandal, led, in late 2003, to a Justice Department investigation into possible violation of criminal statutes, including the Intelligence Identities Protection Act of 1982.

In one of his first statements on the plan to invade Iraq, Joseph C. Wilson — Plame's husband and a George H. W. Bush administration official — was quoted in the March 3rd, 2003, edition of magazine *The Nation* that ‘America has entered one of its periods of historical madness’ in regards to the Iraq War. Wilson later wrote a piece in the *New York Times* entitled, ‘What I Didn't Find in Africa’,⁵⁵ in which he claimed that he had found no evidence of Iraqi pursuit of nuclear material during his trip to Africa. He also criticized the administration for using allegedly unreliable documents (Yellowcake forgery) to make its case against Iraq. These documents, known as the Yellowcake documents, stated that Iraq attempted to buy yellowcake uranium, necessary for the creation of nuclear weapons, from the country of Niger. On 11 July 2003, five days following the publication of Wilson's piece, the CIA issued a statement discrediting what it called ‘highly dubious’ accounts of Iraqi attempts to purchase uranium from Niger.[11] In the press release, CIA Director George Tenet said it should ‘never’ have permitted the ‘16 words’ relating to alleged Iraqi uranium purchases to be used in President Bush's 2003 State of the Union address, and called it a ‘mistake’ that the CIA allowed such a reference to be used in the speech. The Senate Intelligence Committee Report of July 2004, however, indicates that Wilson's piece prematurely decided on what seems to be an open question about whether an Iraqi envoy attempted to buy yellowcake uranium from Niger.

It was in the wake of these revelations that columnist Robert Novak described Plame as ‘an Agency operative on weapons of mass destruction’ in a July 2003 column. Other journalists have also

⁵⁵ J. Wilson ‘What I didn't Find in Africa’, *New York Times*, July 6th, 2003.

mentioned her identity. The revelation of Plame's identity by Bush administration officials, is the basis for the 'Plame affair'. US Attorney Patrick Fitzgerald is investigating the events surrounding the naming of Valerie Plame to determine what crimes, if any, were committed in the process. In October 2005, the Vice President's Chief of Staff Lewis Libby was indicted on 5 counts of perjury and obstruction of justice.

Here, at a time of war when the imperative 'my country right or wrong' might be expected to govern the enforcement of law, instead the force of justice deconstructed this consensus and the decision was not purely informed by patriotic fervour or by a sense of a judicial circling of the wagons. Instead, this decision was an example of the singularity of the force of justice; 'each case is other, each decision is different and requires an absolutely unique interpretation which no existing coded rule can or ought to guarantee absolutely'.⁵⁶

Such instances of the force of justice are not confined to the U.S. In Britain, Lord Archer, a peer of the realm and one of the most powerful people at the heart of Margaret Thatcher's Conservative party, was sent to jail for perjury. In Ireland, a number of senior government ministers have been brought to book in various tribunals of inquiry. These are the very people in these cultures who enforce the law so, one would imagine, keeping the strictures of Montaigne and Pascal in mind, it would seem that the adequation of strength and the law would see them as existing above its power. However, once the law has become a textual entity, it is open to the violence of interpretation, a violence that is enacted according to the call of justice, that initiates some 'irruptive violence'⁵⁷ which deconstructs the power relationships of those structures wherein the hegemonic power resides in the shape of these politicians who make the laws. In this sense, justice relates to the law in terms of the undecidable which may deconstruct and unhinge the structural relationship between the

⁵⁶ Derrida, 'Force of Law', *loq. cit.*p. 251.

⁵⁷ Derrida, 'Force of Law', *loq. cit.*p. 256.

discourses of law and power and instead operates in that temporal futurity of the perhaps – ‘one must always say perhaps for justice’ and perhaps no justice is possible except to the degree that ‘some event is possible which, as event, exceeds calculation, rules, programmes, anticipation and so forth’.⁵⁸

Issues of decision, calculation, responsibility, language, inauguration all combine in anastomosis to create the context which permeates and allows the discussion on the force of law and the force of justice. As Derrida has noted:

However careful one is in the theoretical preparation of a decision, the instant of the decision, if there is to be a decision, must be heterogeneous to the accumulation of knowledge. Otherwise there is no responsibility. In this sense not only must the person taking the decision not know everything . . . the decision, if there is to be one, must advance towards a future which is not known, which cannot be anticipated.⁵⁹

It is when the calculations of law are deconstructed by the incalculability of justice; when the present of the law is deconstructed by the *avenir* of justice to come; when the generality of the law is deconstructed by the singularity of justice; and when the hegemonic force of law is deconstructed by the other of justice that the force of law becomes deconstructed by the force of justice, a force that is ethical in its modality.

⁵⁸ Derrida, ‘Force of Law’, *loq. cit.*p. 257.

⁵⁹ J. Derrida, Jacques (2002) *Negotiations: Interventions and Interviews, 1971-2001*, translated and edited by Elizabeth Rottenberg (Stanford, Stanfons University Press, 2002), p. 231.

