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Jacques Derrida Never Wrote about Law

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From the 1970s on, the reception of Jacques Derrida's work in the Anglophone world and in the common-law tradition in particular has prompted compelling narratives and continues to feature eminent exemplifications.[1] Aware of the theoretical shortcomings of the dominant positivist versions of law obtaining in their countries, many of the common-law lawyers who sought to invest themselves in critical interpretive projects saw in Derrida's texts, mostly as they were becoming available in English (although some individuals could read French), crucial themes that they purported to enlist in their pursuit of deviant scholarship, for example, as regards strategies of interpretation. However, even as critical engagement was deepening in the common-law world, the preoccupation with Derrida's work was discernibly accompanied with a forgetting that Derrida's texts in English were but translations, that is, in Derrida's own words, "transformation[s],"[2] and arguably distortions. An illustration concerns the constant reference to "free play" among Derrida's Anglophone discussants, with hardly any realization that the expression arose out of an unjust translation of "jeu" in the English

version of Derrida's famous contribution to the celebrated 1966 Johns Hopkins conference.[3]

Interestingly, one of Derrida's distinguished mediators, Gayatri Spivak, who translated what perhaps remains Derrida's best-known book, proceeded to demote the French text by challenging "the absolute privilege of the original" and claiming "the freedom of the absence of a sovereign text." Arguably vindicating Derrida's own critique of origins, she asked: "Why should that act of substitution that is translation be suspect?" And, she said, "Why should the translator's position be secondary?" Spivak left Derrida's interpreters with a further question: "Where does French end and English begin?"[4] In the case of law, common-law lawyers implemented a bold version of Spivak's claim. Ignoring the fact that Derrida had never written in English and that he had therefore never written about *law* properly speaking, they opined that when found in translation the word *law* could readily be taken to mean "law." To adopt and adapt an analyst's rendition of what happened to Derrida's work in the English language generally, common-law lawyers "remove[d] what is foreign and transform[ed] it into the context to which it was foreign."[5] Is it too much to say that, greater fidelity having been shown to local knowledge than to the authority of the original text, the common law's "Derrida" is in fact the outcome not of what common-law lawyers have taken *from* Derrida but of what they have done *to* Derrida?[6] With hindsight, Spivak's interrogations therefore suggest at least another: "Did this growing thematization of translatability, this challenge to the status of the original, license the interpretive freedom and free-for-all that erupted around Derrida's work in the second half of the 1970s?"[7]

In this essay, I expose Derrida's determined pledge to the French language that informed all his work, an engagement having entailed important consequences for his understanding of the legal. I thus challenge every single interpretation of Derrida in English translation whenever Derrida's readers have reflexively assumed that the word *law* meant "law" as usually understood in the Anglophone world. In fact, in Derrida's work *law* never carried that meaning, for Derrida was only ever acquainted with *droit* or *loi*. And since he always wrote in French, he never had anything in mind but *droit* or *loi*. Specifically, Jacques Derrida never wrote about law, and his "law" persistently remained anchored to key epistemic tenets regulating French legal culture under the sway of the most adamant positivism (a fact that common-law lawyers unfamiliar with the French model have conspicuously failed to appreciate). Yet, as I show, out of the impressive Derridean tool-

box featuring a dazzling array of daring philosophical and literary interpretive designs, it *is* possible to structure a theory of law epitomizing a post-positivistic understanding of the legal radically different from the governing epistemic assumptions obtaining in France that Derrida himself assimilated. In typical Derridean fashion, such theory would intervene obliquely: while there would obtain a humanist understanding of law, a limited role for the posited would continue to prevail.

On August 19, 2004, the French newspaper *Le Monde* featured the text of an encounter with Derrida that had taken place about four months earlier. At the time of the interview, Derrida knew that he was terminally ill. He died in October, which makes the parts of the conversation devoted to survival—ever a paramount motif in Derrida's work—particularly poignant.[8] Even during what was to be his last recorded interview—and perhaps because he sensed that there might not be further opportunities to express himself publicly, at least in France[9]—Derrida was at pains to emphasize, as he had often done in the past,[10] his abiding love for the French language. Not only did he envisage himself as being situated in language—"my own presence to myself has been preceded by a language"[11]—but Derrida always regarded *philosophy* as being positioned in language. He felt that the articulation of philosophical thought was intimately related to the language in which it was expressed, that philosophy was affected by language (a view evoking the "Whorfian" stance that he held against the dominant philosophical attitude that refuses to pay much attention to the language of philosophy, as if philosophy somehow operated irrespective of language).[12] The significance that Derrida attached to language suggests how a proffered *commitment* on his part to a language, such as his pledge of allegiance to French, must be received as being especially meaningful. Indeed, "*Jacques Derrida is (was) a French philosopher*. To call him a philosopher without qualification is to miss an extraordinary richness."[13] Yes: "Derrida [wrote] in French, and *this ought not to be effaced by any commentary*."[14]

Language was the bedrock of Derrida's intellectual project. He maintained that "[our] historico-metaphysical epoch *must* finally determine as language the totality of its problematic horizon" (which, incidentally, is not to say, pace some of Derrida's detractors, that there is nothing beyond language, but to assert that without language no "reality" can appear to one and no "understanding" of it can be had by one).[15] Famously, Derrida claimed that no text is fully extricable from the myriad discourses that inform it,

in effect that nothing is meaningfully accessible unless the embeddedness of discursive formations is taken into account.[16] Having declared to his *Le Monde* interlocutor that "the experience of language" is "vital,"[17] Derrida formulated his devotion to French in riveting terms (a fidelity that he carefully refused to extend to France, thus revealing aspects of his discomfort with Frenchness): "I love what has constituted me into what I am, the very element of which is language, this French language that is the only language I was ever taught to cultivate, the only one also for which I can say I am more or less responsible."[18] He added: "I suppose that . . . I love this language like I love my life, and sometimes more than one or other native French love it, . . . I love it as a foreigner who has been welcomed, and who has appropriated this language as the only possible one for him. Passion and escalation. All the French of Algeria share this with me."[19]

The reference by Derrida to his North African roots is hardly accidental. As he often explained, to express oneself in French in El Biar, on the outskirts of Algiers, in the 1930s and 1940s, was very much to speak the language that effectively *dominated* the local political, economic, and cultural life, to use the language of the French colonizers of Algeria, a language that had come from elsewhere, from the *métropole*, from the "Capital-City-Mother-Fatherland."[20] It was to adopt another language, someone else's language, so that one did not resort to a language that one could genuinely call one's own—an aporia that Derrida asserted pithily: "I have only one language and it is not mine."[21] With the fierce sense of appropriation that is perhaps characteristic of those who are in search of cultural identity, it is precisely that heterogeneity that Derrida craved to domesticate all his life.

Derrida's relationship to French, which he idealized, was "irreducibly idiomatic."[22] He confessed: "My attachment to the French language takes forms that I sometimes consider 'neurotic.'"[23] For example, Derrida was possessed with a strong aspiration to linguistic acculturation. This meant a compulsion to lose his Algerian accent, a local residue he regarded as a shameful badge of provinciality (a view he extended to every other accent): "I am not proud of it, I make no doctrine of it, but so it is: an accent—any French accent, but above all a strong southern accent—seems incompatible to me with the intellectual dignity of public speech. (Inadmissible, isn't it? Well, I admit it.)"[24] Even though in his work he relentlessly decried every claim to purity as abusive and maintained that what seemed pure had always already been compromised,[25] Derrida styled his demand for "pure French" as being "inflexible" and saw himself as "the last defender . . . of the French

language."[26] In fact, not only did he seek to master French, Derrida wanted to *improve* it: "To leave traces in the history of the French language—that is what interests me. I live off this passion."[27] Having ascertained that he felt "lost, fallen, and condemned outside the French language,"[28] Derrida proclaimed: "I only ever write in French and . . . I attach great importance to this fact."[29] He added: "I write in a language that I insist on keeping very French."[30]

Although acutely aware that one never speaks one language only,[31] Derrida nonetheless insisted on his "monolingual obstinacy."[32] In an exchange with a French journalist, he made his position clear: "I am very monolingual, very Francophone."[33] In the same vein, while he accepted that nothing was untranslatable, "if only one is prepared to take one's time,"[34] for Derrida translation could only happen "in the loose sense of the word 'translation'"[35]—and "the excellence of the translation [could] do nothing about it."[36] As he noted, the metaphor of the Tower of Babel connects the ideas of "structure" and "language,"[37] and it is indeed the very structure of language that is at stake. Language's irreducible indefiniteness foiling any attempt to bear witness in language 2 to the precise meaning that the word being translated carries in language 1 (either the new word loses some of the significance or adds semantic content so that, for example, "'Peter' . . . is not a *translation* of Pierre"),[38] Derrida maintained that "for the notion of translation we will have to substitute a notion of *transformation*: a regulated transformation of one language by another, of one text by another."[39] Strictly speaking, then, "translation is another name for the impossible,"[40] "[a] debt that one [cannot] discharge,"[41] which is no doubt why Derrida referred to "quasi-translations."[42] For him, there could be no dialogue.[43] Indeed, incommunicability is inevitable, and "there are only islands."[44] Thus, Derrida exclaimed, "What guides me is always untranslatability."[45]

No doubt as a consequence of his decision "[to] try to assume all [his] Francophone responsibilities,"[46] Derrida offered further protocolar advice in one of his inexhaustible sentences: "We must begin *somewhere where we are*," "in a text where we already believe ourselves to be."[47] One cannot be surprised to find in this injunction echoes of Martin Heidegger (1889–1976). Although having marked his distance from the German philosopher's totalizing (and totalitarian) thought,[48] Derrida held that Heidegger's work was "extremely important," that it constituted "an unprecedented, irreversible advance."[49] And he claimed that "nothing of what [he] [was] attempting would have been possible without the opening of Heideggerian

questions."[50] In line with his notions of "fore-having" (*Vorhabe*), "foresight" (*Vorsicht*), and "fore-conception" (*Vorgriff*), which indicate that only within the pregiven sign-system within which one is framed can one ever ascribe meaning,[51] Heidegger had explained in his early correspondence that "[he] work[ed] concretely and factically from [his] 'I am'—from [his] spiritual and in particular factical origin—[from his] environment—[from his] life as a whole [*Lebenszusammenhängen*], from what [was], from there, accessible [to him] as living experience, from that within which [he] live[d]."[52] Starting, then, from the fact that, as Derrida put it, "philosophical nationalities have been formed,"[53] and from the further fact that he emphatically styled himself a *French-speaking* philosopher, and a staunchly monolingual one at that, commencing, in other words, from where he, Derrida, was, from where he read and wrote, from the language within which he believed himself to be, one of his principal translators was prompted to ask whether Derrida could in effect be conveyed beyond French: "The question arises—and it is a serious one—whether [Derrida's] essays can be read in a language other than French."[54] Quite apart from the challenging reflection concerning cross-linguistic transmissibility of meaning that it pointedly invites, this expression of doubt prompts two findings of immediate interest to my argument here.

First, Derrida would have been primordially preoccupied with *droit* and *loi*, two French words that can be said, when taken together, to approximate optimally, but certainly not replicate, the meaning of the English word *law*.[55] Second, to the extent that Derrida was at all concerned with "law," this English term, which as a word that he could "never inhabit" could only have been *uncanny* and thus of limited significance to him,[56] would have been open to apprehension for him exclusively through the diffractive prism of French. In effect, "law" could only ever have had meaning for Derrida as a variation on *droit/loi* and not *as such*.[57] As Derrida himself appreciated, any translation process, even as it carefully purports to convey meaning, is doomed to errancy and to disadjustment, to a lack of justness vis-à-vis the text in translation. As whatever understanding Derrida would have had of "law" would have taken place through the French language, it would therefore have been at irrevocable variance with, say, the understanding of an Anglophone lawyer socialized into English law—both because it would have been affected by Derrida's prejudgments, predispositions, and predilections, all traceable to French legal culture and to French culture *tout court*, and also because it could only have possibly attended to a fraction of

the extensive semantic range of "law" familiar to a London barrister or a Cambridge law professor.

It is simply not reasonable, then, to assume that as Francophone an intellectual as Derrida, steeped in a language where *droit* and *loi* inevitably carry resonances profoundly characteristic of the nomothetic legal culture that bred them, would have found himself in a situation allowing him to ascribe *unaffected* (and *unaffecting*) meaning to "law" as the typical product of an idiographic legal culture such as prevails in England or in the United States. Here, the French language is shown to act as much as a "right of way" allowing "law" to reach Derrida-the-Francophone-philosopher in translation as a "barrier" preventing the English word from getting to its destination unimpeded—the issue of how much of the economy of the English term could ever be rendered in French inevitably remaining a matter of speculation.[58] There is a "differend" following from inscription-in-language, which is inscription-in-situation. One crucial point to be emphasized is that this differend is unbridgeable. Indeed, lest one accept the presence of radically different linguistic singularities and come to them as sites for the exploration of incommensurable dissensus, one risks falling for glib readings harking back in one form or another to the specious idea of universalism—precisely the kind of highly underwhelming result against which Derrida's work incessantly seeks to warn us.

To apply oneself to the matter of Derrida's comprehension of "law," to probe the connections between Derrida *and* law, thus raises a seemingly insurmountable challenge for anyone wishing to elucidate what the conjunction masks, that is, aiming to acknowledge the "there is" that haunts this formulation as it brings not-together the inscription of a proper noun (*Derrida*) in the French language and that of a noun (*law*) in the English language. Because language pertains to the *effect* of every word, one simply cannot speak of *a history* ("Derrida-and-law"), but only of *histories* ("Derrida" and "law"). Accordingly, the invitation is to address the discord between *two entities that never actually met*, *that never were fully in one another's co-presence*, *that only ever dealt with one another through the French language acting as intermediary between them.* Even as they were in contact via the French language—to be understood, then, as a third space where the negotiation between the protagonists was brokered—the *interpretans* and the *interpretandum* remained "*absolutely* irreconcilable," no matter how much readers of Derrida's texts in English show themselves willing to "live them simultaneously and reconcile them in an obscure economy."[59] One can only

contemplate limited options, then: either one must attempt to address the differend through the perceiver, Derrida, thus trying to envisage "law" as Derrida himself would have understood it, that is, as a species either of *droit* or of *loi* or as some combination thereof; or else one has to operate through the perceived, *law*, and apprehend the topic with respect to what this word means in the language in which it appears, that is, in English (or in a range of Englishes), subsequently to transpose that configuration to Derrida's work even though he himself ultimately remained foreign to the word.[60] *In effect, there is no other possibility*. In acknowledgment of the fact that this essay is written in English and therefore directed at Anglophone readers, I retain the latter course of action while remaining keen to emphasize that the dynamics between "Derrida" and "law" cannot be reducible to the specific, English, term of the equation through which I have elected to discuss it. Here, "law" very much intervenes synthetically. It is "compromise English."[61] Circumventing the evidence, let us pretend, therefore, that Derrida would have written about *law*.

As Derrida himself acknowledged, the word *law* can point to meaning issuing "from morality, from legality or from politics, even from nature."[62] Two of his well-known texts are especially topical as regards the possible range of imperatives or *doxas*: "The Law of Genre" and "Before the Law."[63] While I accept that this particular understanding remains problematic inasmuch as it purports to operate in closed fashion by keeping other discourses exterior to it, it is to law in the narrower sense, as it aims to concern itself with "matters legal,"[64] that I shall devote the remainder of this argument—which is, perforce, based on Derrida's work *as I read it*, on *my* Derrida.

It is apt to observe at the outset that most commentators who have wanted to address Derrida's relationship with law in its specialized sense have focused on the text of his well-known opening address at Cardozo Law School's conference "Deconstruction and the Possibility of Justice," delivered in October 1989 as "Force of Law: The 'Mystical Foundation of Authority.'"[65] This is so although Derrida himself was at pains to observe that his work had often foregrounded law.[66] "Deconstruction" is, to be sure, the crucial motion around which Derrida has always articulated his hypercognitive desedimentation and dehierarchization practice. Unwilling to confine deconstruction to a forum that would be its "proper place," Derrida surmised that "if, hypothetically, it had a proper place," it would be "more at home in law schools, . . . than in philosophy departments and much more than in the literature

departments where it has often been thought to belong."[67] For him, "law is essentially deconstructible,"[68] which is to say that he thought there was nothing more deconstructible than law.

One reason for the special relevance of law to the deconstructive enterprise would have to do with the fact that "deconstruction is not, should not be only an analysis of discourses, of philosophical statements or concepts, of a semantics; if it is going to matter, it has to challenge institutions, social and political structures, the most hardened traditions."[69] And law, as "a profoundly traditional practice," as a narrative that "rests upon mountains of inherited tradition, preserved, referred and deferred to by highly developed institutions and practices of tradition-maintenance,"[70] as also "that [which] exposes us to our own blindness or the limits of our historicality," as therefore an "unmasking of the present," as ultimately "the voice out of the past whose task is . . . to torment and scourge,"[71] as all of *that*, law, then, is an evident focal point for the deconstructive challenge—which is about exposing what lies within law about which law has lied (even to itself), that which law, for an array of institutional reasons, has "officially" sought to deny or repress. It is this hidden or other side of law that the Derridean toolbox allows one to capture through what I style an *inventive* approach. Etymologically, *invention* refers simultaneously to discovery and creation. This notion thus appears the least inapt to render the archivistic process at work as it involves at once disclosive and ascriptive dimensions: the analyst works with the texts that are there and reveals their meaning, but it is he who reads those texts in order to make them meaningful.[72]

In the end, Derrida's equipment permits one to think thoughts that would be more thoughtful than the thinking that goes under the name "positivism," which, in its various declensions, holds that what counts as law is what has been posited as law, ultimately by the sovereign—"positivists," the vast majority of legal academics, being concerned with legal technique and with rationalization of legal technique; fostering "legal dogmatics" through the organization of the different rules adopted by the sovereign in the form of an orderly, coherent, and systematic representation; seeking to offer an interpretive commentary of the legal provisions in force that would be judicious and rational, that would explain their reach and their potential, that would eliminate or reduce their apparent flaws, obscurities, gaps, or contradictions; pursuing fixity of meaning; and adhering to a brand of writing purporting to present itself in an unproblematic and unsituated mode, seeking to deny any political commitment or personal investment (thus,

wanting to show itself as being simply "there" rather than as having arrived where it is through processes of contestation with alternative practices). By way of a strategy of invagination (a folding of law back on itself, as one can do with a glove) and by dint of a careful mode of phenomenological attention allowing for a letting-be of law as world, Derrida renders possible the uncovering of law's other language, which can make it feasible for one to hark back to law speaking a different language than the purportedly descriptive, propositional language that has usually been heard from positivists united. But this other language that, pace positivism's enclosing juricentrism, reveals the law's constitutive and exuberant heterogeneity is not outside the law. It is still emphatically law's language; indeed, it is arguably more authentically law's language than the thin or superficial linguistic configuration to which positivism has held law. It is hyperlaw rather than counterlaw. It is *excessively* legal.

Note that the Derridean understanding would be to the effect that law conceals a difference *within* in that the possibility of another language-of-law being spoken is inscribed *within* law itself, which means that the other is within the self, that it is present although invisible, not unlike a phantom. After Derrida, one can say that there is a "logic of haunting" at work when it comes to a law-text.[73] Because "[the law] ghosts,"[74] since "it is spectral structure that *makes the law* here,"[75] law's interpreters have to attest to this otherness and proceed to act *differentially*. While positivism has asserted law's autonomy, one can mobilize Derrida to account for "law" as heteronomy. Interpreters must, in other words, make themselves suspicious of anything that would affirm itself along the lines of a pure, detachable, and separate legal identity. Rather, they have to turn themselves into "hauntologists." Instead of incessantly asking what law "is" (and answer tautologically that it is what is posited as law by the law through the law-making authorities positing the law), law's interpreters require, if only for authenticity's sake, to engage in an exigent mutation of their thinking having law as its object. They need to elicit what law exists *as* or writes *as* or speaks *as*, that is, to show awareness of law's constitutive nexus of relations to space, to place, to situation, to time also, to reveal attentiveness to law's embeddedness in a multiplicity of intensities and in a plurality of forces, to law *as* discourse encumbered with proliferating spatiotemporal precedence. In other terms, they must abandon ontology and, through an exercise in the resignification of the legal, practice "hauntology."[76]

"Spectrality" is a recurring motif in Derrida's work. In fact, the phan-

tom incarnates (so to speak!) Derrida's thought. It is arguably one of his most profound and central ideas. It is the notion that undergirds much of Derrida's writing as it bears witness to his primordial intuition that any "reality"—including, then, law and law-texts—is multiple, indefinite, and complex: "The spectral logic is de facto a deconstructive logic."[77] In other terms, "[the specter] regularly exceeds all the oppositions between visible and invisible, sensible and insensible. A specter is both visible and invisible, both phenomenal and nonphenomenal."[78] Being less than full presence and more than absence, the phantom makes the distinction between the factual and the fictional fuzzy. Critically, the phantom is not exterior to the text but pertains to its very constitution.

I shall return to the matter of law's spectrality presently. But there is at least one other reason, according to Derrida, that would prompt deconstruction spontaneously to focus on law, and this concerns the fact that lawyers stand at the interface of an array of pivotal tensions whose problematic terms, even as they prove as contradictory as they show themselves to be indissociable, ceaselessly inform legal discourse. Consider the following dyads, which refer to the brand of oppositions that lawyers reflexively approach as binary structures not allowing room for the presence of a third term—unless, perhaps, under the auspices of a dialectical resolution à la Hegel—and that lawyers have indeed come to regard as marking "natural" delineations: law/nonlaw, positive law / natural law, legislative text / judicial decision, interpretation/transformation, certainty/discretion, private/public, equality/individuality, and so forth. Arguably, though, as it frames itself through the various techniques from which it has become inseparable—it *is* definition, formulation, classification, composition, arbitration, adjudication, legislation—law must contend with the incessant restlessness attendant on the interaction between concepts or categories that simply do not feature the discrete contours, the sharp distinctions, the clear edges that are sought and assumed by lawyers (whether in good faith or not). One of deconstruction's main messages is precisely that concepts are in effect undelineated and categories unframed, that *there are no unquestionable borders*. The point is not, contrary to what a hasty reading of Derrida might suggest, that the law can operate without distinctions or in the absence of demarcating boundaries. Rather, deconstruction's target is the idea that neat partitions can present themselves so that one could proceed to ground clear and fixed topologies on them. The assumption of foundational alignments, claims Derrida, is at best a metaphorics instantiating wishful thinking, an illusion of reassuring certitude in

which deconstruction cannot find solace as it denies "the transcendentality or logical superhardness of the barrier that marks off the conceptual purity of X from everything that is not-X."[79]

For Derrida, there exists an insurmountable indecidability inhering to the very idea of "concept" or "category" or "definition" always already challenging *any* approach based on the sustainability of binary distinctions and undermining *any* order founded on the mastery of classificatory meaning. Indeed, Derrida's insights would lead one to take the instability, the "play," that he addresses as referring, seriously, to a constitutive feature of law, to something that is inscribed, if in white ink, into the very fabric of the law, *as* law. Importantly, the "play" would not intervene from an Archimedean standpoint and is certainly not something that would be "injected" into law or attributed to law by some mischievous deconstructor. Rather, this intrinsic characteristic—think, perhaps, of a "virus"[80]—is, in Derridean terms, immanent to the processes whereby a text like law manifests itself. In the (paradoxical) name of probity, the play of the text would always already subvert any claim made in support of law's conceptual or categorical or definitional purity and would entail that there is always interpretive room for action, interpretive scope for activity, interpretive latitude.

Bearing in mind the oft-repeated accusations of nihilism castigating Derrida's perceived self-indulgence and deconstruction's assumed whimsy, it is important to note that in his work "the value of [law] (and all those values associated with it) is never contested or destroyed . . . , but only reinscribed in more powerful, larger, more stratified contexts."[81] It is not, then, that Derrida's analyses of textuality or of the legal would direct one to seek to forget (legal) tradition but that they would foster through an exacting anamnesis the recall of what law-as-tradition has wanted to forget about itself as it has been repressing all memory of the impurity of its condition while its positivist exponents, whether out of arrogance or fear, chased after the chimera of the *distinctively legal*—it being clear, in any event, that "this amnesic loss of consciousness [has] not happen[ed] by accident."[82] Subtracting itself from law's self-constituted memory that it inherits at the same time as it asserts this inheritance, deconstruction must ascertain and excavate—or *invent*—that which haunts and constitutes law, any law, in its singular uniqueness. Again, deconstruction's motion is *for* hyperlaw. According to Derrida, the notion of "presence" is thus to be approached as being much more complicated than what lawyers have superficially been accepting. Pursuing the re-presentation of the presence of law "in the form of a presence adequate

to itself,"[83] an interpreter making use of Derrida's instruments would argue that "the [law] [is] not reducible . . . to the sensible or visible presence of the graphic or the 'literal,'"[84] that "whether in the order of spoken discourse or written discourse, no element can function as a sign without referring to another element which itself is not simply present,"[85] that "this sequence results in each 'element' . . . being constituted on the basis of the trace within it of the other elements of the chain or system."[86] Consequently, there would be a *built-in* dimension to law, a "structural necessity that is marked in the [law],"[87] that would operate tacitly or at least in a manner that could not be graphically visualized in the way the words on a page can be. That "operator"—let us refer to it as "culture"—while not as readily conspicuous as expressed words, leaves a range of constitutive traces within law: historical, epistemological, ideological, social, political, economic, psychological, linguistic, and _____ (fill in the blank), each of them a singular trace, a different trace, all of them ascertainable traces showing that the law is not/cannot be autarkic or "[m]onogenealog[ical],"[88] that even as it is said to be founded on an unconditional point of departure, a textual "ground," law remains but an unreflected conditionality, a self-posited, self-authenticating, and therefore *contingent* event.

In the way in which he permits a *radical* complexification of the law—it is traces *all the way down* so that "there is no atom," which means an "excess of signifying possibilities preceding the text" entailing that no reader of law can ever hope to capture the infinity of law's constitutive network[89]—Derrida fosters the adoption of a resolutely antipositivist stance. Resorting to the array of Derridean tools leads one to appreciate that there is infinitely much more to law than its positivity. In other words, within law, within the positivity of law, *as* law, as the factical concretion of each law, there is the trace, and indeed there is a general economy of traces, "more than one specter,"[90] so that law exists *as cultural text*, that it is always already plural (that it is unimaginable as anything else). In turn, this re-presentation of law allows for a full range of "deconstructive discourses [say, epistemological, ideological, political, and so forth] as they present themselves in their irreducible plurality."[91] In Derrida's language, then, law-as-it-exists is haunted by discursive traces forming complex intertwining and, strictly speaking, never-ending semiotic chains, and it is *that* that law's-interpreters-as-hauntologists are to invent (etymologically speaking) as they revisit the law with an affirmed concern for its spectrality—all the while challenging received ideas such as origin and finitude: there is, in theory at least, no first or last trace. Since one

can always take one further step, there is an ever-nextness to the trace that means, crucially, that "there is no absolute origin of sense in general."[92]

Because Derrida's approach to texts shows law to be formed of such interconnecting textual layers, law cannot usefully be envisaged as having an ultimate foundation that would allow it to be apprehended as emanating from some vanishing point. Rather, law consists of an "endless multiplication of folds, unfoldings, foldouts, foldures, folders, and manifolds."[93] One seeking to account for law cannot therefore usefully re-present it as the *distinctively legal*, as a pure entity. There is, to borrow an expression from J. Hillis Miller, the "uncanny inherence" of the trace to the law.[94] The array of traces that haunt law entails that law exists *as* something other than "only law" or that *law can only be law as "not-only-law."* On account of the trace, otherness is inscribed within the legal along the lines of a virus (if one wants to return to Derrida's imagery). For a text to exist *as* law is, indeed, for it to harbor this otherness within (which is not to say that it finds itself submerged in otherness): *legality is trace-affected*. In fact, the trace is always already at home within its host, and so much so that it is *of* the host. In an attempt to capture this point, one could perhaps refer to the "of-ness" of the trace. For the host, there is no escape from the trace: "It is of no avail to show it the door, because it has long since been roaming around invisibly inside the house. The task is to catch sight of and see through" the trace,[95] what Derrida calls "the stranger at home."[96] Law exists—that is, writes and speaks—*as* an interface of heterogeneous traces; it exists *as* the social writing/speaking legally, *as* the political writing/speaking legally, *as* the economic writing/speaking legally, and so forth—it exists, in sum, *as culture* writing/speaking legally.[97] In effect, the law text exists *as* "what is spun, woven,"[98] which is what the words *textile* and *texture* in effect bring to mind. Over against Hans Kelsen and his seemingly innumerable disciples, law does not count only as that which is posited and cannot reasonably be taken to be counting only as that which is posited.[99] The pressing Derridean invitation to lawyers is, in sum, to rethink law's "as-ness."

Derrida's philosophical and literary insights, as they encourage the dismantling of positivism's hegemonic distortions, prove as bracing as they are compelling. Yet, even as his intuitions allow for "the non legal or pre-legal origin of the legal" as a primordial feature of what law exists *as*,[100] and thus for the priority of otherness, and even as his discernment manages to surmount the sterile Cartesian dichotomy between subject and object through the notion of (the invention of the) trace, Derrida's reading of law finds itself

being indebted to some of the central tenets of positivism, specifically to the singularly hermetic, postcodification, *Napoleonic*, type that persists unchallenged within French jurisprudence. Perhaps this paradox befits a philosopher having so painstakingly heightened sensitivity to the aporia, that is, to the blockage, to the impasse (the Greek *aporos* refers to what is impassable), to the "non-road."[101] But there is more: Derrida studied and taught in France for over fifty years, a country where what counts as law continues to be bounded in rigorously positivist terms, intellectual order being prized above all else, analytic studies toward the realization of an exhaustive and coherent conceptual system being held in the highest regard,[102] "critical" work being largely reduced to the exposition of the state's laws in "connivence" with the state itself,[103] the dominion of the statute being unceasingly extolled, and adjudication being almost just as incessantly scorned and apprehended along the lines of a seemingly necessary evil.[104] Not only is French law positivized, then, but it is deemed a brand of knowledge that ought to operate strictly formalistically—an understanding that, as Roberto Unger has indicated in his influential critique of formalism, must be contingent on "[a] conception of intelligible essences," the point being, for example, that "to subsume situations under rules, and things under words, the mind must [assume that it is] able to perceive the essential qualities that mark each fact or situation as a member of a particular category."[105] A good illustration of the classificatory certainty or categorical confidence with which French minds apprehend the law is the *Tribunal des conflits*, a jurisdiction that meets occasionally to assign complex cases either to private-law or public-law courts, the underlying assumption being that a case, any case, is ascertainably private *or* public, that it *must* be either, and that it *cannot* be both. While more relaxed positivisms have emerged within the common-law world—I have in mind, for instance, "inclusive legal positivism" whereby under certain circumstances morality may be validated as a positive source of law[106]—these remain positively unknown in France.

To be sure, Derrida traveled widely.[107] But, while he was not trained as a French lawyer, it appears implausible that his conception of law, especially as it took shape in the early years of his intellectual life,[108] would have remained immune to the relentless dogmatism presiding over legal discourse in France. Indeed, a specific mélange of Kelsen's *Pure Theory of Law*,[109] Roman-inherited *scientia juris*,[110] a centuries-old *mos geometricus* whereby law's leading exponents aim to put it on an epistemic par with geometry,[111] not to mention a fixation on Ramist methodology,[112] is still the only configuration

of the legal deemed worthy of consideration (no matter how much this supposedly sophisticated view of law can be said to consist, in effect, of scraps of technical or conceptual information locked in ancestral analytic dichotomies whose intellectual authority seems largely indebted to persistence through an age-old and self-perpetuating (and profoundly chauvinistic) recycling process involving academics, their disciples, their disciples' disciples, and so forth).[113]

It is not that every French lawyer has deliberately and publicly committed to Kelsenism on the occasion of a solemn ceremony after being educated at length regarding the fine points of *Pure Theory of Law*. Rather, the dominion of French Kelsenism—the relentless epistemic drive for enhanced terminological clarity, improved logical consistency, and reinforced systematic coherence, that is, for optimized positivization, or for a purer posited law—is a diffuse and insidious affair. In the words of a noted commentator, "if the self-proclaimed 'disciples' of Kelsen are rare in France, . . . with very few exceptions there is no problem in legal theory today that would be formulated while making abstraction of the particular sense with which the Pure Theory of Law has invested traditional concepts of legal thought."[114] Speaking of Kelsen, a French philosopher of law thus writes that "there is no longer any point being discussed in our discipline over which does not stretch nowadays the shadow of his Pure Theory."[115] Likewise, in an encomium marking Kelsen's honorary doctorate from the Sorbonne, a French constitutional lawyer said that "after him, one can no longer write or speak of the law without feeling the hold of his thought."[116] In one form or another, Kelsenism asserts itself with every French yearning for "pure law," for arguments that would be "incontestably neutral," and for the purported eviction of facticity (and its unruly indefiniteness).[117] And in a country where it is still forcefully claimed that each lawyer is a "child of Domat"—the famous seventeenth-century writer who defended the view that legal reasoning had to model itself on geometrical reasoning[118]—such strivings are recurrent. This is why I argue that, when it came to law, Derrida's determined Francophony could not have escaped the very long reach of Frenchness-at-Law—no matter how innovative and cosmopolitan he was in so many other ways. Even allowing for a substantial measure of nomadism, the idea of noninscription in legal space and, indeed, of nonlocation in legal time is untenable: to be Derrida writing about law was to *be* Derrida-the-Francophone-at-Law and was to be *Derrida-in-Frenchness-at-Law-in-the-Second-Half-of-the-Twentieth-Century*. Without situating Derrida within Frenchness at that time, within French

legal culture at that time, and therefore within so-called French "scientific" positivism at that time, the classical side of his understanding of law—it has rightly been said of Derrida that "among the last generation of continental philosophers [he] stands out as the most legalistic of thinkers"[119]—would become very awkward indeed to justify.

Derridean instruments allowing for a signal contribution to the hauntology of law, to what law exists *as*, to the intrinsically heteronomic "as-ness" of law (it exists *as* culture speaking legally; it is a cultural form incorporating a labyrinthine assemblage of traces, of "influences, filiations, or legacies"),[120] do not prevent Derrida himself from considering law to be also that which *laws* (if I may be allowed to coin a verb out of a noun, with a nod to Heidegger) because it has been authoritatively posited as law irrespective of anything that it otherwise exists as. There being express evidence that Derrida was aware of Kelsen,[121] one can identify two principal axes inclinating aspects of Derrida's thought about law along unmistakably positivist lines,[122] about law-being-law-because-it-has-been-authoritatively-posited-to-be-law—although it must be observed again that, unlike Kelsen, Derrida never lent credence to the idea of purity, as his "quasi-logic" of spectrality makes emphatically clear,[123] as does indeed his proposed clarification of deconstruction, a brief formula meant to capture the basic gesture of heteronomic commitment: "*Plus d'une langue*, that is, both more than a language and no more of *a* language."[124]

The first manifestation of Derrida's French positivism pertains to his distinction between law and justice. Although of ancient lineage, this idea has more recently been prominently expressed by Kelsen, who, referring to "the dualism of law and justice,"[125] writes that "justice . . . must be imagined as an order different from . . . the positive law."[126] For his part, Derrida formulates this differentiation in terms that are in effect idiosyncratically Derridean. His initial motion is to assert both that law is deconstructible and that it must be deconstructed. The *deconstructibility* of law would emerge from the fact of its intrinsic embodiment in an "as" narrative, a constitutive network of traces whose voice has been relentlessly silenced on the altar of uppercase Law as master-signifier, as "the posited" that, thing-like, is deemed to be visibly, ascertainably "out there," objectively and exclusively identifiable through the deployment of the correct method. The *necessity* of deconstruction would arise on account of this suppression itself, because of the institutionalization of a dominant position not allowing or *out-lawing* all other voices (that I have subsumed under the label "culture"). And it

would emerge precisely in the name of the justice that law cannot be, and can never even hope to be, as long as it does not acknowledge the structural presence of that which is not not-law (i.e., the circuits of embedded traces) and the complexity of the interpretive negotiation that must follow from this constitutive fact.[127] Derrida's contrapuntal gesture is to insist that justice is undeconstructible—indeed, that it is the *only* concept that is resilient enough to withstand deconstruction.[128]

Law, for Derrida, pertains to the realm of the calculable. Specifically, it is about claim, obligation, and entitlement,[129] assessed by a third party such as a judge, whose task is to engage in a commutative/distributive exercise that is meant to be kept within strictly *legal* boundaries, within the ambit of an application of *law*. As Derrida envisages justice, it eschews any mediation and concerns the relation between self and other approached as standing face-to-face and as recognizing one's vis-à-vis as *alter ego* (i.e., as another ego just like oneself) or, less self-centeredly, as recognizing oneself as another, as but one source of meaning among others. On this point, Derrida quotes Emmanuel Levinas (1906–1995), one of his main sources of inspiration, who expressly equates "the relation to others" and "justice."[130] On the one hand, then, there is to be found "the calculation of restitution," "calculable equality," "the symmetrizing and synchronic accountability or imputability of subjects or objects . . . that would be limited to sanctioning, to restituting, and to *making law*" (*faire droit*).[131] On the other hand, beyond the realm of the posited, beyond any law, indeed beyond any "economy" and beyond the order of knowledge,[132] as a kind of meta-law, as a Law of law, there would exist justice as what there is that is not there yet, that is always "to-come,"[133] that is infinitely deferred,[134] and as that which, if it exists, exists *in itself* and which "as the experience of absolute alterity is unpresentable."[135] (On this account, Derrida's justice distinguishes itself from any idea of natural law, which claims to precede the posited while purporting to encapsulate both law and justice, that is, to enunciate law as justice and justice as law.)

While the notion of calculability takes one back to that of mathematizable law and shows Derrida to be also a "child of Domat," justice as the "singularity of the an-economic ex-position to others"—as what is at once out of the posited and *stemming from* a position—gestures toward the "incalculability of the gift."[136] And it is precisely because it is "owed to the other, before any contract" that justice is "irreducible in its affirmative character, in its demand of gift without exchange, without circulation, without recognition or gratitude, without economic circularity, without calculation and

without rules, without reason and without rationality."[137] There is, and these are Derrida's own words, "a madness" in this—an observation that prompts him to say that "deconstruction is mad about this kind of justice."[138]

Having sketched this opposition between law and justice, Derrida swiftly proceeds, in typical deconstructive fashion, to blunt anything that might come across as too sharp a delineation. Thus, he observes that although heterogeneous to each other, law and justice are not immiscible. Indeed, he claims that their very heterogeneity *requires* their "inseparability" (*indissociabilité*). There cannot be justice except through law and thus by way of legal determinations. And there cannot be any becoming or any perfectibility of law, any transformation of law, that does not call on an idea of justice destined inevitably to exceed it.[139] (Still in contradistinction to the idea of natural law, Derrida's justice, then, assumes neither the effacement of the posited nor an opposition to it.)

This imbrication of law and justice offers an illustration of the logic of supplementation that is a hallmark of Derrida's deconstructive investigations.[140] Law fashions itself as whole, complete, and self-sufficient. It is readily taken to be such by positivists whose *Dogmatik* draws an acute line between law and nonlaw, deeming anything that is not strictly law (such as equity, discretion, and even interpretation) an external appendage—and therefore supplementary *to* law. While Derrida accepts that justice is to be distinguished from law and that it therefore operates supplementarily to it in the sense at least that it differs from it, he takes the view that this "supplement" partakes *of* law on account of the fact that law must comport at the very least a yearning for justice. From this perspective, justice is an other-of-the-law, an out-of-law, an extrinsicism that is intrinsic to law as that-which-law-wants-to-be, which is a part of what-law-exists-as (a constitutive part of what I exist as today is what I want to be tomorrow). This schema illustrates both the indefiniteness between law and any supposed beyond-the-law and the fluidity of any notion of supplementarity as what is neither "present" within nor "absent" from within. Here, justice fills a hole in the law that sees itself as whole (and therefore as just) "on its own."

There is an additional point to be made about Derrida's thoughts on law/justice. What he says about justice being undeconstructible and "deconstruction tak[ing] place in the interval that separates the undeconstructibility of justice from the deconstructibility of [law]," that is, what he observes about deconstruction helping bridge the gap between calculability and incalculability, does not only concern deconstruction as it applies to law

but addresses the whole of the deconstructive enterprise.[141] In other words, "deconstruction is justice" not only when it comes to law.[142] Rather, "deconstruction is justice" is to be understood as a generic slogan, which suggests that Derrida's contribution to legal theory is significant in terms of his deconstructive strategy as a whole and that a good understanding of Derrida's apprehension of law is necessary to a sound appreciation of his thought.[143]

The second salient strand of Derrida's French positivism concerns the fact that, aporetically,[144] law and force are structurally imbricated into each other—specifically, force is endogenous to law while being precisely that exogenous threat that law is meant to counter. In Derrida's words, "law is always an authorized force."[145] He adds: "There is no such thing as law . . . that doesn't imply *in itself*, *a priori*, *in the analytic structure of its concept*, the possibility of being . . . applied by force."[146] In other words, while force is law's other, law contains within itself the fact of force: "That which threatens law already belongs to law."[147] Drawing on a statement by Pascal,[148] Derrida shows how law cannot usefully be understood apart from the idea of "enforceability."[149] Law cannot operate as law unless it is in force (i.e., unless it has come into force) and unless it is enforced in a context where its coming-into-force or its enforcement call on the mobilization of an institutional machinery pertaining both to the executive and judicial authorities by those who have a monopoly on legitimate/legal force. Derrida's reference to law as "authorized force" is again reminiscent of Kelsen, who claimed that law cannot subsist without force, that law is a mode of organization of force.[150] But I do not wish to dwell on these habitual connotations of the word *force*. Instead, I propose to address another sense in which, according to Derrida, law is force. This other meaning is usually overlooked, although it is tied to the very possibility of law and, beyond it, to the very possibility of language,[151] so that "force" apprehended in this sense is an irreducible feature of law.[152]

On account of its primordial character, Derrida refers to this form of force as "arche-violence," the Greek root *arche* suggesting that the violence in question would have been always already there.[153] Derrida's basic point about violence's inherence revolves around language and addresses the very fact of articulation,[154] which is "appellatio[n]," "classification," and therefore "differen[tiation]."[155] As such, articulation, any articulation, *is* a determination. Now, any determination *is* violent to some extent given that, as an act of meaning-creation, it operates in a moment of decision that, as is the case with any expression of decidability, proves simultaneously inclusive

and exclusive (e.g., as I decide to refer to this tree as an oak, I include and exclude certain characteristics). Since every discourse is inescapably an act of articulation, it follows that it is just as inevitably a determination, and it ensues that it is violent. Indeed, only a discourse that would say nothing at all could eschew violence, but then it would make no sense to talk of *that* as a discourse.[156] Thus discourse and violence are to be seen as arising at once as facets of a single event. In Derrida's words, "The structure of violence is complex and its possibility—writing—no less so."[157] This entanglement is emphatically relevant to law (which is not to say that Derrida reduces juridicity to an exclusive interaction between law and violence; as one knows, he allows for justice also).

No matter how much law wishes to circumvent violence, it simply cannot operate only as the inevitable unfolding of the kind of mechanistic process that would deprive it of any and all articulatedness. Irrespective of how technical the legal decision to be made, of how seemingly automatic, any expression of law represents a determination and, as such, shows itself to be violent. No expression of law can be other than the making of a determination, the taking of a *position*—which means that no determination can be other than a reassessment of the tradition. Law is, intrinsically, discursive positionality. Paul Ricoeur helpfully makes this point as follows: "Between the least contradicted rule and its application there always remains a hiatus."[158] Even if the zone of intervention within which the legal official is operating should prove extremely narrow, any determination represents a movement away from the paradigm of generality (whereby the law must apply to all cases identically in the name of equality) toward that of particularity (whereby the law must apply to each case differentially on account of the singularity of individual circumstances), a process that is always conducted by a particular person at a specific time in a given place. This must mean that there is always a moment of decidability, however fleeting, during which a course of action is retained and another is rejected, even if as being wildly implausible. Although it asserts itself as a mere reenactment of a prior law, the legal determination-as-position cannot escape being a decision against an alternative claim—in other words, it cannot avoid being a denial of an alternative source of meaning.[159] Ultimately, the fact is that a legal determination can never appeal to a prior law to hide its constitutive character: *there is no guarantor*.[160] Any purported restatement of a prior law is, structurally, but a reinvention of it. Again, the Latin *inventio* is at once discovery and creation: as the antecedent law is discovered, it is created.

The inherence of violence to law is aptly summarized in these terms: "All law—unlike justice—is dependent on a positing (*Setzung*), and no positing manages without violence."[161] Inasmuch as legal determination is as articulation, which it necessarily is, it embodies arche-violence and indeed reiterates it every time that another legal intervention takes place. To paraphrase Derrida, "[a] [law] without violence would be a [law] which would occur outside the existent."[162]

Note that although it is a contrivance of law in every case, the legal determination cannot be regarded as *pure* violence. Otherwise, it would amount to the utter obliteration of other horizons of meaning to such an extent that alternative standpoints could not even be recognized as *arguments*, as something refutable. In effect, the holding of different positions would become impossible.[163] Granted that the legal decision "belongs to the structure of fundamental violence,"[164] the violence at work, then, is best understood as an "economy" of violence, that is, as modulated violence.[165]

To admit the inescapability of law-as-violence does not leave deconstruction bereft as a dismantlement strategy. By calling into question—by putting *to* the question—the alleged foundations on which law claims to be established, by "interrogati[ng] . . . the origin, grounds and limits of our conceptual, theoretical or normative apparatus,"[166] by lifting the "veil,"[167] deconstruction shows that law, *even* law, is discursively bound to the particular horizon of its writers or promoters and ultimately tied to the necessary perspectivism of egoity. By claiming that law is "constructed on interpretable and transformable textual strata,"[168] deconstruction seeks to mitigate the violence that law-as-established-discourse would otherwise continue to perpetrate on repressed voices in the name of its own reiteration. Again, it is not so much that deconstruction aims to destroy law-as-established-discourse, but that it calls on it to show responsibility in the face of the question put to it, in the face of others, and in the face of justice. Law is thus given an opportunity to justify itself, to account for itself, to reestablish itself in a way that better approximates justice by doing justice to the situation, that is, for instance, to the repressed "others" within the situation, by recognizing them as independent sources of meaning (which is an acknowledgment of the others' being-in-the-world). Confronted with a law that, in the name of its presumed universality, imposes its perspectives on others who are structurally denied status as meaning-creators, deconstruction promotes the reception of all voices in their individuality and thus, assuming the primordial nature of the other as a source of meaning at least equivalent to the self, aims

to respect the face of the other as a sovereign face, to avoid its effacement, that is, *to give the other what the other is due*.

Although it purports to minimize violence by countering the aggression of law-as-established-discourse's totalizing presence, deconstruction is, of course, itself a form of violence. But it is not rabid rebellion seeking to overthrow law-as-established-discourse for revolution's sake. It is violence deployed as unfolding, as interruptive reading, in order to avoid the kind of violence that would permanently silence all positions except one. Through a radical questioning of the basis of law-as-established-discourse, deconstruction operationalizes a suspension of law's programmatic agenda suspending the epistemic relevance of otherness (yes, deconstruction "assumes the right to contest, and not only theoretically, constitutional protocols, the very charter that governs reading in our culture").[169] As it ensures that the self-identity of juridicity is neither assured nor reassuring, deconstruction, then, adduces an "infinite demand for justice."[170] It is thus "an impure, contaminating, negotiated, bastard and violent way,"[171] "violence against violence,"[172] violence as counterviolence, but violence *as vigilance*.[173] Pure nonviolence being impossible (a point that takes us back to discourse necessarily being articulation), deconstruction is that which constantly challenges law in the name of justice *for* those who are currently marginalized (and never, of course, the kind of "bad violence" that "does not leave room for the other").[174]

For the positivist, there would be a unique foundational manifestation of authority that would be law's only positive force. Every subsequent expression of legal discourse—for instance, in an adjudicative context—would repose on the posited foundation; in other words, it would simply consist in an act that would repeat or re-pose the foundation. Not only would law be static (in terms of the source of its authority), it would also be "automatic," the result of a legal order operating measuredly, regulatedly, predictably. And law's authority would be a function of this very automatization.

Clearly, law's mode of production, formal structure, rhetorical organization (not least through the development of a system of reference and self-reference), and dissemination of legal knowledge articulate an impressive mise-en-scène. And, no matter how fanciful *ratio scripta*'s scenario (one could refer to an "epistolary fictio[n]"),[175] there seems little merit in doubting the relevance of the posited law as a pertinent and commodious point of departure for the analysis of legal discourse (indeed, there is something

like the impossibility of not passing through posited law). Derrida's own French positivism can be apprehended as an acknowledgment of this fact. But even Derrida's concessions to the posited cannot detract from his main philosophical and literary message that law texts cannot usefully be confined to law-as-the-posited, to "*das Gesetzte*" (it is interesting to observe that the German word used to render "the posited," *Gesetzte*, is so close to that which accounts for "statute," *Gesetz*). In this regard, Derrida's argument would be that law inherently exceeds any automation or calculation. It surpasses any possible reduction to a presently posited that would be there as such (to transpose Derrida's words, "[law] transgress[es] the figure of all possible representation").[176] There is that within law, as constitutive of law, as law, "which in no case can be 'posed,'" indeed "that by means of which every position is *of itself confounded*."[177] What undermines the posited by necessarily overcoming it is the trace, which is the inscription of otherness in law and as law. Now, the instantiation of the trace within the structure of law shows law as situated, located, embedded, factical. And law cannot escape the trace, its "idiomatic hereness."[178] The trace is an encrypted imprint of a past that is invisibly and imperceptibly present within law and as law, which positions law. It turns law into a position (even as there are those within law who wish to claim for it a "view-from-nowhere" status). The trace pertains to law "*in the analytical structure of its concept*."[179] When it comes to law, then, "there is the writing + something else that would be there *in addition* . . . , ⊙. something that the law cannot do without."[180]

The economy of the trace thus demands an interpretive passage from law-is-"*das Gesetzte*" to law-as-"*die Setzung*." Consider Jean-Luc Nancy's claim as he observes that "*Setzung* . . . responds point for point to the dynamic of *différance* by which Derrida designates the infinite motion of finite being as such."[181] In other words, even though finite or posited, law and its meaning is incessantly in movement, which means that any idea of repose is demoted or dis-posed of, reflecting a distrust in positing and in positivity and in positivists and in the positivist *Zeitgeist*, which is thus *ex-posed* as a position on account of the dynamic presence of the traces deposited in the law-text (and de-positing the law-text). In Derrida's own words, "positive law does not make the law."[182] There is "an inadequation between the form and the content of discourse or . . . an incommensurability between the signifier and the signified."[183] As much as *das Gesetzte* is wanted, and as much as it may appear that this is what is on offer, a close examination of law as it exists, of

law-as-cultural-text, shows that in effect law can only generate *die Setzung* or, more accurately, *die Setzungen*, that is, positions.[184]

The inherent facticity of law means that law is not, and cannot ever be, a text that would have a finite and fixed meaning. Rather, it is a text, and can only ever be a text, whose meaning is always already deferred (and which, in this respect, is not different from any other text, law's specific brand of normativity not being enough to detract from law as literary genre). Any interpreter is accordingly doomed to an (unceasing) quest for law's meaning. And, as if to complicate matters further, any ascription of meaning to law by its interpreter is an inevitable function of the interpreter's own facticity, which entails that there takes place the imputation of a position to law in this sense also. This observation confirms Derrida's insight that although meaning cannot escape the trace, the trace is not all there is to meaning. In Derrida's terms, the trace does not "saturat[e]" meaning.[185] Just as the trace is inadequate to all that there is, fails to correlate exactly with the "there-isness" of law in its endless ramifications, any writing purporting to capture the law through the trace is itself destined to err, which brings to mind the Derridean figure of "destinerrance." As the interpreter brings the traces into play, there will always be a trace missing: it is a case of n-1 or, rather, of t-1. This situation leads, ultimately, to a relation without a relation. As the interpreter refers to law according to this new form of coherence (rather than in pursuit of formal coherence), he cannot connect with it, that is, with the whole of it. He can only ever stand on the verge of the law, which means that he can only ever write *toward* law. The purported relation between the interpreter and the law becomes, in effect, a *nonrelation*. Still, though, the trace keeps the alienating character of the positivist reduction under check.

After Derrida, authority-*Gesetzte* cannot escape the grip of authority-*Setzung*. In other words, *die Setzung* haunts *das Gesetzte* as law is shown as a matter of *structure* to be a "ghost story."[186] Ultimately, then, Derrida's key lesson would thus be that, even if it can mark a convenient point of departure for legal interpretation, the posited cannot constitute a term of arrival for analysis of *law*.

I have been making three principal claims. First, I have established Derrida's abiding commitment to the French language. Literally, he never wrote about "law." Second, I have emphasized that Derrida's philosophical and literary insights make it possible to revisit the dominant, positivist, understanding

of the legal to considerable advantage. Third, I have shown that Derrida's appreciation of "law"—on the assumption that, for convenience's sake, this word is to be retained for present purposes—features not only the brand of deconstructive understanding that is readily associated with him but also an ascertainably positivist facet incorporating salient features of Kelsenism, as one would expect from a French academic expressing interest in matters legal.

I want to suggest one further argument, if briefly, which is that once one has become aware of the French singularity of Derrida's thought on "law," one can marshall this fact beneficially to inform a postpositivist, indeed a humanist, understanding of the legal going beyond the French model. A key insight is supplied by Derrida himself as he observes that "a written sign contains a power of severance from its context,"[187] that it is *iterable*.[188] Aspects of his reflection on the constitution of the legal, therefore, can/must be severed from their French moorings. Interestingly, Derrida's basic guidance is formulated in terms of a law: "My law, the one to which I try to devote myself or to respond, is *the text of the other*, its very singularity, its idiom, its appeal which precedes me."[189] It is, then, this primordial motion in favor of recognition and respect that justifies the move away from the rendition of the legal in tightly formatted descriptive, propositional terms—a reductionist narrative acting as an epistemic obstacle that brings to a halt, that silences, the movement of otherness incessantly at work within the law-text—toward an acknowledgment of law as the nexus of relations out of which it emerges, that it exists as. Qualifying his positivism in significant manner as he defends the necessity of thinking at once both the law and the trace, and of resisting thinking the trace as the nonlaw, Derrida equips one with a strategy that allows for a letting-be of law that is also a letting-emerge-the-world-as-law. Along the way, he shows one that place is not a mere static backdrop to legal meaning but a dynamic constituent of it. In other words, place is not simply a physicalist conception: it is also an existential notion. Law proceeds only in and through place (an assertion that does not entail an essentialist, exclusionary, reactionary, conservative, or immobile understanding of place—one can indeed approach place as source rather than terminus, as that from which something begins in its unfolding, rather than that at which it comes to a stop). It is not that law exists in space but, primordially, that there is no aspatial law. Through the trace, law and place are inextricably enmeshed, which means, incidentally, that law can be constitutive of place in its turn. In the same way as there is no ungrounded

language, there is no ungrounded law. For law, for any law, to exist "as law," it must stand forth in terms of an experience of place. It must *dwell*. For those who have German, Derrida's claim, in short, is for *Ortung* in contradistinction to the seemingly relentless drive for evermore *Ordnung* being promoted by positivists. To attend to law in this way is to honor one's debt to the singularity and to the difference that there is, to pledge allegiance to their implacable demand through the law, to agree to be interpellated *thus* by the law-text. Derrida's thought therefore reminds one that positivism is no longer to be understood as holding the exclusive position that positivists have wanted it to occupy. It prompts one to think about the law other-wise, that is, in a way that, as legal thought wises toward otherness, differs from how it has habitually operated. Now, the fostering of thoughts other than what positivism has been thinking means, to that extent at least, a dethronement of positivism.

Yet positivism keeps a place, as it does in Derrida's own thinking. Indeed, one's goal cannot be simply to jettison statutes and judicial decisions as if they had nothing to do with law. Rather, the point is to approach them afresh, that is, to come to them obliquely. The idea is that no formulation of the posited law can safely escape a spectral interpretation and therefore that all formulations of the posited law must be envisaged through the traces that haunt the legal. Yet, in no way can a humanist understanding of law seek to dispense altogether with the usual artifacts such as statutes and judicial decisions. As I have explained, the traces are indeed to be found at work at the heart of statutes and judicial decisions, which must therefore remain one of the principal foci of study for lawyers. But the posited law cannot be something at which interpretation stops. Rather, it must be something from which interpretation begins its *presencing*. The idea is to refuse to take statutes or judicial decisions as a literal given and, through an unceasing movement of oscillation toward and away from the posited, to try to see how they are conditioned and shaped by what haunts them. Ultimately, the governing direction can be expressed thus: "Let us return to the thing itself, that is to say, to the ghost."[190] This call is very important and is, in fact, key.

As there takes place a tracing of the law, the act of interpretation is being conducted as a matter of recognition and respect for the law as it exists (rather than as positivism has wanted it to be). In this regard, Derrida is adamant: "[Reading] . . . cannot legitimately transgress the text toward something other than it,"[191] for there is "the law of the other text, its injunction, its signature."[192] And what is arguably one of the most significant features of

any tracing exercise is precisely that in the course of tracing, the interpreter does not reach beyond the law and therefore does not disqualify himself as someone purporting to ascribe meaning to *other-than-legal* discourse. To be sure, to the extent that the traces attest to the instability/interstitiality/interlinearity of the text, that they are taking the text beyond stasis, they can be said to connote a "beyond" of the analytic limits of the hard copy, that is, to suggest a hypertext showing in intertwining fashion discourses interlaced within discourses. Instead of a hardened text, then, there would be a fluid text featuring, for instance, flexibility and recursivity. (Observe that fluidity can act as a powerful trope for feminist sensibility and show tracing as the feminization of the text.) But while the reader gets farther away from what the text is said to declare according to positivist dogma (pure, uncontaminated by other discourses, protected), one gets closer to what the text declares in effect. The reader is not, then, re-presenting the text as being other than itself, as if one were betraying it. Rather, the reader is re-presenting the text as other than itself inasmuch as it is constituted of otherness and therefore exists as something impure.

Deconstruction's commitment to a humanist understanding of law—to an appreciation of its enculturation and of the enculturation of those who study and practice it—must be understood as a critical posture featuring a significant political dimension. As Derrida himself was at pains to underline, "Deconstruction . . . is not *neutral*. It *intervenes*."[193] Not only is it the case that "no deconstruction is . . . apolitical,"[194] but deconstruction is, in fact, "hyper-political."[195] For Richard Bernstein, Derrida's fight against hierarchy, subordination, repression, exclusion, violence—in other words, his objection to the condemnation of otherness or difference (i.e., for present purposes, his struggle against positivism's strategy to proscribe, silence, outcast, exile other discourses, a segregation that is institutionally prescribed and ceaselessly inscribed)—is "primarily" political.[196] Likewise, according to Terry Eagleton, "deconstruction is for [Derrida] an ultimately *political* practice."[197] And Derrida's is uncompromisingly a *subversive* politics, that is, "a disturbance, displacement, or disruption of the status quo . . . that retains enormous potential for resisting the self-assurance of any hegemonic discourse or practice" such as positivism.[198] Consider his claims that "[the law] is always already a trace," that the trace "reintroduces into [law] originarily all the impurity that one had thought to be able to exclude from it," and that "the trace is the relation of the intimacy of the [law] to its outside, the openness to exteriority in general, to the non-proper" (at least according to

the traditional understanding of the legal). Contemplate, in sum, Derrida's argument for the trace's suturation to the law-text so that "the same is the same only by affecting itself with the other,"[199] or that, once more, the law is the law only in being affected by the historical, the epistemological, the ideological, the social, the political, the economic, the psychological, the linguistic, and the _____ (fill in the blank)—a strong defense of the "irreducible" character of law-as-difference.[200]

As if these counterpositivist assertions did not generate enough disciplinary dissonance, Derrida's programmatic challenge for the release of law from the shackles of positivism can be extended to the view that everything one alleges to know regarding law manifests itself within a strictly contingent cognitive scheme, indeed within a frame that is doubly contingent on account of law's situatedness, on the one hand, and of the emplacement of law's interpreter, on the other—two "self-referentialities," to write like Niklas Luhmann, making for a variation on the Batesonian theme of the "double bind."[201] Specifically, according to Derrida, no reading of a text—and therefore no reading of a law-text—can ever operate on the basis of rational or objective foundations. Once more, his argument is not that such foundations have been lost but that they were never there. Nor can a law-text ever harbor an exact meaning that would be lying in wait for its reader or indeed conceal a meaning that would be fully available to interpretation.

In core respects, then, Derrida's deconstruction stands for an extolment of values such as indefiniteness and unmasterability, co-specification and unsynthesizability, that positivists reflexively regard as practices of articulation pertaining to a cognitive predicament rather than as supplying the propitious signposts for thought—which they prefer (if illusorily) to associate with the transparency and exhaustibility of meaning. Through the idea of traces gathered, as it were, into the microchip of the law-text (there is "what one could call the *bindinal* economy," "the economy of the tie or of the link"),[202] Derrida's *coup de dé* solicits and encourages one, on account of the motif of spectrality, to do away with the fantasy of the will to power that would have law exist as univocal texts and to promote the law's heteroreferentiality, to foster the rehabilitation of otherness-in-the-law, to show care, to be careful, to display response, to be response-able and responsible, to be *hospitable* vis-à-vis otherness.

I have come full circle, as one does. That so many common-law lawyers should have domesticated Derrida's work on "law" in order to edify their

critique of positivism, that Derrida should therefore have been mobilized in earnest to assist beyond France with alternative legal scholarship and with other strategies of interpretation in particular, is not to be regretted. There remains one unfortunate factor, which I have wanted to address: all along, there has been insufficient realization in the common-law world that this process of appropriation was persistently crossing linguistic and legal boundaries in somewhat spectacular fashion without attending to the cultural fact that, in Derrida's own formulation, "it is in French, of a French word that [he] always speak[s]," "in the irredentism of [French's] most untranslatable idiom."[203]

NOTES

1. E.g.: Mark Currie, *The Invention of Deconstruction* (New York: Palgrave Macmillan, 2013), 28–63; Peter Goodrich, "Europe in America: Grammatology, Legal Studies, and the Politics of Transmission," *Columbia Law Review* 101 (2001): 2033–84; Pierre Schlag, "'Le hors de texte, c'est moi': The Politics of Form and the Domestication of Deconstruction," *Cardozo Law Review* 11 (1990): 1631–71; J. M. Balkin, "Deconstructive Practice and Legal Theory," *Yale Law Journal* 96 (1987): 743–86; Clare Dalton, "An Essay in the Deconstruction of Contract Doctrine," *Yale Law Journal* 94 (1985): 997–1114.

2. Jacques Derrida, *Positions*, trans. Alan Bass (New York: Continuum, 2002), 19 (emphasis omitted). For the reader's convenience, I refer to published English translations whenever possible, although I silently modify them on a number of occasions.

3. For a recension of the basic facts concerning this issue (including a reference to Derrida's complaint), see Jeffrey T. Nealon, "Deconstruction and the Yale School of Literary Theory," in *Poststructuralism and Critical Theory's Second Generation*, ed. Alan D. Schrift (London: Routledge, 2014), 389–90.

4. Gayatri C. Spivak, "Translator's Preface," in Jacques Derrida, *Of Grammatology*, trans. Gayatri C. Spivak (Baltimore: Johns Hopkins University Press, 1997), lxxxvi. I deliberately refer to this edition of Spivak's commentary.

5. Ibid., 55.

6. Cf. Joseph F. Graham, introduction to *Difference in Translation*, ed. Joseph F. Graham (Ithaca, N.Y.: Cornell University Press, 1985), 14. Ironically, the common-law lawyer's attitude would broadly accord with Derrida's views on untranslatability to the effect that his French law in French would be, strictly speaking, ultimately untranslatable into common law in English.

7. Currie, *Invention of Deconstruction*, 44.

8. See Jacques Derrida, *Learning to Live Finally*, trans. Pascale-Anne Brault and Michael Naas (Hoboken, N.J.: Melville House, 2007), 22–26, 31–34, 50–52. This

title is taken from the first sentence of the exordium in Jacques Derrida, *Specters of Marx*, trans. Peggy Kamuf (London: Routledge, 1994), xvi.

9. Derrida's last public appearance took place in Rio de Janeiro on August 16, 2004.

10. See, e.g., Jacques Derrida, *Monolingualism of the Other; or, The Prosthesis of Origin*, trans. Patrick Mensah (Stanford, Calif.: Stanford University Press, 1998).

11. Jacques Derrida, *Dissemination*, trans. Barbara Johnson (Chicago: University of Chicago Press, 1981), 340.

12. That "Derrida was . . . teaching philosophy and philosophers . . . that there may be some conceptual and practical problems attendant to the fact that most philosophy is articulated in a given, nonuniversal language," a "lesso[n] that some modes of institutionalized philosophy were not at all anxious to learn," is articulated in Ian Balfour, introduction to "Late Derrida," special issue, *South Atlantic Quarterly* 106, no. 2 (2007): 212. See, e.g., Jacques Derrida, *Points . . .* , ed. Elisabeth Weber, trans. Peggy Kamuf (Stanford, Calif.: Stanford University Press, 1995), 374.

13. Verne Harris, *Archives and Justice* (Chicago: Society of American Archivists, 2007), 72.

14. Marian Hobson, *Jacques Derrida: Opening Lines* (London: Routledge, 1998), 2; my emphasis. According to Hobson, her book can be read as an extended argument on the importance that Derrida's writing held for his own work and on the significance of the fact that that writing was in French (1).

15. Derrida, *Of Grammatology*, 6.

16. The actual enunciation is more cryptic, as Derrida states, "Il n'y a pas de hors-texte," in *De la grammatologie* (Paris: Editions de Minuit, 1967), 227. Translations vary. I favor a close reading and retain "There is no out-of-text." Cf. Derrida, *Of Grammatology*, 158: "*There is nothing outside of the text.*"

17. Derrida, *Learning to Live*, 34.

18. Ibid., 36. For Derrida's reservation regarding France, see ibid., 37.

19. Ibid.

20. Derrida, *Monolingualism*, 41.

21. Ibid., 25. Derrida was still remarking on this paradox in his final interview. See Derrida, *Learning to Live*, 38.

22. Jacques Derrida, "La vérité blessante ou le corps-à-corps des langues," *Europe*, May 2004, 10.

23. Derrida, *Monolingualism*, 56.

24. Ibid., 46.

25. "The dyad [i]s the minimum": Jacques Derrida, *Margins of Philosophy*, trans. Alan Bass (Chicago: University of Chicago Press, 1982), 111.

26. Derrida, *Monolingualism*, 46, 47, 47.

27. Derrida, *Learning to Live*, 37. The most celebrated of Derrida's numerous neologisms earned an entry in the leading French dictionary. See, e.g., *Le Grand*

Robert de la langue française, 2nd ed., Alain Rey, vol. 2 (Paris: Le Robert, 2001), s.v. "différance."

28. Derrida, *Monolingualism*, 56.

29. Derrida, *Points*, 416.

30. Derrida, "La vérité blessante," 9.

31. See Derrida, *Monolingualism*, 7–11.

32. Ibid., 57.

33. Franz-Olivier Giesbert, "Ce que disait Derrida . . . ," *Le Point*, October 14, 2004, http://www.lepoint.fr/actualites-litterature/ce-que-disait-derrida/1038/0/31857.

34. Derrida, *Monolingualism*, 56.

35. Ibid.

36. Derrida, *Specters*, 21.

37. See Jacques Derrida, "Des tours de Babel," trans. Joseph F. Graham, in *Psyche*, ed. Peggy Kamuf and Elizabeth Rottenberg, trans. Joseph F. Graham, vol. 1 (Stanford, Calif.: Stanford University Press, 2007), 191–92. Elsewhere, Derrida observes that "the words *deux*, *two*, *zwei* are the same only each in its own language: . . . they remain bound to a language" (*The Beast and the Sovereign*, ed. Michel Lisse, Marie-Louise Mallet, and Ginette Michaud, trans. Geoffrey Bennington, vol. 1 [Chicago: University of Chicago Press, 2009], 178).

38. Ibid., 198.

39. Derrida, *Positions*, 19.

40. Derrida, *Monolingualism*, 57.

41. Derrida, *Psyche*, 199.

42. Jacques Derrida, "What Is a 'Relevant' Translation?," trans. Lawrence Venuti, *Critical Inquiry* 27 (2001): 174.

43. See Jacques Derrida (with Pierre-Jean Labarrière), *Altérités* (Paris: Osiris, 1986), 85.

44. Jacques Derrida, *The Beast and the Sovereign*, ed. Michel Lisse, Marie-Louise Mallet, and Ginette Michaud, trans. Geoffrey Bennington, vol. 2 (Chicago: University of Chicago Press, 2011), 9.

45. Aliette Armel, "Du mot à la vie: Un dialogue entre Jacques Derrida et Hélène Cixous," *Magazine littéraire*, April 2004, 26.

46. Jacques Derrida, *Paper Machine*, trans. Rachel Bowlby (Stanford, Calif.: Stanford University Press, 2005), 140. This text is the English version of an interview with Antoine Spire.

47. Derrida, *Of Grammatology*, 162.

48. See, e.g., Catherine Malabou and Jacques Derrida, *Counterpath*, trans. David Wills (Stanford, Calif.: Stanford University Press, 2004), 54. Indeed, Derrida refuted the ascription of the label "Heideggerian" (*Paper Machine*, 149–50).

49. Derrida, *Positions*, 48.

50. Ibid., 8.

51. Martin Heidegger, *Being and Time*, rev. trans. Joan Stambaugh (Albany: State University of New York Press, 2010), sec. 32, pp. 145–46.

52. Martin Heidegger, [letter to Karl Löwith], in *Zur philosophischen Aktualität Heideggers*, ed. Dietrich Papenfuss and Otto Pöggeler, vol. 2 (Frankfurt: Klostermann, 1990), 29.

53. Derrida, *Margins*, 111.

54. Alan Bass, "Translator's Introduction," in Jacques Derrida, *Writing and Difference*, trans. Alan Bass (Chicago: University of Chicago Press, 1978), xiv.

55. In continental Europe, most legal terms used in modern political philosophy come from a transcription into vernacular languages of words issuing from Roman law and from Roman law's reception in medieval Europe. Although such transcriptions have been accompanied by important inflections of the ancient meanings, translation practices have proved stable enough throughout continental Europe for foundational terms like *jus* and *lex* to find local renditions—such as *droit* and *loi* in French—giving effect to the basic distinction between, very roughly, the legal order (as in "according to French *droit*, three conditions are required for the formation of a valid contract") and the output of the legislative authority (as in "the recent *loi* on immigration aims to curb the arrival of economic migrants"). Thus, *loi* enjoys a narrower extension than *droit*, being one source of *droit* only, albeit traditionally by far the principal one. Where French has two words, *droit* and *loi*, to convey two different ideas, English has settled for amphibology inasmuch as it has long featured exclusively the word *law* to cater to both configurations (earlier, the language had oscillated between *ley*, *lay*, and even *dreit*).

56. Derrida, *Monolingualism*, 57.

57. In his first text expressly devoted to law, Derrida addressed the Frenchness of *loi*. See Jacques Derrida, "Before the Law," trans. Avital Ronell and Christine Roulston, in Jacques Derrida, *Acts of Literature*, ed. Derek Attridge (London: Routledge, 1992), 206.

58. I borrow the formulation of the paradox from Spivak, "Translator's Preface," lxxxvi.

59. Jacques Derrida, *Writing and Difference*, trans. Alan Bass (Chicago: University of Chicago Press, 1978), 293; my emphasis.

60. While my argument does not require me to address the matter of patterning at any length, I accept that "law" does not hold the same meaning for all Anglophone readers within, say, a given geographic area. The opposite contention would be silly.

61. Geoff Bennington and Ian McLeod, "Translators' Preface," in Jacques Derrida, *The Truth in Painting*, trans. Geoff Bennington and Ian McLeod (Chicago: University of Chicago Press, 1987), xiv.

62. Derrida, "Before the Law," 192.

63. Jacques Derrida, "The Law of Genre," trans. Avital Ronell, in Jacques Derrida, *Acts of Literature*, ed. Derek Attridge (London: Routledge, 1992), 221–52; Derrida, "Before the Law."

64. See generally Jacques de Ville, *Jacques Derrida* (London: Routledge, 2011).

65. See Jacques Derrida, "Force of Law: The 'Mystical Foundation of Authority,'" trans. Mary Quaintance, *Cardozo Law Review* 11 (1990): 919. This article also features the French original that was subsequently published in book form as *Force de loi* (Paris: Galilée, 1994). The semantic disjuncture between *law* and *loi* in the two titles is exemplary of the structural impediment I address above.

66. See Derrida, "Force of Law," 929.

67. Ibid., 931. See also Jacques Derrida and Jeffrey Kipnis, afterword to *Chora L Works*, ed. Jeffrey Kipnis and Thomas Leeser (New York: Monacelli, 1997), 167: "Thus architecture, and for similar reasons the law, are the ultimate tests of deconstruction." The words are Derrida's.

68. Derrida, "Force of Law," 943.

69. Derrida, *Points*, 213.

70. Martin Krygier, "Law as Tradition," *Law and Philosophy* 5 (1986): 239, 256.

71. Gerald L. Bruns, *Hermeneutics Ancient and Modern* (New Haven, Conn.: Yale University Press, 1992), 204.

72. For a reflection on "invention," see Jacques Derrida, "Psyche: Invention of the Other," trans. Catherine Porter, in *Psyche*, ed. Peggy Kamuf and Elizabeth Rottenberg, vol. 1 (Stanford, Calif.: Stanford University Press, 2007), 1–47.

73. Derrida, *Specters*, 10.

74. Derrida attempts a translation of the German "es spukt" (ibid., 216).

75. Derrida, *Paper Machine*, 89; my emphasis.

76. The word *hauntology* (*hantologie*) is Derrida's (*Specters*, 10). Studies of Derrida's work on revenants include David Applebaum, *Jacques Derrida's Ghost* (Albany: State University of New York Press, 2009); Michael Sprinker, ed., *Ghostly Demarcations* (London: Verso, 1999); Kas Saghafi, *Apparitions—Of Derrida's Other* (New York: Fordham University Press, 2010).

77. Jacques Derrida and Bernard Stiegler, *Echographies of Television*, trans. Jennifer Bajorek (Cambridge: Polity, 2002), 117.

78. Ibid.

79. Henry Staten, *Wittgenstein and Derrida* (Lincoln: University of Nebraska Press, 1986), 18. See generally Jacques Derrida, "Living On," trans. James Hulbert, in Harold Bloom, Paul de Man, Jacques Derrida, Geoffrey H. Hartman, and J. Hillis Miller, *Deconstruction and Criticism* (New York: Continuum, 2004), 67–70.

80. Geoffrey Bennington and Jacques Derrida, *Jacques Derrida*, trans. Geoffrey

Bennington (Chicago: University of Chicago Press, 1993), 91. The word is Derrida's, who adds that "the virus will have been the only object of [his] work" (91–92).

81. Jacques Derrida, *Limited Inc*, ed. Gerald Graff, trans. Samuel Weber (Evanston, Ill.: Northwestern University Press, 1988), 146. In his text, Derrida applies this sentence to "truth"—which means that it works for law, at least as conventionally understood by the *doxa*.

82. Derrida, "Force of Law," 1015.

83. Derrida, *Margins*, 80.

84. Derrida, *Positions*, 55.

85. Ibid., 23–24.

86. Ibid., 24. As the mark of otherness, Derrida credits the notion of trace (*trace*) to Emmanuel Levinas. See Jacques Derrida, "Differance," in *Speech and Phenomena*, trans. David B. Allison (Evanston, Ill.: Northwestern University Press, 1973), 152.

87. Derrida, *Dissemination*, 223.

88. Jacques Derrida, *The Other Heading*, trans. Michael B. Naas (Bloomington: Indiana University Press, 1992), 10.

89. Derrida, *Points*, 137; Christopher Johnson, *System and Writing in the Philosophy of Jacques Derrida* (Cambridge: Cambridge University Press, 1993), 29.

90. Derrida, *Specters*, 24.

91. Derrida, "Force of Law," 1035.

92. Derrida, *Grammatology*, 65. No invention of traces by law's interpreters can plausibly be dissociated from autobiographical investments.

93. Derrida, *Dissemination*, 270.

94. J. Hillis Miller, "The Critic as Host," in Harold Bloom, Paul de Man, Jacques Derrida, Geoffrey H. Hartman, and J. Hillis Miller, *Deconstruction and Criticism* (New York: Continuum, 2004), 188.

95. Martin Heidegger, "On the Question of Being," trans. William McNeill, in *Pathmarks*, ed. William McNeill (Cambridge: Cambridge University Press, 1998), 292.

96. Jacques Derrida, *Aporias*, trans. Thomas Dutoit (Stanford, Calif.: Stanford University Press, 1993), 10.

97. For leading arguments on law as culture, see Lawrence Rosen, *Law as Culture* (Princeton, N.J.: Princeton University Press, 2008); and Gary Watt, "Comparative Law as Deep Appreciation," in *Methods of Comparative Law*, ed. Pier G. Monateri (Cheltenham, U.K.: Elgar, 2012), 82–103.

98. *Dictionnaire historique de la langue française*, 2d ed., Alain Rey (Paris: Le Robert, 2010), s.v. "texte." In Latin, a *textor* is a weaver (and *texere* is "to weave"). See *Shorter Oxford English Dictionary*, 6th ed., Angus Stevenson, vol. 2 (Oxford: Oxford University Press, 2007), s.v. "textorial."

99. I track Kelsen's pronouncement in the first edition of his *Reine Rechtslehre*

(Vienna: Deuticke, 1934), 64: "Das Recht gilt nur als positives Recht." For an English version, see Hans Kelsen, *Introduction to the Problems of Legal Theory*, trans. Bonnie L. Paulson and Stanley L. Paulson (Oxford: Oxford University Press, 1992), sec. 28, p. 56: "The law [counts] only as positive law."

100. Jacques Derrida, *The Politics of Friendship*, trans. George Collins (London: Verso, 1997), 153.

101. Derrida, "Force of Law," 947.

102. It is not that the French model disconsiders scholarly interpretation, a revered practice boasting Roman ancestry. Indeed, a leading academic like Michel Troper is willing to grant interpretation a measure of relevance as a source of normative meaning. But in order to earn its warrant, interpretation must unambiguously qualify as conceptual, that is, it must address the refinement—the detersion—of legal concepts.

103. Philippe Jestaz and Christophe Jamin, "L'entité doctrinale française," D.1997.Chron.167–75, 172. Such critique of French legal scholarship by French legal scholars remains unique. It is, in fact, so inhabitual that even these academics' subsequent publications fail to sustain it.

104. For (cursory) theorizations of thoroughgoing judicial subordination, see Christian Atias, *Devenir juriste* (Paris: LexisNexis, 2011), 3, who, having introduced "legal rules" ("règles de droit") as "answers" ("réponses"), writes that "the judge is there to ascertain the right answer and to impose it"; Daniel Gutmann, "Le juge doit respecter la cohérence du droit," in Georges Fauré and Geneviève Koubi, eds., *Le titre préliminaire du Code civil* (Paris: Economica, 2003), 109: "The judge must respect the coherence of the law."

105. Roberto M. Unger, *Knowledge and Politics* (New York: Free Press, 1975), 92–93.

106. See, e.g., W. J. Waluchow, *Inclusive Legal Positivism* (Oxford: Oxford University Press, 1994).

107. In 2000, for instance, Derrida spoke in Mainz (Germany), Cairo, London, Puerto Rico, Irvine (California), Helsinki, Uppsala, Frankfurt, Pecs (Hungary), New York, Albany (New York), Chicago, Milan, Trieste, and Murcia (Spain). As extensive biographical notes make clear, this peripateticism repeated itself year after year as of the early 1990s. See [Marie-Louise Mallet and Ginette Michaud], "Repères biographiques," in *Jacques Derrida*, ed. Marie-Louise Mallet and Ginette Michaud (Paris: L'Herne, 2004), 601–6.

108. In a conversation with Michel Rosenfeld published in the Fall 1998 issue of *Cardozo Life*, Derrida said: "My interest in law as an academic discipline started very early." He also asserted that "[he] never acted on [his] dream to really study law." For the transcript, see "An Interview with Jacques Derrida," http://hydra.humanities.uci.edu/derrida/law.html (accessed January 14, 2018).

109. After the first German edition of Kelsen's book had appeared in 1934, the French translation, featuring input by Kelsen himself, was published in 1953 as *Théorie pure du droit*, trans. Henri Thévenaz (Neuchâtel: La Baconnière, 1953). The second German edition dated 1960 was released in French in 1962 (the translation having been revised by Kelsen): *Théorie pure du droit*, 2nd ed., trans. Charles Eisenmann (Paris: Dalloz, 1962). Thévenaz later published a further translation of the second German edition incorporating a number of post-1960 changes: *Théorie pure du droit*, 2nd ed., trans. Henri Thévenaz (Neuchâtel: La Baconnière, 1988).

110. See generally Fritz Schulz, *History of Roman Legal Science* (Oxford: Oxford University Press, 1946); Peter Stein, "The Quest for a Systematic Civil Law," in *Proceedings of the British Academy* 90 (1996): 147–64; Lelio Lantella, *Il lavoro sistematico nel discorso giuridico romano* (Turin: Giappichelli, 1975); Witold Wolodkiewicz, *Les origines romaines de la systématique du droit contemporain* (Wrocław: Ossolineum, 1978); Henry Goudy, *Trichotomy in Roman Law* (Oxford: Oxford University Press, 1910). The contemporary French predilection is epitomized in Jean-Louis Bergel, *Méthodologie juridique* (Paris: Presses Universitaires de France, 2001), 34: "Law is uncontrovertibly a science." Indeed, a leading French theoretician observes that "the assertion of the scientificity of [l]aw . . . has become a truism" (André-Jean Arnaud, *Les juristes face à la société* [Paris: Presses Universitaires de France, 1975], p. 195; emphasis omitted).

111. For a famous sixteenth-century French law professor, "the elements of law, the bases of its maxims and of its fundamental problems are like the points, the lines, and the surfaces in geometry" (François Le Douaren, *In primam partem Pandectarum, sive Digestorum, methodica enarratio* [1561], in *Opera omnia*, vol. 1 [Lucca, 1765], 3). The same idea appears in a late twentieth-century French introduction to legal methodology where the author claims that "ideally, *of course*, the solution to any litigation would be mathematically deduced from clearly defined legal rules" (E. S. de la Marnierre, *Eléments de méthodologie juridique* [Paris: Librairie du Journal des notaires et des avocats, 1976], sec. 91, pp. 193–94; my emphasis). For an analogy between the French doctoral dissertation in law and mathematics, see Philippe Jestaz and Christophe Jamin, *La doctrine* (Paris: Dalloz, 2004), 186.

112. On Ramus, see Nelly Bruyère, *Méthode et dialectique dans l'oeuvre de La Ramée* (Paris: Vrin, 1984); Walter J. Ong, *Ramus, Method, and the Decay of Dialogue* (Cambridge, Mass.: Harvard University Press, 1983).

113. The uncontested prevalence of Kelsenism on the French jurisprudential stage can be shown by the fact that the author of a general introduction to legal theory published in the best-known "pocket-book" series in France confines himself to a discussion of Kelsen. Out of the 128 pages of text (the iconic length of books in the series) and in terms of those pages that one can access electronically, the website Amazon.fr thus informs me that the name "Kelsen" appears 44 times (accessed

November 1, 2015). I can supply a TIFF screen capture confirming this information. Meanwhile, economic analysis of law, critical legal studies, and feminist legal studies are omitted. See Michel Troper, *La Philosophie du droit*, 4th ed. (Paris: Presses Universitaires de France, 2015). "Natural law" is the only other theory benefiting from any kind of entitlement to serious intellectual consideration on the French scene. Like positivism, it applies a paradigm seeking to contain law within a logic of authority—an unsurprising fact in the French context. See Roger Cotterrell, *The Politics of Jurisprudence*, 2nd ed. (London: Lexis Nexis, 2003), 120.

114. Michel van de Kerchove, "L'influence de Kelsen sur les théories du droit dans l'Europe francophone," in Kelsen, *Théorie pure* [1988], 227–29.

115. Michel Villey, "Préface," in J[oseph] Miedzianagora, *Philosophies positivistes et droit positif* (Paris: L.G.D.J., 1970), i–ii (emphasis omitted).

116. Georges Vedel, "Eloge," *Annales de l'Université de Paris* (1963), 552.

117. Atias, *Devenir juriste*, 55.

118. Laurent Aynès, Pierre-Yves Gautier, and François Terré, "Antithèse de 'l'entité,'" D.1997.Chron.229–30, 230. These writers were reacting to Jestaz and Jamin's diatribe ("L'entité doctrinale française"). For samples of Domat's statements on "law-as-geometry," see Jean Domat, *Les quatre livres du droit public* (1697; repr. Caen: Université de Caen, 1989), 1.17.307; Domat, *Les loix civiles dans leur ordre naturel* (Paris, 1689), "preface." On Domat's mathematics, see André-Jean Arnaud, *Les origines doctrinales du code civil français* (Paris: L.G.D.J., 1969), 142–47.

119. Thus began the description of *Derrida and Legal Philosophy*, ed. Peter Goodrich, Florian Hoffmann, Michel Rosenfeld, and Cornelia Vismann (New York: Palgrave Macmillan, 2008) when I visited the publisher's website on April 1, 2008. Later, the word *legalistic* was replaced by *jurisprudential*, which can also be found on the back cover of the published book. Until they closed their doors on September 18, 2011, the booksellers Borders retained the early formulation for their website. I can supply a PDF copy of this text dated July 1, 2011.

120. Derrida, *Paper Machine*, 176.

121. Jacques Derrida, *Who's Afraid of Philosophy?*, trans. Jan Plug (Stanford, Calif.: Stanford University Press, 2002), 46.

122. I draw on Adolfo Barberá del Rosal, "Derrida et le positivisme (juridique)," in *Le passage des frontières*, ed. Marie-Louise Mallet (Paris: Galilée, 1994), 387–90.

123. See Derrida, "Force of Law," 973. Derrida refutes "the sphere of pure, immune law, intact, not contaminable by everything we would want to purify it of" (Jacques Derrida and Elisabeth Roudinesco, *For What Tomorrow . . .*, trans. Jeff Fort [Stanford, Calif.: Stanford University Press, 2004], 150).

124. Jacques Derrida, *Memoires for Paul de Man*, rev. trans. Cecile Lindsay (New York: Columbia University Press, 1989), 15. The words "plus d'une langue" appear in French in the English text. The periphrasis is added to the English version.

125. Kelsen, *Introduction*, sec. 8, p. 16.

126. Ibid.

127. See Derrida, "Force of Law," 943. Law denies its contingency. In Derrida's words, "to be invested with its categorical authority, the law must be without history, without genesis, or without any possible derivation" ("Before the Law," 19). Derrida makes the point more pithily still: "The story of prohibition is a prohibited story" (200).

128. See Derrida, "Force of Law," 945.

129. See ibid., 947, 963.

130. Ibid., 959. The reference is to Emmanuel Levinas, *Totality and Infinity*, trans. Alphonso Lingis (Pittsburgh: Duquesne University Press, 1969), 89: "The relation with the Other, that is, to justice."

131. Derrida, *Specters*, 26.

132. "One cannot speak *directly* about justice" (Derrida, "Force of Law," 935).

133. Ibid., 969.

134. In Derrida's language, justice is caught in the net of "differance," that is, of the infinitely deferred and ever different.

135. Derrida, "Force of Law," 971.

136. Derrida, *Specters*, 26. For the phrase "child of Domat," see Aynès, Gautier, and Terré, "Antithèse," 230.

137. Derrida, "Force of Law," 965.

138. Ibid.

139. I paraphrase Jacques Derrida, *Rogues*, trans. Pascale-Anne Brault and Michael Naas (Stanford, Calif.: Stanford University Press, 2005), 150.

140. See, e.g., Derrida, *Grammatology*, 95–316.

141. Derrida, "Force of Law," 945.

142. Ibid.

143. See Pierre-Yves Quiviger, "Derrida: de la philosophie au droit," *Cités*, no. 30 (2007): 41–52.

144. "Ethics, politics, and responsibility . . . will only ever have begun with the experience and experiment of the aporia" (Derrida, *Other Heading*, 41).

145. Derrida, "Force of Law," 925.

146. Ibid.

147. Ibid., 989.

148. See Pascal, *Pensées*, trans. A. J. Krailsheimer, 2nd ed. (London: Penguin, 1995), sec. 135, pp. 200–1. Pascal's text initially appeared posthumously in 1670.

149. Derrida, "Force of Law," 925.

150. Kelsen, *Introduction*, sec. 30(b), p. 61: "The law is . . . a certain system (or organization) of power."

151. See Derrida, *Writing and Difference*, 21: "Force . . . [is] meaning itself." See

also ibid., 125, where Derrida refers to the fact that force is "embedded in the root of meaning and logos."

152. Ibid.: "'The structural fact thus described . . . appears as a constant.'" Derrida appropriates these words from Jean Rousset (1910–2002), a Swiss literary critic.

153. Derrida, *Grammatology*, 112.

154. See ibid., 148.

155. Ibid., 110.

156. See Derrida, *Writing and Difference*, 147.

157. Derrida, *Grammatology*, 112.

158. Paul Ricoeur, *Freedom and Nature*, trans. Erazim V. Kohak (Evanston, Ill.: Northwestern University Press, 1966), 174.

159. This is not to say, though, that a position spontaneously partakes in originality. It is embedded and, as such, it is "a call for self-conserving repetition," which means that, ultimately, there is "no rigorous opposition between positioning and conservation" (Derrida, "Force of Law," 997).

160. See ibid., 961: "Each case is other, each decision is different and requires an absolutely unique interpretation, which no existing and codified rule can or ought to guarantee absolutely."

161. Werner Hamacher, "Affortative, Strike," trans. Dana Hollander, *Cardozo Law Review* 13 (1991): 1134.

162. Derrida, *Writing and Difference*, 147.

163. Derrida thus writes of "pure violence" that it is "a relationship between beings without face" (ibid., 146).

164. Derrida, "Force of Law," 997.

165. Derrida, *Writing and Difference*, 117.

166. Derrida, "Force of Law," 955.

167. Derrida, *Dissemination*, 316.

168. Derrida, "Force of Law," 943.

169. Ibid., 995.

170. Ibid.

171. Ibid., 1035.

172. Derrida, *Writing and Difference*, 117.

173. Deconstruction's violence can also arise from the fact that it is situated: "What I call 'deconstruction,' . . . is European; it is a product of Europe, a relation of Europe to itself as an experience of radical alterity" (Derrida, *Learning to Live*, 44–45).

174. Jacques Derrida and Maurizio Ferraris, *A Taste for the Secret*, ed. Giacomo Donis and David Webb, trans. Giacomo Donis (Cambridge: Polity, 2001), 92. The words are Derrida's.

175. Jacques Derrida, *The Post Card*, trans. Alan Bass (Chicago: University of Chicago Press, 1987), 232.

176. Jacques Derrida, "Envoi," trans. Peter Caws and Mary Ann Caws, in *Psyche*, ed. Peggy Kamuf and Elizabeth Rottenberg, vol. 1 (Stanford, Calif.: Stanford University Press, 2007), 128.

177. Derrida, *Positions*, 77.

178. Derrida, *Aporias*, 52.

179. Derrida, "Force of Law," 925.

180. Pierre Legendre, *Le désir politique de Dieu* (Paris: Fayard, 1988), 295.

181. Jean-Luc Nancy, *The Experience of Freedom*, trans. Bridget McDonald (Stanford, Calif.: Stanford University Press, 1993), 186.

182. Derrida, *Post Card*, 180. The French is "ne fait pas la loi," an idiomatic expression that could also be translated as "does not rule."

183. Derrida, *Dissemination*, 18.

184. See Barberá del Rosal, "Derrida et le positivisme (juridique)," 390–91.

185. Derrida, "Living On," 67.

186. Derrida, "Force of Law," 1009.

187. Derrida, *Margins*, 377.

188. Using the lemma "iter," which he claims to derive from the Sanskrit *itara*, meaning "other," Derrida coins "iterability," a neologism connoting both "reiteration" and "alterity," that is, repeatability with a difference, which entails that repetition does not cancel singularity. See ibid., 314–21.

189. Jacques Derrida, "This Strange Institution Called Literature," in *Acts of Literature*, ed. Derek Attridge (London: Routledge, 1992), 66.

190. Derrida, "Force of Law," 1009.

191. Derrida, *Grammatology*, 158.

192. Jacques Derrida, "Fidélité à plus d'un," *Cahiers Intersignes*, no. 13 (1998): 262.

193. Derrida, *Positions*, 76.

194. Michael Sprinker, "Politics and Friendship: An Interview with Jacques Derrida," in *The Althusserian Legacy*, ed. E. Ann Kaplan and Michael Sprinker (London: Verso, 1993), 212. The words are Derrida's.

195. De Ville, *Jacques Derrida*, 165.

196. Richard J. Bernstein, *The New Constellation* (Cambridge, Mass.: MIT Press, 1991), 176.

197. Terry Eagleton, *Literary Theory*, 3rd ed. (Minneapolis: University of Minnesota Press, 2008), 128.

198. David Wills, *Matchbook* (Stanford, Calif.: Stanford University Press, 2005), 13.

199. Jacques Derrida, *Voice and Phenomenon*, trans. Leonard Lawlor (Evanston, Ill.: Northwestern University Press, 2011), 73.

200. Derrida, *Limited*, 137.

201. This expression, which Derrida presses into service in a variety of settings,

always in English *dans le texte*, is indebted to Gregory Bateson, who coined the phrase in 1956 as an explanation partaking in the etiology of schizophrenia but more broadly to illustrate the complexities of communication. See Gregory Bateson, *Steps to an Ecology of Mind* (Chicago: University of Chicago Press, 1972), 201–27.

202. Derrida, *Post Card*, 389. Miller reports that there are two meanings of the word "trace" in English that suggest "connection." For Miller, "the trace is a hinge": J. Hillis Miller, "Trace," in *Reading Derrida's* Of Grammatology, ed. Sean Gaston and Ian Maclachlan (New York: Continuum, 2011), 51.

203. Jacques Derrida, "Abraham, the Other," trans. Gil Anidjar, in *Religion*, ed. Hent de Vries (New York: Fordham University Press, 2008), 318, 327.