

ARTICLES : SPECIAL ISSUE
A DEDICATION TO JACQUES DERRIDA - MEMOIRS

J.D.

By Peter Goodrich*

Introduction

Jacques Derrida. J.D. for short. And J.D. of course is titular. It is the acronym for Juris Doctor. It signifies a lawyer or one wise in the law. If we are to recollect and celebrate his life in its juridical context and significance then Jacques Derrida, J.D., is not a bad place to start. Technically, of course, and despite the legal sounding acronym, J.D. was not a lawyer. He did, however, hold a visiting appointment at a Law School in New York. My law school in fact. Let me add, at the risk of getting personal for a moment – and if not now, when? – that in many ways I am here because he was. And then also some of his most influential articles were on the subject of law or were delivered and published first in a legal forum. His essay on Kafka,¹ on the law of genre, for example, and then again his lengthy and widely circulated exposition of “The Force of Law.”² He kept coming back to law: he inhabited its margins, searched for its supplements, dwelt on its traces.

Looking back, fondly and critically, I think Derrida’s influence on legal scholarship was significant enough for the acronym J.D. to be appropriate. He was a lawyer in the classical sense of a scholar who gave opinions on law, an *amicus*, a *jurisconsultus*, or further back still, in a meaning to be explained later, he was a *nomikos* or adviser to lawyers. He was equally, however, a philosopher and critic, a humanist, a literateur amongst the lawyers, an outsider looking in and causing a touch of panic. He looked at positive law from the perspective of a prior or first law, that of writing or, to quote a phrase, that of “structure, sign, and play.”³ Such

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¹ Jacques Derrida, *Péjugés Devant la Loi*, in LA FACULTÉ DE JUGER (Jean-Francois Lyotard et al. eds., 1985).

² Jacques Derrida, *Force of Law: The “Mystical Foundation of Authority”*, 11 CARDOZO LAW REVIEW 919 (1990).

³ JACQUES DERRIDA, *Structure, Sign and Play in the Human Sciences*, in WRITING AND DIFFERENCE (1978).

was his gift, his genius and his challenge. He played with the norm and with the law of genre. To follow that contribution, both the critical pricks and the public persona, *nomos* and mark, it is the law of writing in the writing of law that he called into question.

Self-Portrait

Maybe you met Derrida the person. Not that tall, but always arriving in the company of his aura. Big handshake, generous, warm greeting, and a tendency to mention his mother. Or you have read *Derrida* the book, and on occasion also his handwritten letters and his postcards. We have learned that his middle name was Elie, *elu* or chosen one. We have watched *Derrida* the movie and smiled at Jacques on a somewhat unconventional couch. We have seen the still life of his face in an exhibition of the portraits of philosophers. Maybe we visited the park he helped design in Paris. There was also Derrida the postcard painting, and the subject of an exhibition by Rebecca Dolinsky. There are even a few of us who may be hip enough or old enough or neither to remember also hearing and perhaps dancing to "Jacques Derrida," the Scritti Politi single. All of which makes Jacques Elie Derrida not a bad turn of phrase.

There is much that is fond in those avenues of access but they are no royal road to the philosopher, the erudite import, the fashion accessory, the scholarly figure or the disco beat. For those of us resident to the West of where Jacques mainly wrote, us denizens of the Anglophone world, before Derrida was Derrida in America, before he became "French Theory," there was the baroque translation of his most complex work: *Of Grammatology*.⁴ This was his study of the "gramma" or the accumulations of marks that make up writing systems. It was his emblematic work, his first American intervention and I will take it, for that reason, as my initial theme. I will address J.D. -- Jacques Derrida the mark. No helping it, honest reader that I am, I will elaborate upon what is left, the trace, the gram, in fact the Derrida-gram, the trajectory of name, *nomos*, and *nomikos*.

In truth I have no choice. It has to be either the mark or its failing image and materialist that I am I will start with the obvious. And I didn't meet Jacques that often. It leaves me no option but to be economical and scrupulous. I will address the signs that remain, limit myself that is to the graphic traces, pay attention only to the marks or grams, and most strictly interpreted where better to start than the *nomos* of the name. It was Derrida the metaphor that more than anything else made us aware of how metaphor invades all of language use. There is a law of the mark,

⁴ JACQUES DERRIDA, *OF GRAMMATOLOGY* (Gyatri Spivak trans., 1976).

a *sillepsis* or slippage of the sign that not even lawyers can escape. That was at least implicitly his thesis. I will work it out here, however, by reference to his name. His proper name. His signature. My method is both simple and radical. I will focus on his gram in its various forms, as recognized by philologists and rhetoricians. Here is the list: J.D. the pictogram, the logogram, the lipogram, the chronogram, the anagram and the nomogram. I confess I more or less made the last term up. It is the punch line. You will have to wait. Though not for long. Just for a gram or two.

Grammatology

So first the pictogram. My favorite instance comes from a paper delivered by Roman Jakobson's collaborator Louis Halle. He took an early manuscript of the 23rd Psalm and showed that if you turned the psalm on its side, it made a castle. He claimed that this provided a hermeneutic key to the poem: it was a defensive exercise, an apology and so on. Quite right too, and very persuasive. But what about Derrida's name? I have put it sideways, upside down, diagonal and more, and at first, I confess, it didn't seem to illustrate very much. Not a promising start; but wait, just look at the name in ordinary cursive (or in some other font, French Script MT maybe, or even better in Blackadder) and in time, depending on your font, you will see a ship. A firm initial capital "D," the perilunar flourish forms a vigorous rudder, "D" the gubernator. The second "d," in lower case, a funnel or a mast -- depending upon your sailing prowess. The final "a" with its forward curlicue makes a prow, a fine Norse nose cutting through the waters on the way to new worlds. And what are we to make of such a pictogram, Derrida the ship? It is, I think, an appropriate image of a heterotopic space, the sign of a moving mark, a floating signifier. Hermeneutically that is apt, it marks as it must Derrida the friend, the ship who passes in the night, and Derrida the courier or messenger, the advocate of deconstruction, alone and passing through. Europe in America, doing the continental.

That takes us nicely to the logogram, to the philology and etymology of the proper noun. In the old legal jargon, in a Latin gloss to the *Corpus Iuris*, we learn that the name inheres in the bones - *nomina ossibus inhaerent* - and this must be taken to mean that the name is its own law, the name as *nomos* appropriates the person, and it is the name that, to borrow from Baldus, makes the body walk. And so: Derrida, Jacques (pronunciation: da reader) (employment itinerant: Paris, New York, Irvine). The name is first off and most obviously from the Latin *derideo*, to scoff at, to deride. This is not an obvious root. It should thus be noted that *derideo* has a stronger meaning than in English and implies that the person deriding has an advantage enabling him to do so with reason: thus to ridicule. Etymologically at least, Derrida derided for good causes, he was a scholar, an erudite practitioner of the supplementary interpretation, an irreverent philosopher who allowed words to

have their say. Take the play on the name a little further, and we can note that in Medieval Latin, Derrida can be given a root in *rida* meaning ridge. There is a further cognate meaning associated with *ad deridicula* or to extremes, all the way to the ridge, to the limit as it were. And finally, as another supplement, there is an alternate etymology from the Old English *ridere*, from *ridan* to ride, which is the occupational name of a messenger.

Derrida is here again and variously the mercurial hermeneut, the itinerant figure of passage, of transmission of meaning. He is not, however, your usual messenger, his hermeneutics are in conventional terms on the margin or more simply they are extreme. His play upon interpretation, the elements of deconstruction and supplement, the philological ploys all make for an honesty, a candid refusal to reduce, that was early on interpreted to be somewhat mocking of accepted norms of academic discourse, a little critical of the self-possession, propriety and *amour propre* of scholars. Derrida was always most generous to words. He would play, mock, ride the ridge, push to extremes and, peculiarly troubling for law, offer a Janus face, a double reading. So his name is not far from his *nomos*, his logogram is close to the mark. If one sought a figure that captured this naming, then my choice would be *epimone* also termed in Latin *versus intercalaris*. This figure refers to a verse that is inserted several times in a poem and carries – bears the burden of -- its meaning. In Puttenham's definition, the figure of *epimone* originally had a musical context and so suggests something of the lyrical and rhythmic, a submerged beat, a refrain. Puttenham gives an example from Sir Philip Sidney: "My true love hath my heart and I have his," repeated three times in a poem to friendship.⁵

It is a good example. Derrida was all out for friendship and the *epimone* that his name suggests can be found most explicitly in his book on friendship which has as its *versus intercalaris*, the Aristotelian phrase "Oh my friends, there is no friend."⁶ For Derrida, I suspect, there was no friend because the singular and unique relationship of amity or amorousness necessarily escaped the abstraction of friendship, the public token of amity in the market. Derrida, who always and vehemently resisted being in analysis, treated amity as far more than could be said or numbered and named. Friendship occupied a space of silence and the decipherment of its intimations. Everything, and here I will use his own words from an interview after the death of Althusser, "everything took place underground, in the said of the unsaid."⁷ Hence in a sense to the intercalated

⁵ GEORGE PUTTENHAM, THE ARTE OF ENGLISH POESIE (s.v. *epimone* 1589).

⁶ JACQUES DERRIDA, POLITICS OF FRIENDSHIP 1 (1997).

⁷ JACQUES DERRIDA, NEGOTIATIONS 158 (2001).

phrase: there is no friend, only the becoming of friendship, the struggle towards friendship, the failed attempt at the self-presence of friends, to use Derrida's own early terminology. In sum, friendship has its own law. That is what Jacques kept saying, what he repeated in his many different ways.

From logogram to lipogram. The third category of gram, the lipogram refers to a type of witticism, the classical device of dropping a letter from a word or, as in the case of Tryphiodorus, from an entire *Odyssey* or epic poem. Addison, the Augustan satirist, whose essay on wit is a principal source on this practice,⁸ cites Seneca on the lipogrammatists: "operose nihil agunt" (busy about nothing) and so indeed it is fortunate that Derrida never resorted to any simple lipogram, but he did famously drop an "e" and substitute an "a," changing "différence" to "différance."⁹ We can note that the substitution is recognized by Addison as a subtype of lipogram and as a more or less legitimate mode of witty argument. Addison gives the example of Cicero. The name comes from *cicer* meaning a wen or little morbid lump, a vetch no less. He then recounts that Cicero ordered the words Marcus Tullius with the figure of a vetch at the end of them be inscribed on a public monument. "This was done probably to show that he was neither ashamed of his name or family."¹⁰ In Derrida's case the lipogram *différance* is used in the argument that writing is presupposed in speech, that speech carries the trace of the written in a phonetically indiscernible manner. There is much more to the argument, in that the very possibility of this substitution marks a linguistic impossibility, a play or slippage of meaning that precludes any definitive origin or meaning to words and laws. Without expanding on the philosophical significance of the lipogram, we can simply note that it is a gram, and in fact it is one of Derrida's more famous grams, a repeated term, and maybe even another *epimone*.

Fourth is the chronogram. We can link it to the lipogram. If the latter drops a letter, the former reads those letters in a name that are also Roman numerals. The numerals in the name are then added up to form a number, the chronogram. Not only is the chronogram a species of lipogrammatic substitution, it also shows the power of the concept of *différance* which argues that all meaning is potentially undecideable, that all words are codes or metaphors requiring the justice of interpretation. Choices have to be made, prejudices and precedents suspended, while the words are attended to, letters substituted, corruptions reformed perhaps, and meanings put into play. That is the project that the court of literature imposes

⁸ Cited in Addison, *Essay on Wit – History of False Wit* 2, 59 SPECTATOR 1711 (reprinted in 5 THE BRITISH ESSAYISTS 382 (A. Chalmers ed., 1855).

⁹ DERRIDA, *supra* note 4 at 44 et seq.

¹⁰ Addison, *supra* note 8 at 384.

upon the practices of law. In this case the issue is the numerical value, the numerological significance, of Jacques Elie Derrida.

Add it up and we can truthfully say that we have Derrida's number. Here it is: CLIDID -100, 50, 1, 500, 1, 500. It comes to 1152 if one counts each Roman numeral separately. Added simply as Arabic numbers the total is 18. As neither of those totals means very much we need a lipogram. I will come to that shortly. First off, 1152 is not an insignificant date. Given time I could find many meanings for it. Without too much effort, we can place 1152 at the cusp that marks the transition from the late Middle Ages to the Renaissance. It is the era of the troubadour lyric and the reception of Ovid's *Art of Love*. The comedy of eros was rampant, the laws of love were being formulated and promulgated, the flowers of rhetoric were being sown and we might hazard that philosophy would later and ambivalently watch them bloom. Put it differently, differently even, the first postclassical - cisalpine -- postcards were being sent, the love notes of the courtly lyric, the first laws of the gay grammar, not Socrates to Freud so much as A.D. to J.D., Arnaut Daniel to Jacques Derrida and beyond.

It is the period of poetic searching, of the gay science, of *las leys d'amor* or of the cases, judgments and laws of love. For the troubadours court and law were everything, ethics ruled, and *amor vincit omnia*, as the poet legislators used to say. The point is that in 1152, our arbitrary date, and assuming even that the 12th century took place, law was really very much closer to what J.D. would likely propose, than to what positivists now mean by it. For the judges of the courtly lyric and of the legally disputed question of love, the *quaestio amoris*, the rule to be applied was that of rhetoric, both law and word, *rethorica* as it was later termed, and *mezura*, meaning measure and ethical honesty was the sign of the times rather than any more positive rule. It is also an epoch of transition in the uses of writing and law. Writing is just coming in as a trustworthy mnemonic in legal affairs. And then again, it is one of the many years that Aelred of Rievaulx, having made a start but being now taken up with his responsibilities as Abbot, postponed work on his treatise *On Spiritual Friendship*. So a lot going on. The transitional status of writing, the movement from unwritten to written forms of record, and specifically the indiscernible border between them is both an emblem of that epoch and an important grammatological theme. An intimate date. A hidden source perhaps, a precursor and exemplum for Jacques' work.

Add to that the number 18, the age of majority, birth as a symbolic subject, entry into legal subjectivity and we hardly need the chronographic lipogram, it is hardly worth dropping the second D, the latter 5, so as to turn 18 into 13. But I will anyway and in honor of Derrida's Jewish roots. Thirteen is the age of maturity for males in the Judaic tradition. We can add to that the observation that according to the Torah

there are 13 divine attributes, and 613 commandments. Thirteen is a wonderfully ambiguous sign, it is constantly at play, lucky and unlucky, powerful and portentous. I, for instance, was born on the 13th of the month. The Roundhead Oliver Cromwell, leader of England's short-lived revolution, was born and died on September 13th. We could add, though this is cream on cream, *ad derridicula* as it were, that 13 was classically a sign of power and that Zeus sat as the 13th and most powerful God. In Tarot, the 13th major arcanum is Death meaning not ending but fresh beginning. So 13 is a kind of numerical equivalent of *différance*, and it too can be taken to mark an impossible space or fractured origin. And that is appropriate, granted that both the number and the concept are the products of lipograms, and both signify a peculiarly Derridean hermeneutic play.

The Nomogram

That takes us to the anagram. We have already noted the J.D. in Jacques Derrida. One could note, just for additional support, though it is quite unnecessary, just a flourish, that inside the name one can find *ad iure* or towards law, as well as ludic, *seria* and *deja lu*. But J.D. says it well, and it is that juristic theme that will be traced into the final gram, the nomogram. The term is not mine, but rather borrowed from the work of a colleague of Derrida's, Pierre Legendre, whose work on writing and law addresses in a specifically legal context some of the themes, especially those of scribble, of writing and power, that Derrida played upon in more literary terms.¹¹ Whatever the source, and Legendre hardly develops the term, the nomogram is a term coined from *nomos* and *gramma*, a combination that joins order or measure to mark, trace, or sign. We might translate it as the law of the sign or more specifically as the rule or institutional significance of the name. Derrida then or as I have suggested J.D. stands for something, it appropriates or names a person, an institution, a measure.

Derrida stood back. He acknowledged in an interview that he wrote in a complex and convoluted style, "almost to the point of unintelligibility,"¹² so as to respect the political order at the Ecole Normale when he arrived there. He didn't want to upset Louis Althusser, the philosopher prince, nor did he wish to be denounced or derided by Althusser's acolytes as a reactionary thinker, a phenomenologist who prioritized subjectivity over politics, philosophy over social change. Those were the terms of the discourse when he arrived in the academy and they marked his work,

¹¹ Jacques Derrida, *Scribble (writing-power)*, 58 YALE FRENCH STUDIES 116 (1979). The nomogram is defined first in PIERRE LEGENDRE, *LES ENFANTS DU TEXTE. ÉTUDE SUR LA FONCTION PARENTAL DES ÉTATS* (1992); and is reprised in LEGENDRE, *LA 901E CONCLUSION. ÉTUDE SUR LE THÉÂTRE DE LA RAISON* (1998).

¹² Derrida, *supra* note 7 at 153.

they gave his writings their *nomos*, that of suspension of judgement, of the ethics of indirection, of *aporia* and of waiting.

If Louis Althusser was the legislator of the intellectual norm, the promulgator of bad style, his fault was precisely that of adopting or at least allowing himself to be placed in the position of sovereignty. He and his followers enforced a code, they instituted a norm, they were even, in Jacques' view, somewhat terroristic in their impositions and their judgements. Derrida sought to move beyond that degree of determination, or in Althusserian terms, the overdetermination of the real. He sought to avoid legislating and, being by training a phenomenologist, he wanted to attend to the question of origin, the question of what comes prior to judgement and law. His fascination with law was in consequence no accident. Whether because of personal experience or for institutional reasons, and specifically so as to overturn the structuralist orthodoxy that he encountered professionally, the question of law was persistently present.

The discipline of law represented for Jacques a protocol of close reading. He spent time with lawyers because they were to his mind unsung grammatologists, latter day hermeneuts, the disciplinary inheritors of a tradition within which words really mattered. Lawyers, and specifically legal scholars, with their texts, their cases, their briefs, their files and their dictats. Their discipline cried out for the application of a rigorous hermeneutics, for some flexibility and play in interpretation. They could use a little phenomenology and that is what Derrida gave. That was his gift. He addressed the force of law in terms of its illocutionary force, its modes of enunciation, its utterance and reiteration. His concern, his obsession if you like, was with the institutional site of legal discourse and specifically with the ground of its judgements. He wanted to look philosophically at the moment prior to judgement, pre-law, or Kafka's *Before the Law*,¹³ as a way of holding up on legislating too quickly.

Nomos is derived from the verb *nemein* meaning to appropriate and by extension to name. What did Derrida name? More precisely, what did he appropriate, measure, make his own? The trajectory I have traced through his name, his own gram, is one that moves from gay science to law, from postcards to legal texts, from justice to judgement. There is first the attention to play, and specifically the play of words. In his book *The Post Card* Derrida plays upon the desire that subtends writing. He sends postcards and love letters as a species of literary acrostic that marks how every text is a fragment and exemplifies the hermeneutic necessity of attending to the lyrical and lexical, the unintended or marginal features of writing. His position

¹³ FRANZ KAFKA, *Before the Law*, in THE TRIAL chapter 9 (W. & E. Muir trans., 1925).

was very consistent. The troubadour, the poet lawyer, the scholar who attends to the measure that underpins law, is a distant lover, an infinitely patient reader, and attentive to every detail, to every syllable, sound and letter. Thus his injunction to his correspondents: listen. The protocol of listening is attention, waiting, doubting, holding on. Suspend the rush to judgement, do not be determined to decide, don't decide in advance. Good readers are not afraid to retrace their path nor hesitant to examine how they came to be where they now are.

Lawyers decide. They judge, they determine, they legislate. There is no avoiding legal writs, the statutes, injunctions, *sub poenae*. No question about that. Good or bad, it gets done. Derrida's question was slightly to the side of that manifest determination. He asked what comes before the law? What precedes the rush to judgement? How do we understand law in terms of whence it came? In his essay on the force of law Derrida held up the institutional site of legal judgement to scrutiny. He argued that before law there has to be a moment of suspension, an instance of inattention to law, a hearing of the particular, person and event, prior to rule or determination. Justice meant holding back from calculus and judgement. The instant precedes the rule. It was an argument made in a legal forum and with reference to the Levinasian concept of the face to face of justice, the call of the other. I will end by suggesting that in fact the legitimate force of law is for Derrida both richer and more complicated than his initial take in that essay suggests.

The clue lies in the *epimone*. For law to be just, the judge has to enter a relation with the judged. The subject of judgement has to be seen and heard. That is axiomatic. The judge has to listen and remind the judged that law is something held in common. Justice says, in effect, "Oh my friends, there is no friend". A curious reprise, a strange if implicit judicial utterance. But Derrida was very much about the implicit in the legal and about the attitude or tone that came prior to law. For him friendship preceded law, it was the implicit relationship, the moment of amity being the expression of justice in the intimate space in which law was suspended. The judge cannot be a friend, there is no friend, but the judge exists amicably, in a loving relationship, amongst friends. Law will turn the singular into the general, the particular into the abstract, instance to rule. That is what law does, but before it does it there is a moment of amity, an attention to friendship, to things held in common. It is a position that has its origins in Aristotle's *Ethics*, of course, and in the aphoristic dictum that "good legislators pay more attention to friendship than to law,"¹⁴ but Derrida's genius was to take that principle seriously, to play with it, to apply it directly to the legislations of lawyers.

¹⁴ ARISTOTLE, NICHOMACHEAN ETHICS Book viii c. 1, at 235 (1846 ed.).

Friendship, living together, holding things in common, inhabiting the same institution, these are the pre-conditions of law. Amity is *nomos*. Amity is more important than law because it is amity that grounds law and makes justice possible. That is Derrida's main argument, his nomogram, his measure of law. He was in that sense a *nomikos*, a term that appears in a few post-classical manuscripts and that means someone who is not a lawyer but one who advises lawyers, and specifically judges, on the meaning of law. Derrida. *Nomikos*. J.D. deserved his J.D.

There is a black and white photograph in our law school Faculty seminar room.



Photo from Susan Orastalia

It shows Jacques at the 1990 Conference on his work, on "deconstruction and the possibility of justice," at Cardozo Law School in New York. He is sitting and listening. Big hair. White as snow. He is leaning back, face turned, with a hand on his cheek. He looks younger then, but also tired, supporting his face with his hand, maybe hiding the blind side, the bad side. Whatever the tenor or pitch of the head, his gaze is generous, deep, attentive. He looks infinitely patient. He is attending the conference. He is waiting, waiting and listening to the lawyers talk as lawyers will. There is distance, time, stillness and a certain melancholy, a composed strangeness as well as an exceptional amicability in the portrait. He is not one of them, the eyes seem to say, but he is amongst them. Oh my friends, there is no friend. That is the lyrical and always potentially ludic position that his posture conveys. It is an image of intimacy, hung in a public place. A gesture of love in a professional domain. The photo remains. It is lodged in the Faculty seminar room. It hangs over the Law School. It shows Derrida from the inside, looking out. It offers a lesson for lawyers. Derrida the *nomikos*. J.D. in the process of getting his J.D. Or put it like this. He sent a nomogram. A postcard image. He was *amicus curiae*, a friendly critic of law.