

ARTICLES : SPECIAL ISSUE
A DEDICATION TO JACQUES DERRIDA - THEORY

Moving Away From Moving Away: A Conversation About Jacques Derrida and Legal Scholarship

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[Editorial Comment: This engaging dialogue between the two authors is a selection from a much larger piece including a wider exploration of Derrida's intellectual context and his current interlocutors in law and the social sciences in general. The editors of this Special Section hope to publish further parts of this conversation in a subsequent issue of *German Law Journal*.]

A. Introduction: A Tribute to Derrida

As we all know, this fall, the leading philosopher, Jacques Derrida has passed away. We feel privileged to have our thoughts published in this journal, hoping to have come to create a proper tribute to an original thinker. In this article, we set out to explore some of the ideas that Derrida discusses in his philosophical work. Although this text is by no means exhaustive as a source to understand Derrida, or any other philosopher or thinker for that matter, its goal is to spark some thoughts about him, some of his core ideas, and how we see him relating to the legal discipline.

We considered writing a standard law article for the *German Law Journal* when we received the call for papers, but then thought that one of the best ways to pay tribute to Derrida is to write about him in a form that reflects his ideas, since form was never a marginal, let alone accidental matter for him. Indeed, as we explain in our addendum, his work can be seen as an attack on Western philosophy's logocentric and phonocentric biases. The logocentric bias represents this idea of centering the discovery of truth on logic. For Derrida, this is problematic considering that logic, in the way that it has been described by philosophers, has

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prioritized presence over absence: the “what is” versus the “what is *not*.” By focusing exclusively on the present, it in effect produces the illusion of meaning by fixating on describing a ‘thing’, a *present* thing, thereby ignoring the many other phenomena that are absent. Since the absent relates with the present, this produces *radical instability* in meaning. By doing this, Derrida demonstrates that logocentrism is a myth: there is no absolute site of meaning, no origin, no center for logic (or logocentrism) where truth and meaning flow. Undecidability pervades meaning and instability is ubiquitous.

While Derrida’s first preoccupation was the “logocentric” bias in Western philosophy, the second major one is the “phonocentric” bias, again in Western philosophy. Derrida describes the phonocentric bias as constructing *oral discourse* as somehow superior to *writing*. Derrida uses Plato to make this demonstration. For Plato, writing is viewed as problematic, because the author is no longer present to verify, correct misperceptions and misunderstandings of his text when it is read by others. But, Derrida fundamentally disagrees with this idea of oral speech, quite explicitly showing that there is ambiguity when we speak, and even when we speak to *ourselves*. Instabilities and undecidabilities pervade throughout our speech. Meaning drifts away from us, producing ambiguity in others’ perspectives, but also from the perspective of the hearer, who senses a vertigo produced by his own confusion at what she says.

We consider that a *conversational* format¹ is meant to respond to the two critiques that Derrida advances in response to the phonocentric and logocentrism biases. Let us start off with the phonocentric bias. By presenting ourselves through the oral speech, we feel that we have moved away from the perceived comforts of the written word. Having transcribed our words, the transcript of the conversation that follows can be seen as relying on the oral word as a means of communication. Of course, a paradox that has not been lost on us is how to communicate the oral word, we had to request that a transcriber *write our conversation*. A paradox we think Derrida would enjoy.

But, let us also consider the logocentric bias. For most philosophers and legal theorists, an article is meant to be written, in the form that it is, for reasons of systematicity, comprehensiveness, sequential logic, etc., and these qualities represent *rigor* for most legal scholars. As legal scholars, we have been constructed

¹ As a method of communicating ideas in legal theory, the conversational format has been used before by legal scholars in legal journals. For articles written in a conversational format, see Peter Gabel and Duncan Kennedy, *Roll Over Beethoven*, 36 STAN. L. REV. 1 (1984); Ellen C. DuBois, Mary C. Dunlap, Carol J. Gilligan, Catherine A. MacKinnon and Carrie J. Menkel-Meadow, *Feminist Discourse, Moral Value, and the Law - A Conversation*, 34 BUFFALO LAW REVIEW 11 (1985).

in our discipline as seeing these qualities as a type of logical flow that produces *clarity* for our readers. But, Derrida would remind us that clarity comes at the cost of ignoring many absent features. Such a style of writing represents a concoction, an illusion of meaning. To pay tribute to this idea, we have decided to speak our minds to one another, reflecting in a manner that might not be seen as ordered. Although there is still much absence in our conversation, we feel the mode in which we converse will constantly remind the reader of that.

Although we have come to this decision, this is not to say that conversing has not produced anxieties in us. These anxieties were felt throughout the project: from the moment we picked up and spoke into the microphone to record our conversation, throughout our discussion as we asked ourselves questions, and even, or perhaps, more accurately, *especially* when reading and editing our conversation. We both jokingly wonder if we are feeling the pangs of the logocentric bias. Being legal academics, writing, teaching and presenting ideas to students and colleagues with the illusion that it must be ordered, sequenced in a particular way, we were confronted face to face with our anxieties about how our conversation seemed disorderly (in light of our logocentric biases).

After reading our transcripts, we had a need to change this or that, wanting to just add this point because it had to be comprehensive, clearer, or *even*, the best of all these justifications is "it should sound like me." "Did I really say this?" Hassan exclaims. Juan asks Hassan, "I wonder why you didn't answer this question I was trying to ask you again and again?" Both of us also asked "why did we ask these problems, and not others?" "How did this happen?" and "why did the conversation go in that direction?" This brought us face to face with our logocentric biases. After having read our original transcripts, we came to recognize that. We came to recognize that it is difficult to judge a conversation as having too little or too many questions, or to judge it by saying that they didn't answer enough questions, or answered too many. Conversations are inventions. Spontaneous inventions. During our conversation, speech seemed to be out of control, on its own, determining itself without us. For us, the task of conversing in this way provided a perpetual reminder that the phonocentrism of philosophy was seemingly wrong. Every time we tried to reach clarity, something else would preempt that. Editing the written version of the conversation, we needed to talk about it, in order to edit more written stuff, and this would produce a renewed need to discuss it, and so on. Every time we wanted to just address this question, another question would emerge, preempting the attempt to set the agenda, put something finally *to rest*. If anything, rest was not possible, settling questions beyond our reach. After we completed reading and editing our mutual parts of the original transcripts, we recognized ourselves in a passage by Gilles Deleuze and

Claire Parnet entitled *A Conversation?: What is it? What is it for?*, in *Dialogues*,² where they say the following:

It is very hard to 'explain oneself' – an interview, a dialogue, a conversation. Most of the time, when someone asks me a question, even one which relates to me, I see that, strictly, I don't have anything to say. Questions are invented, like anything else. If you aren't allowed to invent your questions, with elements from all over the place, from never mind where, if people 'pose' them to you, you haven't much to say. The art of constructing a problem is very important: you invent a problem, a problem-position, before finding a solution. None of this happens in an interview, a conversation, a discussion.³

Indeed, when we read these opening remarks of Deleuze and Parnet's book, we recognized ourselves. We remarked to each other how this systematic idea of problem followed by solution is connected to the idea that order is possible in a conversation, that conversations can yield discoveries, truths. Our discussion didn't provide solutions, but further discussions, and questions. The questions were experienced by us as somehow distant, determined by them, rather than by us, the interlocutors.

Another point in Deleuze and Parnet's text where we identified ourselves is where they say the following about conversations:

...Objections are even worse. Every time someone puts an objection to me, I want to say: 'OK, OK, let's go on to something else.' Objections have never contributed anything. It's the same when I am asked a general question. The aim is not to answer questions, it's to get out, to get out of it.⁴

Indeed we *had* felt concerned, and even distressed about how sometimes we felt the other was not *really* answering the question we posed him, that he was ducking, or changing the topic. Again, the logocentric side of our identities told us, dictated, that somehow *this* was the *direction* my interlocutor should go. Sometimes we felt somehow alienated by the other, in our view, *moving away* from what the questioner thought was the *center* – only yielding the movement from one question to another – really the movement from one peripheral matter to another peripheral matter. Yet somehow even if peripheral, we each had the desire to set the tone,

² GILLES DELEUZE AND CLAIRE PARNET, *DIALOGUES* (1977).

³ *Id.* at 1.

⁴ *Id.*

decide the center, and construct the discussion in the image of our perception of what constituted the 'good,' the great conversation. This need to center, to question and request answers as a way of ordering is bankrupt. Instead of answering, we sound like we are, in the words of Deleuze and Parnet, "getting out" of the question, not to answer, but to get out of the question. And in each of our minds, to move to what we think are the right questions.

Deleuze and Parnet seem to be right. Questions are inventions, triggered by our imaginings of what we hear, but also what we don't hear. As Derrida reminds us, logic has been constructed in philosophy as "present" and not absent. The logocentric idea of conversations as dialogue to resolve problems and achieve understanding seemed inaccurate to us after reading our experience, after recording or conversations. But if we were to focus on the absent aspects of a conversation, what is not said explicitly, what is felt, a conversation is not this ordered, stable tool for understanding. In the words of Deleuze and Parnet, it is filled with silent moments where we "don't have anything to say." And in response to questions, we would rather resist, and move away to speak our thoughts. Questions in this sense are distractions. Instead, we rather invent our own questions. This is in fact something we can identify with. We felt at different times that the other didn't hear, wasn't answering my important question. And we felt alienated, "Why is he asking *that*?" The absent, unexpressed thought seems to lead to a perpetual moving on.

This is where Derrida comes in: if each of us is moving on, moving away from questions, the movement of a conversation as ordered is questionable. And, all there exists in a conversation are moves away, and *moves away from moving away*: a perpetual chain of moves-away making the conversation, not a source of structure and order, but a disordered matrix of contingent thoughts. This notion of moving away from moving away ties in nicely with Derrida's idea of *différance*, a coined neologism by Derrida suggesting that language, or conceptual meanings, are perpetually *deferred*. Every term means another, and each of these others means other words, in turn demonstrating the deep instabilities of *the word*.

In light of these comments, it comes as no surprise to our readers that it in no way is meant to provide a comprehensive understanding of any of the ideas presented by Derrida. It is meant to be a tribute, to pay homage to his ideas, and provide some examples of ways he might have, and continues, to influence the legal field. If anything, it can be seen more as a discussion between two legal academics, who have particular interests, preoccupations, and anxieties with Derrida, and feel the need to discuss it. And, in this sense, it is not even a piece that should be read to explore the varying ways in which Derrida might have influenced the legal field

from a historical level, but a piece that provides general, or broad-strokes about how Derrida might be influencing the legal field.

Our single goal is to provide a conversation that is moderately readable to the intellectually curious legal scholar who wants to have an introduction about Derrida, and an introduction that we think is immersed with recognizable legal concepts and ideas. A conversation on Derrida perhaps *by* legal scholars *for* legal scholars. The hope is not to provide information about all of Derrida's work, and how it can be used by particular legal scholars, or legal scholarship in general, but rather to spark an interest in him, maybe stimulate us to go to Derrida's book, and take a read sometime. We think that perhaps that is a nice way to pay tribute to a man whose works are of increasing interest to academics of many disciplines.

B. Talking about Derrida

Hassan: So, do you think that Derrida has left an imprimatur in our field – that is, the legal field? Do you think that he has some kind of so-called presence in our field?

Juan: Actually I don't think he has that much of a presence as he could or even should. Funny, because he seems to be omnipresent in many ways, in for example the way 'deconstruction' is a very popular word and increasingly used in all kind of contexts. In our field I would see him much more present in the close reading practices that law and literature people use and semiotics people⁵ and in feminists who use law and literature as well as semiotics in their analysis.⁶

⁵ Throughout the text, we use the words "post-structuralist" and "semiotic" interchangeably.

⁶ Generally, and among many others, GUYORA BINDER AND ROBERT WEISBERG, *LITERARY CRITICISMS OF LAW*, (2000); DAN DANIELSEN AND KAREN ENGLE, *AFTER IDENTITY: A READER IN LAW AND CULTURE* (1995); *FEMINIST LEGAL THEORY: READINGS IN LAW AND GENDER (NEW PERSPECTIVES ON LAW, CULTURE, AND SOCIETY)* (Katherine Bartlett and Roseanne Kennedy eds., 1991). Others are: Jack Balkin, *Deconstructive Practice and Legal Theory*, 96 *YALE LAW JOURNAL* 743 (1987); Jack Balkin, *The Crystalline Structure of Legal Thought*, Ed Morgan, *Act of Blindness, State of Insight*, 13 *BOSTON UNIVERSITY INTERNATIONAL LAW JOURNAL* 1 (1995); Ed Morgan, *The Other Death of International Law*, 14 *LEIDEN JOURNAL OF INTERNATIONAL LAW* 3 (2001); Clare Dalton, *An Essay on the Deconstruction of Contract Doctrines*, 94 *YALE LAW JOURNAL* 997 (1985); Stanley Fish, *Working on the Chain Gang: Interpretation in the Law and in Literary Theory*, 9 *CRITICAL INQUIRY* 201 (1982-1983); Duncan Kennedy, *The Semiotics of Legal Argument*, 42 *SYRACUSE LAW REVIEW* 75 (1991); Christine Desan, *Expanding Legal Vocabulary: The Deconstruction and Defense of Law*, 95 *YALE LAW JOURNAL* 969 (1986); Robert Cover, *Violence and the Word*, 95 *YALE LAW JOURNAL* 1601 (1985); Mary J. Coombs, *Outsider Scholarship: The Law Review Stories*, 63 *UNIVERSITY OF COLORADO LAW REVIEW* 683 (1992); Kimberly Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Woman of Color*, 43 *STANFORD LAW REVIEW* 6 (1991); and the list could go on and on... Some people have cited DAVID KENNEDY, *INTERNATIONAL LEGAL STRUCTURES* (1987) and MARTTI KOSKENNIEMI, *FROM APOLOGY TO UTOPIA: THE STRUCTURE OF INTERNATIONAL LEGAL ARGUMENT* (1989) as example of deconstructive practices. The tendency and

Hassan: That's what I was thinking about the other day: how difficult it is somehow to find traces of Derrida's works. His presence is perhaps, oddly enough, *implicit*. You have to read Derrida into the work of legal academics. Derrida is not even present in the footnotes or citations, forget about the body of academics' works. Legal scholars who use critical thinkers often turn to philosophers such as Foucault and Nietzsche rather than Derrida. Consider Janet Halley's *Taking a Break from Feminism*,⁷ which relies on Foucault and Nietzsche to advance her critique of feminism. Also consider Duncan Kennedy and David Kennedy working in different areas of the legal discipline: Duncan Kennedy working primarily in private law (property, contract, and tort law) and David Kennedy working in international law. Neither David Kennedy nor Duncan Kennedy rely on Derrida, save Duncan in a single work of his, the *Semiotics of Critique*.⁸

Juan: I find him even in those cases to be absent as an anxiety, which is one of the ways in which you could signal an implicit presence. While he could be a thinker who produces immense and even lasting anxiety, I find him absent as such, even when I analyze Janet Halley's text *Taking a Break from Feminism* and I see her as strategizing with her arguments. Not as trying to cope with a Derridian kind of anxiety. I might, with some effort, see him in David Kennedy's writing style, in the way that he's constantly reemphasizing, rehearsing and repeating which seems to be the flow of his texts. I might see it there. But like I said, that's with some effort and I don't suspect that there is a conscious Derridian anxiety. But then again I don't know, is he present as an anxiety? I mean, we have several Derridas, one is the Derrida of anxiety, about the elusiveness of language, about the emptiness of meaning. What often in our conversations becomes obvious as in the moments of self consciousness that Basak⁹ was talking about. The realization, when you say something, that it is actually bullshit. You know: "whatever that means" and "whatever," etc. I see that as a Derridian kind of anxiety. Which is not necessarily a painful anxiety, but there I see Derrida somehow operating. Intersecting with whatever train of thought we are pursuing. What do you think?

difficulty of placing certain authors at either side of the structuralist - post-structuralist divide will remain a recurring issue, and not merely in this conversation.

⁷ Janet Halley, *Taking A Break from Feminism?*, in *GENDER AND HUMAN RIGHTS* ch. 3 (Karen Knop ed., 2004)

⁸ Duncan Kennedy, *A Semiotics of Critique*, 22 *COR. L. REV.* 1147 (2001).

⁹ Basak Cali is a dear friend who is often present in our conversations.

Hassan: I am not so sure what you mean by *anxiety*, but if you mean the anxiety of thinking about Derrida's work or his insights, then I understand. Yeah, in terms of David Kennedy, I absolutely think that we can define or refine our analysis of his work in such a way as to say that it is highly influenced, if not inspired, by Derrida. If this remains inaccurate, we can at least describe his work, easily, I would say, *through* Derridian concepts. The use of words like *counterpoint*, in *Thinking against the Box*¹⁰, or his method in *The Human Rights Movement: Part of the Problem?*¹¹ seems to at least fit the interpretation that David Kennedy can be described through Derridian concepts. The mere attempt of consistently showing how some foundational concepts of human rights, such as 'deontology,' 'abstractness,' 'universality' are part of the problem of the *very notion* of human rights, in turn disabling the human rights activists and members of the so-called 'human rights movement' to actualize their self-declared goals, *I see that* as an inherently Derridian approach, or at least as adopting what seems to be a Derridian approach. David Kennedy's method in *Part of the Problem?* starts off with showing what certain core concepts mean to persons and activists in the human rights movement, but then moves on to show the internal instability of these concepts, by demonstrating how the opposing concept might be useful to achieving the self-declared goals of activists in the human rights movement. David Kennedy does this, for example, by showing that human rights activists and theorists see human rights as deontological, *but then saying* that maybe taking on a teleological approach would be more useful. But, he *even* goes further, telling the human rights activist "*that actually* seeing human rights as strictly deontological is part of the problem, in turn explaining the failures of human rights activists."¹² To consistently see human rights as *deontological* does not allow one to *strategize*, for example, or to take on a *teleological, pragmatic* approach, one that is more goal-oriented. David does this flipping (sometimes referred to as *flippability* among critical legal scholars) – shifting from the way activists and theorists of human rights see human rights, and

¹⁰ David Kennedy, *When Renewal Repeats: Thinking Against the Box*, 32 N. Y. U. J. INT'L L. & POL. 335 (2000). Other related significant works by David Kennedy include David Kennedy, *The Move to Institutions*, 8 CARODOZO L. REV. 841 (1987); David Kennedy, *A New World Order: Yesterday, Today, and Tomorrow*, 4 TRANSNAT'L L. CONTEMP. PROBS. 329 (1994); David Kennedy, *The International Style in Postwar Law and Policy*, 1994 UTAH L. REV. 7 (1994); David Kennedy, *The Disciplines of International Law and Policy*, 12 LEIDEN J. INT'L L. 9 (1999); David Kennedy, *Receiving International Law*, 10 CONN. J. INT'L LAW 347 (1994); David Kennedy, *Primitive Legal Scholarship*, 27 HARV. INT'L L. J. (1986); David Kennedy, *International Law in the Nineteenth Century*, 17 QUINNIPIAC L. REV. 99 (1999).

¹¹ David Kennedy, *The International Human Rights Movement: Part of the Problem?*, 15 HARV. HUM. RTS. J. 101 (2002). See DAVID KENNEDY, *THE DARK SIDES OF VIRTUE: REASSESSING INTERNATIONAL HUMANITARIANISM* (2004); David Kennedy, *International Refugee Protection*, 8 HUM. RTS. Q. 1 (1986). For another elaborate work that critiques human rights, see COSTAS DOUZINAS, *THE END OF HUMAN RIGHTS* (2000).

¹² This is to point out that although within quotations, these words were pronounced by Hassan.

showing, *well*, that might be a problem for human rights activists. David Kennedy does this by informing the human rights activist that: “*look*, the binary opposite concept that *you*, Ms. Human Rights Activist, have excluded, would *actually* facilitate, be helpful to the human rights movement in pursuit of its goals.”¹³ So, David would ask, ‘instead of the *abstract*, where’s the *concrete*?’; ‘instead of *universal*, where’s the *cultural*?’ and so on. By flipping the way that he does, David implicitly (or perhaps quite explicitly) attacks the underlying suppositions that activists and theorists believe about human rights, showing how their conception or theory of human rights are part of a broader mental model, one that systematically and comprehensively includes ‘deontology,’ ‘universality,’ ‘legality,’ ‘abstractness,’ ‘emancipation,’ and that somehow these concepts are suspect, since they do not inevitably yield the political outcomes that activists have (and had) in mind. This is one methodology which I think, even if not inspired by Derrida, is certainly related to him. It is a method in which the *idea* of human rights, if I can call it that, what is seen as its *core essences* are actually not an essence of this *thing* called human rights, and *actually*, many other essences have been excluded from them, which if included, might have been useful to achieving the self-declared goals of human rights. This is one way to show that there isn’t an essence to something called human rights. I see this throughout *Human Rights: Part of the Problem?* It’s actually a pretty fantastic text, because it has very few, perhaps no footnotes whatsoever. David’s goal doesn’t *really* seem to be about providing an analytically cogent set of criticisms in order to improve the task of international human rights activists and scholars, or of improving or perfecting theories of human rights. But rather, it consists of a list of what people think *are* human rights, or what they think that human rights movements *do*, and showing *them* that *actually*, while they think this thing called ‘*right*’ that they are relying on will yield *these* good results, they don’t *at all*, and *by the way*, they don’t *because* (and *not* in spite) they are properly relying on a particular theory of what human rights are, and those things that they are relying on are *precisely* the culprits, the causes, of the bad results. What is brilliant about David’s text, what puts it in a category called *critique* or critical thought, at least for me, is that it operates by showing how the very concept that human rights activists and theorists rely on, is the *very thing* that yields the *opposite* (or less than ideal) result that human rights activists long to achieve.

Juan: Yeah, I see David as leaving Derrida aside, but as seeing things in a way that you could construct as being from a Derridian perspective. I see David at his strongest when he is running, at his weakest when he is standing. When he attempts to pinpoint, to translate his constant efforts, ongoing efforts into one political sound bite, like when he says that ‘we need more contestation’, or ‘we

¹³ This is to point out that although within quotations, these words were pronounced by Hassan.

need more politics', I see those points there being very powerful when he's like just making them and then going on to say the opposite. But I find him weaker when he tries to nail them down, which in a way goes back to this other image that I have of Derrida. The one in which language is always requiring more language. This inversion of *différance* that instead of language pushing meaning ahead and just deferring meaning,¹⁴ it is somehow always inviting you to speak more: "please come, speak more." Almost like the sirens in the story of Ulysses, irresistible, tempting, "come, come, tell me more, and keep on talking." We are driven by it, we're persuaded, and we're seduced by it. This would be a Derridian insight as a pleasure principle. And I see him, David Kennedy, doing that at his strongest, just going on and on. "Actually, blah, blah, blah, but actually, the opposite of blah, blah", flipping and flipping and inverting. There I see Derrida very much as a presence.

Hassan: The use of the words *flippability*, words like *counterpoint*, *indeterminacy*, and *unknowability* seem to be part of the language of critical legal thought, particularly at Harvard Law School, where we were both visiting last year, but also in other law schools as well. The same words have been imported to other places where faculty and students are interested in critical thought like here at the United Nations University for Peace, where we teach. But, such words differ from the ones that Derrida has used. Consider Derrida's use of words such as *deference*, *différance*, *arbitrariness*, *traces*, and *deconstruction*. With the possible exception of the word *deconstruction*, none are commonly used rhetorically in the aisles of the law school, and definitely not in legal journals, or legal scholarship in general. And, so I say all this because I am wondering to what extent you think that people like Peter Gabel and Duncan Kennedy and other critical thinkers of the 1980s have in some way constructed a *particular* Derrida marketable for the legal field?. This construction is one that is constantly deployed by Ph.D. students around the world who are interested in critical legal thinking. In other words, these Ph.D. students are actually reflecting on the Derrida that was imported by the Duncan Kennedys, the Peter Gabels,¹⁵ and the Roberto Ungers.¹⁶ And, somehow Derrida – his own voice and writing – are now quite distant in the legal academy.

Juan: I don't know, but okay, we should further explore that sentiment that everything is flippable. Because you could argue that most of it is of a structuralist

¹⁴ See JACQUES DERRIDA, ... *That Dangerous Supplement ...*, in OF GRAMMATOLOGY 141 (Gayatri Chakravorty Spivak trans., 1974); JACQUES DERRIDA, *Structure, Sign, and Play in the Discourses of the Human Sciences*, in WRITING AND DIFFERENCE 278 (Alan Bass trans., 1978).

¹⁵ See Roberto Unger, *The Critical Legal Studies Movement*, 96 HARV. L. REV. 561 (1983).

¹⁶ See Peter Gabel, *A Critique of Rights: The Phenomenology of Rights-Consciousness and the Pact of the Withdrawn Selves*, 62 TEX. L. REV. 1563 (1984).

character. But where I do see Derrida at work, or almost at work, in Duncan's work, is in his article *The Stages of Decline of the Public/Private Distinction*,¹⁷ in which he constructs, but in a way that is well, artificial, even ironic, the stages of decline of this dichotomy, the different manifestations of the public/private distinction from being very stable to, finally, caught in a circle of loopification, in which by going within a set of legal categories more and more towards the 'private' you end up where you started, which was the most 'public' one to begin with. It is a brilliant piece. You could actually take that argument further into a fuller Derridian moment, as in seeing his construction of the decline in stages in a diachronic mode. He projects it on a temporal development. There used to be a time, and he even implicitly refers to periods, when it was a stable dichotomy and then progressively it declined into loopification. And the point that I would make is that you can also see this fluidity of the dichotomy, this ability to 'change', to move from a solid state to a state of flux, not only in a diachronic, temporal, even historicized frame, but also in a synchronic situation. So, to use Duncan's vocabulary, all the stages of the dichotomy can be seen to exist or operate in one moment in time, synchronically.

[...]

Hassan: [...] I think that constructions of Derrida, in many different types and styles, will emerge in the literature of many scholarly disciplines, particularly after his death. Well, where is he? Is he *somewhere*, is he *nowhere*, and if he is somewhere, how does he look, what's his shape?

Juan: Yeah, yeah, you know, the whole idea of an obituary is about placing somebody. It's about looking back and seeing that person as a central actor, in a story that you construct to commemorate that person and to somehow, to use maybe an inappropriate word, to *celebrate* that person's death.

Hassan: So you want to say something about Derrida? I mean do you want to place him in a box?

Juan: No, no, I actually already placed him as a presence. I think so far for now I am happy with placing him as suddenly in our conversation having become a presence even an indefinable one, whatever, but somehow a presence. We somehow are looking for connections between what we have been talking about and his vocabulary. And we want it definitively to be *his* vocabulary. 'Trace', 'deference', 'undecidable,' 'instability,' as *his* words. We definitively want his ghost to be here!

¹⁷ Duncan Kennedy, *The Stages of the Decline of the Private Public Distinction*, 130 U. PA. L. REV. 1349 (1982).

And if in the first part of this conversation we were using his terms as if they were *ours*, now we definitively want to use them as if they were *his*.

Hassan: Well..., I would be cautious in using the pronoun 'we', and I would ask you what you mean by that? Because I would say that I certainly appropriate Derrida in particular ways. And I'm not sure I have much of an interest in connecting how he saw his work to some kind of real or actual idea of his work. And certainly the project of trying to, in your words, "celebrate his death" by defining contours of something you call 'presence' or 'placement' is one that I'm afraid I don't see myself engaged by. I see myself more engaged by finding ways for him to connect to my thoughts, to instigate, fuel ideas for my work, to inspire, in the way that we are doing in this conversation. And, I don't see how we are talking about it any differently than how we did prior. I don't see any commitment, any need, to define him and to place him, and neither do I find that his relevance increases if we try to *infuse* his ghost into our words. In other words, to *appropriate* him in ways that is loyal to his vocabulary. Anyways, I find that even when I am not being loyal, I don't see myself as being loyal. Perhaps *attempting* to be loyal to Derrida, believing that his ideas *stand for something*, and *not* for other things, is a type of appropriation. Oh, a *paradox*? It seems that being loyal means appropriating, using, transforming them for our purposes. Remember, his work, his papers, the way he structures and formats his ideas, can be generalized as demonstrating conceptual instabilities. And I find that to try to find a meaningful type of underlying meaning to Derrida would be contrary to the themes he's developed in his work. Perhaps the attempt to replicate, duplicate him, to be true are antithetical notions of Derrida himself, these are not themselves Derridian, I would say at least in the way that I understand him. So I don't feel this need to pick him up and find his shape somehow, *even* after his so-called death.

Juan: I would agree with that but at the same time I see, and I would construct this as a tangent and the moment before the tangent as one in which we were somehow consciously invoking his vocabulary. For our purposes and loyal or not loyal, whatever *that* is, but somehow *yes*, looking for his footprints. Like explicit footprints. Like the words that we used because *he* wrote them. And some of them he arguably invented. And in that sense, that's what I meant. I didn't see it as somehow looking for his contours or his boundaries, but I saw it more as somehow to have him sit here at this table, to have him present as a ghost, and I think he would like that kind of presence. You know the kind of presence of a ghost which is also a non presence.

[...]

Hassan: I was just thinking about a variety of relations, and how we're constructed in specific ways in the legal discipline to make use of, to discursively deploy dichotomies. They are everywhere: in contract law, tort law, international law, public interest law, constitutional law, human rights law, criminal law, etc. Many contemporary legal theorists and scholars from these disciplines explicitly and implicitly drench themselves in dichotomies or theoretical oppositions as a way to communicate their ideas. Derrida rejects these dichotomies or oppositions when they are presented as a source of meaning, or understanding. In that sense, Derrida is distant from legal academia in general. But, of course, there are some works in legal theory that attempt to show how legal dichotomies are somehow *problematic*. Consider Clare Dalton's *An Essay in the Deconstruction of Contract Doctrine* in the *Yale Law Journal*,¹⁸ which attempts to 'deconstruct' contract law, which examines the idea of consent, problematizing contract law-specific dichotomies, such as private-public and objective-subjective will. But, sometimes 'deconstruction' is used in ways that doesn't remind me or alienates me from my understanding of the word. Many people refer and talk about deconstructing this notion *within* their discipline. And many times, I think to myself, *oh!* that isn't deconstruction. We could get to define the word *deconstruction*, but at this point I am curious if we could go through a set of interesting research questions or inspirational thoughts from Derrida that you think our colleagues in varying parts of the legal discipline would be interested in using for their work. Of course, I say that with full awareness that many legal scholars do deploy dichotomies with a sense that their meanings are stable.

Juan: Well, I don't know, but I would like to say that in this sense I do see David Kennedy as, suddenly, because we first only referred to his *style* as being Derridian, but only in terms of dealing with doctrine, I would see him as a towering Derridian figure. Dealing with, focusing on particular doctrines, particular oppositions in those doctrines, his *relentless* problematization, I see as the kind of Derridian move that you were just talking about. Somehow telling scholars, telling international lawyers, don't *believe* these categories!, don't believe them, because the opposite is true as well. As to interesting research questions, I don't know, it's my thing, my preoccupation with Derrida in the context of my activity and somehow in the context of the 'discipline', to use a David Kennedy notion, how to relate to my discipline, which is usually focused on making categories, and better categories, and improving them. Make them more solid. My discipline, my international law and human rights discipline, seems to be based on that. 'We need more clarity', 'more reduction', 'more essentializing', consent *is* this, or compliance *is* that. It is about defining and building structures. And what does it do to my relationship with that discipline, to my being a part of that discipline? To have this Derridian

¹⁸ See Clare Dalton, *An Essay on the Deconstruction of Contract Doctrines*, 94 YALE LAW JOURNAL 997 (1985).

compulsion to problematize those boundaries? And David Kennedy has showed me a *style* of problematizing, with his “well actually... this”, “well actually... that”. Or, in his more recent foregrounding the background and backgrounding the foreground, which I find Derridian moves. By the way, it’s funny how we managed to construct Derrida as an implicit absence in David Kennedy and now we’re constructing Derrida as a very explicit presence in David Kennedy, which goes to show, which makes our point... But to come back to the point I was trying to make, my personal preoccupation is: *how* do I relate to that? So one way which is very common to critical approaches to international law is to, and which I think is somehow linked to or contaminated by the kind of *Form and Substance* articles (as if it is a genre!), is to somehow, as it is taking place, by historicizing it, by ‘temporalizing’ it, which means that you put it into a temporal context, which actually means that you start to wondering about strategy or you start wondering about downstream effects. And by the way, downstream effects is a very *temporal* notion. And that’s one move which I think we both find very problematic or very difficult to sustain. Because these are somehow linked to ideas about causality and intentionality. There they are again those words that demand a fate of their own. So, this is the thing, you move from rejecting faith in categories and definitions to like an apparently more dynamic faith in causality and intentionality by focusing on strategy and downstream effects to a loss of faith in causality and intentionality..., and then what? And even if you find the ‘then what,’ I am sure you could problematize the faith in that as well. Another thing is that I think that having faith is important, even though, I could interrogate, and I sometimes do, my religious experiences and wonder ‘what do I have faith *in*’? And maybe I could say that I have faith in terms of my recent experience and you could transpose that to you know, to my relation to my discipline, and you could say that having faith is not a having faith *in*, but it’s an acceptance of unknowability, it’s an embracement of humility, it’s seeing my discipline through all my phases of a Derridian ‘problematization of the problematization,’ etc., as being a kind of a Sisyphus-process.¹⁹ Arguably it’s having faith in the impossibility of closure. But somehow I always have trouble in translating that to a concrete engagement with my discipline. I mean in terms of writing articles or stuff.

Hassan: Now, I wanted to point out that our conversation will be published in a law journal. And more specifically, a law journal that self-identifies as ‘German’, and hence, a journal from Europe. And in Europe one interesting fact of the European academic culture, if I could generalize, is the prominence of some

¹⁹ From Albert Camus’ *Myth of Sisyphus*, which consists of a story of a man that continuously carries a boulder up the hill even after it falls. Albert Camus uses this as a metaphor to explain the human condition wherein a person continues to struggle, although nothing is changed, and meaninglessness and absurdity pervades. See ALBERT CAMUS, *THE MYTH OF SISYPHUS AND OTHER ESSAYS* (1955).

philosophers and scholars like Habermas. I have found that Habermas is present in legal articles and journals in Europe, particularly in continental Europe. He is seen as a *key figure* by European legal academics. Would you see the level of influence that Habermas has, the level of interest in Habermas by European legal academics as somehow parallel to that of Derrida, and *if so* (or if not so), then *why*, and *how*? Does this question pose problems? Some legal academics claim that Habermas facilitates their legal research, in far-reaching areas, such as contract law; tort law; democratic theory; parliamentary; and constitutional law. Derrida reminds us that the research we are actually doing is an *illusion*. Of course Derrida doesn't put it in such terms, but his work in *Différance* indicates that '*logic*' does not yield the results, the expected outcomes that people like Plato,²⁰ Aristotle, Kant, and Habermas,²¹ have assumed. For him, logic does not allow us to discover that great, ethereal *something* called '*truth*'. And, the thesis that a word conceptually signifies a *thing* in an '*outer world*' (in contradistinction to something known as an '*inner self*') is less than accurate. So, to return to my question, do you see Derrida as similar to Habermas with respect to his level of influence and importance in legal academia? Is Derrida seen as relevant by legal scholars in the same way that they see Habermas as relevant?

Juan: I definitively agree that the question poses some problems. But I think it is interesting to draw on the relevance or presence or whatever, of Derrida by talking about another prominent scholar, about a philosopher like Habermas. Having said that, I would move immediately to a differentiation between the two. Because I somehow see Habermas as having a project that is about *constructing* a social theory 'that fits', while I see Derrida's intervention as radicalizing the epistemological field in which legal discourse operates, and in that sense the way that scholars would lean on or deploy Habermas' writings as very different. And again, and this brings me back to our previous discussion, I see Habermas as *comforting*, he gives comfort to the Liberal project of building the rule of law, improving democracy, etc. Guaranteeing the procedural equality of those who engage in the dialectics of trying to build a consensus. And I see Derrida as the opposite, as somehow raveling in producing discomfort. Or as emphasizing an *existing* discomfort.

Hassan: Before you go on to that, in what way does Derrida create this discomfort? And as you say, in what way does Derrida create this juxtaposition with Habermas? Are you saying, that, unlike Habermas, who believes in the possibility of communication and mutual understanding, Derrida does not think it possible?

²⁰ See PLATO, GORGIAS (Donald J. Zeyl trans., 1987); PLATO, REPUBLIC 1-32 (G.M.A. Grube trans., 1992).

²¹ See JÜRGEN HABERMAS, LEGITIMATION CRISIS (Thomas McCarthy trans., 1975); J. HABERMAS, COMMUNICATION AND THE EVOLUTION OF SOCIETY (1979).

Juan: Absolutely! I see Derrida as somehow saying that the whole notion of consensus is an illusion. Because the idea of consensus has this link to this idea of closure and of clarity. 'We know when we see it', and 'there is a consensus.' And 'we know when it's not there', and when it's not there, 'we need to talk'. That is Habermas. Derrida would say: we *don't* know when it's there and when it's not there and even *if* is there, it's never an ending point with any kind of stability. It's just an experience. And not something somehow linked to either ideas or knowledge or even, to look at it from a more materialistic Marxist perspective, interests, or relations between groups or classes. In that sense I would use a common distinction which I immediately find problematic, and say that Habermas's project is constructive, while Derrida's project is one of critique or one of problematizing. I could immediately problematize this distinction, by constructing Derrida as hyper-realist, or as hyper-pragmatic, by arguing that he shows how good intentions are based on a set of illusions and that he makes the point that we should snap out of it. But here I feel that I am projecting too much normativity on Derrida's project. I think that this snapping out of anything, I don't think that Derrida would actually say that at all.

Hassan: I would agree with you that maybe Derrida wouldn't agree. But, certainly by saying that it might be different from something normative, your snapping idea, Juan, what would it then be? Descriptive? I think then Derrida would disagree that it is normative, or for that matter, its seeming opposite, 'descriptive.' But, I guess if Derrida's project is normative, I would agree with you, its politics or morality is not about saving the world or ending world suffering, but about doing just that, "snapping." A politics of snapping. But, I would distance myself from your insinuation that this politics of snapping is about awakening people from their slumbers, or about bringing them from ignorance toward knowledge, but about snapping them out of their sense that some ideas are not problematic, by revealing some problematics in the ideas they strongly believe in. But, there another thing that is interesting about invoking this idea of 'normativity', since critical theorists, including Derrida, consider law and politics to be related, connected, and even, interchangeable. But, interesting enough, someone like Habermas also sees law and politics as related.²² He sees law and politics mutually presupposing one another, in a type of mutual dances, inter-relating, and inhering in one another. In fact, both Habermas and Derrida would agree that positivists are mistaken in thinking that law is independent from politics. They would both concede that law and politics are intermingled, one in the other. But they would both agree that politics inheres

²² See Jürgen Habermas, *Private and Public Autonomy, Human Rights, and Popular Sovereignty*, in *THE POLITICS OF HUMAN RIGHTS* 50 (Brad Saric ed., 1999).

in many things, including their own academic projects. But, then, if that is the case, what does it mean for Derrida's idea of deference to be *normative*? And if not normative, then, is it *descriptive*? The term descriptive is often seen as the binary opposite of normative. But, what would it mean that deference is descriptive? And, if one argues that Derrida's work, or notion of deference, is neither "normative" nor "descriptive", then what is it?

Juan: I must resist that distinction between normative and descriptive. Because I see, okay, normativity or description is of course something we can project on either or both.

Hassan: Absolutely...

Juan: Either on Habermas or on Derrida. But I would like to make the point that, even though I brought it up myself, when you asked me about scholars, and how they referred to Habermas or Derrida, and I started talking about Habermas and his projects, and about Derrida's projects. However, now I would like to come back from that, and leave them for what they are, they have their projects, whatever, but talk instead in terms of how legal scholars use and appropriate and employ and refer to Habermas or Derrida. I think it's more useful or more appealing to talk about these scholars, and not about Habermas or Derrida, but about the projects of these scholars. And we might be talking about the same thing by the way, but I could see some scholars using Derrida alongside Habermas, and not so much in opposition to, and having a constructivist project, while I can see some scholars using Habermas alongside Derrida in a critical or a 'deconstructivist' project. So, there are some using Habermas for the constructivist potential of his theories, but also Derrida for his constructivist potential, or the constructive potential of his view, or his writings. So in that sense I think we should talk more about the projects of those scholars if you want to. And, to continue on the line of 'experience' of the experiential, I think that the drive to use either Habermas or Derrida, or both, can be linked to the idea of anxiety, or to anxieties. So, constructivist scholars who want to somehow add or connect with projects of the rule of law and international organizations, and democracy, they might feel at a certain level an anxiety in the sense that they might have some lingering doubts about the actual possibility of this. And then they would defer to Habermas to deal with that sometimes. I might have some doubts but there is a scholar, this very smart person Jürgen Habermas, who worked it all out. He dealt with the doubts. He responded to them and in this is what I mean with comforting. At the same time I think some critical scholars, who have their own project of emphasizing indeterminacy and the fluidity of language might have some doubts because they themselves often experience language as highly determinant. And not fluid at all. They would defer that doubt to Derrida. So there is this thinker, Jacques Derrida, who addresses this stuff and

who demonstrates, once and for all, that language is fluid and that meaning is elusive. So they would seek comfort for their anxieties in Derrida. So that is I think one of the ways in which the different scholars would refer to either. At the same time you could argue that some constructivist scholars would seek comfort in Derrida, by somehow constructing Derrida as somebody, you know, they would cut off his radical wings, and they would use his article *Force de Loi* as somehow leaving intact the possibility of justice.²³ So, they would pursue their constructivist project with the reassurance that *even* the guy who demonstrated the elusiveness of meaning, even him, he left intact the possibility of justice. So somehow even he does serve their projects. And at the same time some critical scholars might seek comfort in Habermas because he somehow acknowledges open-endedness and they would construct a Habermas that is not necessarily concerned with determinacy and closure but offers a formal setting, while he knows that things are problematic and within that knowledge, within that consciousness, merely offers a formal setting for dialogue to take place. So they would downplay his constructivism.

Hassan: That is very interesting, Juan. Critical scholars using Habermas for their own work, and constructivist Liberals who use Derrida to advance, perfect their Liberal constructivist projects. Yes, Juan, you are right. Indeed, Habermas, who is typically seen as advancing a *nouveau* Liberalism, newly justified through the optic of communication, believes in the idea of constructing democracy, although this is not to say that he thinks doing this is easy, or unproblematic. Habermas' sparkling constructivism is in seeming sharp contrast with Derrida's constant problematization of designing systems such as democracy, but as you know, if Derrida has talked about something again and again, it is language or communication. While Habermas sees communication as possible, as resulting in mutual understanding and shared knowledge, Derrida sees communication as riddled with ambiguities, and complicit in producing misunderstandings between interlocutors. And, as you say, despite this seeming opposition between the two thinkers, there are many critical legal scholars who still use, appropriate Habermas, and many Liberal constructivists who draw on Derrida's ideas to advance their Liberal projects. In spite of coming from different philosophical places, Liberal constructivists and critical scholars mutually appropriate ideas from one another, for their own purposes. And, in fact, I have not only seen that in the academic literature, but at conferences as well. I have also had a personal experience that I would like to share that reminds me of what I have referred to as "mutual appropriation." This is about a comment I received during the oral defense of my master's thesis. On my examining committee was Princeton Professor Richard Falk.

²³ See Jacques Derrida, *Force of Law: The Mystical Foundation of Authority*, 11 *CARD. L. REV.* 919 (1990).

But, for now, just some background information about Richard Falk: his work has a distinctly Liberal constructivist flavor to it, in the sense that he believes in the possibility of language, in the sharing and learning of values, and that he sees communicative interactions as useful, in fact, as a doorway to “progress.” This comes out quite clearly especially if you read his recent piece called Global Peoples Assembly in the *Stanford Journal of International Law*.²⁴ During my Master’s degree thesis examination, Princeton Professor Richard Falk In that piece, he shows how international democracy might be possible to design if international civil society develops a Global Peoples Assembly, where representatives from different nation-states would communicate with one another. In spite of this, Richard Falk advised me to read more Derrida as a way to better perfect the design of international democracy. In this sense, it is interesting to note that to academics there are really two Derridas. One Derrida, the Derrida of Richard Falk, is an assistant, someone who inspires ideas to better develop Liberalism. Someone who fires the Liberal’s imagination, to think new thoughts, to go where no Liberal has gone before. This might account for Richard Falk’s undoubted creativity, and explain his original ideas on democracy. Of course, there is the other Derrida who sees communication as a bankrupt project because of how ambiguity pervades language. And, so all this to say, Juan, I agree, Habermas is used by critical scholars, and Derrida is used by constructivist Liberals.

Hassan: I want to move away from that and talk about this word that has been coming up also a lot, and I will then explain why I bring this up. The word is *critique*. Actually, the word “critique” is a word that is rarely used or perhaps not used at all by Derrida who uses many other words that we’ve been throwing around throughout our multiple conversations about him, such as *deference* and *différance*. Yet, I would say that the word critique is very much related to Derrida. The thing that I find interesting about the word critique is that often you and I use it in manners which come really close to resemble Derrida’s idea of *deference*. In fact, it’s almost as though Derrida has strongly influenced you and myself in terms of our perception of what critique is. I think that we both accept that there’s no *definable, essentialized* meaning of critique, but whenever we talk about it, it sounds to me as though our methodology is Derridian. But if you take *Semiotics of Critique* by Duncan Kennedy, we realize that the word *critique* is expansive in its definition. It includes people like Hegel, Weber,²⁵ Schmitt,²⁶ and Nietzsche,²⁷ includes people

²⁴ Richard Falk and Andrew Strauss, *On the Creation of a Global Peoples Assembly: Legitimacy and the Power of Popular Sovereignty*, 36 *STANFORD JOURNAL OF INTERNATIONAL LAW* 191 (2000).

²⁵ See Max Weber, *Politics as a Vocation*, in *FROM MAX WEBER: ESSAYS IN SOCIOLOGY* 77 (H.H. Gerth & C. Wright Mills eds., 1946); HARVEY GOLDMAN, *POLITICS, DEATH, AND THE DEVIL: SELF AND POWER IN MAX WEBER AND THOMAS MANN* (1992).

like Kierkegaard,²⁸ and it even includes people who work in general equilibrium theories of economics²⁹, it includes Marx³⁰ and Freud,³¹ it includes Catharine MacKinnon, and it includes the obvious and usual suspects: Levi-Strauss, Judith Butler,³² and De Saussure³³ and obviously Derrida. Duncan generally describes Derrida's work as *deconstruction*. But the thing I am curious about is this word "critique" that for some reason, in my mind, is related to Derrida's ideas. But, then again, we could argue that Derrida is not related to critique as well, or is only associated to *one* type of critique. Consider how Duncan Kennedy considers Hegel, who paradigmatically differs from Derrida, as *doing* critique, (although admittedly a different mode of critique, yet still critique). Duncan refers to Hegel as doing *organicist* critique³⁴...

Juan: Okay, okay. Maybe this goes to the point that you are somehow trying to make, but in a way I have many doubts about it. My first instinct, my first reaction is to say that all of these people can be seen as doing critique or as doing the

²⁶ See CARL SCHMITT, *THE CONCEPT OF THE POLITICAL* (George Schwab trans., 1976) (1932); CARL SCHMITT, *THE CRISIS OF PARLIAMENTARY DEMOCRACY* (Ellen Kennedy trans., 1985). See also CARL SCHMITT, *SOBRE TRES MODOS DE PENSAR LA CIENCIA JURIDICA* (Montserrat Herrero trans., 1996); Robert Howse, *From Legitimacy to Dictatorship - and Back Again: Leo Strauss's Critique of the Anti-Liberalism of Carl Schmitt*, in *LAW AS POLITICS: CARL SCHMITT'S CRITIQUE OF LIBERALISM* 56, 87 n.20 (David Dyzenhaus ed., 1998).

²⁷ See FRIEDRICH NIETZSCHE, *BEYOND GOOD AND EVIL* (R.J. Hollingdale trans., 1973); FRIEDRICH NIETZSCHE, *ON THE GENEALOGY OF MORALS* (Douglas Smith trans., 1996); FRIEDRICH NIETZSCHE, *THUS SPAKE ZARATHUSTRA* (Thomas Common trans., 1916).

²⁸ See KIERKEGAARD, *FEAR AND TREMBLING AND THE SICKNESS UNTO DEATH* (Walter Lowrie trans., 1954).

²⁹ For an example, see LEON WALRAS, *ELEMENTS OF PURE ECONOMICS, OR THE THEORY OF SOCIAL WEALTH* (William Jafe trans., 1977).

³⁰ See KARL MARX, *CAPITAL: A CRITIQUE OF POLITICAL ECONOMY* (Frederick Engels & Ernest Untermann eds., Samuel Moore & Edward Aveling trans., 1906); KARL MARX & FRIEDRICH ENGELS, *THE COMMUNIST MANIFESTO OF KARL MARX AND FRIEDRICH ENGELS* (D. Ryazanoff ed., Eden Paul & Cedar Paul trans., 1963); KARL MARX, *THE EIGHTEENTH BRUMAIRE OF LOUIS BONAPARTE* (Daniel de Leon trans., 3d ed. 1919); KARL MARX, *On the Jewish Question*, in *KARL MARX: EARLY WRITINGS 1* (T.B. Bottomore ed. & trans., 1963).

³¹ See SIGMUND FREUD, *A GENERAL INTRODUCTION TO PSYCHOANALYSIS* (G. Stanley Hall trans., 1920).

³² See JUDITH BUTLER, *GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY* (1990).

³³ See FERDINAND DE SAUSSURE, *COURSE IN GENERAL LINGUISTICS* (Charles Bally et al. eds., Wade Baskin trans., Peter Owen Ltd. 1959) (1907-11).

³⁴ Kennedy, *supra* note 8 at 1156-7. See G.W.F. HEGEL, *THE PHENOMENOLOGY OF MIND* (J.B. Baillie trans., 1971). Hegel's work is very nicely explained by Herbert Marcuse. See HERBERT MARCUSE, *REASON AND REVOLUTION: HEGEL AND THE RISE OF SOCIAL THEORY* (2d ed. 1960). See also CATHERINE COLLIOT-THELENE, *LE DESENCHANTEMENT DE L'ETAT: DE HEGEL A MAX WEBER* (1992).

opposite of it, whatever *that* is, and I would say, to connect to what I was saying earlier, that doing critique is to offer discomfort, anxiety, and doing the opposite of it, whatever that is, to offer hope and comfort. Now, I think this is a workable observation in the sense that, like I just said, within one book David Kennedy offers both anxiety and comfort. And Martti Koskenniemi³⁵ offers both anxiety and comfort. So I see it as unproblematic to refer to Duncan's article in that sense, and am not too surprised when he sketches all these shades of different critiques and puts people in boxes that are somehow, for some readers, counterintuitive. However, at the same time I have some problems with what I just said because, *what is* comfort and what is discomfort?, and when can you say that something is a critique and when can you say that something is the opposite? [...]

[...]

C. Afterward

As described in the introduction, there is a sense of moving away from moving away throughout our conversation. And as we each read our transcripts, we both shared a sense of this moving away. This manifested itself in the type of alienation that comes with recognizing that the conversation came to an end. Not just an ending, but one that was experienced as abrupt. We felt the ending to be *sudden*. We felt, that if we just had one more question, maybe if I just asked you *this*, if I could only have answered *that...*, I could have further nuanced, qualified, and explained these notions further. And then, looking back on our entire script and how it developed, we both felt that, oh no, "I wish I had more time to talk about this or that." "And, if I only read my transcript as I was speaking, I could have pointed out *this* or *that*."

The sense of abruptness, sudden as it seemed, feeling like a smack, could be explained by this act of moving away from moving away. Somehow we felt we still wanted to move away. But more than that, it seemed that in the beginning or in the middle of the conversation, we had experienced this sense that 'whatever I haven't yet said or completed, that I haven't yet nuanced will be corrected, and sealed, fixed later on'. The implicit, unconscious hope was to move away temporarily, and to return later to frame or nuance our previous utterances. This anticipation, hopeful as it might have seemed, resulted in producing a sense in which ending, what *ending?* *oh no*, the ending of our movement away from movement was experienced as abrupt, as alienating.

³⁵ See MARTTI KOSKENNIEMI, FROM APOLOGY TO UTOPIA: THE STRUCTURE OF INTERNATIONAL LEGAL ARGUMENT (Lakimiesliiton Kustannus, 1989).

Acknowledging Derrida's idea, we recognized that 'doing better,' 'speaking more,' 'nuancing more,' wasn't going to produce a better, so-called more coherent conversation. Conversations are not logocentric, sequenced, clear, with each utterance flowing with a constancy that produces a sense of comprehensive completion. We recognized that continuing our conversation *only* meant continuing to move away from moving away – to ask more questions that only produce further unexpected questions to answer, which only produce further answers that begin to sound problematic, producing further questioning. Deleuze and Parnet say this in the following passage:

Many people think that it is only by going back over the question that it's possible to get out of it...[People] won't stop returning to the question in order to get out of it. But getting out never happens like that. Movement always happens behind the thinker's back, or in the moment when he blinks.³⁶

While editing our piece, we also recognized that moving away from moving was continuing to occur. We had an idea of what it means to speak clearly, hoping that our editing would re-frame, order the conversation to live up to that. Our discussions began to reveal that we not only constructed our own type of phonocentrism, and we were confronting the contingency of it. Why is this too long? How could this follow that? Why is it that you seem to ramble on? Did you not say that differently in the conversation? There was a way to talk, to speak that made speech clear, that made speech understandable. After editing and re-editing our piece, we came face to face with our own phonocentric biases, now recognizing that our activity constituted a type of experiential critique of our unconscious, phonocentric biases.

Throughout our activity, which included the conversation and the editing a transcribed version of the conversation, we recognized that we moved not only away from our questions, *but also* that we were moving away from the oral word to the written word, shifting perpetually. Moving away from speech to writing and then from writing to speech. Somehow the oral and the written began to collapse, each format producing layers of ambiguity in the other. When we sent each other the written edits, we wondered to ourselves "This does not seem clear. But I wonder if I can really discuss this by email. I will have to speak about this." And the reverse also occurred, when it seemed that the oral word was too difficult, because it was too cumbersome to explain, and some kind of record seemed necessary as a basis of reflection, we wrote to each other, thinking that the oral

³⁶ DELEUZE AND PARNET, *supra* note 2 at 1.

word was insufficient. And this was another type of moving away from moving away.

A conversation is a peculiar activity. It brings us face to face with our logocentric and phonocentric biases, but also face to face with ourselves. One can potentially see a conversation as a dialogue between *two* persons, each distinctive, responding logically to the other. Somehow the idea is that Juan and Hassan are speaking, *these* are Juan's ideas here, *oh*, and *there* are Hassan's ideas. It relies on an idea of the person – the self. And in fact, this is the way that we present it. But after moving away from moving away, we came to recognize that this divide between being and becoming in a conversation is another logocentric bias. For Deleuze and Parnet “a conversation is... simply the outline of a becoming.”³⁷

Indeed, this idea of a conversation as the outline of a becoming was made evident to us as we each struggled both to communicate something called *ourselves* while at least sound as though our communications were crafted as responses to our colleague's questions. Somehow we were not articulating a particular view, but rather caught in a web of questions on one end and our desire to speak our thoughts on the other. We were not *separate* to the discussion, we *were* the discussion. We were *becoming*, hence the sense of moving away from moving away. Or, to put it differently: of moving ourselves, or our-self, away from another self. Always in transition, never at any destination. Hence, our sense of alienation when we ended, thinking ‘could this really be the end? But there's so much more!’

This idea that ‘there is so much more’ presupposes that certain thoughts must be made for the sake of comprehensiveness, as suggested above. But those thoughts might change as we move along. And so, what we started off thinking that it was necessary to discuss changes as we discuss further with our colleagues, only making us desire to share the experience of what we *now* think is necessary to discuss, in order to remain comprehensive and rigorous. We are moving away from one self with particular thoughts to another self. Moving away from our self to another self, as the conversation crafts, shapes us, makes us realize how wrong, or even how right we are, in turn transforming us, and making us move away into new selves perpetually. This is reflected in the words of Deleuze and Parnet, who say the following about becoming:

The question “What are you becoming?” is particularly stupid. For as someone becomes, what he is becoming changes as much as he does himself...The wasp and the orchid provide the example. The orchid seems to form a wasp image, but in fact

³⁷ *Id.* at 2.

there is a wasp-becoming of the orchid, an orchid becoming of the wasp, a double capture since 'what' each becomes changes no less than 'that which' becomes. The wasp becomes part of the orchid's reproductive apparatus at the same time as the orchid becomes the sexual organ of the wasp. One and the same becoming, a single bloc of becoming...³⁸

As explained in the paragraphs preceding the passage above by Deleuze and Parnet, becoming is about recognizing that the changes are not separate from our identities, but *are us*, we are perpetually *becoming*, never *being* or *the self*. The self is not fixed, but moving away from itself, again and again. But, another insight that struck us both as fascinating is the fact that, as Deleuze and Parnet say: "The wasp becomes part of the orchid's reproductive apparatus at the same time as the orchid becomes the sexual organ of the wasp. One and the same becoming, a single bloc of becoming..." The sense we got while we did our conversation that our changes, questions, the changes to our questions, the changes in our answers, were a part of us, a feature of our becoming. But also that our becoming was the product of our mutual interventions. That a conversation is not necessarily the product of two people discussing in the illusory logocentric design that presents itself, but as an entity as well, an entity in which the conversation is a becoming, a move away from the two persons who spoke, a thing separate, without loyalty to anything or anyone. Something that itself, by itself, has moved away, perhaps a long time ago, at the moment of its inception - conception - from the *authors*. Away from *their* grip.

³⁸ *Id.*