
PHILOSOPHERS AND LAW

DERRIDA
AND
LAW

PIERRE LEGRAND

Derrida and Law

Edited by

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ASHGATE

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Series Preface

The series *Philosophers and Law* selects and makes accessible the most important essays in English that deal with the application to law of the work of major philosophers for whom law was not a main concern. The series encompasses not only what these philosophers had to say about law but also brings together essays which consider those aspects of the work of major philosophers which bear on our interpretation and assessment of current law and legal theory. The essays are based on scholarly study of particular philosophers and deal with both the nature and role of law and the application of philosophy to specific areas of law.

Some philosophers, such as Hans Kelsen, Roscoe Pound and Herbert Hart are known principally as philosophers of law. Others, whose names are not primarily or immediately associated with law, such as Aristotle, Kant and Hegel, have, nevertheless, had a profound influence on legal thought. It is with the significance for law of this second group of philosophers that this series is concerned.

Each volume in the series deals with a major philosopher whose work has been taken up and applied to the study and critique of law and legal systems. The essays, which have all been previously published in law, philosophy and politics journals and books, are selected and introduced by an editor with a special interest in the philosopher in question and an engagement in contemporary legal studies. The essays chosen represent the most important and influential contributions to the interpretation of the philosophers concerned and the continuing relevance of their work to current legal issues.

TOM CAMPBELL

Series Editor

Centre for Applied Philosophy and Public Ethics

Charles Sturt University

Introduction

(Of Derrida's Law)

I pointed the man to a chair. ...

'I sell Bibles,' he said at last. ...

It's not only Bibles I sell. I can show you a sacred book that might interest a man such as yourself. ...

I opened it at random. ... I was struck by an odd fact: the even-numbered page would carry the number 40,514, let us say, while the odd-numbered page that followed it would be 999. ...

Then [the stranger] lowered his voice, as though entrusting me with a secret.

'I came across this book in a village on the plain, and I traded a few rupees and a Bible for it. The man who owned it didn't know how to read. I suspect he saw the Book of Books as an amulet. ... He told me his book was called the Book of Sand because neither sand nor this book has a beginning or an end.'

He suggested I try to find the first page.

I took the cover in my left hand and opened the book, my thumb and forefinger almost touching. It was impossible: several pages always lay between the cover and my hand. It was as though they grew from the very book.

'Now try to find the end.'

I failed there as well.

'This can't be,' I stammered, my voice hardly recognizable as my own.

'It can't be, yet it is,' the Bible peddler said, his voice little more than a whisper. 'The number of pages in this book is literally infinite. No page is the first page; no page is the last. I don't know why they're numbered in this arbitrary way, but perhaps it's to give one to understand that the terms of an infinite series can be numbered in any way whatever.'

Jorge Luis Borges*

* Jorge Luis Borges, 'The Book of Sand', in *Collected Fictions*, trans. Andrew Hurley (London: Penguin, 1998 [1975]), pp. 480–82 [emphasis original]. Unless I indicate differently, translations are mine throughout the paper.

On 19 August 2004 the French newspaper *Le Monde* featured an interview with Jacques Derrida. At the time, Derrida knew that he was terminally ill. A few weeks later, he succumbed to his cancer, which makes the parts of the summer conversation devoted to survival – ever a paramount motif in Derrida's work – particularly poignant.¹ Even in the course of what was to be his last recorded interview – and perhaps because he sensed that there might not be other opportunities to express himself publicly, at least in France² – Derrida was at pains to emphasize, as he had done in the past,³ his abiding love for the French language. Derrida always regarded philosophy as being positioned in language. He felt that the articulation of philosophical thought was intimately related to the language in which it was expressed (a view which he held against the prevailing philosophical attitude that refused to pay much attention to the language of philosophy as if philosophy was somehow operating irrespective of language).⁴ The significance that Derrida attached to language suggests how a proffered commitment on his part to a language, such as his pledge of allegiance to French, must be received as especially meaningful. Indeed, 'Jacques Derrida is (was) a French philosopher. To call him a philosopher without qualification is to miss an extraordinary richness.'⁵

Language was always the bedrock of Derrida's philosophical project. For instance, he argued that '[our] historico-metaphysical epoch *must* finally determine as language the totality of its problematic horizon'.⁶ He also, famously, claimed that no text is fully extricable from the myriad discourses that inform it; in effect that nothing is accessible unless embeddedness within discursive formations is taken into account.⁷ Having declared to his *Le Monde* interviewer that '[t]he experience of language' is 'vital',⁸ Derrida formulated his devotion to French in compelling terms (a fidelity which, incidentally, he carefully refused to extend to France, thus revealing aspects of his discomfort with Frenchness): 'I love what made

¹ See Jacques Derrida, *Learning to Live Finally*, trans. Pascale-Anne Brault and Michael Naas (Hoboken, NJ: Melville House, 2007 [2005]), pp. 22–26, 31–34, and 50–52 [hereinafter *Learning to Live*]. This title is taken from the first sentence of the exordium in Jacques Derrida, *Specters of Marx*, trans. Peggy Kamuf (London: Routledge, 1994 [1993]), p. xvi [hereinafter *Specters*].

² Derrida's last public appearance took place in Rio de Janeiro on 16 August 2004. He spoke on forgiveness, truth and reconciliation at the Maison de France to open an international conference devoted to his work organized by the Universidade Federal de Juiz Fora.

³ For example, see Jacques Derrida, *Monolingualism of the Other; or, The Prosthesis of Origin*, trans. Patrick Mensah (Stanford, CA: Stanford University Press, 1998 [1996]) [hereinafter *Monolingualism*].

⁴ For example, see Jacques Derrida, *Points...*, ed. Elisabeth Weber, trans. Peggy Kamuf (Stanford, CA: Stanford University Press, 1995 [1992]), p. 374 [hereinafter *Points*].

⁵ Verne Harris, *Archives and Justice* (Chicago, IL: Society of American Archivists, 2007), p. 72 [emphasis original].

⁶ Jacques Derrida, *Of Grammatology*, 2nd English ed., trans. Gayatri C. Spivak (Baltimore, MD: Johns Hopkins University Press, 1997 [1967]), p. 6 [emphasis original] (hereinafter *Of Grammatology*).

⁷ The actual formulation is slightly more cryptic as Derrida states: 'Il n'y a pas de hors-texte'. The passage appears in Jacques Derrida, *De la grammatologie* (Paris: Editions de Minuit, 1967), p. 227 [emphasis original] (hereinafter *De la grammatologie*). Translations vary. I favour a close reading: 'There is no out-of-text.' Cf. Derrida, *Of Grammatology*, *supra*, note 6, p. 158: 'There is nothing outside of the text' [emphasis original].

⁸ Derrida, *Learning to Live*, *supra*, note 1, p. 34.

me what I am, the very element of which is language, this French language that is the only language I was ever taught to cultivate, the only one also for which I can say I am more or less responsible.”⁹ He added: ‘I think that I love this language like I love my life, and sometimes more than certain native French do, ... I love it as a foreigner who has been welcomed, and who has appropriated this language for himself as the only possible language for him. Passion and hyperbolization. All the French of Algeria share this with me.’¹⁰

The reference by Derrida to his North African roots is hardly accidental. As he often explained, to speak French in El Biar, on the outskirts of Algiers, in the 1930s and 1940s was very much to speak the language that effectively *dominated* the local political, economic and cultural life, to speak the language of the colonizer, a language that had come from elsewhere, from the *métropole*. It was to speak another language, someone else’s language,¹¹ such that one did not have a language that one could genuinely call one’s own: ‘I have only one language and it is not mine.’¹² With the fierce sense of appropriation that is perhaps characteristic of those who are in search of cultural identity, it is precisely that heterogeneity which Derrida craved to domesticate.

Derrida’s relationship to the French language, which he idealized, was ‘irreducibly idiomatic’.¹³ He confessed: ‘My attachment to the French language takes forms that I sometimes consider “neurotic”’.¹⁴ For example, Derrida was possessed with a strong aspiration to linguistic acculturation. This meant a compulsion to lose his Algerian accent, which he regarded as a shameful badge of provinciality (a view that he extended to every other accent): ‘I am not proud of it, I make no doctrine of it, but so it is: an accent – any French accent, but above all a strong southern accent – seems incompatible to me with the intellectual dignity of public speech. (Inadmissible, isn’t it? Well, I admit it).’¹⁵ But not only did Derrida want to master French – he styled his demand for ‘pure French’ as being ‘inflexible’ and regarded himself as ‘the last defender ... of the French language’¹⁶ – but he wanted to *improve* it: ‘To leave traces in the history of the French language – that’s what interests me. I live off this passion.’¹⁷ Having ascertained that he felt ‘lost, fallen, and condemned outside the French

⁹ Ibid., p. 36. For Derrida’s reservation regarding France, see *ibid.*, p. 37.

¹⁰ Ibid., p. 37.

¹¹ See Derrida, *Monolingualism*, *supra*, note 3, *passim*.

¹² Ibid., p. 25. Derrida was still remarking on this paradox in his final interview. See Derrida, *Learning to Live*, *supra*, note 1, p. 38.

¹³ Jacques Derrida, ‘La vérité blessante ou le corps-à-corps des langues’, *Europe*, May 2004, p. 10 [hereinafter ‘La vérité blessante’].

¹⁴ Derrida, *Monolingualism*, *supra*, note 3, p. 56.

¹⁵ Ibid., p. 46. *Quaere*: To what extent can Derrida’s aversion for vocal modulation be correlated with his philosophical prioritization of writing (as he understands it) over speech? For a thoughtful introduction to the primordial Derridean distinction writing/speech, see Niall Lucy, *A Derrida Dictionary* (Oxford: Blackwell, 2004), pp. 118–30.

¹⁶ Derrida, *Monolingualism*, *supra*, note 3, pp. 46, 47 and 47 respectively.

¹⁷ Derrida, *Learning to Live*, *supra*, note 1, p. 37. Derrida succeeded in one conspicuous respect, perhaps the most celebrated of his numerous neologisms earning an entry in the leading French dictionary. See Alain Rey (ed.), *Le Grand Robert de la langue française*, 2nd edn, vol. II (Paris: Le Robert, 2001), *vbo* différence.

language',¹⁸ Derrida proclaimed: 'I only ever write in French and ... I attach great importance to this fact.'¹⁹ He added: 'I write in a language that I am eager to keep very French.'²⁰

Though acutely aware that one never speaks only one language or that whatever language one speaks is never pure,²¹ Derrida nonetheless insisted that he only ever spoke one language and referred to his 'monolingual obstinacy'.²² In an interview with a leading French journalist, he made his position emphatically clear: 'I am very monolingual, very francophone.'²³ In the same vein, while he admitted that nothing was untranslatable, 'however little time is given',²⁴ for Derrida translation could only happen 'in the loose sense of the word "translation"',²⁵ and '[t]he excellence of the translation [could] do nothing about it'.²⁶ As he noted, the metaphor of the 'Tower of Babel' connects the ideas of 'structure' and 'language',²⁷ and it is indeed the very structure of language that is at stake. Language's irreducible indeterminacy foiling any attempt to bear witness in language 2 to the precise meaning that the word being translated carries in language 1 (either the new word loses some of the significance or adds semantic content, such that, for example, 'Peter' ... is not a *translation* of Pierre'),²⁸ Derrida argued that 'for the notion of translation we would have to substitute a notion of *transformation*: a regulated transformation of one language by another, of one text by another'.²⁹ Strictly speaking, then, 'translation is another name for the impossible',³⁰ '[a] debt that one [cannot] discharge',³¹ which is no doubt why Derrida referred to 'quasi-translations'.³² For him, there

¹⁸ Derrida, *Monolingualism*, *supra*, note 3, p. 56.

¹⁹ Derrida, *Points*, *supra*, note 4, p. 416 [1992].

²⁰ Derrida, 'La vérité blessante', *supra*, note 13, p. 9.

²¹ See Derrida, *Monolingualism*, *supra*, note 3, pp. 7–11. Cf. Jacques Derrida, 'Living On', trans. James Hulbert, in Harold Bloom *et al.*, *Deconstruction and Criticism* (New York: Continuum, 2004 [1979]), p. 81, not.: 'One never writes either in one's own language or in a foreign language' [hereinafter 'Living On'].

²² Derrida, *Monolingualism*, *supra*, note 3, p. 57.

²³ Interview with Franz-Olivier Giesbert, of the French weekly *Le Point*, released posthumously on 14 October 2004 under the title 'Ce que disait Derrida...'. The transcript is available at <http://www.lepoint.fr/actualites-litterature/ce-que-disait-derrida/1038/0/31857> [last visited on 17 March 2008].

²⁴ Derrida, *Monolingualism*, *supra*, note 3, p. 56.

²⁵ *Ibid.*

²⁶ Derrida, *Specters*, *supra*, note 1, p. 21.

²⁷ See Jacques Derrida, *Psyche*, ed. Peggy Kamuf and Elizabeth Rottenberg, trans. Joseph F. Graham (Stanford, CA: Stanford University Press, 2007 [1987]), pp. 191–92 [hereinafter *Psyche*].

²⁸ *Id.*, p. 198 [emphasis original]

²⁹ Jacques Derrida, *Positions*, 2nd English edn, trans. Alan Bass (New York: Continuum, 2002 [1972]), p. 19 [emphasis original] (hereinafter *Positions*).

³⁰ Derrida, *Monolingualism*, *supra*, note 3, p. 57.

³¹ Derrida, *Psyche*, *supra*, note 27, p. 199.

³² Jacques Derrida, 'What Is a "Relevant" Translation?', trans. Lawrence Venuti, (2001) 27 *Critical Inquiry*, 174, p. 178 [1999].

could be no dialogue.³³ Indeed, incommunicability was inevitable.³⁴ Derrida exclaimed: 'What guides me is always untranslatability.'³⁵

No doubt as a consequence of his decision '[to] try to bear all [his] francophonic responsibilities',³⁶ Derrida offered further advice on protocol in one of his inexhaustible sentences: 'We must begin *somewhere where we are*', 'in a text where we already believe ourselves to be'.³⁷ Unsurprisingly, one can find in this injunction echoes of Martin Heidegger. Derrida called the German philosopher his 'foreman',³⁸ saying that Heidegger's work was 'extremely important', that it constituted 'an unprecedented, irreversible advance'.³⁹ And he maintained that 'nothing of what [he] [was] attempting would have been possible without the opening of Heideggerian questions'.⁴⁰ Heidegger had explained in his early correspondence that, in line with his notions of 'fore-having' (*Vorhabe*), 'foresight' (*Vorsicht*) and 'fore-conception' (*Vorgriff*), which indicate that only within the pre-given sign-system within which one is framed can one ever ascribe meaning,⁴¹ '[he] work[ed] concretely and factually from [his] "I am" – from [his] spiritual and in particular factual origin – [from his] environment – [from his] life as a whole [*Lebenszusammenhängen*], from what [was], from there, accessible [to him] as living experience, from that within which [he] live[d]'.⁴² In the words of Hans-Georg Gadamer, another German philosopher (and prominent disciple of Heidegger) with whom Derrida pursued a problematic conversation over more than 20 years,⁴³ situatedness

³³ See Jacques Derrida (with Pierre-Jean Labarrière), *Altérités* (Paris: Osiris, 1986), p. 85 [hereinafter *Altérités*].

³⁴ For an excellent examination of Derrida's views on man's insularity, see J. Hillis Miller, 'Derrida Enisled', in W.J.T. Mitchell and Arnold I. Davidson (eds), *The Late Derrida* (Chicago, IL: University of Chicago Press, 2007), pp. 30–58. Cf. Samuel Beckett, *Proust*, in *The Grove Centenary Edition*, ed. Paul Auster, vol. IV (New York: Grove Press, 2006 [1931]), p. 539: 'There is no communication because there are no vehicles of communication.'

³⁵ Aliette Armel, 'Du mot à la vie: un dialogue entre Jacques Derrida et Hélène Cixous', *Magazine littéraire*, April 2004, p. 26.

³⁶ Jacques Derrida, *Paper Machine*, trans. Rachel Bowlby (Stanford, CA: Stanford University Press, 2005), p. 140 [hereinafter *Paper Machine*]. I have modified the translation. This is the English rendition of an interview with Antoine Spire which took place in 2001 and first appeared as Jacques Derrida and Antoine Spire, *Au-delà des apparences* (Latresne: Le Bord de l'eau, 2002).

³⁷ Derrida, *Of Grammatology*, *supra*, note 6, p. 162 [emphasis original].

³⁸ Catherine Malabou and Jacques Derrida, *Counterpath*, trans. David Wills (Stanford, CA: Stanford University Press, 2004 [1999]), p. 54. Derrida's French word *contremaitre* connotes a 'master' (*maitre*), but also suggests a master against (*contre*) whom one is thinking. This reading allows Derrida to assert his fidelity to Heidegger's thought while advocating his own intellectual specificity, which in the name of loyalty to Heideggerian contrarianism takes the form of frequent departures from Heidegger's ideas. Indeed, Derrida expressly refuted the ascription of the label 'Heideggerian'. For example, see Derrida, *Paper Machine*, *supra*, note 36, pp. 149–50.

³⁹ Derrida, *Positions*, *supra*, note 29, p. 48.

⁴⁰ *Ibid.*, p. 8.

⁴¹ Martin Heidegger, *Being and Time*, trans. Joan Stambaugh (Albany, NY: SUNY Press, 1996 [1927]), §32, pp. 140–41.

⁴² Martin Heidegger, [Letter to Karl Löwith], in Dietrich Papenfuss and Otto Pöggeler (eds), *Zur philosophischen Aktualität Heideggers*, vol. II (Frankfurt: Klostermann, 1990 [1921]), p. 29.

⁴³ For example, see Diane P. Michelfelder and Richard E. Palmer (eds), *Dialogue and Deconstruction: The Gadamer-Derrida Encounter* (Albany, NY: SUNY Press, 1989); Jacques Derrida,

is such that 'one does not find oneself in front of it'.⁴⁴ (To say that all understanding is prejudiced by the light that the epistemological situation sheds on the interpreter, and on that to which the interpreter is trying to impute meaning, is not necessarily debilitating. Thus: 'We can understand a certain text as a novel, for example, because we belong to a history and culture that knows what a novel is.'⁴⁵ Or, one can apprehend Marcel Duchamp's 'ready-mades' as art because one belongs to a culture that has an idea of what art is and of what art can be.'⁴⁶ Moreover, although there is a clear sense in which situatedness acts as a revendication of identity which, in fact, stands for a 'deidentification of oneself',⁴⁷ it does not exclude the possibility that one can deviate from an ingrained cognitive pattern creatively and, indeed, idiosyncratically.)

Starting, then, from Derrida's monolingual state and from his conviction in the ultimate monolingualism of language, from the fact also that, as he put it, 'philosophical nationalities have been formed',⁴⁸ and from the further fact that he emphatically styled himself a *French* philosopher – starting, then, from where Derrida was, from where he read and wrote, from the language within which he believed himself to be, one of his principal translators was prompted to ask whether Derrida could be transmitted beyond the French language: 'The question arises – and it is a serious one – whether [Derrida's] essays can be read in a language other than French.'⁴⁹ Quite apart from the challenging reflection concerning the cross-linguistic

Rams: Uninterrupted Dialogue – Between Two Infinities, The Poem, in Jacques Derrida, *Sovereignities in Question*, ed. Thomas Dutoit and Outi Pasanen, trans. Thomas Dutoit and Philippe Romanski (New York: Fordham University Press, 2005 [2003]), pp. 135–63.

⁴⁴ Hans-Georg Gadamer, *Truth and Method*, 2nd rev. English edn, trans. Joel Weinsheimer and Donald G. Marshall (London: Sheed and Ward, 2004 [1986]), p. 301. This statement encapsulates one of the most important ways in which Heidegger and his successors – including Derrida – seek to distinguish their philosophical project from Edmund Husserl's phenomenology, regarded by them as indentured to Cartesian assumptions, including the promotion of the sovereignty of the subject as epitomized in Husserl's exclamation, 'I stand *above* the world': Edmund Husserl, *The Crisis of European Sciences and Transcendental Phenomenology*, trans. David Carr (Evanston, IL: Northwestern University Press, 1970 [1937]), p. 152 [emphasis original in English].

⁴⁵ Georgia Warnke, 'Literature, Law, and Morality', in Bruce Krajewski (ed.), *Gadamer's Repercussions* (Berkeley: University of California Press, 2004), p. 92.

⁴⁶ In Arthur Danto, 'The Artworld', (1964) 61 *Journal of Philosophy*, 571, p. 581, the well-known art critic and philosopher makes an analogous point with respect to Andy Warhol's 'Brillo Boxes': 'What in the end makes the difference between a Brillo box and a work of art consisting of a Brillo box is a certain theory of art. It is the theory that takes it up in the world of art, and keeps it from collapsing into the real object which it is Of course, without the theory one is unlikely to see it as art, and in order to see it as part of the artworld, one must have mastered a good deal of artistic theory as well as a considerable amount of the history of recent New York painting.'

⁴⁷ Gayatri C. Spivak, *Outside in the Teaching Machine* (London: Routledge, 1993), p. 6. For an investigation of the rhetoric of situatedness, see David Simpson, *Situatedness* (Durham, NC: Duke University Press, 2002), pp. 192–247 and 19–57.

⁴⁸ Jacques Derrida, *Margins of Philosophy*, trans. Alan Bass (Chicago, IL: University of Chicago, IL Press, 1982 [1972]), p. 111 [hereinafter *Margins*].

⁴⁹ Alan Bass, 'Translator's Introduction', in Jacques Derrida, *Writing and Difference*, trans. Alan Bass (Chicago, IL: University of Chicago Press, 1978 [1967]), p. xiv [hereinafter *Writing and Difference*].

transmissibility of meaning which this expression of doubt pointedly invites, it compels two findings of immediate interest.

First, Derrida was only ever preoccupied with *droit* and *loi*, two French words that can be said, when taken together, to approximate optimally, but certainly not replicate, the meaning of the English word 'law'.⁵⁰ Second, to the extent that Derrida was at all concerned with 'law', this English term, which as a word that he could 'never inhabit' could only have been *uncanny* and thus of limited significance to him⁵¹ – would only have been open to apprehension by him through the prism of French. In effect, 'law' could only ever have had meaning for Derrida *as droit/loi* and not *as such*.⁵² But, as Derrida himself observed, such a translation process is inevitably fallible. Whatever understanding Derrida would have had of 'law' would thus have been at irrevocable variance with, say, that of an Anglophone lawyer socialized into English law in that it could not have possibly attended to the extensive semantic range of 'law'. It is simply not reasonable to assume that as French an intellectual as Derrida, steeped in a language where *droit* and *loi* carry resonances characteristic of the nomothetic legal culture that bred them, would have found himself in a situation allowing him to ascribe full meaning to 'law' as the typical product of an idiographic legal culture. Here, French is shown to act as much as a 'right of way' allowing 'law' to reach Derrida-the-French-philosopher as a 'barrier' preventing the English term from getting to its destination unimpeded – the issue of how much of the economy of the English term could ever be rendered in French inevitably remaining a matter of speculation.⁵³ There is, then, a 'differend' that follows from inscription-

⁵⁰ In Continental Europe, most legal terms used in modern political philosophy come from a transcription into vernacular languages of words issuing from Roman law and from Roman law's reception in medieval Europe. Although such transcriptions have been accompanied by important inflections of the ancient meanings, translation practices have proved stable enough throughout Continental Europe for foundational terms like *jus* and *lex* to find local renditions – such as *droit* and *loi* in French – giving effect to the basic distinction between, very roughly, the legal order (as in 'according to French *droit*, four conditions are required for the formation of a valid contract') and the output of the legislative authority (as in 'the recent *loi* on immigration aims to curb the arrival of economic migrants'). Thus, *loi* enjoys a narrower extension than *droit*, being one source only of *droit*, albeit traditionally the principal one. Now, where French has two words, *droit* and *loi*, to convey two different ideas, English has settled for amphibology in as much as it has long featured exclusively the word 'law' to cater to both configurations (at first, the language had oscillated between 'ley', 'lay' and even 'dreit'). The issue is slightly more complicated as 'law' can be used metaphorically in expressions such as 'the law of numbers' or 'Murphy's Law'. In these cases, the only pertinent French word is *loi*. Now, the ambiguity disclosed by the English language is compounded by the presence of another equivocation featured in the word 'right', which can mean either something along the lines of 'entitlement' ('her right to privacy was jeopardized') and something else like 'correct' ('she was right'). To make matters more intricate still, the English 'right' when used in the first of these two senses translates in French only as *droit* (thus, 'her *droit* to privacy').

⁵¹ Derrida, *Monolingualism*, *supra*, note 3, p. 57.

⁵² In his first text expressly devoted to law, Derrida addressed the Frenchness of the word *loi*: Jacques Derrida, 'Before the Law', trans. Avital Ronell and Christine Roulston, in Jacques Derrida, *Acts of Literature*, ed. Derek Attridge (London: Routledge, 1992 [1984]), p. 206 [hereinafter 'Before the Law'].

⁵³ I borrow the terms of the paradox from Gayatri C. Spivak, 'Translator's Preface', in Derrida, *Of Grammatology*, *supra*, note 6, p. lxxxvi.

in-language,⁵⁴ which is inscription-in-situation, and the crucial point is that that differend is unbridgeable. I am reminded of Rilke: 'And there stand those stupid languages, helpless as two bridges that go over the same river side by side but are separated from each other by an abyss. It is a mere bagatelle, an accident, *and yet it separates*.'⁵⁵ Lest one accept the presence of radically different linguistic singularities and apprehend them as sites for the exploration of incommensurable dissensus, one risks falling for glib readings harking back in one form or another to the specious idea of universalism – precisely the kind of highly underwhelming result against which Derrida's philosophy incessantly seeks to warn us.

To introduce a collection of essays devoted to *Derrida and Law* thus raises a seemingly insurmountable challenge for the editor who wishes to elucidate what the conjunction masks – that is, who aims to acknowledge the 'there is', Rilke's 'abyss', which haunts this title as it brings not-together the inscription of a proper noun ('Derrida') in the French language and that of a noun ('Law') in the English language.⁵⁶ Because language pertains to the *effect* of every word, one simply cannot speak of a *history* ('Derrida-and-Law'), but only of *histories* ('Derrida' and 'Law'). The summons, then, is to address the discord between *two entities which never actually met, which were never in one another's presence, which only ever dealt with one another through a French mediator and which, even as they were in contact through the mediation of the French language, remained 'absolutely irreconcilable'*, no matter how much we as interpreters show ourselves willing to 'live them simultaneously and reconcile them in an obscure economy'.⁵⁷ There are only two options, then: either one attempts to reach the 'there is' through the perceiver ('Derrida'), thus approaching 'law' as Derrida himself would have understood it – that is, as either *droit* or *loi* – or else one operates through a perceived such as 'Law' and apprehends the topic in terms of what that word means in English.⁵⁸ *There is no other possibility*. In deference to the fact that this collection of essays assembles only texts in English and only caters to Anglophone readers, I retain the latter course of action while being keen to emphasize that the dynamics between 'Derrida' and 'Law' cannot be reducible to the term of the equation through which I have elected to discuss it. Here, 'law' is very much in the nature of 'compromise English'.⁵⁹

⁵⁴ See Jean-François Lyotard, *Le différend* (Paris: Editions de Minuit, 1983). I adopt the word 'differend' from the English translation of Lyotard's book: *The Differend*, trans. Georges Van Den Abbeele (Minneapolis, MN: University of Minnesota Press, 1988).

⁵⁵ *Rilke Briefe*, ed. Rilke-Archiv in Weimar, vol. I (Frankfurt: Insel, 1950), p. 41 [my emphasis]. Rainer Maria Rilke's letter to Clara Rilke is dated 2 September 1902. In it, the poet comments on the difficulty of communicating with Rodin on the occasion of his visit to the sculptor in Paris. Note that the word 'abyss' (*Abgrund*) also appears in Paul Celan's correspondence with specific reference to the separation between languages: James K. Lyon, *Paul Celan and Martin Heidegger* (Baltimore, MD: Johns Hopkins University Press, 2006), p. 37. The letter (to Werner Weber) is dated 26 March 1960.

⁵⁶ On 'haunting' in Derrida's philosophy, see *infra* at text accompanying notes 70–75.

⁵⁷ Derrida, *Writing and Difference*, *supra*, note 49, p. 293.

⁵⁸ This is not to suggest that 'law' means the same thing for all Anglophone readers, which would be a silly contention indeed.

⁵⁹ Geoff Bennington and Ian McLeod, 'Translators' Preface', in Jacques Derrida, *The Truth in Painting*, trans. Geoff Bennington and Ian McLeod (Chicago, IL: University of Chicago Press, 1987 [1978]), p. xiv.

As Derrida himself acknowledged, the word 'law' can point to meaning that is 'moral, judicial, political, natural, etc.'⁶⁰ Two of his well-known texts are especially topical as regards the range of imperatives or *doxas*: 'The Law of Genre' and 'Before the Law'.⁶¹ But 'law' can carry a narrower sense and concern itself strictly with 'matters legal', and it is to this understanding that I shall devote the remainder of this Introduction and the whole of this collection of essays – which is, inevitably, based on Derrida's philosophy *as I read it* (there is *my* Derrida).

It is apt to observe at the outset that practically every commentator who has wanted to address Derrida's relationship with law in its specialized sense has focused on the text of his well-known opening address at Cardozo Law School's conference on 'Deconstruction and the Possibility of Justice' delivered in October 1989 as 'Force of Law: The "Mystical Foundation of Authority"'.⁶² This is so although Derrida himself has been at pains to observe that his work has often foregrounded law.⁶³ 'Deconstruction' is, of course, the crucial move around which Derrida has always fashioned his hypercognitive desedimentation and dehierarchization practice.⁶⁴ Unwilling to confine deconstruction to a forum that would be its 'proper place',

⁶⁰ Derrida, 'Before the Law', *supra*, note 52, p. 192.

⁶¹ Jacques Derrida, 'The Law of Genre', trans. Avital Ronell, in Jacques Derrida, *Acts of Literature*, ed. Derek Attridge (London: Routledge, 1992 [1980]), pp. 221–52; Derrida, 'Before the Law', *supra*, note 52.

⁶² See Jacques Derrida, 'Force of Law: The "Mystical Foundation of Authority"', trans. Mary Quaintance, (1990) 11 *Cardozo Law Review*, 919 [hereinafter 'Force of Law']. This article also features the French original. On account of the fact that the English version was republished in two different books (see 'Select Bibliography', *infra*), Derrida's text is not included in this volume.

⁶³ See Derrida, 'Force of Law', *supra*, note 62, p. 929.

⁶⁴ The French word *déconstruction* (which initially appeared as '*Dé-construction*') was first used by Gérard Granel in his translation of Heidegger's 'Zur Seinsfrage', which the German philosopher wrote in the mid-1950s and in which he used the word *Abbau* – although not for the first time since he had already had recourse to the term as early as 1927 in the context of a series of lectures that would be published half a century later in which, by way of illustration, one can find a reference to '*ein kritischer Abbau*' or 'critical deconstruction': Martin Heidegger, *The Basic Problems of Phenomenology*, trans. Albert Hofstadter (Bloomington, IN: Indiana University Press, 1982 [1975]), p. 23. For the current edition of Granel's translation, see Martin Heidegger, 'Contribution à la question de l'être', in *Questions I et II*, trans. Kostas Axelos *et al.* (Paris: Gallimard, 1968 [1955]), p. 240. For a detailed discussion of the merits of the French neologism *déconstruction* as a translation of the German *Abbau*, see Jean-Pierre Faye, *Le piège* (Paris: Balland, 1994), pp. 175–87. For Derrida's own account as regards his use of *déconstruction*, see his 'Letter to a Japanese Friend', trans. David Wood and Andrew Benjamin, in David Wood and Robert Bernasconi (eds), *Derrida and Différance* (Evanston, IL: Northwestern University Press, 1988 [1985]), pp. 1–2. It may be that Derrida first mentioned the word in *De la grammatologie*, *supra*, note 7, p. 10, where it appears as '*dé-construction*' ['de-construction']. Having said all of this, it remains that, as Derrida himself put it, '[e]verything begins before it begins' (*Specters*, *supra*, note 1, p. 202). Thus, *Abbau* appears in Husserl around 1921 in connection with his investigations into 'Genetic Logic'. It would later resurface whenever the matter of genetic constitution arose. See Ludwig Landgrebe, 'Editor's Foreword to the 1948 Edition', in Edmund Husserl, *Experience and Judgment*, ed. Ludwig Landgrebe, trans. James S. Churchill and Karl Ameriks (Evanston, IL: Northwestern University Press, 1973 [1948]), p. 5. And *destructio* is in Luther as he refers to the necessity of a destratification of theological knowledge. See Jacques Derrida, *On Touching – Jean-Luc Nancy*, trans. Christine Irizarry (Stanford, CA: Stanford University Press, 2005 [2000]), p. 60.

Derrida nonetheless surmised that '[i]f, hypothetically, it had a proper place', it would be 'more at home in law schools, ... than in philosophy departments and much more than in the literature departments where it has often been thought to belong'.⁶⁵ For him, 'law is essentially deconstructible',⁶⁶ meaning that he thinks there is nothing more deconstructible than law.

One reason for the special relevance of law to the deconstructive enterprise would have to do with the fact that '[d]econstruction is not, should not be only an analysis of discourses, of philosophical statements or concepts, of a semantics; it has to challenge institutions, social and political structures, the most hardened traditions'.⁶⁷ And law, as 'a profoundly traditional practice', as a narrative that 'rests upon mountains of inherited tradition, preserved, referred and deferred to by highly developed institutions and practices of tradition-maintenance',⁶⁸ as also 'that [which] exposes us to our own blindness or the limits of our historicity', as therefore an 'unmasking of the present', as ultimately 'the voice out of the past whose task is ... to torment and scourge',⁶⁹ as all of *that*, is an evident focal point for the deconstructive challenge, which is about elucidating what lies within the law about which the law has lied (even to itself), that which the law, for an array of institutional reasons, has 'officially' sought to deny or repress. It is, if you will, this hidden or other side of the law that primarily concerns Derrida, and which he means to capture through a genealogical exercise. In the end, his goal is to uncover the law's other language, which will make it possible for one to hear the law speak a different language that is still emphatically law's language and, indeed, that is more authentically law's language.

Note that Derrida's point is that the law conceals 'a difference *within*' in that the possibility of another law being spoken is inscribed *within* the law itself, which means that the other is within the self, that it is present though invisible, not unlike a ghost. Indeed, for Derrida, there is a 'logic of haunting' at work when it comes to a law-text.⁷⁰ Because 'it ghosts',⁷¹ because 'it is spectral structure that *makes the law* here',⁷² law's interpreters have to attest to this otherness and proceed to act heteronomically. They must turn themselves into 'hauntologists'. Instead of incessantly asking themselves what law 'is' (and answer tautologically that it is what is posited as law by the law-making authorities), lawyers must, if only for authenticity's sake, engage in an exigent mutation of their thinking about law. They require to elicit what law exists *as* or writes *as* or speaks *as* – that is, to show awareness of law's constitutive relation to space, to place, to situation, to time also, to reveal attentiveness to law's embeddedness in a multiplicity of intensities and in a plurality of forces, to law *as* discourse burdened with proliferating spatio-temporal precedence. In other words, they must abandon ontology and practise 'hauntology'.⁷³

⁶⁵ Derrida, 'Force of Law', *supra*, note 62, p. 931.

⁶⁶ *Ibid.*, p. 943.

⁶⁷ Derrida, *Points*, *supra*, note 4, p. 213 [1987].

⁶⁸ Martin Krygier, 'Law As Tradition', (1986) 5 *Law & Philosophy*, 237, pp. 239 and 256 respectively.

⁶⁹ The three quotations are from Gerald L. Bruns, *Hermeneutics Ancient and Modern* (New Haven, CN: Yale University Press, 1992), p. 204.

⁷⁰ Derrida, *Specters*, *supra*, note 1, p. 10.

⁷¹ Derrida attempts a translation of the German '*es spukt*': *ibid.*, p. 216.

⁷² Derrida, *Paper Machine*, *supra*, note 36, p. 89 [my emphasis].

⁷³ The word 'hauntology' [*hantologie*] is Derrida's: *Specters*, *supra*, note 1, p. 10.

‘Spectrality’ is a recurring motif in Derrida’s work. In fact, the spectre incarnates (so to speak!) Derrida’s philosophy. It is his most central and most profound idea. It is that which undergirds all of Derrida’s writing as it bears witness to his primordial intuition that ‘reality’ is multiple, indecisive and complex: ‘The spectral logic is de facto a deconstructive logic.’⁷⁴ For him, then, texts – including law-texts – are haunted by discursive and material traces forming infinitely complex interlacing and, strictly speaking, never-ending semiotic chains: ‘[The specter] regularly exceeds all the oppositions between visible and invisible, sensible and insensible. A specter is both visible and invisible, both phenomenal and nonphenomenal.’⁷⁵ Being less than full presence and more than absence, the spectre blurs the distinction between the factual and the fictional. Crucially, though, the spectre is not exterior to the text, but pertains to its very constitution.

But there is at least one other reason why, according to Derrida, deconstruction would spontaneously focus on law and this concerns the fact that lawyers stand at the interface of an array of crucial tensions whose terms, even as they prove as contradictory as they show themselves to be indissociable, ceaselessly inform legal discourse. Consider the following dyads as they refer to oppositions that have come to seem ‘natural’: law/non-law, natural law/positive law, legislative text/judicial decision, interpretation/transformation, certainty/discretion, public/private, equality/individuality and so forth. Through its various techniques from which it is inseparable – it *is* definition, formulation, classification, composition, arbitration, adjudication, legislation –, the law must contend with the incessant restlessness attendant upon the interaction between concepts or categories that simply do not feature the discrete contours, the sharp distinctions, the clear edges that are sought and assumed by lawyers (whether in good faith or not).⁷⁶ One of deconstruction’s main messages is precisely that concepts are in effect undelineated and categories unframed, that *there are no borders*.⁷⁷ The idea that neat partitions would present themselves, allowing one to draw clear topologies is at best an instantiation of wishful thinking in which deconstruction cannot find solace. For Derrida, there exists a principle of dismantlement always-already challenging *any* approach based on the sustainability of binary distinctions and undermining *any* order founded on the mastery of meaning. Indeed, Derrida regards the instability, the ‘play’ that he addresses, as inherent to the very idea of ‘concept’ or ‘category’. It is in the nature of a constitutive feature thereof. It is inscribed into the law. Importantly, it does not intervene from some Archimedean standpoint and is certainly not something that is ‘injected’ into law by a mischievous deconstructor. Rather, Derrida assimilates this intrinsic characteristic to a ‘virus’ – that is, to ‘something’ breeding in a host body from ‘within’, which, in the (paradoxical) name of probity, always-already subverts any claim made on behalf of the law in favour of law’s conceptual or categorical ‘purity’.⁷⁸

⁷⁴ Jacques Derrida and Bernard Stiegler, *Echographies of Television*, trans. Jennifer Bajorek (Cambridge: Polity, 2002 [1996], p. 117.

⁷⁵ Ibid.

⁷⁶ A compelling argument on the prevalence of bad faith amongst judges is in Duncan Kennedy, *A Critique of Adjudication* (Cambridge, MA: Harvard University Press, 1999).

⁷⁷ See Derrida, ‘Living On’, *supra*, note 21, pp. 67–70.

⁷⁸ Geoffrey Bennington and Jacques Derrida, *Jacques Derrida*, trans. Geoffrey Bennington (Chicago, IL: University of Chicago Press, 1993), pp. 91–92. The words are Derrida’s. One can see