Jacques Derrida and Deconstruction of Law

Mostafa Taherkhani, S. Mohamed Ghari. S. Fatemi

Jacques Derrida and Deconstruction of Law

Mostafa Taherkhani[1]

S. M. GH. Fatemi[2]

In: *Law Research Quarterly*

Abstract

Deconstruction, which brings to mind the name of Jacques Derrida, has a controversial nexus with the law and legal studies. The story of world's prestigious law schools dealing with this notion is a testament to this claim. Nevertheless, the belief in the obvious clarity of the legal text, and the concealment of the law-making violence, necessitates the deconstruction of the law, and requires consideration of this thought in legal theory. Discussions that have so far focused on the relation between deconstruction and legal studies can be divided into two general categories. The first category seeks to make deconstruction into a technique of legal reasoning, and the other is aimed at addressing its moral side. However, merely establishing a relation between Derrida and law—even at the cost of eradicating the radical side of deconstruction and reducing it into a method or moral advice—does not exert much difference in the *status quo*. Therefore, it is of the essence to impede the transformation of deconstruction in the mainstream legal theory, and to emphasize its intervening aspect. In so doing, one can aim to highlight the third and radical type of legal thinking's link to deconstruction. Accordingly, the present paper, after scrutinizing the relationship between deconstruction and legal studies, seeks to critically analyze the types of legal theories influenced by Derrida's *weltanschauung*, with an analytical-critical eye. It also stresses the deconstruction of law as a movement which exposes and summons the hidden myths and silenced voices of law, and in this way, breaks the one and only *logos* of law and opens a way beyond it.

Keywords: Deconstruction, Jacques Derrida, violence of law, Critical Legal Studies, legal interpretation

[1] PhD student of law, Shahid Beheshti (former National) University (SBU). mostafa.taherkhani@hotmail.com

[2] Professo of Legal Theory, Shahid Beheshti (former National) University (SBU), m-fatemi@sbu.ac.ir

Introduction

The text of law has always sought after linguistic clarity. [3] Textual clarity, structural coherence, and certainty are what the law always strives for, yet flatly fails to achieve. This constant effort and failure—this insurmountable gap and eternal void so to speak— is where legal theory has taken root. Ostensibly, the task of legal theory has always been to maintain the structure, coherence and certainty of law[4] and to hide its failure.

This goal, regardless of its being bad or good, seems to be unattainable. The simplest reason is that a legal text is a rhetorical text before it is a legal creator and reproducer of meaning. No matter how stubbornly does it try to deny its rhetorical nature, it will be to little avail. The legal text is not able to provide conceptual integrity and theoretical coherence.

This position was the starting point for critical legal thinkers in the United States who came up with the idea of "legal indeterminacy" in the mid-1970s. The notion considers a legal issue or case to have different and even contradictory answers according to the political inclinations of the jurist, using different legal arguments, without violating the legal logic. Simply put, a legal issue can have two or more completely different answers, all of which are correct, according to the sources and reasoning logic of the law; what determines this path is the position and orientation of the lawyer or judge. Therefore, applying the rule to an event is not a neutral act and at the same time involves a level of political choice. [5] This idea was raised on the one hand against the prevailing notion of legal formalism, which believes in the availability of a certain intra-legal answer to any legal question, [6] and on the other hand, in response to Ronald Dowrkin's "Right Answer" theory.[7]

In addition, another popular strategy of these jurists was to unveil that legal texts were based on duplicate and bipolar dichotomies. For example, the public/private dichotomy is the basis of the idea of the rule of law, and ostensibly buttresses the realm of personal independence and external government interference. The binary of law/politics establishes the domain of contract and civil law issues, independent of political structure. The duality of universalism/cultural relativism dominates human rights' issues. [8] Moreover, from the point of view of this approach, the rules germane to a subject are the result of different kinds of authoritarianism in dealing with events, and the forgery of the rule based on them.

The role of Jacques Derrida's deconstruction is manifest in the aforementioned discussions. From the idea of indeterminacy, which was the legal translation of Derridean "undecidability"[9],

---

[1] Douzinas, Costas and Gearey, Adam. **Critical jurisprudence**, Hart Publishing, 2005, p. 69
[4] Walt., Johan van der**. Law and deconstruction**, in: " Research Handbook on Critical Legal Theory", Edited by Emilios Christodoulidis, Ruth Dukes and Marco Goldoni, Edward Elgar Publishing, Glasgow, 2019. P. 179
[5] Knox, Robert. **Strategy and Tactics**, The Finnish Yearbook of International Law, V. 21, 2012, p. 201
[6] Unger, Reberto, op.cit, 1
[7] Dworkin, Ronald. **No Right Answer?** New York Law Review, V. 53, N. 1, 1978
[8] Douzinas and Gearey, Op.cit, 62
[9] Douzinas and Gearey, Op.cit, 65

to the critique of the conceptual binaries as a metaphysical logic[10] and the deconstruction of stubborn texts seeking to conceal their textuality, the ghost of Derrida is ubiquitous. It can be added that the lack of agreement, confusion in the face of the decision, the impossibility of the certainty that the jurists sought, and finally challenges faced with dominant legal theories are the corollary of deconstruction's confrontation with law.[11]

Derrida has inspired various approaches to law running the gamut from critical legal studies to legal pragmatism and legal deconstruction[12]. In addition, Derrida's theories are adopted in the feminist approach to law, and feminist jurists believe that the application of his thinking in law can reveal the masculinity and gender hierarchy of law[13]. Deconstruction has also been used in contract law[14]. In some cases, attempts have been made to analyze judicial decisions using deconstruction[15]. Some even believe that a post-positivist theory of law can be deduced from Derrida's thought[16]. Important things have also been written about Derrida's importance in the field of legal interpretation; Derrida's influence in this area is such that some believe that Michel Rosenfeld was completely influenced by Derrida in her seminal book on legal interpretation[17], without mentioning his name[18]. With all these interpretations, it can be construed that "we should not talk about Derrida and law". This issue does not have merely a history, but histories. Ergo, it is prudent to write: "Derrida" and "Law".[19]

Against this backdrop, this article reflects on this issue: the effect of Derrida's deconstruction on legal thought and the examination of the relationship between "Derrida" and "law". In this way, the first encounter of the Law Academy with Derrida's thinking is examined. Then the necessity of heeding deconstruction in legal studies is discussed. Next, the various effects of this "strategy" on legal thinking are described in three general categories (i.e., instrumentalist, ethical, and radical) and finally, the potential of Derrida's deconstruction to change the attitude towards legal study is considered.

1. Deconstruction and legal academy

[10] Derrida, Jacques. **Positions**, The University of Chicago Press, 1981, pp. 41–43
[11] Goodrich, peter and Rosenfeld, Michel. Introduction, in: "Administering Interpretation", edited by Peter Goodrich and Michel Rosenfeld, New York, USA: Fordham University Press, 2019, p. 3
[12] Hoffmann, Florian. **Epilogue: in lieu of conclusion**, German Law Journal, V. 6, Issue 1, 2005, p. 197
[13] Troup, Maggie**. Rupturing the Veil: Feminism, Deconstruction and the Law**, Australian Feminist Law Journal, N. 1, 1993, 63-88.
[14] Dalton, Clare. **An Essay in the Deconstruction of Contract Doctrine**, YALE LAW JOURNAL, V.94, 1985, 425 - 438
[15] Lloyd, Chris. CE QUI ARRIVE': **DECONSTRUCTION, INVENTION AND THE LEGAL SUBJECT OF R V R**, Australian Feminist Law Journal, V. 37, Issue 1, 2012, 2014, 65 - 82
[16] Legrand, Pierre. **Jacques Derrida Never Wrote about Law**, in: "Administering Interpretation", edited by Peter Goodrich and Michel Rosenfeld, New York, USA: Fordham University Press, 2019, p. 107
[17] Rosenfeld, Michel. **Just Interpretations: Law Between Ethics and Politics**, University of California Press, 1998
[18] Legrand, Pierre. **Jacques in the Book (On Apophasis)**, Law & Literature, V. 23, Issue 2, 2011, 282-294
[19] Legrand, Pierre, Introduction, in: Derrida and Law, Edited by Pierre Legrand, Routledge, 2009, p. 22

The entry of Derrida's deconstruction into the world of law has been problematic *ab initio* and it continues to be so. Although Derrida himself believed that deconstruction "would be more at home in law schools … than in philosophy departments and much more than in the literature departments" [20] it was in these law schools that the deconstruction identified itself as a menacing entity[21]. Hence, in grappling with this Gordian knot, it is not surprising to spot aggressive reactions from lawyers towards it. For example, some contend that Derrida was not worth reading at all and that his ideas did not make much sense. Statements such as the procedure of deconstruction "has a distinctly irritating effect on the reader"[22] and Derrida's writings on the law "sounds like sophism and it has to provoke philosophical mistrust"[23] are but some of the reactions that can be found in abundance.

Even renowned jurists such as Judge Richard Posner state emphatically and *sans* argument that: " deconstruction has obvious if unacceptable implications for legal interpretation, because fixity of meaning is necessary to minimize legal uncertainty and cabin judicial discretion." [24] Posner's pragmatism is quite evident in his position: for a judicial decision, the stability of meaning is necessary, which is jeopardized by deconstruction. In effect, it should not be allowed to enter into the scope of legal thinking. It is, therefore, regarded as a kind of expediency to protect the glorious palace of the decisive judicial decision; rejection as a matter of necessity, not as an argument; and rejecting the issue, not criticizing it critically.

This resistance to Derrida's thinking, beyond a few specific jurists, is an academic and institutional practice. As Bernadette Miller points out, philosophy of law has little space in the American legal academy, and therefore the potential of deconstruction in the theory and practice of interpretation is not yet understood[25]. Duncan Kennedy goes even further and argues that the American legal academy is dominated by a hermeneutic of suspicion. It was this hermeneutics that condemned Derrida, or at least culminated in the uncertainty and turmoil of his work[26]. Moreover, all the story of rejection lies beneath the bitter reality that Simon Critchley rivetingly pinpoints: no doubt most critics of Derrida have never read his works[27].

Nevertheless, Derrida's entry into the world of legal thought has not necessarily been good news or auspicious either. It is no exaggeration to state that in most of the encounters of legal thinkers with deconstruction, Derrida's thinking has become so tame and harmless that, in the end, it would not be different from a legal tool and technique for reading the text. The important point is also that such a neutral and safe approach of legal scholars to a radical thinking is not confined to Jacques Derrida. It is as if we are facing a kind of "self-construction" of thinking.

---

[20] Derrida, Jacques. **Force of Law: The Mystical Foundation of Authority**, trans. Mary Quaintance, in Deconstruction and the Possibility of Justice, Edited by Drucilla Cornell, Michael Rosenfeld, and David Gray Carlson, Routledge, 1992, P 8.
[21] Goodrich and Rosenfeld, Op.cit, 3
[22] Gehring, Petra, **The Jurisprudence of the "Force of Law**, in: Derrida and Legal Philosophy, Edited by Peter Goodrich, F. Hoffmann, M. Rosenfeld and C. Vismann, Palgrave Macmillan, 2008, p. 55
[23] Ibid, 65
[24] Posner, Richard A. **What Has Modern Literary Theory to Offer Law?**, Stanford Law Review, V. 53, 2000, p. 205, from Goddrich, 2001, 284.
[25] Goodrich and Rosenfeld, Op.cit, 4
[26] Ibid
[27] Critchley, Simon. **Derrida: the Reader**, Epoché: A Journal for the History of Philosophy, V. 10, Issue 2, 2006, p. 322

Legal thinkers systematically transform any new thinking and idea into another type of reasoning technique. This "rhetorical economy," according to Schlag, is so powerful that even when lawyers are confronted with anti-systemic and anti-methodological ideas, they use it in their reasoning and technical matters, what Shlag calls "cannibalistic transformation"[28.]

This approach was not limited to traditional legal thinking. Critical legal thinking, influenced and shocked by the temporary success of the Critical Legal Studies movement in the United States, also deviated from a broad and deep understanding of Derrida's work and "has turned away from any expansive reception of Derrida's work and."[29]

Much of this confrontation stems from the jurists' long-held desire for structured thinking, and this tendency is so strong that it seeks to capture a thinker like Derrida. However, the result of such an effort is already known. According to one theorist: " If legal theorists were to continue to deem it important to engage seriously with Derridean deconstruction for purposes of distilling from it constructive insights for the normative concerns of legal theory, they would either have to rely on a highly tamed and domesticated understanding of Derrida's work that ignores large parts of it, or they would need to break new ground to show what the radically disruptive potential of his work might mean for legal theory. " [30] It also must be admitted of course, that law academies have done this not only with Derrida, but with many others.

The question here is not simply the relationship between rights and a particular mindset. In the humanities, this relationship can be established between virtually everything. We can definitely talk about Derrida and law as we could talk about Foucault and law, Marx and law and Rawls and law, and so forth *ad infinitum.* The real question is, can Derrida's deconstruction, with all its radical potential, be applied to law? If the purpose of applying is something akin to applying the law to reality, or applying another knowledge to law, the answer will definitely be a categorical no. In other words, deconstruction cannot be applied to law as an interdisciplinary model. Neither can it be related to law in the manner of "law and ...". In this type of relation and applying, it is as if one is explaining the other, or, to put it differently, one is explaining itself with the help of the other; the nature of each is known in advance, and only a relation is established, and that is all. In this interdisciplinary work, what is overlooked is talking about the relationship itself and the possibility of establishing it. In such studies, the validity of both sides of this study is already accepted and the only thing that is required is to put them together. In these interdisciplinary studies, that secondary discipline always seeks to solve a legal problem as a tool or technique and in a completely logocentric manner. For example, look at the legal theory of Judge Richard Posner. His use of microeconomics in his legal analysis is not much different from the use that a lawyer makes of a Supreme Court verdict. If we want to deal with deconstruction in the same way, we get nothing special but one technique alongside other techniques, or ultimately a pluralistic moral approach in judicial decisions.

Nonetheless, if we are to problematize the possibility of this relationship with the help of deconstruction, we shall bring law into crisis or to the point where all those seemingly obvious

---

[28] Schlag, Pierre. **"LE HORE DE TEXTE, C'EST MOI": The Politics of Form and the Domestication of Deconstruction**, Cardozo Law Review, 11, 1990, p. 1635

[29] Goodrich and Rosenfeld, Op.cit, 4

[30] Walt., Johan van der. **Law and deconstruction**, in: " Research Handbook on Critical Legal Theory", Edited by Emilios Christodoulidis, Ruth Dukes and Marco Goldoni, Edward Elgar Publishing, Glasgow, 2019, p. 178

definitions and concepts that are safe for it are questioned again, problematize the existence of law in case it is possible to take the threatening aspect of deconstruction to its ultimate (in case there is an ultimate after all) —without claiming to lead the status quo to a better situation, and without introducing a special theory from the outside— and finally break the law in a way it questions its own existence. Only then can we speak of acts of deconstruction of law. In fact, in deconstruction (as opposed to the label of relativism adopted by some critics), we are dealing with a kind of radical and acute rationalism that since it takes into account the greatest number of others in the text, the logos of the text will be disintegrated from within, breaking it down to thousands of others which have so far remained silenced and neglected. So "deconstruction is, after all, a promise, not a doctrine." [31]

2. The necessity of deconstruction for legal thinking

Peter Fitzpatrick considered violence to be exceptional in law. According to him, the law has a monopoly on legitimate violence and violence outside the law becomes illegitimate. This violence is justified only by the need to maintain order and the law itself. Law, *ipso facto*, is inherently related to peace, and violence seeks to free itself from law. As a result, the law, while enshrining violence, is inherently non-violent. [32] Derrida, however, considers violence to be inherent in the law. In his view, violence is not an entity that enters the law from the outside [33] and " t law is always an authorized force, a force that justifies itself or is justified in applying itself .". [34] As Derrida emphasizes, the relationship in question is not law in the service of violence, or violence in the service of law. Rather, it is a law that finds, legitimizes and protects violence. Violence that is simultaneously within the law and caused by law. Violence, then, is not something against the law that the law seeks to justify, but the law itself and its legitimacy comes from its performance, not from something else. The application of law (or violence) legitimizes it. The law, ergo, does not resort to anything else to legitimize itself, but merely acts. [35] Or, as Stanley Fish believes, law's functional machinery renders its philosophical inadequacy and erase the mystical foundations of its own authority.[36] So " law and force are structurally imbricated into each other—specifically, force is endogenous to law while being precisely that exogenous threat that law is meant to counter ." [37]

We obey the law, accept its authority and legitimize its aggression, and it is still above us; at the same time, it evaluates our actions through concepts such as responsibility, crime, and punishment. But what is the reason for this easy rule of law?

For Derrida, in short, the reason for this easy superiority is that "law should never give rise to any story"[38]. The origin of the law is never questioned and there is no account of how it came

---

[31] Vismann, Cornelia. **Derrida, Philosopher of the Law**, German Law Journal, V. 6, Issue 1, 2005, p. 6

[32] Fitzpatrick, Peter. **Modernism and the grounds of law**, Cambridge University Press, 2014, p. 77

[33] Derrida, 1992, Op.cit. 34 - 5

[34] Ibid, P 15

[35] Buonamano, Roberto. **The Economy of Violence: Derrida on Law and Justice**, Ratio Juris, V. 11, N. 2, 1998, p. 170

[36] Fish, Stanely. **Doing What Comes Naturally**, Duke University Press, 1989, pp. 328–31.

[37] Legrand, 2019, Op.cit, 124

[38] Derrida, Jacques. **Before the Law**, in: "Acts of Literature", Ed. Derek Attridge, trans. Trans. Christine Roulston, Routledge, 2017, p. 191

into being. No one talks about the monologue of the law; neither one narrates how out of all the voices, all the whispers and all the cries, it was this one voice that stood out. It is as if the law had existed *ab ovo* . Derrida writes: "To be invested with its categorical authority, the law must be without history, genesis, or any possible derivation." [39] Derrida's gist is: "The story of prohibition is a prohibited story" [40]

At any rate, we are faced with something whose power comes from its silence. A self-legitimizing element, accompanied by a mysterious silence. [41] The silence that accompanied it, and silenced other voices: voices repressed by law, which no one should ask about their elimination. We are confronted with something whose story of creation is bound up with endless repressions, and all those repressions are hidden under the domination of a mysterious silence.

The necessity of deconstruction of law comes from here. Eliminate and silence other voices when enacting the law. The omission that happened to be in the name of justice, and the silence that has overshadowed the whole story. Deconstruction enters into this story, without being neutral and observant. As Derrida emphasized, deconstruction " is not neutral, "It intervenes."[42] Deconstruction is after openness to the rejected and eliminated, and beyond that, the coming and not formed life. [43] And if the law stands against this openness, deconstruction, by overthrowing any claim to the absolute definition and concept of law "would entail that there is always room for action." [44] This is so owing to the fact that the life of a text, law, or anything else ends with the author giving up writing. Nevertheless, as soon as it is read, it is reborn and revived, creating a space for action. In the meantime, one can only hope that the author will survive, but only hope! There is no hope, at least today, for readers of Derrida's writings.

3. Legal deconstructive approaches

After considering the necessity of deconstruction, it is now time to examine the attitudes of jurists who have realized this necessity and have made efforts to apply deconstruction to law, identifying their types in a general categorization.

In general, the work that has been done so far on the relationship between deconstruction and law can be divided into three different approaches: the instrumentalist approach, the ethical approach, and the radical approach. In the following section, they will be dealt with briefly.

3.1. The instrumentalist approach

In the initial encounter of critical legal studies with Derrida, deconstruction was used to expose the dualities that created the hierarchy. [45] This is akin to what Derrida does regarding the

[39] Derrida, Before the Law, 19
[40] Legrand, 2019, Op.cit, 143
[41] Buonamano, Op.cit
[42] Derrida, 1981, Op.cit, 93
[43] a venir / to come
[44] Legrand, 2019, Op.cit, 116
[45] See e.g.

relationship between speech and writing. Based on their initial understanding of Derrida's thought, these jurists sought to expose concepts and theories that had traditionally and unreasonably prevailed in the legal system for no special reason.

As a result of such an attitude, deconstruction became a technique of reasoning that legal thinkers—leftist or rightist—could use. That could be: "called upon to reveal the contradictions that emerge when such thinking is pushed up against its limits in various problematic instances. And the same applies to those other antinomies - of fact/value, "original meaning" versus current application, the letter of the law as opposed to its (presumably more enlightened) spirit - which plague the discourse of judicial reason"; [46] or " a weapon against every last precept and principle of established judicial thought"; [47] a politically neutral method that can be used to overturn the conceptual hierarchy of a theory or rule, albeit temporarily and until someone else comes along and puts it back in its place or builds a new hierarchy.

A classic example, and one of the first explicit writings in this regard, is an article that seeks to "deconstruct" court summonses. In this article, Charles Yablon deconstructs the signs on these sheets and reveals the hidden authority in the summonses. [48] The right-wing aspects of this view go so far as to seek to elicit a classical Anglo-Saxon positivism from Derrida's thinking, [49] the origin of which is the thought that considers deconstruction entirely as a stream of analytic philosophy.[50]

This reading of Derrida considers his famous statement that "there is no out of the text" to indicate the distinction between language and reality. For Derrida, although text is not opposed to "reality," "text" is involved in constructing "reality." In other words, reality is textual, and textuality is inseparable from reality. Or, in Derrida's own words, " one cannot refer to this "real" except in an interpretive experience". [51] Therein lies the reason why " law's formal answer to Derrida's 'Il ny a pas de hors de texte' will be … : 'Le hors de texte, c'est moi'"[52]. In other words, the moment deconstruction seeks to enter the realm of law, legal thinkers place themselves beyond the reach of deconstruction. In this view, the self is outside the text, has rationality and integrity, and is the source of moral and political action. That said, putting oneself out of the text is somehow twisting deconstruction which is quite contrary to what Derrida always pronounced.[53]

1. Tushnet, Mark. **Critical Legal Studies and Constitutional Law: An Essay in Deconstruction**, Stanford Law Review, Vol. 36, No. 1/2, 1984, 623 – 647
2. Dalton, 1985, Op.cit
3. Frug, Gerald E. **The Ideology of Bureaucracy in American Law**, Harvard Law Review V. 97, N. 6, 1984, 1276 - 1388

[46] Norris, Christopher, **Law, Deconstruction, and the Resistance to Theory**, Journal of Law and Society, V. 15, N. 2, 1988, p. 167

[47] Ibid, 166

[48] See: Yablon, Charles m. **Forms**, Cardozo Law Review, V. 11,1990, 1349 – 1359

[49] See: Briggs, Robert. **Just Traditions? Deconstruction, Critical Legal Studies, and Analytic Jurisprudence**, Social Semiotics, V. 11, Issue 3, 2001, 257-274

[50] See: Wheeler,Samuel. C. **Deconstruction as Analytic Philosophy**, Stanford University Press, 2000

[51] Derrida, Jacques. **Limited Inc**, Trans. Jeffrey Mehlman and Samuel Weber, Northwestern University Press, 1988. P. 148

[52] Schlag, 1990, Op.cit, 1637

[53] Edmundson, Mark. **The Ethics of Deconstruction**, Michigan Quarterly Review, V. 27, N. 4, 1988, p.628

The most important figure who developed this view, whose impact was so great that for a decade the American academic milieu was under the effect of deconstruction, [54] was Jack Balkin, a professor of constitutional law at Yale University. Balkin neutralized deconstruction as a technique and at the service of legal reasoning. He sees deconstructive thinking as merely a "rhetorical practice" that can be used for good or evil. [55] Contrary to what Derrida has repeatedly pointed out, [56] he defines deconstruction as an "analytic tool" [57] and a technique that has "no necessary ethical stance" [58]; however, he admits that his view of deconstruction is not what Derrida intended. [59] In his view, it does not take much effort to show how deconstruction serves evil, [60] for which he gives some examples.[61]

The main problem with the Balkin approach (deconstruction as a toolbox) is that " at the very moment that deconstruction is making its entry into the law, the legal thinker will once again situate his self outside the reach of deconstruction."[62] By emphasizing "deconstruction must, in fact, be altered, changed, modified" [63] to make it a "useful tool of critical analysis" [64] he builds a pragmatism that immunes law, most of all, against any kind of critical and radical deconstruction.

As mentioned, deconstruction seeks to sound the silent. But in the path Balkin considers, using a series of "deconstructive techniques,"[65] the voice of other is silenced in order to make functional the classic legal methodology. Balkin's approach can be seen as a symbol of the stereotype of legal thinking, which is why "many American legal thinkers were only too happy to land upon some account of deconstruction" because it " helped to reprieve legal thinkers, progressives and liberals from encountering this more corrosive deconstruction". [66] In effect, it can be considered a step towards the destruction of deconstruction.

Here we see an ideological instrumentalism. Balkin's version of deconstruction is a prime example of what the dominant paradigm of critical legal studies pursues. In fact, the formalist

---

[54] Mailey, Richard, Deconstruction and law: a prelude to a deconstructive theory of judicial interpretation, LL.M(R) thesis., University of Glasgow, 2012, p. 66

[55] Balkin, Jack. M. **Being Just with Deconstruction**, Social & Legal Studies, V. 3, N. 3, 1994, p. 400.

[56] One of the most explicit examples:

"Deconstruction is not a method and cannot be tranformed into one. Especially if the technical and procedural significations of the word are stressed. It is true that in certain circles (university or cultural, especially in the United States) the technical and methodological "metaphor" that seems necessarily attached to the very word deconstruction has been able to seduce or lead astray. Hence the debate that has developed in these circles: Can deconstruction become a methodology for reading and for interpretation? Can it thus be allowed to be reappropriated and domesticated by academic institutions?"

In: Derrida, Jacques, **Letter to a Japanese Friend**, in: Derrida and Differance, edited by: Wood & Bernasconi, Warwick: Parousia Press, 1985, p. 3

or: Derrida, Jacques. **Dissemination**, trans. Barbara Johnson, University of Chicago Press, 1983, p. 271

[57] Balkin, Jack. M. **Deconstructive Practice and Legal Theory**, Yale Law Journal, V. 96, 1987, p. 786

[58] Balkin, Jack. M. **Deconstruction's Legal Career**, Cardozo Law Review, V. 27, 2005, p. 738

[59] Balkin, 1987, Op.cit, 746

[60] Balkin, Jack. M. **Tradition, Betrayal, and the Politics of Deconstruction**, Cardozo Law Review, V. 11, 1990, 1637.

[61] Balkin, Jack. M. **Transcendental Deconstruction, Transcendent Justice**, Michigan Law Review, V. 92, 1994, 1131 - 86.

[62] Schlag, 1990, Op.cit, 1640

[63] Balkin, 1994, Op.cit, 1132

[64] Balkin, 2005, Op.cit, 719

[65] Balkin, 1994, Op.cit, 1137

[66] Schlag, Pierre. **A Brief Survey of Deconstruction**, Cardozo Law Review, V. 27, 2005, p. 748

approach to deconstruction and taking it within a set of specific rules and techniques is a hallmark of the deconstruction in critical legal studies. [6867]

3.2. Ethical approach

It can be said that the most important subjects that have focused on the relationship between Derrida and law fit into this approach. In this interpretation of Derrida, Emmanuel Levinas and his philosophy of morality, which is based on the relation with "other", and of course has a great influence on Derrida's thinking, plays a central role. One of the first and most important books to emphasize the politico-ethical aspects of deconstruction also focused on this aspect. [69] At a glance, the goal of this movement can be seen as freeing the deconstruction from the fence that the departments of literary criticism, especially at Yale University, have built around and made deconstruction a tool for critique and reading the text. [70]

Meanwhile, however, the debate over whether or not there was an ethical turn in Derrida's thinking has been extended to the world of law. Some legal thinkers believe that Derrida's political and moral concerns were present in his writings in the period before what is called his "ethical turn." Others, however, despite Derrida's emphasis on not having such a turn, [71] insist that he does have that turn.[72]

Furthermore, the debate over whether the moral aspect of deconstruction provides certain criteria for judgment or moral action is an important issue in deconstructive legal thinking. Some seek to provide a reading that, in addition to emphasizing the critical aspect, also provides a practical and positive view of Derrida's legal thinking. From this perspective, deconstruction, even if it does not provide a complete normative framework, undoubtedly defines the boundaries of political action. [73]

On the other hand, for example, Michel Rosenfeld, one of the most important thinkers in this field, considers the moral aspect of deconstruction to be insufficient and believes that "In Derrida’s case, there is no cogent criterion for distinguishing more relatively unjust laws from relatively less just ones ". [74] Hence, Rosenfeld seeks to theorize ethics for legal deconstruction. An ethics " which must always be attempted and renewed but which can

---

[67] See, e.g.

1. Dalton, 1985, Op.cit
2. Spann, Girardeau A., **A Critical Legal Studies Perspective on Contract Law and Practice**, 1988 Ann. Surv. Am. L. 1988, pp. 223 – 258

compare with:

Hutchinson, **Allan C. From Cultural Construction to Historical Deconstruction** (Book Review), Yale Law Journal, V. 94, N. 1, 1984, 209 - 238

[68] Schlag, 1990, Op.cit, 1639

[69] Critchley, Simon. **The Ethics of Deconstruction: Derrida and Levinas**, Edinburgh University Press; 3rd edition, 2014.

[70] See, e.g. Jonathan Arac, Wlad Godzich, and Wallace Martin. **The Yale Critics: Deconstruction in America**, University of Minnesota Press, 1983.

[71] Derrida, Jacques. **Rogues: Two Essays on Reason**, Stanford University Press, 2005, p. 64

[72] Rosenfeld, Michel. **Derrida's Ethical Turn and America: Looking Back from the Crossroads of Global Terrorism and the Enlightenment**, Cardozo Law Review, V. 27, 2005, 815 - 845

[73] Morar, Nicolae. **Derrida’s Structure of Law and Its Political Application**, Studia Universitatis Babes-Bolyai - Philosophia, V. 53, N. 1-2, 2008, p. 134

[74] Rosenfeld, Michel. **Law against Justice and Solidarity: Rereading Derrida and Agamben at the Margins of the One and the Many**, in: "Administering Interpretation", edited by Peter Goodrich and Michel Rosenfeld, New York, USA: Fordham University Press, 2019, p. 83

never be satisfied." [75] He calls this moral model "comprehensive pluralism" to fill the gap he finds in deconstruction. [76] He elaborates on this notion in his various writings. [77] [78]
Overall, the importance of the ethical facet of deconstruction in this regard is such that it can be considered as one of the important factors in the revival of critical legal thinking. In the late 1980s, when the Critical Legal Studies movement seemed to have come to an end after focusing too much on technical issues, aesthetics, methodical interpretation, and many of the movement's proponents were reconsidering or revisiting their past positions. Hence, attention to the ethical aspect of deconstruction, in addition to its methodological dimension, was for these jurists a "starting where they left off in search of a new path to a more constructive enterprise" [79] Below two of the most important considerations of this approach are discussed.

3.2.1. Juridico-legal idea

Critical legal thinkers are undoubtedly indebted to Drucilla Cornell. Not only as a jurist but also as an important philosopher and radical feminist, she was the first to argue that Derrida was not merely a "relativist," and deconstruction was not just a method. She contended that there is an "ethical dimension" in Derrida's thought that could be used in the world of law:

> "We know several interpretations of deconstruction: as a method of reading, as a demonstration of the infinite regress in language that undermines the foundations of determinant judgment, as serious play that opens up new possibilities of interpretation in the conventions of meaning. I was not so much arguing against the validity of these interpretations of deconstruction as much as I thought it was necessary to open up the ethical as the heart of the matter of deconstruction". [80]

Her classic book, *The philosophy of the limit*, is undoubtedly the first and most seminal book ever penned on the subject. In her own words: "This book will attempt to reformulate the juridical and legal significance of this recognition of the limit of idealism". And he means idealism "a system that can successfully incorporate what is other to the system and thereby erase the system's contradictions" [81]
Cornell's argument can be summarized as follows: For Levinas, it is "other" who builds me. Derrida adopts this position from Levinas and emphasizes *the singular* versus *the general*. This emphasis goes beyond the rights and duties defined in a legal system. Cornell argues that the judge owes a debt to the litigants, who come to the court, not to the legal system. [82]

---

[75] Rosenfeld, Michel. **Deconstruction and Legal Interpretation: Conflict, Indeterminacy and the Temptations of the New Legal Formalism**, in Deconstruction and the Possibility of Justice, Edited by Drucilla Cornell, Michael Rosenfeld, and David Gray Carlson, Routledge, 1992, p. 159
[76] Rosenfeld, 2019, Op.cit, 86
[77] Rosenfeld, 1998, Op.cit, 224-231. and
See: Rosenfeld, Michel. **Law, Justice, Democracy, and the Clash of Cultures: A Pluralist Account**, Cambridge University Press, 2011, pp. 297-308
[78] Rosenfeld, 2019, Op.cit, 86
[79] Rosenfeld, 2019, Op.cit, 61
[80] Cornell, Drucilla. **The Thinker of the Future** – Introduction to The Violence of the Masquerade: Law Dressed Up as Justice, German Law Journal, V. 6, Issue 1, 2005, p. 126
[81] Cornell, Drucilla. **The Philosophy of the Limit**, Routledge, 2009, p. 2.
See also: Cornell, Drucilla. **Beyond Accommodation**, Rowman & Littlefield, 1999, p. 169
[82] bid. 143.

Deconstruction can be an approach in judicial decision-making, and its emphasis on singularity has the potential to lead the legal system to very fundamental changes.

Cornell later advocates an ethical idea in deconstruction, and beyond that, argues that deconstruction provides us with a basis for a utopian possibility:

> "Deconstruction of the privileging of the present, protects the possibility of radical legal transformation, which is distinguished from mere evolution of the existing system". [83]

Cornell's theory, despite its great importance, is open to criticism. This approach makes moral responsibility merely a professional role in the legal system. Accordingly, the best legal system for any person involved in a judicial process is one that can reconcile the interests of all, a dream that is impossible in a positivist legal system, and that this impossibility is, as Jacques De ville puts it, different from *the impossible* that Derrida envisions. [84]

Drucilla Cornell's interpretation of deconstruction and her emphasis on openness to the other ends in meaninglessness, especially in the world of law. Openness to the other, in positivist law, means closeness to the second other. How can one decide between the two and remain open to both? "A positive law without closure would not only be infernal—think of the ALI as "being open to the other"—but it would not be law".[85]

The problem with Cornell's theory is that she seeks to apply all the potentials of deconstruction within the existing legal system and judicial process. The result, however, is the disappearance of the radicalism of ethical aspect of deconstruction and its transformation into a pluralistic moral advice that invites the judge to consider the situation of both parties to the dispute. Hence, it is crystal clear that if we reduce deconstruction purely and simply to some moral advice, we would take from it the utopian and messianic aspect that Cornell purports. It was exactly due to this that Derrida was reluctant to use this word:

> "... There is no 'I' that ethically makes room for the other, but rather an 'I' that is structured by the alterity within it, an 'I' that is itself in a state of self-deconstruction, of dislocation. This is why I hesitated just now to use the word 'ethical'. This gesture is the possibility of the ethical but is not simply ethical ..." [86]

3.2.2. Deconstruction and comparative law

Pierre Legrand, a French jurist, with an extensive study of Derrida's work, seeks to introduce deconstruction as an alternative to the dominant rationalist and positivist approach to comparative legal studies. [87]

Currently, the dominant and hegemonic voice in comparative law is Professor Hein Koetz, and his book, *An Introduction to Comparative Law*. [88] is the main source of comparative law

---

[83] Cornell, 2005, op.cit, 129.

[84] Ville, Jacques de. **Deconstruction and Law: Derrida, Levinas and Cornell**, Windsor Yearbook of Access to Justice, V. 25, N. 1, 2007, p. 37

[85] Shlag, 2005, Op.cit, 751

[86] Derrida, Jacques, **A Taste for the Secret**, by Maurizio Ferraris, Polity, 2001, pp. 84- 5

[87] Legrand, Pierre. **"Il n'y a pas de Hors-texte:" Intimations of Jacques Derrida as Comparatist-at-Law**, in: Derrida and Legal Philosophy, Edited by Peter Goodrich, F. Hoffmann, M. Rosenfeld and C. Vismann, Palgrave Macmillan, 2008, p. 133

[88] Zweigert, Konrad. Koetz, Hein. **An Introduction to Comparative Law**, trans. Tony Weir, Clarendon Press; 3rd edition, 1998.

courses at most universities around the world. In contrast to Koetz' view of comparative law, Legrand proposes Derrida. Why Derrida? He himself replies: " Because he is a cosmopolitan who emphasizes the insufficiency of an ethics of rationality that would not also be an ethics of relationality, that is, that would operate without drawing on the resources or perspectives of the other" [89]

Legrand's problem with Koetz' view and the dominant approach of comparative law is their attempt to unify differences into a single unit. But "nothing is identical to itself… there is no "true" German, French, or English law or no "true" account of German, French, or English law". [90]

According to Legrand, the movement of the comparative jurist should be focused on the other, not on the reduction of differences and their unification. [91] In his view, if we, in comparative legal studies, look for a system without any gaps based on rationality, we will not see the dominant ideology and attitude behind many of these divisions.

The closure of concepts in the dominant approach to comparative law and their infinity in Derrida's thinking are two opposite poles, one of which escapes the difference and seeks to hide it in general divisions, but the other does not regard any concept as closed and pursues the concept "traces" as much as it can and sees no end to it. [92] One perceives the text of the law of certain regions as a definite context and seeks to determine its place from a high position, but another emphasizes that in a text "we are not dealing with the peaceful coexistence of a vis-a-vis, but rather with a violent hierarchy. One of the two terms governs the other (axiologically, logically, etc.), or has the upper hand". [93]

More specifically, this field of legal studies should emphasize the endless differences between various laws and the internal incompatibilities of legal systems, not consider a particular legal system as a closed and full circle, and thus, ""re-inscribe" (or "deconstruct") the locality of law in order to make it amenable to crosslegal/ cross-cultural/cross-traditional negotiation."[94]

In a similar vein, if for Koetz, interpretation is a way to find the similarities and differences of various laws with the intention of including them in a predetermined form, for Derrida, interpretation means "deciphering the law of their [the texts'] internal conflicts, of their heterogeneity, of their contradictions". [95] If, in Koetz' view, agreement is possible, in Derrida's view agreement is impossible, and trying to do so is a failure for another. [96] Therefore, comparative legal studies, instead of any attempt to show the coherence of several legal systems and compare them with each other, should always seek to expose the silenced, rejected and marginalized voices in these divisions. [97]

---

[89] Legrand, Pierre. **Paradoxically, Derrida: for a Comparative Legal Studies**, Cardozo Law Review, V. 27, 2005, p. 666

[90] Ibid, 711

[91] legrand, 2005, Op.cit, 715

[92] Trace

[93] Derrida, 1981, Op.cit, 41

[94] legrand, 2005, Op.cit, 710

[95] Derrida, Jacques. **Margins of Philosophy**, University of Chicago Press, 1985, 305.

[96] Legrand, 2011, Op.cit, 621

[97] Legrand, Pierre. **Derrida/Law: A Differend**, in: A Companion to Derrida, Edited by Zeynep Direk and Leonard Lawlor, John Wiley & Sons, 2014, p. 588

3.3. Radical approach

The radical legal approach to Derrida's thinking is not yet fully formed, and such a view cannot be delineated coherently. Having said that, we can refer to the third generation of the British branch of critical legal studies, which "turned to Freud, Derrida or Foucault, not as replacements of Marx or alternatives to politics but as the most advanced theoretical approaches that could help fill the lack left by the defeat of traditional radical theory and politics" [98] Radical legal approach to Derrida is not as technical as the classical legal mindset, nor does it seek to draw just a moral advice from Derrida's thought. Rather, considering the relationship between Derrida and Marx, it is aimed at the most of the radical potential of deconstruction and sees it as a movement against the dominant order.

The most quintessential example in this regard is Costas Douzinas, a distinguished professor of philosophy of law at Birkbeck University in London, who, by considering the relationship between Marx and Derrida, regards resistance as the goal of critical legal thinking, and in this way, admirably goes beyond the readings. Like Derrida, he pronounces the totalitarian nature of liberal democracy. Another admirable point in his work, which, of course, comes very close to Derrida here, is that Douzinas emphasizes a notion of the cosmopolitanism that "uproots every city, disturbs every filiation, contests all sovereignty and hegemony … extends beyond nations and states, beyond the nation-state". [99] It is on this basis that Douzinas speaks of the idea of a "cosmopolitan to come" and compares it thoughtfully with Derrida's notion of the "New International" in *Specters of Marx*, where Derrida explicitly speaks of the need for a fundamental change in international order and its implications. [100]

In this approach, the pivotal issue is to pay attention to the violence that has always covered a legal order behind it and will not be dismantled with a simply moral view. The violence that "is consigned to oblivion. Indeed one of the most important strategies in this politics of forgetting is the creation of a dominant approach to legal interpretation" [101] According to Derrida, as soon as victory prevails, "the "successful foundation of a state" … will produce apres coup what it was destined in advance to produce, namely, proper interpretative models to read in return, to give sense, necessity and above all legitimacy to the violence that has produced, among others, the interpretative model in question, that is, the discourse of its self-legitimation" [102] As such, in consonant with Roberst Cover, it can be stated that "legal interpretation has made the house in the midst of pain and death." [103]

In effect, violence, dictatorship, force and coercion have always been at the heart of law. The menace of deconstruction lies not in toppling or suspending the relationship, nor in merely tampering with the hierarchy of legal concepts, nor in cultivating a moral judge, but in stating that violence and authoritarianism are at the heart of all legal actions. It is as if "the truth of law

---

[98] Douzinas, Costas. **A Short History of the British Critical Legal Conference or, the Responsibility of the Critic**, Law and Critique V. 25, N. 2, 2014, p. 193

[99] Douzinas, Costas, **Human Rights and Empire**: The Political Philosophy of Cosmopolitanism, Routledge-Cavendish, 2007, p. 294

[100] Derrida, Jacques. **Specters of Marx**: The State of the Debt, The Work of Mourning & the New International, Routledge, 2006, p. 105

[101] Douzinas, Costas. **Violence, Justice, Deconstruction**, German Law Journal, V. 6, Issue 1, 2005, p. 175

[102] Derrida, 1992, Op.cit, 36

[103] Cover, Robert. **Violence and the Word**, Yale Law Journal, V. 95, 1986, p. 1601

and the force of law were one and the same". [104] It is no wonder then that deconstruction is resisted by the dominant legal discourse: since it emphasizes not only the violence of the law, but also the violence of an interpretive theory of law and due to the fact that it "provides a theatrical staging, a dramatic presentation of the trauma"[105] of law. Thus, as Douzinas said, "the main if not exclusive function of many judgments is to legitimize and trigger past or future acts of violence". [106]

In scrutinizing this position, the standpoint of Anglophone legal culture is evident. This thinking resists and rebuffs such a view, and this, as Peter Goodrich enunciates, boils down to the culture's resistance to "continental" thinking. [107] This thinking aims to find a legitimate foundation, an original meaning and a clear language for law. Deconstruction, however, unravels how absurd this claim is: "the metaphors of texts are scrutinised to reveal the impossibility of closing down meaning, and to show how the means claimed to contain meaning are, at the same time, those that ground the opposites of the apparent claims", [108] and undermines such a logic, the hesitation that, in the words of Duncan Kennedy, in the minds of these jurists is close to "the experience of loss of faith in God."[109]

Apart from classical thinking, nonetheless, what is important is to clarify the task of critical law studies with deconstruction. This thinking must find its way so that its project does not lead to some kind of academic conformism, and in this way, it sees two ways in front of it.

One way is to look at the law as a form of politics. In fact, instead of losing both law and politics, it is after preserving both; it is a new kind of formalism which uses the law to transform and change, without believing in it. It also uses evil to achieve good. Such a view is perhaps most theorized by Martti Koskenniemi in international law as the "culture of formalism." [110] He aimes to re-enact the law as "a faithless practice". [111] A similar view can be seen in the theory of "lawfare" [112] as well as in the reformist spectrum of Marxist international law theorists such as B. S Chimni[113] and Bill Bowring[114].

This approach is, in a way, a repetition of Roberto Unger, one of the most important figures in critical law thinking. He "turned himself from a prophet to a high priest preaching the

---

[104] Goodrich, peter. **Europe in America: Grammatology**, Legal Studies, and the Politics of Transmission, Columbia Law Review, V. 101, N. 8, 2001, p. 2054

[105] Goodrich, peter. **Introduction: Un Cygne Noir**, Cardozo Law Review, V. 27, 2005, p. 542

[106] Douzinas, 2005, Op.cit, 173

[107] Goodrich, 2001, Op.cit, 2034

[108] Douzinas, Costas. Warrington, Ronnie. **On the Deconstruction of Jurisprudence**: Fin(n)is Philosophiae, Journal of Law and Society, V. 14, 1987, p. 33

[109] Kennedy, Duncan. **The critique of rights in Critical Legal Studies**, in: Left Legalism/Left Critique, Ed. Wendy Brown and Janet Halley, Duke University Press, 2002, p. 192

[110] Koskenniemi, Martti. **From Apology to Utopia**: The Structure of International Legal Argument, Cambridge University Press, 2006, p. 571

[111] Hoffmann, 2008, Op.cit, 195

[112] See: Dunlap, Jr. Charles J. **Lawfare Today: A Perspective**, Yale Journal of International Affairs. V. 3, 2008, p. 146 - 154

In international law, mostly, Kennedy and Marks deal with this theory. See:

Kennedy, David, **Of War and Law**, Princeton University Press, 2006.

and: Marks, Susan. **State-Centrism, International Law, and the Anxieties of Influence**, Leiden Journal of International Law. V. 19, 2006, 339-347

[113] See: Chimni, B. S. **International Law and World Order**: A Critique of Contemporary Approaches, Cambridge University Press, 2017. Chapter 7.

[114] See: Bowring, Bill. **The Degradation of the International Legal Order?**, Routledge-Cavendish, 2006.

"strategic" use of law". [115] Koskenniemi's important role is to theorize these efforts: that we are faced with a suitcase that we cannot easily drop. We have to carry it with us, even if it is infamous and cumbersome. A view that, "introduces an international law audience to a ruthlessly critical vision of their discipline without at the same time condemning their dreams, values and hopes, however naive or suspect they may seem otherwise" [116]

The result of the culture of formalism, however, is nothing but the emphasis on the necessity of the status que, this time in the language of critical theorists. At worst, the culture of formalism is a license for unfettered legal action, and at best, moral advice to legal actors and, ultimately, a reproduction of the ruling order. According to one jurist, Koskenniemi "in fact calls for the perpetuation of the system" [117]

This can be seen as the conservative approach of critical thinking in law to the radical side of deconstruction. Yet, what needs to be deconstructed is precisely this repetitive reference to something outside the text. The traditional legal text always wants to externalize itself. It is as if a "self," somewhere outside the text, is constructed by legal thought. And here, amongst the critical spectrum of law, we see the repetition of this pattern.

Nevertheless, this is not the only way in front of critical legal thinking. The second way is returning to the protest roots of critical legal studies and criticizing the culture of formalism. There is a more profound and more complex nexus amongst law, justice and power that cannot be immediately resolved in the form of a "culture of formalism" and a hope for the transformative potential of law as a liberating strategy. Transcending the metaphysical foundations, or, in Goodrich's words, the material totems of legality[118] , enables us to see, alongside with Derrida, the endless abyss of violence and madness underlying the foundation of law. Law becomes law by a decision beyond itself and an illegal decision. Politics, then, comes before the law, not with it. And this is the point that Koskenniemi seems to be missing. Deconstruction, as the preservation of hope for justice outside the law, is not a kind of utopia, but a ghost that dwells in the endless violence of law and imposes moral responsibility on us,[119] a responsibility that manifests itself in Derrida's idea of "new international" and requires us to always strive to overthrow the law.

Conclusion

Admittedly, law gains legitimacy through two myths: the first is the myth of the "founding father", which on the other side becomes the "original sin". It is as if man, when he awoke from his sleep, like Joseph K in Kafka's novel, found himself condemned and the law above him. The second myth is the "clarity of the word," and the notion or wish that the word of law is absolutely clear-cut and non-metaphorical, and that we do not have to wander through the scary, winding corridors of the law to understand the reason for our conviction, like Joseph K.

---

[115] Hoffmann, 2008, Op.cit, 196

[116] Rasulov, Akbar**. A Marxism for international law: a new agenda**, European Journal of International Law, V. 29 N. 2, 2018, p. 654.

[117] Kotiaho, Paavo**. A Return to Koskenniemi; or the Disconcerting Co-Optation of Rupture**, German Law Journal, V. 13, 2012, p. 494

[118] Goodrich, 2001, Op.cit, 2054

[119] Hoffmann, 2008, Op.cit, 195

These myths, as Stanley Fish concurs, preserve law as a self-legitimizing system. A system that, resorting to legal interpretation, seeks to repeat the original moment of its creation in a closed hermeneutic cycle. [120]

Running against this self-legitimizing system, deconstruction toils to expose violence within the law. Deconstruction unveils that " there can be no easy solution to the crisis affecting legal interpretation " [121] and that a peaceful and transparent law is a dream to escape the acceptance of this inevitable crisis. Deconstruction, in Derrida's own words, "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". [122] For this reason, it cannot be placed in the form of static thinking and legal-centered techniques, or as a mere judicial ethical framework. Rather, it must emphasize its radical direction, and in so doing overthrow the stability of the empire of law and transcend any legal order.

Deconstruction, moreover, summons the ghosts suppressed by law. As such it makes the stable and coherent state of the law quintessentially pivotal. It is also critical to teach “legal scholars to listen to the specters of law, the displaced, transplanted and exiled internal voices".[123] In this sense, the deconstruction function in the face of the law can be compared to a black swan; an exceedingly rare bird, whose presence is short and evanescent, but undermines the uniformity of the landscape and prevents us from seeing the whole beautiful panorama of the swans' flock as uniform and cohesive. [124]

For these reasons, the essay can come to an end by professing that Derrida is a *Nomikos* for lawyers, a nomenclature that in some ancient scripts is applied to someone who is not a lawyer, but guides lawyers. [125] There is no doubt that he has much to teach rigid legal thinking. Ergo, even though almost two decades have elapsed since his demise, we must acknowledge his own statement in one of his last interviews that we are still at the embryonic stages of reading him.

Bibliography

1. Balkin, Jack. M. **Being Just with Deconstruction**, Social & Legal Studies, V. 3, N. 3, 1994, 393 - 404
2. Balkin, Jack. M. **Deconstruction’s Legal Career**, Cardozo Law Review, V. 27, 2005, 719 - 41
3. Balkin, Jack. M. **Deconstructive Practice and Legal Theory**, Yale Law Journal, V. 96, 1987, 743 - 786
4. Balkin, Jack. M. **Tradition, Betrayal, and the Politics of Deconstruction**, Cardozo Law Review, V. 11, 1990, 1623 -40.
5. Balkin, Jack. M. **Transcendental Deconstruction, Transcendent Justice**, Michigan Law Review, V. 92, 1994, 1131 - 86.
6. Bowring, Bill. **The Degradation of the International Legal Order?**, Routledge-Cavendish, 2006.

[120] Fish, 1989, Op.cit, 328–31.
[121] Rosenfeld, 1992, Op.cit, 153
[122] Derrida, Jacques. **Points. . . Interviews,** 1974–1994, ed. Elizabeth Weber, Stanford University Press, 1995, p. 213
[123] Goodrich, 2005, Op.cit, 542
[124] Ibid, 543
[125] Goodrich, peter. **J.D.**, German Law Journal, V. 6, Issue 1, 2005, 524

7. Briggs, Robert. **Just Traditions? Deconstruction, Critical Legal Studies, and Analytic Jurisprudence**, Social Semiotics, V. 11, Issue 3, 2001, 257-274
8. Buonamano, Roberto**. The Economy of Violence: Derrida on Law and Justice**, Ratio Juris, V. 11, N. 2, 1998, 168-179.
9. Chimni, B. S. **International Law and World Order: A Critique of Contemporary Approaches**, Cambridge University Press, 2017.
10. Cornell, Drucilla. **Beyond Accommodation**, Rowman & Littlefield, 1999.
11. Cornell, Drucilla. **Rethinking Legal Ideals after Deconstruction**, in: Law's Madness, Edited by Austin Sarat Lawrence, Douglas Martha and Merrill Umphrey, University of Michigan Press, 2003.
12. Cornell, Drucilla. **The Philosophy of the Limit**, Routledge, 2009.
13. Cornell, Drucilla. **The Thinker of the Future** – Introduction to The Violence of the Masquerade: Law Dressed Up as Justice, German Law Journal, V. 6, Issue 1, 2005, 125 – 149.
14. Cover, Robert. **Violence and the Word**, Yale Law Journal, V. 95, 1986, 1601 - 1629
15. Critchley, Simon. **Derrida: the Reader**, Epoché: A Journal for the History of Philosophy, V. 10, Issue 2, 2006, 315 – 326
16. Critchley, Simon. **The Ethics of Deconstruction: Derrida and Levinas**, Edinburgh University Press; 3rd edition, 2014.
17. Dalton, Clare. ***An Essay in the Deconstruction of Contract Doctrine***, YALE LAW JOURNAL, V.94, 1985, 425 - 438
18. Derrida, Jacques and Bennington, Geoffrey. **Jacques Derrida**, trans. Geoffrey Bennington, University of Chicago Press, 1993.
19. Derrida, Jacques, **A Taste for the Secret**, by Maurizio Ferraris, Polity, 2001.
20. Derrida, Jacques, The Beast & The Sovereign, trans. Geoffrey Bennington, University of Chicago Press, V. 1. 2011.
21. Derrida, Jacques, **The Beast & The Sovereign**,V. 1, trans. Geoffrey Bennington, University of Chicago Press, 2011.
22. Derrida, Jacques. **Before the Law**, in: "Acts of Literature", Ed. Derek Attridge, trans. Trans. Christine Roulston, Routledge, 2017.
23. Derrida, Jacques. **Dissemination,** trans. Barbara Johnson, University of Chicago Press, 1983.
24. Derrida, Jacques. **Following Theory**, in: Life.After.Theory, Edited by by Michael Payne and John Schad, Continuum, 2004.
25. Derrida, Jacques. **Force of Law: The Mystical Foundation of Authority**, trans. Mary Quaintance, in Deconstruction and the Possibility of Justice, Edited by Drucilla Cornell, Michael Rosenfeld, and David Gray Carlson, Routledge, 1992.
26. Derrida, Jacques. **Limited Inc**, Trans. Jeffrey Mehlman and Samuel Weber, Northwestern University Press, 1988.
27. Derrida, Jacques. **Margins of Philosophy**, University of Chicago Press, 1985.
28. Derrida, Jacques. **Of Grammatology**, trans. Gayatri Chakravorty Spivak, Johns Hopkins University Press, 1998.
29. Derrida, Jacques. **Points. . . Interviews, 1974–1994**, ed. Elizabeth Weber, Stanford University Press, 1995.
30. Derrida, Jacques. **Positions**, The University of Chicago Press, 1981
31. Derrida, Jacques. **Rogues: Two Essays on Reason**, Stanford University Press, 2005
32. Derrida, Jacques. **Specters of Marx**: The State of the Debt, The Work of Mourning & the New International, Routledge, 2006
33. Deutscher, Max. **"Il n'y a pas de hors-texte" - once more**. *Symposium : Canadian journal of continental philosophy*, *V.18* N. 2, 2014, 98-124.
34. Douzinas, Costas and Gearey, Adam. **Critical jurisprudence**, Hart Publishing, 2005
35. Douzinas, Costas, **Human Rights and Empire**: The Political Philosophy of Cosmopolitanism, Routledge-Cavendish, 2007
36. Douzinas, Costas. **A Short History of the British Critical Legal Conference or, the Responsibility of the Critic**, Law and Critique V. 25, N. 2, 2014, 187-198
37. Douzinas, Costas. **Violence, Justice, Deconstruction**, German Law Journal, V. 6, Issue 1, 2005, 171 - 178

38. Douzinas, Costas. Warrington, Ronnie. **On the Deconstruction of Jurisprudence: Fin(n)is Philosophiae**, Journal of Law and Society, V. 14, 1987, 33 - 46.
39. Dunlap, Jr. Charles J. **Lawfare Today: A Perspective**, Yale Journal of International Affairs. V. 3, 2008, 146 – 154.
40. Dworkin, Ronald. **No Right Answer?** New York Law Review, V. 53, N. 1, 1978
41. Edmundson, Mark. **The Ethics of Deconstruction**, Michigan Quarterly Review, V. 27, N. 4, 1988, 622-643.
42. Fish, Stanely. **Doing What Comes Naturally**, Duke University Press, 1989.
43. Fitzpatrick, Peter. **Modernism and the grounds of law**, Cambridge University Press, 2014.
44. Frug, Gerald E. **The Ideology of Bureaucracy in American Law**, Harvard Law Review V. 97, N. 6, 1984, 1276 - 1388
45. Gehring, Petra, **The Jurisprudence of the "Force of Law**, in: Derrida and Legal Philosophy, Edited by Peter Goodrich, F. Hoffmann, M. Rosenfeld and C. Vismann, Palgrave Macmillan, 2008.
46. Goodrich, peter and Rosenfeld, Michel**.** Introduction, in: "**Administering Interpretation**", edited by Peter Goodrich and Michel Rosenfeld, New York, USA: Fordham University Press, 2019.
47. Goodrich, peter. **Europe in America: Grammatology, Legal Studies, and the Politics of Transmission**, Columbia Law Review, V. 101, N. 8, 2001, 2033 - 2084
48. Goodrich, peter. **Introduction: Un Cygne Noir**, Cardozo Law Review, V. 27, 2005, 529 - 545
49. Goodrich, peter. **J.D.**, German Law Journal, V. 6, Issue 1, 2005, 15 - 24
50. Hoffmann, Florian. **Deadlines: Derrida and Critical Legal Scholarship**, in: Derrida and Legal Philosophy, Edited by Peter Goodrich, F. Hoffmann, M. Rosenfeld and C. Vismann, Palgrave Macmillan, 2008.
51. Hoffmann, Florian. **Epilogue: in lieu of conclusion**, German Law Journal , V. 6 , Issue 1, 2005, 197-199
52. Hutchinson, Allan C. **From Cultural Construction to Historical Deconstruction** (Book Review), Yale Law Journal, V. 94, N. 1, 1984, 209 - 238
53. Jonathan Arac, Wlad Godzich, and Wallace Martin. **The Yale Critics: Deconstruction in America**, University of Minnesota Press, 1983.
54. Kelsen, Hans. **General Theory of Law and State**, Routledge, 2005.
55. Kennedy, David, **Of War and Law**, Princeton University Press, 2006.
56. Kennedy, Duncan. **A Critique of Adjudication: Fin de Siècle**, Harvard University Press, 1998.
57. Kennedy, Duncan. **The critique of rights in Critical Legal Studies**, in: Left Legalism/Left Critique, Ed. Wendy Brown and Janet Halley, Duke University Press, 2002.
58. Knox, Robert. **Strategy and Tactics**, The Finnish Yearbook of International Law, V. 21, 2012, 193 - 229
59. Koskenniemi, Martti. **From Apology to Utopia**: The Structure of International Legal Argument, Cambridge University Press, 2006.
60. Kotiaho, Paavo. **A Return to Koskenniemi; or the Disconcerting Co-Optation of Rupture**, German Law Journal, V. 13, 2012, 483-496.
61. Legrand, Pierre, Introduction, in: **Derrida and Law**, Edited by Pierre Legrand, Routledge, 2009.
62. Legrand, Pierre. **"Il n'y a pas de Hors-texte:" Intimations of Jacques Derrida as Comparatist-at-Law**, in: Derrida and Legal Philosophy, Edited by Peter Goodrich, F. Hoffmann, M. Rosenfeld and C. Vismann, Palgrave Macmillan, 2008
63. Legrand, Pierre. **Derrida/Law: A Differend**, in: A Companion to Derrida, Edited by Zeynep Direk and Leonard Lawlor, John Wiley & Sons, 2014.
64. Legrand, Pierre. **Jacques Derrida Never Wrote about Law**, in: "Administering Interpretation", edited by Peter Goodrich and Michel Rosenfeld, New York, USA: Fordham University Press, 2019.
65. Legrand, Pierre. **Jacques in the Book (On Apophasis)**, Law & Literature, V. 23, Issue 2, 2011, 282-294

66. Legrand, Pierre. **Paradoxically, Derrida: for a Comparative Legal Studies**, Cardozo Law Review, V. 27, 2005, 631 - 717
67. Legrand, Pierre. **Siting Foreign Law: How Derrida Can Help**, Duke Journal of Comparative & International Law, V. 21, 2011, 595 – 630
68. Leiter, Brian. **Legal Indeterminacy**, Legal Theory, V. 1, Issue 4, 1995, 481 - 492
69. Lloyd, Chris. **CE QUI ARRIVE': DECONSTRUCTION, INVENTION AND THE LEGAL SUBJECT OF R V R**, Australian Feminist Law Journal, V. 37, Issue 1, 2012, 2014, 65 - 82
70. Mailey, Richard, **Deconstruction and law: a prelude to a deconstructive theory of judicial interpretation**, LL.M(R) thesis., University of Glasgow, 2012.
71. Maks, Susan. **State-Centrism, International Law, and the Anxieties of Influence**, Leiden Journal of International Law. V. 19, 2006, 339-347
72. Morar, Nicolae. **Derrida's Structure of Law and Its Political Application**, Studia Universitatis Babes-Bolyai - Philosophia, V. 53, N. 1-2, 2008, 133 - 148
73. Norris, Christopher, **Law, Deconstruction, and the Resistance to Theory**, Journal of Law and Society, V. 15, N. 2, 1988, 166 - 187
74. Posner, Richard A. **What Has Modern Literary Theory to Offer Law?** Stanford Law Review, V. 53, 2000, 195 – 208
75. Rasulov, Akbar. **A Marxism for international law: a new agenda**, European Journal of International Law, V. 29 N. 2, 2018, 631-655.
76. Rosenfeld, Michel. **Deconstruction and Legal Interpretation: Conflict, Indeterminacy and the Temptations of the New Legal Formalism**, in Deconstruction and the Possibility of Justice, Edited by Drucilla Cornell, Michael Rosenfeld, and David Gray Carlson, Routledge, 1992.
77. Rosenfeld, Michel. **Derrida's Ethical Turn and America: Looking Back from the Crossroads of Global Terrorism and the Enlightenment**, Cardozo Law Review, V. 27, 2005, 815 - 845
78. Rosenfeld, Michel. **Just Interpretations: Law Between Ethics and Politics**, University of California Press, 1998
79. Rosenfeld, Michel. **Law against Justice and Solidarity: Rereading Derrida and Agamben at the Margins of the One and the Many**, in: "Administering Interpretation", edited by Peter Goodrich and Michel Rosenfeld, New York, USA: Fordham University Press, 2019.
80. Rosenfeld, Michel**. Law, Justice, Democracy, and the Clash of Cultures: A Pluralist Account**, Cambridge University Press, 2011.
81. Schlag, Pierre. **"LE HORE DE TEXTE, C'EST MOI": The Politics of Form and the Domestication of Deconstruction**, Cardozo Law Review, 11, 1990, 1631 – 74
82. Schlag, Pierre. **A Brief Survey of Deconstruction**, Cardozo Law Review, V. 27, 2005, 741 – 752
83. Sherry, Suzanna. **The Ninth Amendment: Righting an Unwritten Constitution**, Chi· Kent L. Rev, V. 64, 1988, 1001 - 1013
84. Spann, Girardeau A. **A Critical Legal Studies Perspective on Contract Law and Practice**, 1988 Ann. Surv. Am. L. 1988, 223
85. Teubner, Gunther**. Economics of Gift - Positivity of Justice: The Mutual Paranoia of Jacques Derrida and Niklas Luhmann**, Theory, Culture and Society, V. 18, 2001, 29 - 47
86. Thurschwell, Adam. **Specters and Scholars: Derrida and the Tragedy of Political Thought**, German Law Journal , V. 6, Issue 1, 2005, 87- 99
87. Troup, Maggie. **Rupturing the Veil: Feminism, Deconstruction and the Law**, Australian Feminist Law Journal, N. 1, 1993, 63-88.
88. Tushnet, Mark. **Critical Legal Studies and Constitutional Law: An Essay in Deconstruction**, Stanford Law Review, Vol. 36, No. 1/2, 1984, 623 – 647
89. Tushnet, Mark. **Survey Article: Critical Legal Theory (without Modifiers) in the United States**, Political Philosophy, V. 13, Issue 1, 2005, 99-112
90. Unger, Reberto. **The Critical Legal Studies Movement: Another Time, A Greater Task**, Verso Publishing, 2005

91. Ville, Jacques de. **Deconstruction and Law: Derrida, Levinas and Cornell**, Windsor Yearbook of Access to Justice, V. 25, N. 1, 2007, 31 - 61

92. Ville, Jacques de. **Jacques Derrida: Law as Absolute Hospitality**, Routledge, 2012.
93. Vismann, Cornelia. **Derrida, Philosopher of the Law**, German Law Journal, V. 6, Issue 1, 2005, 5 - 13
94. Walt., Johan van der. **Law and deconstruction**, in: " Research Handbook on Critical Legal Theory", Edited by Emilios Christodoulidis, Ruth Dukes and Marco Goldoni, Edward Elgar Publishing, Glasgow, 2019.
95. Ward, Ian, **An introduction to legal theory**, Cavendish Publishing Limited, 1998.
96. Wheeler,Samuel. C. **Deconstruction as Analytic Philosophy**, Stanford University Press, 2000
97. Yablon, Charles m. **Forms**, Cardozo Law Review, V. 11,1990, 1349 – 1359
98. Zweigert, Konrad. Koetz, Hein. **An Introduction to Comparative Law**, trans. Tony Weir, Clarendon Press; 3rd edition, 1998.