

**QUESTIONING THE NORMATIVE: ON DECONSTRUCTION AS VALUE**

**THEORY**

By

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# Abstract

This thesis explores Derrida's political thought, with special focus on his essay titled "Force of Law: The Mystical Foundation of Authority", in which Derrida deals with the relation between Law and justice. By arguing that law is not equivalent to justice, Derrida points out that justice does not have its normative foundation. In this sense, justice could only exist as certain possible just actions which break the law but not abolish it completely or found a new one. In other words, since law could be unjust, only certain possible insurrection or revolution which breaks the unjust law as the normative construction of justice could bring justice back, in the form of instantaneous action of justice. Derrida's viewpoint of justice and law potentially challenges the concept of normativity established by German Idealism like Kant and Hegel. For Hegel, justice could only be realizable if people's actions are completely in conformity with the norm, the shared form of life of a community. Based upon the examination of Derrida's viewpoint of law and justice, the second half of this thesis deepens Derrida's theory of justice by reading it comparatively with some of Derrida's other essays. My argument is that Derrida does not have faith in objective normative criteria of justice. In his view, the clear distinction between what is just and what is unjust is never very clear. Derrida insists that only by acknowledging this fact could people take certain just actions in reaction to the unjust. On the contrary, the idealistic imagination of the normative criteria of justice never succeeds in protecting its self-legislated criteria of justice from being eroded by the unexpected happening of the unjust.

Primary Reader: Hent de Vries

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## **Introduction:**

There are usually three ways that Derrida or deconstruction could be used, the linguistic/rhetoric approach adopted by Paul de Man and Jonathan Culler, the post-colonial approach taken by Pheng Cheah and Gayatri Spivak, and Derrida's impact on religion or the philosophy of religion as shown by Hent de Vries, John Caputo, Gil Anidjar and Sarah Hammerschlag. These usages of Derrida or deconstruction all rely upon Derrida's philosophical thinking, wholly or partially. This thesis aims at interrogating Derrida's philosophical thinking, especially his thought concerning value and its normative construction. In this sense, "Force of Law: The Mystical Foundation of Authority", which is included in the collection *Acts of Religion*, edited by Gil Anidjar, best illustrates the point that I want to make in terms of Derrida. Therefore, the first half of this thesis is dedicated to a textual interpretation of Derrida's "Force of Law". The purpose of this interpretation is to steer a path toward the question that I want to ask. As Derrida indicates in "Force of Law", law is usually believed to be the synonym of justice, but is actually not. Law could be unjust, and therefore justice, since it could not be fully embodied by law, remains undecidable. The relation between law and justice that Derrida interrogates in "Force of Law" is in fact a question concerning justice and its normative construction, or broadly speaking, the relation between "value" and "norm". This question could also be formulated in this way: all great values, like justice, for instance, are inseparable from certain normative settings, especially in a social or institutional sense, like law, for example. But Derrida aims at pointing out the hiatus, inconsistency or discontinuity between value and its normative construction. On the one hand, justice cannot merely float in the air as a pure concept or ideal; it can only be realized within certain type of institutional settings, or certain kind of law. On the other hand, law, as the normative construction of justice, always betrays justice.

In the second half of this thesis, I try to deepen the discussion of the question concerning the relation between law and justice in "Force of Law", by linking it to

Derrida's other pieces, like "Des Tours de Babel", "Specters of Marx" and "Hospitality", for instance. "Des Tours de Babel", "Specters of Marx", "Hospitality" and "Faith and Knowledge" are all concerned with the normative construction of cosmopolitanism and its limitation. In this sense, if the doctrine that law is equivalent to justice could be called Normative Objectivism, Derrida's argument in "Force of Law" represents Normative Fictionalism: namely, law is not equivalent to justice, but law, as the normative construction of *Lebenswelt*, is indispensable for human life and there is no way for people to live without it. This idea also represents French Post-Structuralism broadly, including also Michael Foucault, Jacques Lacan, Roland Barthes, Pierre Bourdieu, Judith Butler and Slavoj Žižek. All of them, as well as Derrida, focus upon the normative/discursive/institutional construction of subjectivity. In other words, we are all living in a kind of social/moral code which is not only normative but also constructs our lives via people's action. In this sense, deconstruction is another type of the "trans-valuation of all values": on the one hand, it deconstructs all the 'deconstructable', namely, all the normative/institutional settings of value which has its own limitation, and the limitation of them has to be disclosed; on the other hand, it also points out that no value, like justice or democracy, could remain as unchangeable, a-historical or time-transcending. It is always possible for them to be contaminated or destroyed by the unjust, the non-democratic, or the 'radical evil' in a Kantian sense. Therefore, by pointing out the conflict, the hiatus, the inconsistency between values and their normative constructions, like between justice and law, between cosmopolitanism and "hospitality", "neo-liberalism" or Christian messianism, Derrida also opens the dialogue between them. Hence, the purpose of deconstruction is not to seek for another type of 'transcendent justice' beyond the imperfect body of justice, or beyond its normative construction. The purpose of deconstruction is only to disclose the limitation of law or cosmopolitanism, as well as the possibility to move between the "value" and "norm", justice and the unjust, or messianic and messianism.

## **Chapter One**

### **Justice and the Unjust: Law, Violence and Transcendent Justice**

#### **1.1. Derrida on Justice and the Unjust Law**

In *Force of Law: The Mystical Foundation of Authority*, Derrida poses a question concerning the relation between justice and normativity, or justice and law. It is a commonsense that what is just, or a just action has also to be lawful. Namely, only law can represent justice. In this sense, it is impossible to call an action just, if it is not lawful, though it could be 'just' in certain sense, like killing a vicious man by oneself, for instance. This kind of practice is completely prohibited in a legalized and normalized society, where law and justice are the synonym of each other. However, this does not necessarily mean that law is totally coterminous with justice, or it is never possible that law itself could be unjust. In fact, law could be unjust, and this is the reason why in Derrida's view, the commonsense that law is the equivalence of justice has to be challenged and the unjust part of law has to be revealed. What is unjust could be legalized by law, or could even be publicly accepted as the lawful. This often happens when the prejudice against certain social minorities becomes commonly acknowledged or legalized. In this sense, law is essentially intermingled with language, ethnicity and nationality. As Derrida indicates:

As is well known, in many countries, in the past and in the present, one of the founding violence of the law or of the imposition of state law has consisted in imposing a language on national or ethnic minorities regrouped by the state. This was the case in France on at least two occasions, first when the Villers-Cotteret decree consolidated the unity of the monarchic state by

imposing French as the juridico-administrative language and by forbidding Latin, the language of law or of the Church. The decree allowed all the inhabitants of the kingdom to be represented in a common language, by a lawyer-interpreter, without the imposition of the particular language that French still was. It is true that Latin was already carrying a violence. The passage from Latin to French was only the passage from one violence to another. The second major moment of imposition was that of the French Revolution, when linguistic unification sometimes took the most repressive pedagogical turns, or in any case the most authoritarian ones. I am not going to engage in the history of these examples. One should also find others in the United States, yesterday and today; the linguistic problem is still acute there and will be for a long time, precisely in such a place where questions of politics education, and law are inseparable (2002, 249).

If Latin features the medieval cosmopolitan world linguistically, like what Benedict Anderson indicates in *The Imagined Communities*, the nationalization movement initiated by French Revolution replaces the Christian cosmopolitanism with modern nationalism. Namely, a people with a historically shared territory, a common language, a common ethnical identity, a shared religion and shared historical memory of great events concerning the foundation of their nation is naturalized as if people are culturally-genetically so. This naturalization of people results in the exclusion of minorities, identifying only people with the shared identity as ‘human’, whereas the excluded minorities are non-human:

In the space in which I am situating these remarks or reconstituting this discourse one would not speak of injustice or violence toward an animal, even less toward a vegetable or a stone. An animal can be made to suffer, but one would never say, in a sense said to be proper, that it is a wronged subject, the victim of a crime, of a murder, of a rape or a theft, of a perjury--- and this is true a fortiori, one thinks, for what one calls vegetable or mineral or intermediate species like the sponge. **There have been, there are still, many “subjects” among humankind who are not recognized as**

**subjects and who receive this animal treatment.** What one confusedly calls “animal,” the living thing as living and nothing more, is not a subject of the law or of right. The opposition between just and unjust has no meaning as far as it is concerned. Whether it is a matter of trials of animals (there have been some) or lawsuits against those who inflict certain kinds of suffering on animals (legislation in certain western countries provides for this and speaks not only of the “right of man” but also of the rights of the animal in general), these are archaisms or still marginal and rare phenomena not constitutive of our culture. In our culture, **carnivorous sacrifice is fundamental**, dominant, regulated by the highest industrial technology, as is biological experimentation on animals—so vital to our modernity (246-247). The example closest to us would be found in the area of laws [lois] on the **teaching and practice of languages, the legitimization of cannons, the military use of scientific research, abortion, euthanasia, problems of organ transplant, extra-uterine conception, bio-engineering, medical experimentation, the “social treatment” of AIDS, the macro- or micro-politics of drugs, homelessness**, and so on, without forgetting, of course, the treatment of what one calls **animal life**, the immerse question of so-called **animality** (258).

If nationality or ethnicity is legalized and law is conditioned historically, geographically and politically by nationality and ethnicity, as Derrida indicates, the violence against minorities could also be directly or indirectly legitimized by law and therefore is not deemed as an unjust action. In other words, if law is ethnically conditioned, so does justice. In this sense, Derrida attempts a deconstructive interrogation of law, namely, to reveal that the equivalence between justice and law is not as natural as what people usually think, or violence against minorities could be legitimized. In other words, as Derrida argues, justice is not law, and deconstruction is to pursue justice beyond law (244). In this sense, deconstruction does not refer to irresponsibility, but a way to increase responsibility, since it is to question the legitimacy and dogmatism of law itself. The responsibility which results from

deconstruction is also not responsibility in its commonsense: it is responsibility with self-reflection upon its cultural/ ethnical/ religious preconditions. This self-reflection exposes what is paradoxical to ourselves: namely, when people claim that they are responsible for others, they are not equally responsible for every single other. On the contrary, they are always irresponsible for certain people when they are claiming their responsibility for whom they think they should be responsible for. (248-249). Thus, the responsibility given by deconstruction is the responsibility for each individual as an individual, or the responsibility for the particularity of each individual, rather than responsibility for a certain type of people, instead of another<sup>1</sup> (248).

In “Force of Law”, Derrida does not provide an example to illustrate how, in his view, law could be unjust. In this sense, an excellent example which illuminates Derrida’s theory of law is in Pheng Cheah’s *Inhuman Condition: On Cosmopolitanism and Human Rights*, in which he applies Derrida’s critique of law in a case concerning global capitalism, transnational recruitment of labor and immigration law in South-Eastern Asia. The story begins with a historical fact that the fast growth of capitalism in the post-cold-war era forces non-western underdeveloped countries into a global order of neo-liberalism. In order to promote economic growth, non-western underdeveloped countries have to accept western capital investment. It starts with western industries transferring their manual-labor based production to non-western areas, like South-Eastern Asia, for instance, to profit themselves by exploiting local cheap labor. This transnational specialization of labor does help some non-western areas into developed countries, like Singapore, for instance. Based upon its quick economic growth, the Singaporean government expects itself to be a technologically-advanced economy. Therefore, its policy encourages experts and

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<sup>1</sup> “But the address always turns out to be singular. An address is always singular, idiomatic, and justice, as law, seems always to suppose the generality of a rule, a norm or a universal imperative. How to reconcile the act of justice that must always concern singularity, individuals, groups, irreplaceable existences, the other or myself as other, in a unique situation, with rule, norm, value, or the imperative of justice that necessarily have a general form, even if this generality prescribes a singular application in each case”? See Derrida, Jacques. “Force of Law: The Mystical Foundation of Authority.” In *Acts of Religion*, edited by Gil Anidjar. London: Routledge, 2002, 245; “one must know that this justice always addresses itself to singularity, to the singularity of the other, despite or even because it pretends to universality.” Ibid., 248.

skilled labors to immigrate to and work in Singapore, but discourages low-salary job holders into it<sup>2</sup> (2006, 199). This policy of immigration contradicts the fact that, for other underdeveloped countries in South-Eastern or Southern Asia, to export low-salary labor to Singapore is the only way through which they are able to profit themselves from the economic advantage of Singapore<sup>3</sup> (193). On the other hand, though low salary job holders are discouraged in Singapore, they are also indispensable for Singapore society (201-202), as a “necessary but undesirable presence” (210). Thus, the conflict happens between Singapore government’s expectation to minimalize the number of low-salary job holders in its country, and its neighbor countries’ will to maximize their exportation of low-salary labor to Singapore. But what causes this conflict is the classification and standardization of human caused by capitalism: the market-value of people is quantitatively measurable and collectively manageable: the administration of the marketized human resource is what Foucault calls the bio-politics. In a Foucauldian view, “instead of functioning repressively, the central task of bio-power is the administration of human life as a resource that can be attached to the apparatus of production or adjusted to broader economic processes” (199-200). Namely, the market-value of some people is lower than the value of others. Or as Derrida indicates, “there have been, there are still, many “subjects” among humankind who are not recognized as subjects and who receive this animal treatment”. When this marketization of human value is reinforced by law, it becomes what Derrida means, namely, law is not equivalent to justice.

The immigration law that is exercised by Singapore government is not exactly like what in Derrida’s view, “in many countries, in the past and in the present,

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<sup>2</sup> “As part of the reproductive sphere, these migrant workers are crucial to the sustaining of social and civil life. But they are not recognized as “foreign talent.” They are merely “foreign workers” to be used and discarded rather than integrated into the social fabric of the city-state. Indeed, these two poles of cosmopolitan labor have distinctively different legal statuses. Members of the higher tier hold “employment passes” and enjoy liberal benefits and conditions of employment designed to induce them to take up permanent residence and even citizenship, whereas those in the lower tier merely hold temporary “work permits” that must be renewed every two years for a maximum stay of eight years and are subject to stringent legal restrictions” *Inhuman Conditions: On Cosmopolitanism and Human Rights*. Cambridge: Harvard University, 2006, 199.

<sup>3</sup> “Low-growth countries, however, face a profoundly troubling dilemma. On the one hand, they hope to achieve full employment for their citizens. On the other hand, this and the nation’s economic development can occur only if the state actively engages in exporting its workers.” *Ibid.*, 193.

one of the founding violence of the law or of the imposition of state law has consisted in imposing a language on national or ethnic minorities regrouped by the state” (249). Instead of imposing a Singaporean national identity upon the immigrants, the Singapore government protects its own citizens who are mostly experts and skilled workers and opposes low-salary immigrants. In Singapore, the low-salary job holders, or the Foreign Domestic Workers (FDW), are most likely women immigrants who are only able to be household maids, assisting local Singapore families by doing their daily housework. But, no matter how hostile is Singapore to the immigrants as maids, they are an indispensable part in the local division of labor<sup>4</sup>. The result is that, the FDWs are easily abused by native citizens and are not legally protected. In other words, just like what Derrida means, the abusing of FDWs in Singapore is legally acceptable in certain sense. There are two reasons for this. First, since the FDWs are unskilled, low-salary workers, the Singapore government is unwilling to protect them as how they protect their legal citizens and highly-skilled immigrants. The private contract between FDWs and each family as their employer cannot protect them from brutalization<sup>5</sup>. Moreover, the Singapore government works very hard to minimize

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<sup>4</sup>As Pheng Cheah indicates, “Singaporean women can join the workforce only if the burden of reproductive labor is transferred elsewhere; hence, in order to attach educated middle-class women to the professions and high-value service industries, migrant women have to be tethered to the Singaporean home qua machine for the reproduction of society and human capital so that the forces of their bodies can be extracted as reproductive labor” Ibid., 202. Also, as Pheng Cheah indicates (quoting Noeleen Heyzer and Vivienne Wee), “in the disappearance of unpaid female labour in the home, the alternative of paying for available and affordable migrant female labour remains the economic responsibility of the family, especially that of the working woman. It is in this sense that in the receiving countries, development processes are being subsidised by a genderised international class structure--- by the labour subsidy of female migrant workers and by the income subsidy (and therefore also a labour subsidy) of middle class women. The displacement of the costs and burdens of social reproduction from the state to migrant women from poorer countries means that economic success within the new international division of labor generates and is sustained by an international division of domestic labor.” Ibid., 207.

<sup>5</sup> “Unlike foreign construction workers, domestic workers are not governed by the Employment Act. The Singaporean government has repeatedly insisted that the employment of domestic labor involves a private contract between worker and employer and that the conditions of service and wages should be determined by the free market rather than by labor legislation. The excuses given for this policy are the sacrosanct privacy of the home and the impracticality of enforcement. The state maintains that the household cannot and should not be regulated like a workplace.” Ibid., 215-220. As Pheng Cheah indicates, this assumption is wrong in two ways: first, the contract between the FDWs and their employers is not merely based upon their ‘free will’. The FDWs are already the product of biopolitics. Namely, in a marketized society, they are merely used as means for other people’s ends, rather than to be respected as ends. Second, the Singapore government already intervenes people’s household life, since it encourages domestic Singaporean women to go to work. This is also the reason why the maids are needed to take care of the housework of the native citizens. Ibid., 220-221.

the number of FDWs in its country. It imposes an extra levy upon each family who hire FDWs as maids. This practice indirectly forces those families who employ FDWs to reduce their payment to them (209-210): as Joanna Elias, a thirty-seven-year-old Filipina FDW indicates, “the employer wants them to work for every cent they pay them” (215), since “the rising costs of employing an FDW lead employers to expect to get more out of their maids” (209-210). Meanwhile, the Singapore government has a social security and anti-criminal concern, expecting the behaviors of the FDWs in Singapore to be strictly and collectively administrated, and the families as the employers of them are expected to monitor and discipline them<sup>6</sup> (210). For this, each family who want to hire FDW as their maids are required to submit S\$5,000 as security bond (210). Namely, if the FDWs violate the restrictions that the Singapore government imposes upon them, the security bond payed by their employers will be forfeited<sup>7</sup> (210). In this sense, the FDWs in Singapore are completely depoliticized, or are totally deprived of their potentials to be politically actively. The Singaporean state plays the role as what Hannah Arendt calls the modern public housekeeper (28-29). It promotes economic efficiency by prohibiting any extra-production activities, silencing any possible discontents. Thus, everyone is routinized for capitalistic production, just like slaves in ancient Greek household life, but in a much larger house, a house as the whole society<sup>8</sup>.

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<sup>6</sup> “The employer has a responsibility to mitigate the social problems they cause. Indeed, it is almost a public duty of the employer to control the behavior and movement of her foreign maid. From the start, therefore the FDW is viewed as a minor or delinquent, someone without a full moral personality who needs to be trained, corrected, and policed so that she will not err.” Ibid., 210-211.

<sup>7</sup> “An FDW is granted a work permit subject to various conditions. The most repressive of these conditions are the prohibition of marriage to a Singapore citizen or permanent resident during her stay and the prohibition of pregnancy. The FDW is also required to submit to a medical examination for pregnancy and sexually transmitted diseases once every six months, and is repatriated immediately if the test results are positive. Since the bond is forfeited if any of these conditions are violated, the mechanism transfers the monitoring of workers to the site of the household, where it can be performed most effectively and zealously by employers to prevent the possibility of any ‘illegitimate’ activities even before the FDW enters into public space.” Ibid., 210.

<sup>8</sup> “In our understanding, the dividing line is entirely blurred, because we see the body of peoples and political communities in the image of a family whose everyday affairs have to be taken care of by a gigantic, nation-wide administration of housekeeping. The scientific thought that corresponds to this development is no longer political science but ‘national economy’ or ‘social economy’, all of which indicate a kind of ‘collective housekeeping’; the collective of families economically organized into the facsimile of one super-human family is what we call ‘society,’ and its political form of organization is called ‘nation.’” *The Human Condition*. Chicago: The University of Chicago, 1998, 28-29.

The FDW immigrants are also not able to be legally protected by their motherlands, the labor-exporting countries, like Philippine, for instance. Singapore as the labor-importing country is unwilling to protect them, for the sake of maximizing their own interests, so does the labor-exporting country. People in Philippine are only legally permitted to work oversea on condition that they send a mandatory amount of money out of their monthly income back to their families via a designated bank, and the whole process is monitored by local government<sup>9</sup> (224). Moreover, for maximizing the total incomes gained from the FDWs, the local government is hesitant to make the request to Singapore government to protect the human right of their oversea immigrants, since this may make Singapore government more reluctant to import cheap labor from them<sup>10</sup> (240). In one word, the human right of the FDWs are sacrificed for the maximization of national interests of both the labor-importing country, like Singapore, and the labor-exporting country, like Philippine<sup>11</sup> (241). This sacrifice of FDWs for national interests exemplifies what Derrida means by saying that law is always calculable, but justice is incalculable. The mechanism of calculation is that, like what Pheng Cheah describes, law is always used by certain agent to maximize its own interests at the cost of the sacrifice of others. In other words, both the labor-importing country and the labor-exporting country are ‘calculating’ the profits that they can get from exporting or importing the FDWs, but

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<sup>9</sup> “Sending remittances back home is a necessary condition of overseas employment under Philippine law. Under Article 23 of the Labor Code and Executive Order 857, every contract worker has to remit a portion of earnings to her beneficiary in the Philippines through the Philippine banking system. All officially processed labor contracts for domestic workers include a provision mandating that they remit 50 percent of their based salary. The limited-validity passports of OCWs can be renewed only if proof is provided that the remittance requirement has been complied with; noncompliance will cause an individual to be removed from the list of workers eligible for overseas employment. The Overseas Workers Investment (OWI) Fund Act passed under the Aquino regime formalized the policy of improving economic growth by ‘tapping the unofficial and informal remittances of OCWs.’ Cheah, *Inhuman Conditions*, 224.

<sup>10</sup> A labor officer in the Sri Lankan High Commission observed that mentioning human rights would not be of much help: “You can fight for human rights in your own country but not in a foreign country. In the media here, no one speaks of human rights. If a country tries to enforce human rights requirements, demand for domestic labor from that country will drop. We have no hand in this. It is beyond our limits. It is a governmental matter. We will lose our market share if we make too many demands.” *Ibid.*, 240.

<sup>11</sup> “The protection of migrant workers’ rights is in a tense relationship to the imperatives of profit making and economic development that is neither one of simple opposition nor one of continuity. The economic development of the labor-sending country is premised on sacrificing its workers’ human rights. Any attempt to protect such rights must always be balanced against the need to maintain or increase the market share in FDWs.” *Ibid.*, 241.

neither of them wants to do justice to these immigrants. In this sense, justice is suspended when law is applied. Or as Derrida says, “there have been, there are still, many ‘subjects’ among humankind who are not recognized as subjects and who receive this animal treatment” (246). Similar to Derrida, Hannah Arendt, in *The Human Condition*, argues that in ancient Greek polity, only the ‘bios’, the human beings as what Aristotle means the ‘political animal’, are free citizens, whereas the ‘zoe’, the slaves, are animal-like human, who, exactly like the FDWs in modern Singapore, only do housework and are administrated by command and violence<sup>12</sup>. Pheng Cheah also uses ‘*bios*’ to describe the difference between Singapore citizens and the FDWs. As he says, “although the Ministry of Manpower acknowledges the important economic and social contributions of FDWs to Singaporean society, these are not enough to warrant their full integration into the Singaporean *bios*” (207). But the difference between Pheng Cheah and Arendt is that, Cheah has a more complicated understanding of capitalism in relation to humanity, if compared with Hannah Arendt’s critique of the depoliticizing effect of capitalism in modern world in *The Human Condition*. In fact, Pheng Cheah does not completely denigrate the significance of the role that capitalism plays in human society. What he means is that capitalism, when giving freedom and humanity to some people, are depriving the freedom and humanity of the others<sup>13</sup> (265). By adopting a quasi-Marxism perspective, Cheah contends that the material condition is indispensable for the

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<sup>12</sup> “Aristotle distinguished three ways of life (*bioi*) which men might choose in freedom, that is, in full independence of the necessities of life and the relationships they originated. This prerequisite of freedom ruled out all ways of life chiefly devoted to keeping one’s self alive--- not only labor, which was the way of life of the slave, who was coerced by the necessity to stay alive and by the rule of his master, but also the working life of the free craftsman and the acquisitive life of the merchant. In short, it excluded everybody who involuntarily or voluntarily, for his whole life or temporarily, had lost the free disposition of his movements and activities. Arendt, *The Human Condition*, 12. The chief difference between the Aristotelian and the later medieval use of the term is that the *bios politikos*, denoted explicitly only the realm of human affairs, stressing the action, praxis, needed to establish and sustain it. Neither labor nor work was considered to possess sufficient dignity to constitute a *bios* at all, an autonomous and authentically human way of life; since they served and produced what was necessary and useful, they could not be free, independent of human needs and wants.” Ibid., 13.

<sup>13</sup> “Instead of lamenting the horrendous ways in which human labor is commodified and the humane institution of the family is deformed and perverted by global capitalism, we should examine how the technologies sustaining global capitalism both enable and disable the actualization of humanity. My insistence on the generative character of the technologies sustaining capitalist globalization should not be mistaken for the neoliberal argument that the global spread of the market system is to be welcomed despite its patently negative consequences because, through the dissemination of the formal rule of law and human rights discourses, it leads to the actualization of humanity.” Ibid., 265.

realization of humanity (265). In other words, men cannot live without economic life. But it is economy that creates a kind of ‘criteriology’ of mankind, which makes certain people more valuable than the others, and this criteriology, just as Derrida indicates, is reinforced by law<sup>14</sup> (247).

For Derrida, to contend that law is not equivalent to justice, or sometimes what is legal is also unjust, does not simply suggest that law could be merely abolished occasionally for the sake of justice. This is what Derrida calls “Aporia”, or a dilemma but no way out of it. Since what is just has to be legal, or authorized or legitimized by law, and the legality of law is legitimized by the authority of the legislator (here the authority of the legislator also suggests a whole system of state apparatus in a Marxian or Foucauldian sense to enforce the law, especially police, which Derrida talks about later), an unjust law could not be simply invalidated by an individual judge who discerns this injustice. Thus the dilemma is that, a judge could only do what the law authorizes him to do, and the judge has to obey the law even if that law itself is unjust. In this case, what is lawful is actually unjust, and justice is not coterminous with law. This is also the reason why Derrida calls justice the “undecidable”:

this is the experience of that which, though foreign and heterogeneous to the order of the calculable and the rule, must [doit] nonetheless—it is of duty [devoir] that one must speak—deliver itself over to the **impossible decision** while taking account of law and rules. A **decision** that would not go through the test and ordeal of the **undecidable** would not be a **free decision**; it would only be the programmable application or the continuous unfolding of a calculable process. It might perhaps be legal; it would not be just. But in the moment of **suspense of the undecidable**, it is not just either, for only a **decision** is just. In order to maintain the proposition “only a decision is just”,

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<sup>14</sup> “From this very first step, one can already glimpse a first consequence: by deconstructing the partitions that institute the human subject (preferably and paradigmatically the adult male, rather than the woman, child, or animal) at the measure of the just and the unjust, one does not necessarily lead toward injustice, nor to the effacement of an opposition between just and unjust but, in the name of a demand more insatiable than justice, leads perhaps to a reinterpretation of the whole apparatus of limits within which a history and a culture have been able to confine their criteriology.” Derrida, “Force of Law”, 247.

one need not refer decision to the structure of a subject or to the propositional form of a judgment. In a way, and at the risk of shocking, one could even say that a subject can never decide anything [un sujet ne peut jamais rien décider]: a subject is even that to which a decision cannot come or happen [arriver] otherwise than as a marginal accident that does not affect the essential identity and the substantial presence-to-self that make a subject what it is—if the choice of the word subject is not arbitrary, at least, and if one trusts in what is in fact always required, in our culture, of a subject (252).

Here the “undecidable” refers to justice. The word “decision” in this paragraph has three meanings: first, it is merely a legal decision. It is legal but is not just, since it is merely the application of law but not to challenge the unjust part of law. Second, in contrast to this merely legal but not just decision, Derrida calls the truly just decision a “free decision”. This kind of truly just decision, as Derrida indicates, is not actually realizable, since no one can make a juridical decision without the restriction of law. The third meaning of decision is a kind of decision that crosses between these two kinds of decisions: it refers to a situation in which the judge is aware of the injustice of law, and wants to but cannot make a truly just decision without the restriction of the unjust law. This is what the phrase “only a decision is just” means: a truly just decision has to be made but cannot be made. Hence what Derrida means is that people have to fight against the unjust law for the sake of realizing justice, but also that this practice cannot be fully carried out without frustration, or without being contaminated by the unjust law. Finally, a compromise is necessary between justice and law. As Derrida argues:

Once the **test and ordeal of the undecidable** has passed (if that is possible, but this possibility is not pure, it is never like another possibility: the memory of the undecidability must keep a living trace that forever marks a decision as such), the decision has again followed a rule, a given, invented or reinvented, and reaffirmed rule: it is no longer presently just, fully just. At no moment, it seems can a decision be said to be presently and fully just: **either it has not yet been made according to a rule, and nothing allows one to call it just,**

**or it has already followed a rule**—whether given, received, confirmed, preserved or reinvented—which, in its turn, nothing guarantees absolutely; and, moreover, if it were guaranteed, the decision would have turn back into calculation and one could not call it just. (253).

The relation between law and justice discussed by Derrida in this essay raises inevitably another problem: If Derrida considers law as not the legal or institutional embodiment of justice, nor appeal so a conservative type of ‘justice beyond law’, as has been done by Walter Benjamin and Carl Schmitt, the resistance against the unjust law -as well as the possibility of this kind of resistance becomes a question that Derrida has to answer. In fact, Derrida does not have faith in a total revolution which could completely rescind the unjust law, or totally transform a society with unjust conventions, nor does Derrida believe in any type of ‘messianism’, in either the religious or the political sense, which preaches a supposedly better future to people. But this does not imply that Derrida has completely no belief in terms of the possibility to resist. The question concerning the possibility of resistance makes itself heard in the third ‘aporia’ in Force of Law, which is titled “the urgency that obstructs the horizon of knowledge”.

First, in Derrida’s view, the possibility to resist the unjust law originates in the linguistic nature of law. By drawing reference from Austin’s philosophy of language, he argues that law is a combination of the two types of speech acts in the author’s *How to Do Things With Words*: the performative and the constative speech act. The performative refers to a speech act through which a speaker is performing an action. The constative refers to no particular action, but at most describes one. It is merely a statement of fact. The performative speech is regulated by certain rules: in particular, the performative speech should be based upon certain conventions or laws, and the speaker should have the authority to perform the action. In this sense, the constative and the performative together comprise the application of law in a specific case. The application of law is not merely the statement of facts, which is the constative part of it, but also reveals an action which is going to be performed, like punishment, compensation, compromise and apology. For instance, if the code writes

that murder incurs death penalty, in a case of murder, it is both the statement of a fact and an action which is going to be performed for the sake of this fact. Meanwhile, according to Austin's linguistic theory, the action that is going to be performed is based upon certain convention and authority. In the case of a judicial judgment of a murder, law itself is the convention upon which the judgment is based.

Based upon this, what Derrida attempts to argue is that, although the performative speech relies upon certain conventions and authority, it is not completely predetermined by them. In other words, an unjust law does not completely prevent people from performing a just action. This is also the first 'aporia' (The Epokhe of the Rule) that Derrida lists in "Force of Law". Justice, he writes, is always associated with freedom. In other words, an action cannot be defined as a just action if the agent does not have the freedom to act according to his or her own will. But, on the other hand, an action which merely comes out of one's free will can also not be recognized as a just action, since justice always suggests compliance with certain rules.<sup>15</sup> In this sense, as Derrida indicates, a judge has to make a decision as if the decision both comes out of his own will and, at the same time he must be in compliance with the rule, or as if the rule is not imposed upon the judge but, in the Kantian lexicon, legislated by the judge himself<sup>16</sup>. This is also what Austin's linguistic theory means in

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<sup>15</sup> "our most common axiom is that to be just or unjust, to exercise justice or to transgress it I must be free and responsible for my action, my behavior, my thought, my decision. One will not say of a being without freedom, or at least of one who is not free in a given act, that its decision is just or unjust. But this freedom or this decision of the just, if it is to be and to be said such, to be recognized as such, must follow a law [loi] or a prescription, a rule. In this sense, in its very autonomy, in its freedom to follow or to give itself the law [loi], it has to be capable of being of the calculable or programmable order, for example, as an act of fairness. But if the act simply consists of applying a rule, of enacting a program or effecting a calculation, one will perhaps say that it is legal, that it conforms to law, and perhaps, by metaphor, that it is just, but one would be wrong to say that the decision was just, simply because there was, in this case, no decision." Ibid., 251.

<sup>16</sup> "to be just, the decision of a judge, for example, must not only follow a rule of law or a general law but must also assume it, approve it, confirm its value, by a reinstating act of interpretation, as if, at the limit, the law did not exist previously--- as if the judge himself invented it in each case. Each exercise of justice as law can be just only if it is a 'fresh judgment'. This new freshness, the initiality of this inaugural judgment can very well--- better yet, must very well--- conform to a preexisting law. But the reinstating, re-inventive and freely deciding interpretation of the responsible judge requires that his 'justice' not consist only in conformity, in the conservative and reproductive activity of judgment. In short, for a decision to be just and responsible, it must, in its proper moment, if there is one, be both regulated and without regulation, it must preserve the law and also destroy or suspend it enough to have to reinvent it in each case, rejustify it, reinvent it at least in the reaffirmation and the new and free confirmation of its principle. Each case is other, each decision is different and requires an absolutely

terms of the performative speech act. But, for Derrida, the decision made by a judge is not always in compliance with the rules. In other words, there is still the possibility and space for improvisation, even though the improvisation cannot completely overthrow the law. As Derrida indicates:

If one were to trust in a massive and decisive distinction between performative and constative—a problem I cannot get involved here--- one would have to attribute this **irreducibility of precipitate urgency**, this inherent irreducibility of thoughtlessness and unconsciousness, however intelligent it may be, to the **performative structure of “speech acts” and acts in general as acts of justice or of law**, whether they be performatives that institute something or derived performatives supposing anterior conventions. And it is true that any current performative supposes, in order to be effective, an anterior convention. A constative can be *juste*, in the sense of *justesse*, never in the sense of justice. But as a **performative** cannot be just, in the sense of **justice**, except by grounding itself in on **conventions** and so on other performatives, buried or not, it always maintains within itself some **irruptive violence**. It no longer responds to the demands of theoretical rationality. And it never did, it was never able to; of this one has an apriori and structural certainty. Since every **constative** utterance itself relies, at least implicitly, on a **performative** structure, the dimension of *justesse* or truth of theoretico-constative utterances (in all domains, particularly in the domain of the theory of law) always thus presupposes the dimension of justice of the performative utterances, that is to say their essential precipitation, which never proceeds without a certain **dissymmetry and some quality of violence** (256).

Here the irruptive violence and dissymmetry suggest the inconsistency between law and the action that people are going to perform based upon law. For example, an immigration law which refutes the legal status of certain immigrants does not mean

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unique interpretation, which no existing, coded rule can or ought to guarantee absolutely. (At least, if the rule does guarantee it in a secure fashion, then the judge is a calculating machine.) Ibid., 251-252.

that there is no just action that could be done for these immigrants. It is possible that a just action could draw reference from other legal resources to help them, or a lawyer or a judge could improvise based upon existing laws to help the immigrants as much as possible.

Second, the possibility of resistance is also concerned with the problem of temporality, or, in other words, the time when the resistance is going to begin. Since the unjust law cannot be abolished or an unjust society could not be transformed immediately, justice for Derrida is always “to come”. Namely, it is always a future-tensed action. However, this “to come of justice” has to be differentiated from two commonly accepted notions of justice in future: first of all, the coming of justice does not indicate that it could be realized deliberately or via people’s rational deliberation or speculation. Derrida denigrates the social-evolutionary view that the well-being of human society could be scientifically improved based upon the knowledge that people have had already. Instead of the historical teleology which preaches an evolution toward an ideal type of human society, Derrida insists that justice comes as “a finite moment of urgency” and “as quickly as possible”. As he argues:

Yet, justice, however, unrepresentable it remains, does not **wait**. It is that which must not **wait**. To be direct, simply and brief, let us say this: a just decision is always required **immediately**, right away, **as quickly as possible**. It cannot provide itself with the infinite information and the unlimited knowledge of conditions, rules, or hypothetical imperatives that could justify it. And even if it did have all that at its disposal, even if it did give itself the time, all the time and all the necessary knowledge about the matter, well then, the moment of decision as such, what must be just must [il faut] always remains **a finite moment of urgency and precipitation**; it must not be the consequence or the effect of this theoretical or historical knowledge, of this reflection or this deliberation, since the decision always marks the **interruption of the juridico-, ethico-, or politico-cognitive deliberation** that precedes it, that must precede it. The **instant of decision is a madness**, says Kierkegaard, This

is particularly true of the instant of the just decision that must rend time and defy dialectics. It is a madness; a madness because such decision is even **unconscious**, as if the deciding one was free only by letting himself be affected by his own decision and as if it came to him from the other. The consequences of such **heteronomy** seem redoubtable but it would be unjust to evade its necessity. Even if time and prudence, the patience of knowledge and the mastery of conditions were hypothetically unlimited, the decision would be structurally finite, however late it came—a **decision of urgency** and precipitation, **acting in the night of nonknowledge and nonrule**. Not of the absence of rules and knowledge but of a reinstatement of rules that by definition is not preceded by any knowledge or by any guarantee as such (255).

The judgment of such decision of justice is like madness, “a madness because such decision is even unconscious, as if the deciding one was free only by letting himself be affected by his own decision and as if it came to him from the other.” It reveals the instantaneousness of the action of justice as the latter requires a decision of urgency which is like a ‘revolutionary instant.’ It is neither previously deliberated nor does it give birth to an expected result.

Moreover, this decision of urgency or this revolutionary instant has an existential character, and the latter is particularly represented by Derrida’s point that “the decision always marks the interruption of the juridico-, ethico-, or politico-cognitive deliberation that precedes it, that must precede it.” In other words, at the moment of justice, existence always precedes rational deliberation. In the case of the FDW immigrants in Singapore in Pheng Cheah’s *Inhuman Conditions*, the cordial relation between Singapore, the labor-importing country and Philippine, the labor-exporting country, is suddenly interrupted by an instantaneous riot ignited by the death penalty of a Philippine maid, Flor Contemplacion, who is accused of murdering her friend Delia Maga, another Philippine maid, and a four-year-old Chinese boy who was Maga’s charge (232-233):

Widespread public outrage in the Philippines quickly gathered momentum. Communist guerrillas threatened to exact “revolutionary justice” against responsible Filipino officials and warned of threats to the safety of Singaporean diplomats in the country if Contemplacion was executed. When Singapore denied Ramos’s appeal for clemency and his request for a retrial, church, human-rights, and feminist groups were outraged. A demonstration of 1500 people occurred outside the Singapore embassy, which also received many abusive and threatening phone calls. Following the hanging, 2000 people participated in a nighttime prayer vigil outside the embassy. The mayor of Davao City, the fourth-largest city in the Philippines, burned a Singapore flag, and its city councilors resolved to ban the sale and distribution of Singaporean products (234). Through her sufferings and subsequent death, Contemplacion became an icon for the plight of all overseas Filipino workers caused by the labor-export policy of their state and its failure to safeguard the rights of workers who are so crucial to the nation’s economic development. Media reports and editorials in the Philippines variously described her as the “Flower of National Rage,” a national martyr, and a “national saint.” (235).

This riot does not completely rescind the law concerning immigration of FDWs in both Philippine and Singapore. But it belongs to what Walter Benjamin calls the “founding violence” which is discussed by Derrida in the second half of *Force of Law*. Namely, a violence which could overthrow a law and found a new one. It perfectly exemplifies, as Derrida indicates, that justice is “a finite moment of urgency and precipitation” (255). Or, in Pheng Cheah’s own language, the “resistant subject who is opposed to and seeks to regulate the inhuman forces of global capital” is the “‘differance’ inscribed within the inhuman force field that he or she seeks to transcend and overcome” (180); “the small contaminated victories of human rights are not the determinate negation of the inhuman but its differance, the other of the inhuman ‘different and deferred in the economy of the same’” (265-266).

In Derrida’s view, the decision of justice is not only an instantaneous action without rational deliberation, but could also not be the equivalence of any type of

messianic hope which always promises people a supposedly better future, and expect people to wait for the coming of the future with patience. For Derrida, both rational deliberation and messianic hope depoliticize the possible instantaneous action of justice or revolution. The decision of justice is neither to deliberate a future nor to wait for the coming of a future. On the contrary, for Derrida, every moment is a possible moment for its coming. As Derrida contends:

But for this very reason, it has perhaps an *avenir*, precisely, a **“to-come”** [a-venir] **that one will have to rigorously distinguish from the future**. The future loses the openness, the coming of the other (who comes), without which there is no justice; and the future can always reproduce the present, announce itself or present itself as a future present in the modified form of the present. Justice remains to come, it remains by coming, it has to come, it is to-come, the to-come, it deploys the very dimension of events irreducibly to come. It will always have it, this a-venir, and will always have had it. Perhaps this is why justice, insofar as it is not only a juridical or political concept, open up to the *avenir* the transformation, the recasting or refounding of law and politics. **“Perhaps”--- one must always say perhaps for justice**. There is an *avenir* for justice and there is no justice except to the degree that some event is possible which, as event, exceeds calculation, rules, programs, anticipations and so forth. (256-257).

The word ‘perhaps’ clearly delineates the paradoxical character of the decision of justice in this sense: on the one hand, every moment could be a moment for its coming. But, on the other hand, every moment could also not be a moment for its ‘to-come’. This paradox of the possibility of the decision of justice is visualized by Derrida as a ‘ghost’:

The undecidable remains caught, lodged, as a **ghost** at least, but an essential **ghost**, in every decision, in every event of decision. Its **ghostliness** deconstructs from within all assurance of presence, all certainty or all alleged criteriology assuring us of the justice of a decision, in truth of the very event of a decision (253).

The ghost here represents a kind of uncertain expectation of an alternative justice for the minorities suffering from injustice. It is an expectation of justice but is an expectation with uncertainty. In other words, it is not the expectation of a specific futural moment as the coming moment of justice. As Derrida argues, “the future can always reproduce the present, announce itself or present itself as a future present in the modified form of the present.” If the ‘future’ here represents a kind of pessimistic attitude toward all the previous religious/political messianism which all eventually failed, the ‘ghost’ represents a radically affirmative attitude of the possibility of justice against this pessimism: justice is always already to come and, hence, the time of its coming is never quite certain, never guaranteed.

Third, as I mentioned before, Derrida does not appeal to a kind of justice beyond law or justice transcending law or, more in general, a kind of ‘pure justice’ that would remain uncontaminated by any type of unjust law. For Derrida, this kind of idealistic justice is completely untenable and does not have any real possibility of impacting on our world. In this sense, Derrida’s attitude toward justice is a kind of combination of realism and idealism, or a combination of pessimism and optimism, or a ‘realistic idealism’ and ‘pessimistic hope.’ In his own words:

This excess of justice over law and calculation, this overflowing of the unrepresentable over the determinable, cannot and should not serve as an alibi for staying out of juridico-political battles, within an institution or a state, between institutions or states. Abandoned to itself, the incalculable and giving idea of justice is always very close to the **bad**, even to **the worst** for it can always be reappropriated by the most perverse calculation. It is always possible, and this is part of the madness of which we were speaking. An absolute assurance against this risk can only saturate or suture the opening of the call to justice, a call that is always **wounded** (257). Not only must one [il faut] calculate, negotiate the relation between the calculable and the incalculable, and **negotiate without a rule that would not have to be reinvented there where we are “thrown,”** there where we find ourselves; but one must [il faut] do so and take it as far as possible, beyond the place we find

ourselves and beyond the already identifiable zones of morality, politics, or law, beyond the distinctions between national and international, public and private, and so on (257).

This gesture of hope could also be elaborated in this way: we still have to have the hope even if we realize the harsh truth that the unjust always constitutes part of our living world. The incalculable and giving idea of justice is “always very close to the bad, even to the worst, for it can always be reappropriated by the most perverse calculation”. Moreover, justice is not only inseparable from the unjust, but it is the unjust that makes the radical hope of justice meaningful. Or, in Derrida’s own language, “an absolute assurance against this risk can only saturate or suture the opening of the call to justice, a call that is always wounded”.

The interruption of the Singapore-Philippine relation by the unexpected event of the Flor Contemplacion trial propels both of the two sides to make changes to its immigration policy. The Ramos Regime in Philippine passes the Migrant Workers and Overseas Filipinos Act (1995) which aims at appeasing the riots caused by the Flor Contemplacion event (238). It makes the statement that

The state does not promote overseas employment as a means to sustain economic growth and achieve national development. The existence of the overseas employment program rests solely on the assurance that the dignity and fundamental human rights and freedoms of the Filipino citizen shall not, at any time, be compromised and violated (238).

But a representative of the Philippine government quickly makes another announcement to reassure the significance of the economic tie between Philippine and Singapore based upon the neo-liberal global order:

On July 15, 1995, Senator Blas Ople observed: “it is in our interest that normal relations be restored with Singapore. Beyond the emotions generated by the Contemplacion case, Philippines-Singaporean relations are very important to the Philippines and ASEAN. At some point differences must be allowed to lapse into history and we want to begin anew (238-239).

As Derrida indicates, such an unexpected interruption of the unjust law cannot change the neo-liberal order itself, and it is easily reappropriated by the neo-liberal order which drives the immigration of the FDWs between Singapore and Philippine. Or in Derrida's own language, "a call that is always wounded".

Here Derrida adopts a very Hegelian rhetoric to describe the relation between justice and the unjust law: a call that is always wounded, or justice that is always contaminated by the unjust. In this sense, what Derrida and Hegel have in common is that for both of them, justice is not an idea purely transcending reality. In reality, justice could only be seen in a specific situation in which people are aware of the injustice of the law and begin to wrestle with it, struggling against it and having the hope of justice. A typical Hegelian dialect has three steps: first, an idea is an idea which is pure in itself and has nothing to do with the reality; second, the pure idea encounters the reality, which contradicts it, making it untrue or contentious; third, the final reconciliation of the ideal and the real is preached by Hegel as the necessary result of the contradiction. What is ideal and what is real are completely in harmony with each other. The job that Derrida does here is the second step in the Hegelian dialect, but the final step does not exist for Derrida: Derrida openly rejects any type of the imagination of a supposedly best society in which nothing is unjust.

Forth, Derrida understands his critique of the unjust law as a continuation of the struggle against authoritarianism and the emancipation of human in a historical view. In this sense, Derrida is 'waving Enlightenment against Enlightenment'. In other words, Derrida understands his own work as a continuation of the "classical emancipation ideal," like French Declaration of the Rights of Man and the abolition of slavery. As Derrida indicates,

Politicization, for example, is interminable even if it cannot and should not ever be total. To keep this from being a truism, or a triviality, one must recognize in it the following consequence: each advance in politicization obliges one to reconsider, and so **to reinterpret the very foundations of law** such as they had previously been calculated or delimited. This was true for example in the French Declaration of the Rights of Man, in the abolition of

slavery, in all the emancipatory battles that remain and will have to remain in progress, everywhere in the world, for men and for women. Nothing seems to me less outdated than the classical emancipatory ideal. One cannot attempt to disqualify it today, whether crudely or with sophistication, without at least some thoughtlessness and without forming the worst complicities. It is true that it is also necessary to re-elaborate, without renouncing, **the concept of emancipation, enfranchisement, or liberation** while taking into account the strange structure we have been describing (257-258).

The classical emancipation ideal which remains incomplete has to be continued and deepened. In “Force of Law”, Derrida does not unpack this thought. It is unpacked in *Specters of Marx*, where Derrida argues that the classical ideal of emancipation, enfranchisement and liberation not only has to be continued, but can only be continued as the forgetting of them as previous great historical moments. As Derrida indicates:

The dividing line passes between a mechanical reproduction of the specter and an appropriation that is so alive, so interiorizing, so assimilating of the inheritance and of the “spirits of the past” that it is none other than the life of forgetting, life as forgetting itself, and the forgetting of the maternal in order to make the spirit live in oneself (2006, 136). One must forget the specter and the parody, Marx seems to say, so that history can continue. But if one is content to forget it, then the result is bourgeois platitude: life, that’s all. So one must not forget it, one must remember it but while forgetting it enough, in this very memory, in order to “find again the spirit of the revolution without making its specter return” (137-138).

For Derrida, the revival of the classical emancipation ideal, including Marxism, does not suggest that people treat them as what Nietzsche means the “monumental history”, namely, certain great historical moments which are expected to reoccur. On the contrary, any instantaneous revolution against oppression or social inequality is naturally a continuation of the classical ideal of emancipation. In other words, what continues the classical emancipation ideal is not the memory of several great

historical events, but the possibility of new revolutionary action<sup>17</sup>. This possibility of new revolutionary action, as a kind of ‘radical alterity’, interrupts any type of historical necessity or historical teleology, making a ‘future of alterity’ which both interrupts and preconditions the mere progress of history. In this sense, deconstruction is also concerned with the metaphysical question of temporality: in Derrida’s view, history is not in any sense pre-determined by certain type of ‘necessity’ or ‘teleology’, not is it merely a flat moving from one presence to another one. Temporality is preconditioned by the possibility of an alterity interrupting its sequence<sup>18</sup>

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<sup>17</sup> In *Religion and Violence: Philosophical Perspectives from Kant to Derrida*, Hent de Vries talks about this in relation to Kant’s theory of radical evil. In Kant’s view, to achieve moral perfection is not merely a progress from morally imperfect to morally perfect. In this sense, Kant’s thought parallels Derrida’s in a sense that, for Kant, the moral perfection is a kind of “radical alterity” which interrupts the “morally imperfect status” with the help of God. As Hent indicates, “postulating the possibility of the worst (radical evil) at the very root of the possibility of the best does not prevent Kant from entertaining yet another possibility, that of a sudden revolution, a ‘change of heart.’ This change does not announce itself as the result of a moral progress in time, but is its precondition, commencement, or promise. Rather, its revolution has a specific, circular, or elliptical temporality of its own. It is at once timeless, no more time and more than one time or more of one time—and the heartbeat or the inner clock of reason’s unseen yet, Kant believes, providential movement throughout the universal history of humankind.” De Vries, Hent, *Religion and Violence: Philosophical Perspectives from Kant to Derrida*. Baltimore: The Johns Hopkins University Press, 2002, 105. However, for Kant, the possibility of doing evil, which is defined by Kant as ‘radical evil’, cannot be completely eliminated. The radical evil in Kant’s view does not originate in the imperfect human nature which is ineradicable. Ibid., 108. Kant’s purpose here is merely to affirm the possibility of doing evil, and this possibility has a lot to do with religious fanaticism or religious sectarianism, which is prohibited in public realm, though Kant believes that Christianity helps people to follow their self-legislated moral law. In “Faith and Knowledge: the two sources of ‘religion’ at the limits of reason alone”, Derrida has a different understanding of ‘radical evil’. For Derrida, radical evil is not merely the opposite of moral perfection which Kant expects people to achieve, it also represents certain kind of ‘radical alterity’ which interrupts and preconditions the progress of history. As Hent indicates, “if the turn to religion as well as the ‘return of the religious’ are, as Derrida suggests, intrinsically bound up with ‘at least certain phenomena of radical evil,’ then the following question should also be asked: ‘Does radical evil destroy or institute the possibility of religion,’ as well as that of ethics and politics?” Ibid., 110. Since the Kantian moral is deeply linked to Christianity but radical evil is associated with religious fanaticism, or non-Christian religions, radical evil in Derrida’s view has a Euro-centric prejudice. See Derrida, Jacques. “Faith and Knowledge: The Two Sources of ‘Religion’ at the Limits of reason Alone”. In *Acts of Religion*, edited by Gil Anidjar, London: Routledge, 2002, 50-51.

<sup>18</sup> The Derridian temporality has its root in Heidegger but is also different from Heidegger. Pheng Cheah, in *What is a World? On Postcolonial Literature as World Literature*, makes this explicit: “although Heidegger repeatedly emphasizes that time ‘is not a being at all . . . but rather temporalizes itself,’ time still belongs to the order of presence because, first, it is the ground of being, and second, self-temporalization implies a form of presence--- the presence to self in temporalization--- that is superior to the presence of merely objective beings. See Heidegger, Martin. *Being and Time*. New York: Harper & Row, 2008, 302, 328. But if temporalization refers to a radical alterity that is not temporal and not of the order of being, then temporality cannot be grounded in the unity of self-temporalization proper to human beings. Derrida suggests that time is given by what is entirely other to being. The other is not temporal, not in the sense that it is an absolute being that transcends time, but rather because it is not a form of presence and exceeds the order of being. *What is a World? On Postcolonial*

## **1.2.The Law-Giving, the Law-Preserving and the Divine Violence: Derrida on Walter Benjamin's Critique of Violence**

The four points that I have elaborated from the third Aporia in “Force of Law” reveal Derrida’s attitude toward the tension between justice and the unjust law. Based upon this, there is another question which has to be answered: what is the legislative power that makes what is legal just? Or, where does the legislative power come from? This is the reason why in the second part of Force of Law, Derrida turns to Walter Benjamin’s Critique of Violence, introducing the problem of violence into his interrogation of the problem of justice and law. As Derrida indicates in the first half of Force of law, the paradox of law is that, it makes what is legal just, or there is no justice beyond or outside law. In other words, what is just has also to be the legal. The illegal justice is not justice. Derrida attempts to disclose this paradox of law, making the uncovering of this paradox as a critique of law from its internal logic of operation. In this sense, if the unjust law, though unjust, still has to be trusted as just since it is legal, there has to be certain kind of power which guarantees its operation, silencing any attempt to question its legitimacy as the just. This administrative power which guarantees the operation of law, or in the Foucauldian lexicon, governmentality, or in the Marxian words, the state apparatus, is defined by Walter Benjamin as the law-preserving violence. The law-preserving violence has two implications regarding the relation between law and violence. First, it suggests the antagonism between law and violence, or law is against violence. However, this elimination of individual-based violence in fact suggests that the use of violence is monopolized by the law-preserving violence, or the state apparatus<sup>19</sup>. Namely, private individuals are

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*Literature as World Literature*. Durham: Duke University Press, 2016, 165; it refers to an otherness that cannot be reduced to being and presence.” Ibid., 166.

<sup>19</sup> Characteristic of these, so far as the individual as legal subject is concerned, is the tendency to deny the natural ends of such individual in all those cases in which such ends could, in a given situation, be usefully pursued by violence. This means: this legal system tries to erect, in all areas where individual ends could be usefully pursued by violence, legal ends that can be realized only by legal power. It can be formulated as a general maxim of present-day European legislation that all the natural ends of individuals must collide with legal ends if pursued with a greater or lesser degree of violence. From this maxim it follows that law sees violence in the hands of individuals as a danger undermining the legal system. It will be argued that a system of legal ends cannot be maintained if natural ends are anywhere still pursued violently. In the first place, however, this is mere dogma. To counter it one

not permitted to use violence against other private individuals, or to kill other people; only the state is permitted by law to kill the people who use violence privately. This monopolization of the use of violence by the law-preserving violence, or the state apparatus, is what actually makes the unjust law operative.

The law-preserving violence, as what makes law operative, is still not the origin of law. The significance of the law-preserving violence could only be revealed as a consequence of the law-founding violence. In Benjamin's view, the law-founding violence suggests that law is nothing other than the result of certain type of antagonism, or the struggle and contestation between different groups of people. Law, as the natural consequence of the antagonism between people, is in fact a negotiation, or a balance between different interests<sup>20</sup>. The law-founding violence suggests a transition from civil war or contested democracy to normalized social stability, and the purpose of law-preserving violence is undoubtedly to maintain social stability. In this sense, Benjamin's critique of violence is almost a Marxian interpretation of law and its institutional operation in modern world, and this Marxian view is particularly represented by his appropriation of George Sorel's *Reflections on Violence*. In the

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might perhaps consider the surprising possibility that the law's interest in a monopoly of violence vis-à-vis individuals is explained not by the intention of preserving legal ends but, rather, by the intention of preserving the law itself; that violence, when not in the hands of the law, threatens it not by the ends that it may pursue but by its mere existence outside the law." See Benjamin, Walter. "Critique of Violence". In *Walter Benjamin: Selected Writings*, edited by Marcus Bullock & Michael W. Jennings, 237-252. Cambridge: The Belknap Press of Harvard University, 2002, 238-239. This is actually a point that Derrida and Benjamin have in common: "from the moment that this positive, positing and founding character of another law is recognized, modern law refuses the individual subject all right to violence." See Derrida, Jacques. "Force of Law", 274.

<sup>20</sup> "We are above all obligated to note that a totally nonviolent resolution of conflicts can never lead to a legal contract. For the latter, however peacefully it may have been entered into by the parties, leads finally to possible violence. It confers on each party the right to resort to violence in some form against the other, should he break the agreement. Not only that; like the outcome, the origin of every contract also points toward violence. It need not be directly present in it as lawmaking violence, but is represented in it insofar as the power that guarantees a legal contract is, in turn, of violent origin even if violence is not introduced into the contract itself." Benjamin, "Critique of Violence", 243-244; "Where frontiers are decided, the adversary is not simply annihilated; indeed, he is accorded rights even when the victor's superiority in power is complete. And these are, in a demonically ambiguous way, "equal" rights: for both parties to the treaty, it is the same line that may not be crossed. Here appears, in a terribly primitive form, the mythic ambiguity of laws that may not be "infringed"---- the same ambiguity to which Anatole France refers satirically when he says, "Poor and rich are equally forbidden to spend the night under the bridges." It also appears that Sorel touches not merely on a cultural-historical truth but also on a metaphysical truth when he surmises that in the beginning all right was the prerogative of kings or nobles--- in short, of the mighty; and that, mutatis mutandis, it will remain so as long as it exists. For from the point of view of violence, which alone can guarantee law, there is no equality, but at the most equally great violence." *Ibid.*, 249.

modern world, the parliament, as the law-making organization in a country, should be the place where the “founding violence”, the contested democracy, or the struggle between different partisans happens. However, for the sake of social stability, and in particular, for the interests of the capitalists, modern parliamentary democracy depoliticizes itself by making the law-making process a pre-arranged process divested of violence, or any type of contestation<sup>21</sup>. This depoliticization is better exemplified by Benjamin, as well as George Sorel’s critique of the political strike. In order to prevent the exacerbation of the tension between capitalists and workers, workers are allowed, regulated by law and under the control of the police, to strike. This kind of strike in no sense changes the fundamental relation between capitalists and workers. In return, the capitalists usually remunerate them and make certain promises of increasing salaries or improving working conditions. The result is that, the legally permitted strike only makes the employment relation more stabilized. But if a spontaneous strike launched by workers, aiming at overthrowing the state apparatus or abolishing the law, it becomes a totally different thing. This is what according to George Sorel, the difference between the political general strike and the proletarian

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<sup>21</sup> “When the consciousness of the latent presence of violence in a legal institution disappears, the institution falls into decay. In our time, parliaments provide an example of this. They offer the familiar, woeful spectacle because they have not remained conscious of the revolutionary forces to which they owe their existence. Accordingly, in Germany in particular, the last manifestation of such forces bore no fruit for parliaments. They lack the sense that they represent a lawmaking violence; no wonder they cannot achieve decrees worthy of this violence, but cultivate in compromise a supposedly nonviolent manner of dealing with political affairs. This remains, however, a ‘product situated within the mentality of violence, no matter how it may disdain all open violence, because the effort toward compromise is motivated not internally but from outside, by the opposing effort, because no compromise, however freely accepted, it conceived without a compulsive character. ‘it would be better otherwise’ is the underlying feeling in every compromise. Nevertheless, however desirable and gratifying a flourishing parliament might be by comparison, a discussion of means of political agreement that are in principle nonviolent cannot be concerned with parliamentarianism. For what a parliament achieves in vital affairs can be only those legal decrees that in their origin and outcome are attended by violence.” Ibid., 244. Derrida reiterates this point in *Force of Law*: “the first example chosen is that of the parliamentary of the time. If they offer a deplorable spectacle, it is because these representative institutions forget the revolutionary violence from which they are born. The parliaments live in forgetfulness of the violence from which they are born. This amnesiac denegation does not betray a psychological weakness; it is inscribed in their statue, and in their very structure. From then on, instead of reaching decisions commensurable or proportional to this violence and worthy of it, they practice the hypocritical politics of compromise. The concept of compromise, the denegation of open violence, the recourse to dissimulated violence belong to the spirit of violence, to the ‘mentality of violence’ that promotes acceptance of the adversary’s coercion both in order to avoid the worst and while saying, with the sigh of the parliamentarian, that this is certainly not ideal, that, no doubt, things would have been better otherwise but that, precisely, one could not do otherwise.” Derrida, “Force of Law”, 282-283.

general strike: “in contrast to this political general strike, the proletarian general strike sets itself the sole task of destroying state power” (2012, 246). The proletarian general strike will undoubtedly be suppressed since it is a strike which is not only illegal, but aims at abolishing law itself<sup>22</sup>.

Benjamin also explores the law-preserving violence from another perspective, the relation between violence as ‘fate’ and human vulnerability. The law-preserving violence is also defined by Benjamin as the mythic violence, in contrast to the divine violence. The mythic violence refers to the harsh truth that the transgression of law, even merely unintentional transgression, makes human life vulnerable to its violence, even the victim is innocent. As Benjamin argues,

How little such divine violence was, to the ancients, the law-preserving violence of punishment is shown by the heroic legends in which the hero--- for example, Prometheus--- challenges fate with dignified courage, fights it with varying fortunes, and is not left by the legend without hope of one day bringing a new law to men. It is really this hero and the legal violence of the myth native to him that the public tries to picture even now in admiring the miscreant (2002, 248). The act of establishing frontiers, however, is also significant for an understanding of law in another respect. Laws and circumscribed frontiers remain, at least in primeval times, unwritten laws. A man can unwittingly infringe upon them and thus incur retribution. For each intervention of law that is provoked by an offense against the unwritten and

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<sup>22</sup> “Understood in this way, the right to strike constitutes in the view of labor, which is opposed to that of the state, the right to use force in attaining certain ends. The antithesis between the two conceptions emerges in all its bitterness in the face of a revolutionary general strike. In this, labor will always appeal to its right to strike, and the state will call this appeal an abuse (since the right to strike was not ‘so intended’) and will take emergency measures. For the state retains the right to declare that a simultaneous use of strikes in all industries is illegal, since the specific reasons for strikes admitted by legislation cannot be prevalent in every workshop. In this difference of interpretation is expressed the objective contradiction in the legal situation, whereby the state acknowledges a violence whose ends, as natural ends, it sometimes regards with indifference but in a crisis (the revolutionary general strike) confronts inimically. For however paradoxical this may appear at first sight, even conduct involving the exercise of a right can nevertheless, under certain circumstances, be described as violent. More specifically, such conduct, when active, may be called violent if it exercises a right in order to overthrow the legal system that has conferred it; when passive, it is nevertheless to be so described if it constitutes extortion in the sense explained above. It therefore reveals an objective contradiction in the legal situation, but not a logical contradiction in the law, if under certain circumstances the law meets the strikers, as perpetrators of violence, with violence.” Benjamin, “Critique of Violence”, 239-240.

unknown law is call “retribution” (in contradistinction to “punishment”). But however unluckily it may befall its unsuspecting victim, its occurrence is, in the understanding of the law, not chance, but fate showing itself once again in its deliberate ambiguity. Hermann Cohen, in a brief reflection on the ancients’ conception of fate, has spoken of the “inescapable realization” that it is “fate’s orders themselves that seem to cause and bring about this infringement, this offense.” Even the modern principle that ignorance of a law is not protection against punishment testifies to this spirit of law, just as the struggle over written law in the early period of the ancient Greek communities should be understood as a rebellion against the spirit of mythic statues (249).

It is “fate’s orders themselves that seem to cause and bring about this infringement, this offense” alludes to the predatory function of the law-preserving violence. In other words, the infringement upon law and the punishment as the consequence of it are merely based upon the result of one’s action, but not the intention. This is also the reason why Benjamin argues that “all the violence imposed by fate, using justified means, were of itself in irreconcilable conflict with just ends”. One will be punished as long as one’s action infringes upon law, regardless of one’s motivation, even if the motivation is righteous. In this sense, the commonsense that “just ends can be attained by justified means, justified means used for just ends” has to be questioned: even justified means could result in unjust ends. This is exactly Derrida’s own argument in *Force of Law*. Combined with Benjamin, as well as Sorel’s advocacy of the proletarian general strike, the Prometheus here has a proletarian-revolutionary character: the proletarian strike will be punished mercilessly since it violates the justified means, or the law, even its motivation is just.

In the second half in “*Force of Law*”, Derrida’s interpretation of Walter Benjamin’s *Critique of Violence* suggests both Derrida’s debt to Benjamin and the divergence between them. First, Benjamin’s argument that law as the justified means does not necessarily result in just ends (247) is identical to Derrida’s own argument that law is not equivalent to justice (244). This is also where Derrida’s thought is in

debt to Benjamin. Namely, Benjamin's analysis of the law-preserving violence explains how the dogma that law as justified means will necessarily result in just ends is paradoxical and self-undermining, and this is also what deconstruction as a methodology purports to. As Derrida indicates, "An effective critique must take issue with the body of law itself, in its head and in its members, with the laws and the particular usages that law adopts under the protection of its power" (275). The purpose of deconstruction is to disclose how the truth which seems self-logical is essentially self-contradictory, paradoxical and therefore is self-undermining. In the case of law, it reveals how law, the justified means with just ends could also be unjust, and the injustice of it is covered by its legitimacy as the justified means. Moreover, Benjamin's critique of the law-preserving violence, especially his critique of militarism and police help Derrida to complete his own theory of law and justice. As Benjamin indicates, to criticize militarism and conscription merely from a pacifist or a human right perspective, arguing that all human should only be treated as ends rather than means, is inadequate, since "instead of attacking the legal system root and branch, they impugn particular laws or legal practices"<sup>23</sup> (242). Militarism has to be understood as part of the law-preserving violence, and the law-preserving logic is deeply inscribed in law. As Derrida indicates, "that which exists, which has consistency and that which at the same time threatens what exists belong inviolably to the same order, and this order is inviolable because it is unique; it can only be violated within itself" (275).

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<sup>23</sup> "Since conscription is a case of law-preserving violence that is not in principle distinguished from others, a really effective critique of it is far less easy than the declamations of pacifists and activists suggest. Rather, such a critique coincides with the critique of all legal violence--- that is, with the critique of legal or executive force---- and cannot be performed by any lesser program. More important is the fact that even the appeal, so frequently attempted, to the categorical imperative, with its doubtless incontestable minimum program--- act in such a way that at all times you use humanity both in your person and in the person of all others as an end, and never merely as a means--- is in itself inadequate for such a critique. For positive law, if conscious of its roots, will certainly claim to acknowledge and promote the interest of mankind in the person of each individual. It sees this interest in the representation and preservation of an order imposed by fate. While this view, which claims to preserve law in its very basis, cannot escape criticism, nevertheless all attacks that are made merely in the name of a formless "freedom" without being able to specify this higher order of freedom remain impotent against it. And they are most impotent of all when, instead of attacking the legal system root and branch, they impugn particular laws or legal practices that the law, of course, takes under the protection of its power, which resides in the fact that there is only one fate and that what exists, and in particular what threatens, belongs inviolably to its order." *Ibid.*, 241-242.

But what Derrida does to differentiate his own thought from Benjamin is that he furthers Benjamin's critique of the law-preserving violence, militarism, police and death penalty by blurring Benjamin's original distinction between the law-founding violence and the law-preserving violence: in Benjamin's original account, the law-preserving violence, especially the police as the degeneration of it, is what makes the law-founding violence depoliticized; the law-founding violence therefore becomes institutionalized and loses its original vitality. Rather than understanding law-preserving violence as a kind of degeneration of the law-founding violence, in Derrida's view, the hypocrisy of law, its apparent legitimacy and its essential injustice, and its self-defending mechanism, the law-preserving violence, is already part of the law-founding violence, or is already part of law when law is initially established<sup>24</sup>. Or, in a Derridian language, this iterability, the self-correct and self-repeated legitimacy of law, "inscribe preservation in the essential structure of foundation" (278).

In fact, for Benjamin, the relation between law-founding violence and law-preserving violence is merely part of his hierarchy of violence, in which the divine violence, a totally non-secular force, takes the top position in it. The relation between these three types of violence is like a chain of degeneration: the law-preserving violence, the violence which has merely secular utility as a means adopted by the state apparatus to oppress civil disobedience, is at the bottom of Benjamin's hierarchy. What is in the middle is the law-founding violence, the

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<sup>24</sup> As Derrida indicates: "For beyond Benjamin's explicit purpose, I shall propose the interpretation according to which the very violence of the foundation or positing of law must envelop the violence of the preservation of law and cannot break with it. It belongs to the structure of fundamental violence in that it calls for the repetition of itself and founds what ought to be preserved, preservable, promised to heritage and to tradition, to partaking. A foundation is a promise. Every positing permits and promises, posits ahead; it posits by setting and by promising. And even if a promise is not kept in fact, iterability inscribes the promise as guard in the most irruptive instant of foundation. Thus it inscribes the possibility of repetition at the heart of the originary. Better, or worse, it is inscribed in this law of iterability; it stands under its law or before its law. Consequently, there is no more pure foundation or pure position of law, and so a pure founding violence, than there is a purely preserving violence. Positing is already iterability, a call for self-preserving repetition. Preservation in its turn refounds, so that it can preserve what it claims to found. Thus, there can be no rigorous opposition between positing and preserving, only what I will call (and Benjamin does not name it) a differential contamination between the two, with all the paradoxes that this may lead to. No rigorous distinction between a general strike and a partial strike, nor, in George Sorel's sense, between a general political strike and a general proletarian strike. Deconstruction is also the thought of this differential contamination--- and the thought taken by the necessity of this contamination." Derrida, "Force of Law", 272.

violence as antagonism, the origin of law as the balance between power or negotiation. But what is superior to both of them is the divine violence, the violence which resembles George Sorel's general proletarian strike, which only punishes the vicious without hurting the just. As Benjamin contends:

Far from inaugurating a purer sphere, the mythic manifestation of immediate violence shows itself fundamentally identical with all legal violence, and turns suspicion concerning the latter into certainty of the perniciousness of its historical function, the destruction of which thus becomes obligatory. This very task of destruction poses again, ultimately, the question of a pure immediate violence that might be able to call a halt to mythic violence. Just as in all spheres God opposes myth, mythic violence is confronted by the divine. And the latter constitutes its antithesis in all respects. If mythic violence is law-making, divine violence is law-destroying; if the former sets boundaries, the latter boundlessly destroys them; if mythic violence brings at one guilt and retribution, divine power only expiates; if the former threatens, the latter strikes; if the former is bloody, the latter is lethal without spilling blood. For with mere life, the rule of law over the living ceases. Mythic violence is bloody power over mere life for its own sake; divine violence is pure power over all life for the sake of the living. The first demands sacrifice, the second accepts it (249-250).

This clear elaboration of the difference between divine violence and mythic violence reveals Benjamin's attitude toward justice and law: almost like Derrida, Benjamin appeals to a kind of justice beyond law, or the corrupted law as the mythic/the law-preserving violence, the force of the police. This appeal draws a clear distinction between the secularly unjust and the divinely righteous. Namely, if the secular world is corrupted and unjust, there has to be a kind of justice beyond or transcending secular authority.

Besides *The Critique of Violence*, Benjamin adopts a similar logic in *The Task of Translation*, in dealing with the problem of the possibility of rendering one language into another completely. For Benjamin, the notion that the task of translation

is to render one language into another one is essentially wrong. It is always impossible to completely render a text from one language into another one. Thus, in Benjamin's view, the translator should understand translation as understanding the language from which one translates and the language into which one translates as parts of a bigger whole, a kind of pure language which transcends all specific languages but simultaneously reveals itself in every language. As Benjamin argues:

Fragments of a vessel that are to be glued together must match one another in the smallest details, although they need not be like one another. In the same way a translation, instead of imitating the sense of the original, must lovingly and in detail incorporate the original's way of meaning, thus making both the original and the translation recognizable as fragments of a greater language, just as fragments are part of a vessel. A real translation is transparent; it does not cover the original, does not block its light, but allows the pure language, as though reinforced by its own medium, to shine upon the original all the more fully (2002, 260).

The significance of the pure language as a meta-language of all languages in translation is that it preserves the particularity/non-translatability of every language when one attempts a translation of it. It makes a coexistence of two languages in a translation possible, but this coexistence of the two languages is based upon the assumption that they are representations of a more primordial language. Likewise, only the divine violence can preserve the particular life of each individual, since the secular use of violence by state only sacrifices human life when law is violated by an individual life, even this violation does not deserve such a severe punishment/retribution, or in Benjamin's own language, "mythic violence is bloody power over mere life for its own sake, but divine violence is pure power over all life for the sake of the living" (250). In one word, for Benjamin, this perfect unification of a meta-language and particular languages, or a unification of divinity and individual human life is possible and is the only way to preserve the particularity of a language or an individual life.

The critique of the metaphysical assumption behind this perfect unification of the particularity of language/individual life and meta-language/divinity is where Derrida distances his position from Benjamin. In Derrida's view, this metaphysical device that Benjamin adopts in his critiques of translation and mythic/state violence only makes the use of language by translator or the use of violence by state a kind of usurpation of the orthodox or a superfluous supplement of the original, and therefore does not really help to disclose the operation of law itself or the possibility/impossibility of translation. The critique of this metaphysical device, which plays a pivotal role in Derrida's deconstruction, already happens in his early work *Of Grammatology*. As Derrida indicates, the dichotomy of civilization and nature is where Levi-Strauss's anthropology overlaps Rousseau, since both of them insist that the pure nature of human world could be corrupted by civilization. Especially, in Levi-Strauss's anthropological research, this corruption of nature by civilization is how the European colonization of the non-European world happens: by introducing 'western civilization' to the native Nambikwara people, the European colonizers corrupt the uncontaminated native mind. This corruption of nature, according to Levi-Strauss, could be represented by an experiment that the anthropologist has with the native children: the native Nambikwara people have their own names but the use of their names is prohibited; when the anthropologist allows them to use their names, they begin to take revenge upon their enemies by telling the anthropologist secretly the name of one's enemy as a way to revenge (2016, 120). In *Of Grammatology*, Derrida's critique of the nature/civilization binary is mainly from the perspective of metaphysics, but the political implication of his critique of Levi-Strauss's anthropological research is further developed by Gayatri Spivak in her post-colonial studies of India. To imagine the non-European natives as either the barbarous, the morally inferior kind or the people with uncorrupted nature, the morally superior kind, fails to take into account the 'non-representability' of the voice of the non-European natives themselves. This is also what Spivak's most celebrated theory 'can the subaltern speak' means: it does not suggest that the true voice of the Indians is deliberately manipulated by European colonizers so that the task of the

post-colonial researchers is to rescue the deliberately forgotten voice of the Indian subalterns from the narration of the European agents; on the contrary, what it indicates is that the voice of the subalterns can never be fully represented, via either the perspective of the Europeans or a ‘native perspective’ as Levi-Strauss advocates. Likewise, to merely condemn the use of violence by state as the ‘corruption’ of violence, the ‘degeneration’ of divine violence, or as morally inferior to divine violence, does not help to penetrate into the mechanism of law itself, namely, how law could be unjust, just like what Pheng Cheah demonstrates in his field work of Singaporean labor.

Derrida’s suspicion of Benjamin’s divine violence in “Force of Law”, which, as a kind of extraordinary remedy for the corrupted secular violence, the law-preserving violence, especially the violence of the police, parallels his critique of Benjamin’s pure language in “Des Tours de Babel”, which, as a solution to the problem concerning the impossibility of rendering completely one language into another one. The authoritarian character of both the divine violence and the pure language suggests the divergence between Benjamin and Derrida: though Benjamin deals with the kind of question that Derrida is interested in, deconstruction is a radically democratic gesture which is irreconcilable with any type of, either apparent or potential, authoritarianism. In this sense, Derrida’s reinterpretation of Benjamin’s “Critique of Violence” has a broader implication, which suggests the difference between his point of view and modern European anti-democratic thoughts. The argument that Derrida makes in “Force of Law”, namely, law is not equivalent to justice, is also made exactly by two anti-democratic thinkers in the 20<sup>th</sup> century, Leo Strauss and Carl Schmitt, whose thoughts share great similarity with Walter Benjamin’s order of violence which positions the divine violence as morally superior to the secular use of violence by state. What these three thinkers have in common is that for all of them, the rule of law is not equivalent to justice or is insufficient for justice, and the critique of the rule of law is used by them as a rationale to advocate certain type of political-religious authority: namely, for all of them, justice could only be represented by a kind of supreme authority, rather than by law as a kind of

man-made instrumental mean for maintaining secular order. This purely just authority could be either the divine violence in Benjamin's Critique of Violence, or the rule of the wise man in Leo Strauss's account, or the sovereignty in Carl Schmitt's view<sup>25</sup>. But what Derrida means is totally different: it means the possibility of certain

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<sup>25</sup> To compare Leo Strauss's point of view of justice and law with Benjamin and Derrida on the same issue is illuminating, though Leo Strauss's question is not exactly the same as what Benjamin and Derrida deal with here. For instance, in *On Tyranny*, a reinterpretation of ancient Greek philosopher Xenophon's dialogue *Hiero, or Tyrannicus*, Leo Strauss points out that a liberal society with democracy and rule of law is potentially unstable and will possibly degenerate into tyranny, and this kind of degeneration is due to the moral/intellectual incompetence of the majority of average people. Leo Strauss's political philosophy is based upon a Platonic view of social psychology. Namely, there is a strong correlation between the mental order, the order of the soul of people and the social order, or between the internal world and the external world. If the concern of the majority of people in a society is merely power, wealth and vanity, the society will easily degenerate into tyranny, since people will naturally worship the one who is able to enrich and empower them by his own wealth and authority. Leo Strauss's point of view is even more "pessimistic" than Plato in a sense that in his view, in any human society, there is merely a very small number of people, a really "minority" who are morally and intellectually competent in a Platonic sense: namely, their life is a self-perfection of virtue and pursuit of wisdom. Based upon this assumption, Leo Strauss argues that the best society, or the only way to completely prevent a society from degenerating into tyranny, is to let this tiny amount of "noble-minds" rule the majority of the average mediocre. However, since the elites have completely no interest in politics and are really sick of the majority of the mediocre, they are unwilling to bear the burden of saving a society from its potential tyranny. Thus, the rule of law is the only practicable solution but is merely the second best. As Leo Strauss indicates, "It is obvious that absolute rule of the unwise is less desirable than their limited rule: the unwise ought to rule under law. But in the absence of absolute rule of the wise on the one hand, and on the other hand of a degree of abundance which is possible only on the basis of unlimited technological progress with all its terrible hazards, the apparently just alternative to aristocracy open or disguised will be permanent revolution, i.e., permanent chaos in which life will be not only poor and short but brutish as well. It would not be difficult to show that the classical argument cannot be disposed of as easily as is now generally thought, and that liberal or constitutional democracy comes closer to what the classics demanded than any alternative that is viable in our age. In the last analysis, however, the classical argument derives its strength from the assumption that the wise do not desire to rule." See, Strauss, Leo. *On Tyranny*. New York: The Free Press, 1991, 193-194. Based upon this, Leo Strauss also makes the argument that law is not equivalent to justice. Ibid., 103-105. But his rationale to make this argument is not that law itself is unjust, like being contaminated by racism, for instance. His rationale is that law is not able to prevent a society from degenerating into tyranny, and this is due to the moral/intellectual incompetence of the majority of people, not because of the imperfection of law itself. Besides this, Benjamin makes a very similar point in Critique of Violence, in terms of the sanctity of life, and it is mentioned by Derrida in Force of Law. As Benjamin contends, to argue that the dignity of man relies upon the biological life of man is wrong, since the value of human being is more than the mere biological life: "man cannot, at any price, be said to coincide with the mere life in him, any more than it can be said to coincide with any other of his conditions and qualities, including even the uniqueness of his bodily person." Benjamin, "Critique of Violence", 251. As Derrida indicates, "in other words, what makes the worth of man, of his Dasein and of his life, is that he contains the potential, the possibility of justice, the avenir of justice, the avenir of his being-just, of his having-to-be just. What is sacred in his life is not his life but the justice of his life, say Benjamin; this critique of vitalism or biologism, if it also resembles one by a certain Heidegger and if it recalls some Hegel propositions, here proceeds like the awakening of a Judaic tradition." Derrida, "Force of Law", 289. The difference that Benjamin makes here between the biological life of human and the dignity of human based upon one's just character is exactly a Straussian point. Also, both Walter Benjamin and Leo Strauss are German Jewish thinkers. In a footnote, Derrida also mentions that Carl Schmitt has a similar point.

resistance, revolution or insurrection against the legally legitimized injustice. This does not mean that there is totally no overlapping between Derrida and these three thinkers. An apparent common ground between them is that all of them object to liberalism or modernity for which the rule of law is the synonym of justice. But their critiques of liberalism/modernity run into totally different directions. In fact, both Fascism and Marxism are discontents of liberalism/modernity. Derrida is certainly not unaware of this. In “Force of Law”, Derrida does not talk about Leo Strauss, but he refers to the friendship between Walter Benjamin and Carl Schmitt, the intellectual debt that Schmitt owes to Benjamin, as well as the rise of Nazism during the same period and Carl Schmitt’s notorious association with it, and these already suggest Derrida’s attitude toward them<sup>26</sup>. In Derrida’s view, Benjamin’s divine violence has a

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<sup>26</sup> “Zur Kritik der Gewalt is not only a critique of representation as perversion and fall of language, but of representation as a political system of formal and parliamentary democracy. From that point of view, this “revolutionary” essay (revolutionary in a style that is at once Marxist and messianic) belongs, in 1921, to the great antiparliamentary and anti- “Aufklärung” wave upon which Nazism will have, as it were, surfaced and even “surfed” in the 1920s and the beginning of the 1930s. Carl Schmitt, whom Benjamin admired and with whom he maintained a correspondence, congratulated him for this essay” Ibid., 259; “The chronology of such events cannot be taken for granted. And one will always find ways to support the hypothesis according to which Benjamin, already in 1921, was thinking about nothing other than the possibility of this final solution that all the better challenges the order of representation since it would perhaps have belonged in his eyes to radical evil, to the Fall as the fall of language in representation. There are many signs that indicate, were one to trust the constant logic of his discourse, that for Benjamin, after this unrepresentable thing that the ‘final solution’ will have been, not only are discourse and literature and poetry not impossible but more originarily and more eschatologically than ever, they would see themselves open to the dictation of the return or the still promised advent of a language of names, a language or a poetics of appellation, in opposition to a language of signs, of informative or communicative representation.” Ibid., 260. “It is in this context that certain limited but determinate affinities between Benjamin’s text and some texts by Carl Schmitt, and even by Heidegger, seem to me to deserve a serious interrogation. Not only because of the hostility to the Aufklärung, because of a certain interpretation of the polemos, of war, violence and language, but also because of a thematic of “destruction” that was very widespread at the time. Although Heideggerian Destruktion cannot be confused with the concept of “destruction” that was also at the center of Benjaminian thought, one may well ask oneself what such an obsession thematic might signify, what it prepares or anticipates between the two wars, all the more so in that, in every case, this destruction also sought to be the condition of an authentic tradition and memory.” Ibid., 261; “that is, the sense of a return to the past of a purer origin. This equivocation is typical enough to have fed many revolutionary discourses on the right and the left, particularly between the two wars. A critique of ‘degeneration’ (Entartung) as critique of a parliamentarism powerless to control the police violence that substitutes itself for it, is indeed a critique of violence on the basis of a ‘philosophy of history’: a putting into archeo-teleological, indeed, archeo-eschatological perspective that deciphers the history of law as a decline or decay (Verfall) since the origin. The analogy with Schmittian or Heideggerian schemes does not need to be emphasized. This triangle would have to be illustrated by a correspondence, I mean the epistolary correspondence that linked these three thinkers (Schmitt/Benjamin, Heidegger/Schmitt). It is still a matter of spirit and of revolution.” Ibid., 281-282.

Fascistic potentiality, though it seems more benevolent and righteous than Carl Schmitt's open claim of statism.

The Derridian critique of law and violence here should be distinguished from another similar sort of critique, namely, Giorgio Agamben's theory of inclusive exclusion, the state of exception, sovereignty and bared life in his *Homo Sacer* series. For Agamben, violence against a group of people begins when law is suspended by sovereignty. In other words, Agamben assumes that law and sovereign power are in the same institutional hierarchy in which sovereign power takes a position that is superior to law. In this sense, law is manipulable by sovereign power. On the other hands, for Agamben, the fact is not that everyone is equally protected by law. Namely, for those people whose life is not legally protected, the violence against them by sovereign power does not violate the law which protects the 'insiders', or the legal citizens. Rather than protected by law, the 'outsiders' in a society is often directly managed by sovereign power itself, in the form of deportation, imprisonment, or even concentration camp. However, when Derrida argues that law is inseparable from violence, this entanglement of law and violence does not indicate a suspension of law by another institutionally superior power. In other words, the problem that Derrida deals with in "Force of Law" is not a problem of sovereignty and law, or how law could be manipulated by sovereign power<sup>27</sup>. What Derrida wants to question is the normativity of law itself: namely, the legal criterion to differentiate what is just from what is unjust, or the violence against which group of people could be defined as

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<sup>27</sup> "The very emergence of justice and law, the instituting, founding, and justifying moment of law implies a performative force, that is to say always an interpretative force and a call to faith: not in the sense, this time, *that law would be in the service of force, its docile instrument, servile and thus exterior to the dominant power, but rather in the sense of law that would maintain a more internal, more complex relation to what one calls force, power or violence. Justice—in the sense of droit (right or law)--- would not simply be put in the service of a social force or power, for example an economic, political, ideological power that would exist outside or before it and that is would have to accommodate or bend to when useful.* Its very moment of foundation or institution, besides, is never a moment inscribed in the homogeneous fabric of a story or history, since it rips it apart with one decision. Yet, the operation that amounts to founding, inaugurating, justifying law, to making law, would consist of a coup de force, of a performative and therefore interpretative violence that in itself is neither just nor unjust and that no justice and no earlier and previously founding law, no preexisting foundation, could, by definition, guarantee or contradict or invalidate. No justificatory discourse could or should ensure the role of mater-language in relation to the performativity of institutive language or to its dominant interpretation." Ibid., 241-242.

violence or an unjust action, but the violence against what kind of people is often not identified as violence or as the unjust. As Derrida indicates, the criterion of the just and the unjust, the violent and the non-violent, is a kind of normativity that is immanent in law, or is inherently inseparable from law. If racism could be an example of this, in a Derridian view, the violence against ethnical minorities which is not recognized as violence is the violence legitimized by law itself. In other words, racial prejudice is inseparable from law and this is the origin of violence. For Derrida, the Agambenian understanding of law, sovereign power and violence merely opposes law to sovereign power as the origin of violence, and thus fails to see the complexity of the normativity of law: to merely argue that sovereign power could violate the life of certain people without violating the law which protects the majority of legal citizens fails to see how the criterion of the 'insiders' and the 'outsiders' are legitimized by law itself, and the violation of the life of the 'outsiders' could be legitimized by law without the suspension of law by sovereign power.

## Chapter Two

### **The Deconstructable and the Non-Deconstructable: Human Finitude and The Possibility of Justice**

The ultimate question which could possibly be raised by Derrida's essay "Force of Law" is if Derrida has his own normative ideal of justice when he makes the claim that law is not equivalent to justice. Or, if Derrida rejects both the superstition that law is equivalent to justice and certain type of "divine justice" beyond secular law, what kind of 'justice' beyond the unjust law is imagined by Derrida as a possible remedy for the unjust? In *Radical Atheism: Derrida and the Time of Life*, Martin Hagglund makes a significant clarification in terms of Derrida's 'ideal of justice', in "Force of Law", for instance. In this book, Hagglund objects to all the arguments which make the claim that Derrida has his own 'ideal justice'. As Martin Hagglund indicates, any type of the ideal of justice is untenable for Derrida. This does not suggest that Derrida is a 'relativist', in a sense that what is just and what is unjust makes no difference for him. In fact, the critique of the unjust law in "Force of Law" already indicates that Derrida's viewpoint of justice is at least not, though not completely coterminous with, irreconcilable with the Kantian deontology that man could only be treated as ends rather than be used as means. In Hagglund's view, what Derrida fights against is the attempt to eliminate the unjust or to cease violence by replacing evil with certain type of 'permanent good', namely, a kind of a-temporal norm of justice. In this view, the human world is always constituted by certain 'evil', or even the 'radical evil' in a Kantian sense, and therefore justice is only a possibility which has as its equivalent possibility the possibility of evil, a kind of 'lesser unjust' or 'lesser violent', rather than a kind of 'permanent good' which transcends time and allows no deviation from its ideal. The ideal norm of justice could always be killed or disproved when certain type of evil appears unexpectedly. In other words, if we expect the improvement, the lesser unjust or the lesser violent, to be a possibility in future, we should also acknowledge the harsh truth that evil is also an inevitable

possibility which is constitutive of the human condition<sup>28</sup>. Thus, in the case of Walter Benjamin, Carl Schmitt and George Sorel, their critique of the law-preserving violence, the force of the police or the parliamentary democracy contributes to Derrida's thinking, since they prove how the normative could also be the unjust. But their solutions to these problems are not thereby fully compelling: in Derrida's eyes, they all appeal to a kind of a-temporal/a-historical ideal of justice which denigrates not only the possibility of evil, but also the possibility to make improvement.

Hagglund's contribution is that he highlights Derrida's apparent objection to a-historical, timeless, transcendent ideals, as well as Derrida's thought on temporality, possibility, contingency and finitude which could be traced back to the origin of his thought, namely, Heidegger in *Being and Time*. However, I would like to propose a more complex view of Derrida's overall project. In fact, Derrida draws a distinction between what is 'deconstructable' and what is not 'deconstructable'. The 'deconstructable' is the kind of ideal which pretends to be universally valid truth but has its own finitude. Hence, this kind of ideal will be deconstructed, as long as its own finitude is revealed. In other words, as long as other alternative possibilities are revealed, its self-proclaimed 'universal truth' becomes invalid or unjustifiable. Derrida's critique of 'hospitality', his critique of Levinas in "Violence and Metaphysics", as well as his critique of Walter Benjamin's 'pure language' in 'Des Tours de Babel' are examples of this procedure<sup>29</sup>. However, besides this, Derrida also

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<sup>28</sup> Hagglund suggests this in many places throughout his book. Here is an example: "Analogously, Derrida maintains that there can be no justice without the coming of time. the coming of time makes justice possible, since there would be no question of justice without unpredictable events that challenge the generality of the law. But by the same token, the coming of time makes absolute justice impossible, since it opens the risk that one has made or will have made unjust decisions. When Derrida argues that the coming of time is the un-deconstructable condition of justice, he thus emphasizes that it is a 'de-totalizing condition,' which inscribes the possibility of corruption, evil, and mischief at the heart of justice itself. if this impossibility of absolute justice were to be overcome, all justice would be eliminated" See Hagglund, Martin. *Radical Atheism: Derrida and the Time of Life*, Stanford: Stanford University Press, 2008, 123.

<sup>29</sup> As Derrida indicates in "Violence and Metaphysics", "It is evident to separate the original possibility of speech--- as non-violence and gift--- from the violence necessary in historical actuality is to prop up thought by means of transhistoricity; which Levinas does explicitly, despite his initial critique of Husserlian 'ahistoricism'; the ahistoricity of meaning at its origin is what profoundly separates Levinas from Heidegger, therefore. Since Being is history for the latter, it is not outside difference, and thus, it originally occurs as (nonethical) violence, as dissimulation of itself in its own unveiling" In Derrida, Jacques. *Writing and Difference*, Chicago: The University of Chicago Press, 1978, 148.

talks about those ideals which cannot be deconstructed. Derrida's idea of justice in "Force of Law" is one of the best examples of this. As Derrida indicates, law is deconstructable, but justice is not. This does not suggest that the 'un-deconstructable' is certain type of transcendent ideal which always remains the same. This kind of ideal, as Derrida indicates, has to have 'auto-immunity' as part of itself. The Derridian lexicon of 'auto-immunity' means that nothing can always remain the same, and everything has to survive by certain type of self-mutilation, self-killing, or to transmute itself by incorporating what is initially 'heterogeneous' to it into itself. Justice in "Force of Law" is an example of this: there is no such kind of 'transcendent justice' which transcends all institutional settings. Justice could only be embodied in a type of law. Or, as Michael Naas contends, "this autoimmunity of democratic practices stems not from the fact, let me underscore, that democratic practices can never 'live up to ' the true, democratic ideal, but from the fact that these practices must put to work an 'ideal' that, as we have seen, has nothing proper about it" (2008,137). This is also the reason why Derrida makes an apparently self-contradictory claim in "Force of Law": namely, on the one hand, law is not equivalent to justice and it could be unjust; but, on the other hand, there is no justice beyond law, and only legally legitimized justice is justice. In one word, justice, no matter how 'idealistic' it is, has to accept the imperfect reality, or to accept the unjust law as its 'body', its secular incarnation, or, it can only survive in an imperfect, unjust world by incorporating the unjust into itself. This sounds pessimistic but is not the whole story yet. Based upon this, Derrida makes a further claim that this status of the unjust will be interrupted by another possibility of justice, a kind of 'radical alterity' in future. The process of this has been detailed by me in the first half of this thesis, with the help of the case presented by Pheng Cheah's Derrida-inspired Post-Colonial Study work *Inhuman Conditions*. In one word, justice could survive and remains 'un-deconstructable', but it survives via a quasi-Hegelian transformation of the 'negation of negation', which finally negates the first negation, the reluctant acceptance of the unjust and brings justice back.

In this sense, the problem of Martin Hagglund's reading is that he exaggerates the possibility of evil as an equal chance in comparison to the possibility of good or justice in Derrida's thought. Thus, his reading makes Derrida more pessimistic. In Hagglund's view, good and evil as equal possibilities and both of them are not under the control of human power. In other words, the possibility of justice is merely a chance or possibility for Derrida, rather than a kind of substantive improvement. What people can do is not to attempt any change to the 'unjust', though the attempt could be frustrated, but is merely to accept the possibilities passively, either the possibility of good or evil. This reading in fact deviates from Derrida's original meaning in a sense that Derrida does not treat both good and evil as random possibilities and what people can do is merely to accept the chance. Derrida has more faith in the possibility of justice rather than the possibility of evil, though in his view, the effort to make the possibility of justice realizable could always be contaminated or frustrated by certain unpredictable evil. Derrida's faith in the possibility of justice is embodied in the 'un-deconstructable', which is expected by Derrida to survive in future.

## **2.1. Cosmopolitanism Deconstructed: Translatability and Hospitality**

Derrida's critique of Walter Benjamin's "The Task of the Translator" in "Des Tours de Babel" is an example to illustrate what is 'deconstructable' in Derrida's view. Benjamin's purpose to assume a 'pure language' which is like an 'invisible whole', transcending and subjugating two languages as parts to its totality is to assume that the existence of such a pure language guarantees the objectivity of translation (117). Otherwise, if without such a pure language, the translation is partial or unjust, losing the original meaning of the text in another language. However, in Derrida's view, the pure language cannot play the role that Benjamin expects it to play, and the objectivity of translation does not really exist. This certainly does not suggest that a faithful and an unfaithful translation make no difference for Derrida. The Derridian viewpoint is that the norm or criterion of "faithful" translation is hard to be clearly and exactly defined. In other words, there could only be a more faithful translation, a less unfaithful translation, or a more unfaithful translation, a less faithful translation, but not an absolutely faithful translation. In this sense, to assume that a pure language exists and guarantees the objectivity or faithfulness of the translation merely, in Derrida's view, closes all possibilities of improvement, as well as all possibilities of regression, since both a better and a worse translation is the possibility of a translation. A possible better translation could only happen if we assume that the absolutely faithful translation between two languages does not really exist, or any translation is in certain sense 'unfaithful' to or 'unjust' for the original. This also echoes Derrida's theory that democracy is always "to come", since translation itself is inseparable from politics. For instance, in the English-speaking world, any English translation of text written in other languages could not be absolutely faithful to or do justice to its original meaning. This creates a non-democratic relation between English and other languages, but this non-democratic relation is also open to improvement, or to democracy. This is also the reason why for Derrida, the Genesis story that God destroys the ambitious project of building the Babel Tower which connects between heaven and earth, transforming the worldly-shared single language into a variety of

different tones and disseminating people all over the world is a ‘deconstructive’ and also righteous action. As Derrida indicates,

In seeking to “make a name for themselves,” to found at the same time a universal tongue and a unique genealogy, the Semites want to bring the world to reason, and this reason can signify simultaneously a colonial violence (Since they would thus universalize their idiom) and a transparency of the human community. Inversely, when God imposes and opposes his name, he ruptures the rational transparency but interrupts also the colonial violence or the linguistic imperialism. He destines them to translation, he subjects them to the law of a translation both necessary and impossible; in a stroke with his translatable-untranslatable name he delivers a universal reason (it will no longer be subject to the rule of a particular nation), but he simultaneously limits its very universality: forbidden transparency, impossible univocity (111).

The Derridian reading of this story associates divinity with human plurality and justice for ethnic minorities. In particular, the translation as “both necessary and impossible” illustrates what Hagglund indicates, namely, the translation between different languages is still malleable and is open to possibilities, even better or even worse.

The Genesis story in “Des Tours de Babel” could also be read as revealing human finitude in front of God. When God ‘deconstructs’ the tower He is also forcing people to accept their own finitude. We, as humans, could never be perfect, in either the moral or the intellectual sense of the term. Therefore, the ambition to build a tower reaching until the heavens implies the ambition to have an empire with all people speaking the same language and can only be a kind of ‘profanation’. The over-ambitious project of the tower, which symbolizes a variety of political projects to establish a nation with one language, one religion, one ethnical identity, and a self-enclosed territory is merely an “idol”. Human finitude suggests that certain kind of “evil” or “violence” is inseparable from human action, just as Martin Hagglund indicates repeatedly throughout his book. In this view, the translation which could

never fully represents the meaning of the text in its original language is also due to the finitude of the translator which could not be overcome by human intelligence. Benjamin's assumption of the 'pure language,' on this reading, transcends all languages and meanwhile guarantees the objectivity of translation. It would thus seem to suggest his unwillingness to acknowledge human finitude, a finitude, again which cannot be overcome by any individual translator. Moreover, this finitude could not be overcome by assuming the existence or construction of a 'meta-language' either.

Noticeably, the Derridian God in "Des Tours de Babel" does not represent a kind of 'absolute justice' or another normative ideal of justice, in contrast to a corrupted and unjust secular world, like Walter Benjamin's divine violence or Leo Strauss's absolute rule of the wise man. The role that God plays in this context is only to reveal the fragility of a humanly self-legislated ideal norm of justice. In this sense, no ideal norm of justice is immune to the invasion of certain type of 'evil' or even 'radical evil'. The cosmopolitan project which is symbolized by the tower could also transmute into a kind of tyranny. One should recall that both right-wing totalitarianism, Nazism, and left-wing totalitarianism, Stalinism, used to proclaim that they were establishing their imagined, self-indulgent cosmopolitan projects, which were actually based upon the sacrifice of innumerable human lives. This is also the difference between the Derridian God invoked in "Des Tours de Babel" and Benjamin's divine violence in his "Critique of Violence". As I mentioned above, in "Force of Law: The Mystical Foundation of Authority", Derrida links Benjamin's divine violence to Carl Schmitt's statism, as well as to Nazism which rises almost at the same time when this piece is completed. Here Derrida is not confusing the difference between Benjamin's divine violence and Schmitt's statism (they are different, in fact), nor does he insinuate that Benjamin's theory of the divine violence might be seen as the intellectual origin of Nazism. Far from it, Derrida's purpose is to suggest that any type of the ideal norm of justice, no matter how idealistic, like Benjamin's divine violence, is not immune to certain unexpected invasion or contamination of evil, such as Nazism, for instance. As Derrida indicates in *The Gift of Death*, the absolute

responsibility for God is always inseparable from the violence against others. As Derrida argues,

The place where the sacrifice of Abraham or of Isaac is said to have occurred is therefore a holy place but also a place that is in dispute, radically and rabidly, fought over by all the monotheisms, by all the religions of the unique and transcendent God, of the absolute other. These three monotheisms fight over it, it is useless to deny it by means of some wide-eyed ecumenism; they make war with fire and blood, have always done so and all the more fiercely today, each claiming its particular perspective on this place and claiming an original historical and political interpretation of Messianism and of the sacrifice of Isaac. The reading, interpretation, and tradition of the sacrifice of Isaac are themselves sites of bloody, holocaustic sacrifice. Isaac's sacrifice continues every day. Countless machines of death wage a war that has no front (2008, 70).

Thus, the Derridian God does not give an absolute ideal to human. the Derridian God in fact makes himself as a 'differance', interrupting unexpectedly the norm in the human world or the progress of human history, and revealing the finitude of human.

The question raised in "Des Tours de Babel" is picked up in Derrida's another piece titled "Hostipitality". If the 'pure language' as a meta-language of all languages in "Des Tours de Babel" represents a kind of 'pseudo-cosmopolitanism', then the same can be said of 'hostipitality' in this later essay. When people say that one should welcome others or be hospitable to others, this gesture of 'welcoming' is often preconditioned by another gesture, namely, invitation: only the invited guests are welcomed but not the unexpected visitors. The gesture of welcoming or hospitality needs to be deconstructed when this limitation of it is revealed. In Derrida's view, this pseudo- or hypocritical hospitality is always preconditioned by the "unexpected visiting of strangers". In other words, the visitation of the invited guests is merely one possibility; if hospitality merely includes this type of visitors, it becomes potentially exclusive of the possibility of the unexpected visiting. Just like the translator always owes a debt to the language from which s/he translates, the

practice of welcoming or being hospitable always owes a debt to the unexpected strangers (380-381). As Derrida indicates, this debt to the strangers is also the debt of 'forgiveness': the host should ask the strangers, the unexpected visitors being abandoned by him for their forgiveness<sup>30</sup> (389). In this sense, forgiveness, as well as hospitality, reveals the connection between subjectivity and inter-subjectivity. In Derrida's view, intersubjectivity is not the continuation of subjectivity. The truth is the opposite: intersubjectivity is the underpinning of subjectivity. In other words, one's ego, or one's 'cogito ergo sum' is always underpinned by one's debt to another ego. For illustrating this, Derrida puts great emphasis upon the impossibility of being forgiven. The impossibility of being forgiven does not suggest a type of unwillingness in an emotional sense, as if the hatred between one and another one is too strong to be reconciled<sup>31</sup>. Rather, it suggests an existential situation which underpins everyone's ego: as long as I realize that my selfhood is constituted by the debt that I owe to others, or the forgiveness that I ask from others, I cannot be egoistic and my 'cogito ergo sum' is deconstructed<sup>32</sup> (391). The pseudo-cosmopolitanism is also a kind of 'collective egoism', just like the debt that Nazism owes to the Jews.

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<sup>30</sup> "Thus, I have to ask the host for forgiveness because, unable to ever receive and give him enough, I always abandon him too much, but inversely, in asking the other for forgiveness and in receiving him the forgiveness of him, I abandon myself to him". See Derrida, Jacques. "Hospitality." In *Acts of Religion*, edited by Gil Anidjar, 356-420. London: Routledge, 2002, 389.

<sup>31</sup> "I have to ask, therefore, for forgiveness even before committing a determinable fault. One can call this original sin prior to any original sin, prior to the event, real or mystical, real or phantasmatic, of any original sin". Ibid., 388.

<sup>32</sup> "Such that the rapport to forgiveness is no longer a secondary, contingent, moment in a kind of chapter of ethics, it is rather constitutive of my being-myself in my rapport with the other. I have to ask for forgiveness for being myself, before asking for forgiveness for what I am, for what I do or what I have. This 'forgiveness to be asked for' belongs to a kind of 'cogito,' 'ego cogito': as soon as I say I, even in solitude, as soon as I say ego cogito, I am in the process of asking for forgiveness or of being forgiven, at least if the experience lasts for more than an instant and temporalizes itself". Ibid., 391.

## 2.2. Justice beyond Cosmopolitanism: Specters of Marx and Spectral Nationality

Derrida's notion of justice in "Force of Law" illustrates what is not deconstructable in his view, and Derrida's argument concerning justice in "Force of Law" is further developed in *Specters of Marx: The State of the Debt, the Work of Mourning and the New International*, a book that is dedicated to the revitalization of the revolutionary and emancipatory ideal of Marxism in the post-totalitarian, neo-liberal world. The historical transition which is addressed by Derrida in *Specters of Marx* now has already been addressed by numerous works from the Left-Wing: the end of Soviet totalitarianism does not necessarily mean the end of the revolutionary and emancipatory spirit of Marxism. On the contrary, the social inequality, especially global inequality which results from the tremendous increasing of capitalism and the expansion of global market in the current post-cold-war era conjures up the spirit of Marxism. Global capitalism or Neo-Liberalism instigates its world-wide discontents, as well as resistances against it, but these resistances against the current global order of Neo-Liberalism does not have to be strictly in the form of Marxism in its traditional sense; they are the continuation of the human emancipatory ideal of Marxism, but not the party-centered authoritarian rule in old Soviet age. In this sense, the phrase "specters of Marx" particularly illuminates what Derrida means 'auto-immunity'. The word "specters" suggests that the human emancipatory ideal still remains as a 'spirit', a 'ghost' or a 'specter'; it still does not have its own body, or the true realization of it. Therefore, it cannot separate itself from what it objects to, namely, a variety of historical forms of social alienation, domination, enslavement and injustice. It has to adopt these 'evil' as its temporal body, or the temporal 'prosthesis' upon which it relies. As Derrida insightfully observes:

The living ego is **auto-immune**, which is what they do not want to know. To protect its life, to constitute itself as unique living ego, to relate, as the same, to itself, it is necessarily led **to welcome the other within** (so many figures of death: differance of the technical apparatus, iterability, non-uniqueness,

prosthesis, synthetic image, simulacrum, all of which begins with language, before language), it must therefore take the immune defenses apparently means for the non-ego, the enemy, the opposite, the adversary and direct them at once for itself and against itself. Marx thinks he is a better expert (a better “scholar” of ghosts), let us recall that he says in effect to Saint Max: I know my way around specters better than you; the ghost is my affair, if you want to save life and conjure away the living-dead, you must not go at it immediately, abstractly, egologically, fantasmatically, with the word, with the language act of a phantasmagoreuein; you must pass through the laborious ordeal of the detour, you must traverse and work on the practical structures, the solid mediations of real, “empirical” actuality, and so forth. Otherwise, you will have conjured away only the phantomality of the body, not the body itself of the ghost, namely, the reality of the State, Emperor, Nation, Fatherland, and so on. But obviously, for the time of this detour, you must accept to take into account the autonomous, relatively autonomous body of ghostly reality (177).

The Singaporean case in Pheng Cheah’s *Inhuman Conditions* that I have discussed previously illuminates this. When human right or human dignity in the Kantian sense, namely, to be treated as ends rather than to be used as means is contaminated by global capitalism, the realization of it as an a-historical permanent goal is replaced with contingent resistance against capitalistic exploitation, as how the Philippine domestic riot against Singapore case illustrates in Pheng Cheah’s book. In *Spectral Nationality: Passages of Freedom from Kant to Postcolonial Literatures of Liberation*, Pheng Cheah makes a philosophical interpretation of the patriotism against global capitalism case exemplified by Singapore-Philippine relation. As Cheah argues, the Kantian human dignity is in line with the Marxian ideal of the proletarian emancipation. However, under the condition of global capitalism, both the Kantian and the Marxian ideals have to be temporarily combined into a more contingent action, namely, demotic patriotism as political agent against global neo-liberalism. In this

sense, as Cheah indicates, the Marxian ideal of the ‘withering state’ is more like an ‘eschatological goal’, rather than a temporal goal for current moment (209). In the current moment, nationalism, state or patriotism still plays a pivotal role in protecting domestic labor in non-western under-developed countries like Philippine, for instance, resisting the encroachment of global capitalism<sup>33</sup>. In this sense, Cheah draws a distinction between two kinds of nationalism, or the Marxian state apparatus and popular patriotism. The latter, as the pursuit of human right, democracy and equality, deconstructs the former as the institutional legitimization of the localization of global capitalism. In other words, when foreign capital investment encroaches the local world, exploiting and enslaving local labor, like what happens between Singaporean society and its Philippine FDWs, it is the popular patriotism, according to Cheah, that challenges global capitalism, as well as local government which encourages the localization of global market. However, this distinction between state apparatus and popular patriotism also blurs itself or ‘deconstructs’ itself: on the one hand, popular patriotism cannot exist without its institutional backdrop; finally, it is the local government that protects people from the dehumanization of capitalism; on the other hand, the popular patriotism in pursuit of justice is always in danger of being suppressed by the inhumane state apparatus which sometimes also protects the interests of capitalists against its people (228). This is also what the title *Spectral Nationality* means: based upon Derrida’s *Specters of Marx*, it suggests that the popular patriotism in pursuit of justice is always instantaneous, contingent and fragile in contrast to the state power. It is only a possibility, or in Derrida’s language, justice is always “undecidable”.

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<sup>33</sup> As Pheng Cheah indicates, “Marx fails to foresee nationalism’s tenacity because he hastily determined it as a statist ideology and foreclosed its popular and emancipatory face; this face, which revolutionary decolonization exemplifies, is especially important given the uneven globalization of capital” *Spectral Nationality: Passages of Freedom from Kant to Postcolonial Literatures of Liberation*. New York: Columbia University, 2003, 228. This is not only true for Marx, but also true for Derrida in *Specters of Marx*, upon whose argument Pheng Cheah’s *Spectral nationality* relies. As Derrida indicates in *Specters of Marx*, “there is no nationality or nationalism that is not religious or mythological, let us say “mystical” in the broad sense.” Cheah, Pheng. *Specters of Marx: The State of the Debt, the Work of Mourning and the New International*. London: Routledge, 2006, 113. Derrida’s attitude toward nationalism is negative. Here the “mystical” is linked to the “mystical foundation of authority” in “Force of Law”.

Besides “Force of Law” and “Specters of Marx”, “Interpretations at War: Kant, the Jew, the German” is one of the pieces which illuminate Derrida’s concept of ‘auto-immunity’, namely, the survival of certain ideals by a kind of ‘self-alienation’. “Interpretations at War: Kant, the Jew, the German” is Derrida’s interpretation of an essay titled “Deutschtum und Judentum”, written by the Neo-Kantian philosopher Hermann Cohen before the First World War, which pays a tribute to German military victory (146). What interests Derrida about this essay is the apparent conflict between the author’s ethnic (Jewish) and intellectual identity (that of a Neo-Kantian philosopher), in addition to the content of the essay, which is that an eulogy of German victory (181). The reason for this is not complicated: Cohen understands the German and Jewish spirits as both historically and philosophically (or culturally and spiritually) united; they are inseparable in this sense; thus, the victory of Germany is also the victory for German Jews (168); meanwhile, in Cohen’s view, Germany, a land with the Kantian philosophy of perpetual peace, is on the side of the righteous and therefore has to be defended militarily. In this sense, the victory of Germany is not only not in contradistinction to the Kantian doctrine of perpetual peace and a stateless world confederation, but is the first step of it: only the victory of Germany can pave the way for the ultimate realization of the Kantian world confederation (186-188). In this case, the apparent conflict between Judaism, Kantian philosophy and Nationalism, German victory illuminates what Derrida means ‘auto-immunity’: both the Jewish Messiah and Kantian perpetual peace are not deconstructable, just like justice in “Force of Law”; but either Jewish Messiah or the perpetual peace has to adopt German nationalism, its state apparatus as well as its military strength as its temporal incarnation, or the ‘specter’ of it has to adopt German nationalism as its corporeal body, even this body is merely a ‘prosthesis’ for it. As long as the ‘specter’ of Jewish Messiah and perpetual peace still does not have its own ‘body’, or the true realization of it, it is inseparable from German nationalism as the ‘prosthesis’ of it. As Derrida indicates, Cohen makes the point that “the power of the state is necessary in order to make socialism effective, to make it into something other than a ‘blunt weapon and a half-truth.’” (187). Though a Kantian scholar, different from Kant, Cohen believes in

the “necessity of permanent armies” (187). This is based upon the consideration that only military strength can stop ‘militarism’, or the abuse of it, as Cohen argues,

“Expecting a universal lasting peace from what is called the balance of European powers is purely a chimera, similar to that house in Swift, built by an architect in a manner so conforming to the rules of equilibrium, that a sparrow having alighted upon it, it crumbled instantly”. Militarism is a depravation of the military. It arises when people exalt an army that, rather than serve a State worthy of this name, serves economic powers and the interests of capitalist expansionism. An antinomy may exist between the State and the military when the army puts itself in the service of private economic forces or a fraction of civilian society. But once it has become effective, the ideal State--- that is, ethical and confederative in its orientation, hence German in spirit---- has no reason to give up its permanent army. Cohen thus opposes “our conception of military service” to that of the English enemy, whose social policy gave an impetus to the war (188).

This quasi-Schmittian stance also distances Cohen’s position from the patriots who advocates nationalism enthusiastically and uncritically. Strictly speaking, Cohen does not merely advocate patriotism. For him, patriotism only paves the way for the coming of a hope in future.

*In Religion and Violence: Philosophical Perspectives from Kant to Derrida*, Hent de Vries interrogates the Derridian God from a genealogical perspective. Hent’s point in the first chapter of this book, which is a chapter dedicated to Kant’s political philosophy, echoes Derrida’s reading of Cohen in ‘Interpretations at War’. The Kantian moral philosophy is a paradox of, or a dialect of moral perfection and human finitude which prevents people from achieving moral perfection, or reserves chances for the ineradicable evil. On the one hand, the Kantian deontology represents a kind of moral perfection which all human beings have to achieve. But on the other hand, the

human finitude always prevents people from reaching this morally-perfect status, and therefore to achieve moral perfection, in a Kantian view, could only be a progress. For the progress toward moral perfection, state censorship is required for preventing both religious sectarianism or fanaticism and scientific research from entering the public realm (99). For Kant, to achieve moral perfection requires the assistance of religion, or Christianity in particular, but Christianity as only rational theology, not superstition, fanaticism or authority beyond secular life. Meanwhile, academic life should be separated from public realm and kept strictly inside universities, the realm in which the investigation of the ‘phenomenal world’ is conducted (45). However, even censorship cannot completely prevent the unexpected intrusion of the ‘radical evil’, which could possibly ruin the self-legislated, self-autonomous human world (102-103). In this sense, in his moral philosophy, Kant reserves space for the “divine intervention” which could interrupt the progress of human history unexpectedly, bringing a morally perfect world to us<sup>34</sup> (105-107). Hent does not talk about “Interpretations at War” in this chapter regarding Kant, but in “Interpretations at War”, Cohen’s point concerning German victory shares a similar logic with this: that army is indispensable for the realization of perpetual peace is just like that state censorship is indispensable for the realization of moral perfection; both world-peace and moral perfection cannot be achieved immediately; moreover, just like state censorship, military strength or nationalism does not prevent either a more radical ‘alterity’ of a

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<sup>34</sup> As Hent de Vries says, “postulating the possibility of the worst at the very root of the possibility of the best does not prevent Kant from entertaining yet another possibility, that of a sudden revolution, a ‘change of heart.’ This change does not announce itself as the result of a moral progress in time, but is its precondition, commencement, or promise. Rather, its revolution—in an ambiguity of meaning reminiscent of the comparison, in the second preface to the Critique of Pure Reason, of the Revolution der Denkungsart to Copernicus’s De Revolutionibus, as well as to the French Revolution—has a specific, circular, or elliptical temporality of its own. It is at once timeless--- plus d’un temps, no more time and more than one time or more of one time--- and the heartbeat or the inner clock of reason’s unseen yet, Kant, believes, providential movement throughout the universal history of humankind”. See De Vries, Hent. *Religion and Violence: Philosophical Perspectives from Kant to Derrida*. Baltimore: The Johns Hopkins University, 1999, 105; “At the point Kant introduces a double solution: he postulates an infinite time after the time given us in this life, which allows an in principle infinite range of possibilities--- apparently at once reasonable and incomprehensible--- of divine assistance: “Only with respect to that which God alone can do, for which to do anything ourselves would exceed out capacity and hence also our duty, there we can have a genuine, i.e., a holy, mystery of religion. And it might perhaps be useful only to know and to understand that there is such a mystery rather than to have insight into it”. Ibid., 107.

peaceful world, or the ‘radical evil’ of militarism or nationalism exclusive of ethnical minorities. Unfortunately, 20<sup>th</sup> century history after Cohen’s death (which is during the First World War) sees the possibility of ‘radical evil’, rather than the possibility of ‘everlasting peace’: the rise of Nazism disproves Cohen’s radical hope that Jews could share the land with Germans and a world confederation is realizable based upon this<sup>35</sup> (140).

What Derrida questions in “Interpretations at War”, namely, the possibility that nationalism/patriotism and cosmopolitanism could be reconciled, or the possibility that nationalism/patriotism could advance cosmopolitanism, has already been a popular topic today. As I noted earlier, Pheng Cheah, the Derrida-inspired Post-Colonial Scholar whose project combines Derrida’s problematics in both *Specters of Marx* and “Force of Law”, uses Derrida creatively to defend his thesis that patriotism plays a pivotal role in resisting global capitalism, protecting the human right of local labor in South-Eastern Asia and advancing cosmopolitanism into a level beyond Neo-Liberalism. Pheng Cheah does not address Derrida’s “Interpretations at War” in his own work, but the overlapping between them is obvious. Moreover, Martha Nussbaum, a liberalist political philosopher whose work is dedicated to the problem of cosmopolitanism and nationalism, makes similar point in one of her recent books titled *Political Emotions: Why Love Matters for Justice*. For Nussbaum, the significance of patriotism is that patriotism, as a kind of collective political emotion, increases people’s compassion for the disadvantaged minorities. In this view, patriotism is not only not the opposite of pluralism as a fundamental principle of liberalism, but advances it. In Nussbaum’s view, people cannot love others for no reason, and one’s compassion for others is often limited to those whose lives are closely tied to one’s own. Thus, the best way to make people feel responsible for those disadvantaged whose lives are not directly associated with one’s own life is to

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<sup>35</sup> The relation between the time of Cohen’s death and the time of the publication of “Deutschum und Judentum” illuminates Derrida’s thought on temporality and possibility. Cohen died at the end of the war, in 1918, three years after the publication of this essay. See Derrida, Jacques. “Interpretations at War: Kant, the Jew, the German.” In Derrida, Jacques. *Acts of Religion*, edited by Gil Anidjar, 135-188. London: Routledge, 2002.

make people believe that their lives are indeed inseparable from the lives of those disadvantaged, and patriotism, according to Nussbaum, is what can make this happen. Nussbaum assumes that patriotism is to love everyone in a country, rather than to love one's nation as a political symbol (2015, 211). The apparent difference between Nussbaum and Derrida's accounts of patriotism is that Nussbaum, as least in this book, does not consider patriotism as an ideology of exclusivism, but Derrida is more cautious of this aspect of it. Just like Pheng Cheah indicates, even popular patriotism which aims at saving the nation from foreign capital is not immune to the oppressive side of state apparatus, and the state is always possible to be a 'prison', rather than a 'haven'.

Derrida particularly addresses this at the end of "Interpretations at War", in relation to the French social theorist Renan, whose viewpoint seems overlapping Cohen's but is a different sort. As Derrida indicates, the difference between Cohen and Renan is the difference between 'memory' and 'forgetting'. For Cohen, to ask German Jews to love Germany is also a way to keep the memory of their own history, since their history is deeply entangled with German history: "for Cohen, to become aware of a sort of spiritual Jewish-German nation is to practice anamnesis of a rather peculiar kind" (184). But for Renan, it is forgetting, rather than memory, and in particular, the deliberately manipulated forgetting of certain historical events concerning the founding of a nation that makes a nation a solidarity. Derrida's point on Renan is significant for my argument of this thesis and need to be quoted here almost completely. As Derrida says:

Now, Renan's thesis, simultaneously paradoxical and sensible, is that forgetting makes the unity of a nation, not memory. More interestingly, Renan analyzes this forgetting as a sort of repression: it is active, selective, meaningful, in one word interpretive. Forgetting is not, in the case of a nation, a simple psychological effacement, a wearing out or a meaningless obstacle making access to the past more difficult, as when an archive has been accidentally destroyed. No, if there is a forgetting, this is because there is no bearing something which was at the origin of the nation, surely an act of

violence, a traumatic event, some sort of a curse one does not admit. [Quoting Derrida quoting Renan] Forgetting, and I would say even historical error, are an essential factor in the formation of a nation, and thus the progress of historical study is often a danger for nationality. Historical investigation, in effect, brings back to light the violent deeds which took place at the origin of all political formations, even those whose consequences have been beneficial. Unity is always achieved brutally: the union of Northern and Southern France was the result of extermination and of terror continued for nearly a century (184). A series of examples (French, Slavic, Czech, and German) allows Renan to conclude: ‘Now, the essence of a nation is that all individuals should have many things in common and that all should have forgotten quite a few things. No French citizen knows whether he is a Burgundian, an Alainian, a Tifalian, a Visigoth; every French citizen must have forgotten Saint Bartholomew, the 13<sup>th</sup> century massacres in the South (185).

Renan’s theory of forgetting and national solidarity is almost Walter Benjamin’s ‘law-preserving violence’ in his “Critique of Violence” but from a different angle. It is more Foucauldian since it is in regard to the relation between “knowledge” and “power”: As Renan believes, “A nation is a spiritual principle” (184). It first exists in everyone’s mind and then as a political entity. But to manipulate people’s thought requires a series of “political techniques”: education is undoubtedly the most important for the purpose of it; meanwhile, publication and mass media have to be managed directly by the government, so that any information regarding national belonging should not deviate from the common belief which the government inculcates to its people; also, historical research concerning the founding of the nation, national belonging and identity has to be, even not forbidden completely, kept strictly inside universities, so that the research will not disturb people’s faith in their nation; archives have to be also managed directly by the government, or even destroyed or at least corrected, so that the ‘origin of truth’ gets totally controlled by the government.

In “Interpretations at War”, the relation between Cohen and Renan on nationalism parallels the relation between justice and the unjust law in “Force of Law”, the relation between ‘the messianic or ‘messianicity without messianism’ and “messianism” in “Faith and Knowledge”, and the relation between the good and bad ‘specters’ in *Specters of Marx*. The former deconstructs the latter, but is also in danger of being suppressed by the latter. Derrida does not believe in a clear distinction between these two. In other words, what matters for Derrida is not how to “save the truth” of history from the contaminated and manipulated archive. There is no clear distinction between the authentic and inauthentic archives. What matters for Derrida is that the presence, a presence with the truth of the past being manipulated, will be deconstructed or interrupted by the unexpected coming of the future, a future of Jewish Messiah or a world of peace. This future ‘to-come’ is not merely another futural moment of presence. In other words, the relation between future and presence here does not resemble the future and presence in Heidegger’s *Being and Time*, in which every present moment is described as the “past of the future”. The Derridian future is a kind of ‘radical alterity’ which is irreducible to the present. What remain ‘non-deconstructable’ is deeply associated with Derrida’s notion of temporality, or the future as a radical alterity. This is also what the specters of Marx and ‘messianicity without messianism’ mean. As Pheng Cheah indicates, “Derrida suggests that time is given by what is entirely other to being. The other is not temporal, not in the sense that it is an absolute being that transcends time, but rather because it is not a form of presence and exceeds the order of being” (2016, 165); “it refers to an otherness that cannot be reduced to being and presence” (166). Or, As Hent de Vries contends in *Philosophy and the Turn to Religion*:

*Specters of Marx* will reiterate that the messianisms that retain this structure establish a continuity between their inaccessible--- intelligible or utopian—avenir and the “temporal form of a future present, of a future modality of a living present.” This form of most, perhaps all, messianisms should not be confused with the destructuring structure of messianicity as it is

introduced in this more recent work. Here, we are dealing with an a venir, with a temporality out of joint, marked, quite literally, by the splitting of avenir (future) into a venir (to-come). For in both cases (“Force of Law” and “Specters of Marx”) the emphasis is on the necessary distinction between an end that announces itself (and eventually takes place) within a horizon of possible expectation, on the one hand, and a structure of infinity that stands for and enables an appeal here and now--- here and now being without assignable time and space--- that cannot wait, on the other (1999, 328-329).

## Conclusion

### Normative Objectivism and Normative Fictionalism: Deconstruction and Justice

Ending this thesis, my purpose is to highlight where Derrida's thought sheds a light upon political thought. In this sense, the insightfulness of Derrida's thought is that he compels us to reflect upon all the 'human emancipatory ideals' both currently and historically. These 'human emancipatory ideals', which are either political or theological or both political and theological, are either too 'idealistic', in a sense that they are believed to be the permanent solutions to all 'evil', but prove to be untrustworthy in contrast to a variety of 'evil' or 'radical evil' which happen both currently and historically, or they are with essential limitation, and the limitation of them has to be revealed, like Francis Fukuyama's 'liberal democracy as the end of history', which is criticized in *Specters of Marx*. In this sense, not only George Sorel's proletarian violence, Walter Benjamin's divine violence and Rousseau's general will are political ideals which do not really allow the 'differance', or 'auto-immunity' against its ideal, even thinkers whose theory is mostly featured by 'contingency' and 'spontaneity' is not immune to Derrida's critique, like Hannah Arendt, for instance. Derrida does not write anything about Hannah Arendt, but Arendt's political philosophy is potentially underpinned by the kind of 'dogmatism' which could be questioned from a Derridian perspective. Arendt's dogmatism is the strict distinction that she draws between the two spheres of human life, the public and the private, as well as the distinctions between the three fundamental types of human behaviors, namely, labor, work and action. For Arendt, action, as the ultimate goal of human life, and public sphere or political life belong to each other. Human action, which is characterized by the anonymity of its agents, the irreversibility of its process and the unpredictability of its result, is essentially different from the other two 'inferior' categories, work and labor, which only belong to the private sphere (p.7-9). In Arendt's view, the best type of society is a society where the public and the private spheres are separated, or the boundaries between action, work and labor are not

transgressed. Violence, enslavement and dehumanization happen when the boundaries between the public and the private, or between labor, work and action are blurred. When the boundaries are transgressed, human action is deprived of its contingency, spontaneity, unpredictability and irreversibility, substituted by work and labor and therefore becomes collectively manageable; meanwhile, people under such condition, are no longer respected as ends but are used as means to achieve collectively manageable and predictable goals. In Arendt's political philosophy, this boundary-transgression is also the transition between ancient and modern: the best type of society only belongs to ancient Greek polity, whereas modern world, constituted by capitalism and industrialization, is what replaces action with work and labor, or with collective social administration (1998, 41). In this sense, Arendt's objection to the boundary-transgression is where Derrida could possibly object to Arendt: in a Derridian view, the boundary-transgression is what 'differance' means, namely, there is no distinction between divinity and profanation, or between originality and contamination.

Martin Hagglund is correct that Derrida's questioning of the political/religious/metaphysical ideals is where he is insightful. On his view, if we read "Force of Law" and "Faith and Knowledge" only as evidences to suggest Derrida's compassion for the disadvantaged minorities, as John D. Caputo does in *The Prayers and Tears of Jacques Derrida: Religion without Religion*, or Simon Critchley does in *The Ethics of Deconstruction: Derrida and Levinas*, then the significance of Derrida's thought, especially in its more nuanced parts will inevitably be overlooked<sup>36</sup>.

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<sup>36</sup> In *The Prayers and Tears of Jacques Derrida*, Caputo argues that Derrida's purpose is to 'deconstruct' the 'messianisms' which is exclusive of ethnical minorities, or to deconstruct the 'unjust'. The deconstruction of the unjust makes room for the 'just', the inclusivism, the tolerance of the minorities. Similar point could be seen in Michael Naas's *Derrida from Now No*, in which the author makes similar argument concerning the ethical dimension of Derrida's deconstruction. This is certainly not wrong but is insufficient. It is only part of Derrida's thought. As I have indicated, Derrida not only deconstructs the 'messianisms', 'hospitality', or the Abraham religion of sacrificing the others for one's faith in God, he also deconstructs all the 'human emancipatory ideals', the just, the democratic, the idealistic. As I have indicated, Derrida believes that no political/religious ideal could remain all the same as uncontaminated, as the idealistic without profanation. On the contrary, they have to suffer from the destruction of them, or the 'deconstruction' of them, a kind of 'self-alienation', differance, or auto-immunity. The important thing here is that, as I quote from *Specters of Marx* previously in the thesis, auto-immunity, the Derridian lexicon, means that everything has to survive via a kind of self-mutilation or self-alienation. This is not only true for the 'messianisms', or 'hospitality', as

This questioning of the human emancipatory ideal could also be illuminated by Samuel Moyn's recent book *The Last Utopia: Human Rights in History*. The problematics in *The Last Utopia* largely overlaps Derrida's *Specters of Marx*, as well as Pheng Cheah's 'Specters-of-Marx' inspired work *Spectral Nationality and Inhuman Conditions*. Moyn deals with the same historical transition in the second half of the 20<sup>th</sup> century, namely from totalitarian socialism to global neo-liberalism. The failure of the latest human emancipatory ideal, Soviet socialism, was quickly replaced with the appeal to human rights as a new invention by the geo-politically 'Western world', which saw the failure of Soviet socialism as its own victory. As Moyn indicates, the paradox of human rights is that as a device of political emancipation, their advantage is also their disadvantage: they are believed to be the most pure and clean ideal of justice, devoid of all sorts of political violence associated with revolution. But this is also their disadvantage: there is nothing that they can do to help people fighting against the unjust, especially in a new era of neo-liberalism. In this sense, Moyn's critique of human right resembles Derrida's critique of Francis Fukuyama in *Specters of Marx*, although it is developed from a different angle: Moyn's critique of neo-liberalism specifically focuses upon human right as a by-product of the rise of neo-liberalism in the post-Soviet era, pointing out its impotence to resist the historical circumstance which legitimizes it, namely, global capitalism or neo-liberalism.

In a philosophical view, the question that Derrida poses, or the question that deconstruction deals with is a question concerning normativity, or the relation between "value" and "norm". In fact, what Derrida criticizes in "Force of Law", namely, law is the synonym of justice, or the equivalence to justice, could be defined as Normative Objectivism, using the lexicon from analytic philosophy. In this view,

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Michael Nass indicates in his book, but is also true for the revolutionary/emancipatory ideal of Marxism or the Jewish Messiah, just as Derrida indicates in "Interpretations at War: Kant, the Jews, the German" and *Specters of Marx*. This could also be illuminated by a paragraph at the end of Derrida's essay "A Silkworm of One's Own": "namely that the silkworm buried itself, came back to itself in its odyssey, in a sort of absolute knowledge, as if it had to wrap itself in its own shroud, the white shroud of its own skin, in order to remain with itself, the being it has been with a view to re-engendering itself in the spinning of its filiation." See Derrida, Jacques. "A silkworm of One's Own." In *Acts of Religion*, edited by Gil Anidjar. London: Routledge, 2006, 354. Before becoming the butterfly, the butterfly has to be temporarily the silkworm.

the definition of law and justice are coterminous with each other. In contrast to Normative Objectivism, Derrida's own view could be defined as Normative Fictionalism: namely, law does not represent justice, or justice is not the essence of law; in one word, law could be unjust. But this does not indicate that people could live without law. Our life-world is essentially constituted by the normative structure of law, or the normative structure of other types of 'laws', or discourses, if we understand the Derridian law in a typically Post-Structuralistic sense. This is also where Derrida's thought overlaps other French Post-Structuralists, like Michael Foucault, Jacques Lacan, Gilles Deleuze, Roland Barthes, Pierre Bourdieu, Judith Butler and Slavoj Zizek. All of them, including Derrida, have the same type of viewpoint of normative fictionalism. They all have the similar point that human subjectivity or human action is discursively constructed or constituted by certain kind of norm or code.

In *The Image of Law: Deleuze, Bergson, Spinoza*, Alexandre Lefebvre questions the normativity of law by interrogating the tension between the 'generality/normativity' of law and the 'particularity' of each case for which the law is applicable. As Lefebvre indicates, the significance of Deleuze for legal thought is that it reveals the limitation of normative objectivism in the realm of jurisdiction, which could be illustrated by Kantian moralism<sup>37</sup>. This critique of the normativity of law could be furthered by my argument in this thesis via the critical lens of Derrida. In a Derridian view, the problem is not only the conflict between the universality of law and the particularity of the case, but also the moral nature of law. The difference

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<sup>37</sup> As Alexandre Lefebvre writes, "Kantian moral law, another product of the 'eighteenth-century,' functions analogously to scientific law—it too converts singular actions and affects into particulars: "the application of the moral law can be conceived only by restoring . . . the model of the law of nature" (DR, 4). Moral law is enacted through a 'test' of repetition, a test of the types of habits and behaviors that can in principle be repeated without contradiction – 'What is Kant's highest test' if not a criterion which should decide what can in principle be reproduced—in other words, what can be repeated without contradiction in the form of moral law? The man of duty invented a 'test' of repetition; he decided what in principle could be repeated. He thought he had thereby defeated both the demonic and the wearisome" (DR,4). At the expense of singular actions, practices and dispositions, moral law grounds us in the arrangement between the general and particular: actions are converted—tested—into repeatable particularities of a general moral law. Affective, practical becoming are substituted for a moral law that in advance gives a principle by which to recognize actions that conform to it. Such an operation recovers the concept of law with its calculable and sterile temporality on the plane of practical reason." Lefebvre, Alexandre. *The Image of Law: Deleuze, Bergson, Spinoza*. Diss. Baltimore: The Johns Hopkins University, 2007,92.

between normative fictionalism and the Kantian normativity is that the Post-Structuralistic normativity, or normative fictionalism, does not have the moral essence as the Kantian has. This could also be seen in Derrida's recently-published two-volume lecture series titled *The Death Penalty*. Against abolitionist, Kant makes the claim that death penalty represents human dignity and therefore cannot be abolished. In other words, people who commit crimes deserve death penalty, and this is what human dignity, or the universal law requires them to do<sup>38</sup> (2014, 127). Kant bestows death penalty with a strong sense of morality, but Derrida does not acknowledge it. For Derrida, death penalty, as part of law, a kind of social norm, does not have the kind of moral essence that Kant expects from it. Death penalty could certainly be unjust since law could be unjust<sup>39</sup>. In a Derridian view, this is also true for democracy. as Derrida indicates in *Rogues*, the democratic procedure does not necessarily guarantee democracy or justice. The result of democratic decision could be the birth of tyranny, like the rise of Nazism in Germany, for instance. From the perspective of normative objectivism, value is inseparable from its normative construction, like justice is inseparable from law or liberal democracy. Derrida not only acknowledges normative fictionalism, or the hiatus between justice and law, but also expects to bring the "value" or justice back by questioning, interrogating, deconstructing or criticizing the normative construction of value, or justice. In *Rogues*, Derrida holds quasi-Schmittian belief, arguing that a radical intervention or interruption of democratic voting or decision could save democracy from tyranny

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<sup>38</sup> "In other words, and this is one of the great paradoxically interesting things about this Kantian position, which is as rigorous as it is absurd--- when the history of morality and of civil society will have progressed to the point where there is no more discord between the subjective motives and the objective rules, then the categorical imperative that presides over the death penalty will be fully coherent, with neither cruelty nor indulgence, but of course, there will be no more need to sentence to death. But while waiting for that to happen, in order to think the law, the ideal and rational purity of the law, one must maintain the principle of the categorical imperative, that is, the talionic law and inscribe the death penalty in the law, even if the ideal is to be never obliged to pronounce it in a verdict." Derrida, Jacques. *The Death Penalty* (Volume 1). Chicago: The University of Chicago, 2014, 127.

<sup>39</sup> "In other words, if all men are condemned to die, then the poor are more condemned to die. But above all, to move toward the more specific problem of criminal law, and even of the death penalty, of the condemnation to death, it is well known that everywhere, and in particular in the United States, a rich man has a better chance than a poor man of securing his defense in conditions where he can avoid the death penalty, avoid being, precisely, condemned to death; we also know that the majority of those condemned to death are blacks and poor blacks." Derrida, Jacques. *The Death Penalty* (Volume 2). Chicago: The University of Chicago, 2017, 143.

(2005, 33). But the difference between Derrida and Schmitt is that this radical interruption of democracy is not done by the sovereign power, but by people themselves. In the case of cosmopolitanism and neo-liberalism, as in *Specters of Marx* or “Faith and Knowledge”, Derrida contends that a truly cosmopolitan world could unexpectedly interrupt the pseudo-cosmopolitanism, or neo-liberalism, bringing cosmopolitanism back by interrupting neo-liberalism as its normative structure. Or, there will be another type of the human emancipatory ideal which preconditions and interrupts all ‘utopias’, or even ‘the last utopia’ in the future. It will be the ‘utopia after the last utopia’, or, in Derrida’s own language, ‘messianicity without messianism’:

First name: the messianic, or messianicity without messianism. This would be the opening to the future or to the coming of the other as the advent of justice, but without horizon of expectation and without prophetic prefiguration. The coming of the other can only emerge as a singular event when no anticipation sees it coming, when the other and death--- and radical evil--- can come as a surprise at any moment. Possibilities that both open and can always interrupt history, or at least the ordinary course of history. But this ordinary course is that of which philosophers, historians and often also the classical theoreticians of the revolution speak. Interrupting or tearing history itself apart, doing it by deciding, in a decision that can consist in letting the other come and that can take the apparently passive form of the other’s decision: even there where it appears in itself, in me, the decision is moreover always that of the other, which does not exonerate me of responsibility. The messianic exposes itself to absolute surprise and, even if it always takes the phenomenal form of peace or of justice, it ought, exposing itself so abstractly, be prepared for the best as for the worst, the one never coming without opening the possibility of the other. At issue there is a “general structure of experience.” This messianic dimension does not depend upon any messianism, it follows no determinate revelation, it belongs properly to no Abrahamic religion (56).

The Derrida jargon “messianicity without messianism” has three connotations. First, it refers to anti-determinism or the possibility beyond determinism. Messianicity without messianism suggests that future is always indeterminate or undecidable. This is also where Derrida’s thought overlaps all critiques against determinism. Second, it has a special meaning of temporality. Messianicity without messianism does not mean merely another type of ‘possibilism’, or a better future beyond present moment. It is a kind of contingency which could possibly interrupts and intervenes into any present moment. It preconditions or re-structures the normal progress of time. Last but not the least, messianicity without messianism refers to the inconsistency between value and its normative form. If the normative form of messianism is the Christian messianism, the deconstruction of the normativity of messianism opens the dialogue between the ‘messianic values’ and its regular form, just like between justice and law. In this sense, messianicity is also the messianism without form, or form-less messianism, but preserves the value of messianism.

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