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Authority: An Hommage to Jacques Derrida and Mary Quaintance

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In thinking how to remember Jacques Derrida and that marvelous moment in which we were privileged to hear and to read his and Mary Quaintance’s contributions to “Deconstruction and the Possibility of Justice,” I reread *Force of Law: The “Mystical Foundation of Authority”.*\(^1\) That text appears in the *Cardozo Law Review*, with Derrida’s French on the left-hand pages and Quaintance’s English translation of it on the facing right-hand pages. At the conference Derrida read from Quaintance’s English text.\(^2\)

Upon reflection, I noticed a small irregularity, of no apparent significance, in its very first sentence. The French text reads (pardon my French): “C’est ici un devoir, je dois m’adresser à vous en anglais (à prononcer en français puis en anglais en soulignant adresse).”\(^3\) A direct translation would read: “This is an obligation, I must address myself to you in English (to be spoken in French, then in English, emphasizing address).” But Quaintance did not translate what Derrida wrote. Instead, she translated what, from her perspective in the moment she prepared the translation, he would speak: “C’est ici un devoir, je dois m’adresser à vous en anglais. This is an obligation, I must address myself to you in English.”\(^4\) Think about it. Her published translation reports her response to Derrida’s instruction rather than the instruction

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\(^{*}\) Max Freund Professor of Litigation & Advocacy, Benjamin N. Cardozo School of Law. I am indebted to Peter Goodrich for reading and commenting brilliantly upon a prior draft, and to Paul Shupack for helping me see that everything was even more complicated than I had thought.


\(^{2}\) Actually, Derrida read only the first part of Quaintance’s text, though he had the entire text distributed to the audience. He read the second part at a colloquium organized by Saul Friedlander at the University of California at Los Angeles on *Nazism and the ‘Final Solution’: Probing the Limits of Representation*. Derrida added an introduction and conclusion to the second part for that occasion, which were not initially included in the text he distributed at the Cardozo event. The editors of the *Cardozo Law Review* decided to publish the UCLA introduction and conclusion as footnotes, they say, at the beginning and end of the second part. *See* Derrida, *supra* note 1, at 921 (editorial note). They do indeed publish the introduction as a note, but the conclusion is published as a “Post-scriptum,” not as a note. *Id.* at 1040. *See also* note 40 infra.

\(^{3}\) Derrida, *supra* note 1, at 920. Derrida repeats this trope, in slightly altered form, later in the essay. *Id.* at 922.

\(^{4}\) *Id.* at 921.
itself. She prepared the translation for Derrida to read out loud, not as a “faithful” rendering of the French text. In effect, Quaintance gave priority to the spoken over the written, a priority she need not have given, at least in the published version of her text, and one that Derrida, as we know, rejects. And she did this, ironically, with Derrida’s sly acquiescence.⁵

But more. By suppressing Derrida’s French parenthetical, Quaintance altered his written text. She created a difference that appears in the written text, laying the English translation side-by-side with the original French, but not in Derrida’s spoken remarks. We could not know this at the time, for we had only Quaintance’s text in front of us. It was only later, when Derrida’s text was published alongside hers, that we could see the trace of this difference. Our awareness of the difference had to be deferred. Just as in différance.

We are left to wonder. Did Derrida instruct Quaintance to create this difference, this little play of différance? Or, did he leave her a decision, whether to follow what he wrote or what he said? This may not have been a difficult decision when she was preparing the text for Derrida to read aloud, but must have given Quaintance at least a moment’s pause after Derrida had spoken. At the time of the conference, it would have been perfectly appropriate for her to prepare the English text, as she did, for Derrida to read out loud, since that was the project immediately before them. But was it also appropriate to use that very same text, prepared as it was for a one-off event, to effect the altogether different project of publication recto the French?

At other places in his text, Derrida does appear to be giving his translator instructions. At more than one point, Derrida writes out English words that translate a French phrase; he follows “la violence conservatrice” with a parenthetical containing the English words “lawpreserving violence,”⁶ and “faire la loi” with “making the law.”⁷ At several points he writes out English words translating words or phrases in Walter Benjamin’s Zur Kritik der Gewalt.⁸ At these points he presents Benjamin’s text three times, first in his own French translation, then in the original German, then in Edmund Jephcott’s English translation.⁹ All these appear to be instructions to the translator—why else would Derrida bother to include Jephcott?—instructions for which Derrida leaves a trace in the text. But in the first sentence of Force of Law he leaves no trace of an instruction for

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⁵ In a note on the first page of Quaintance’s translation, Derrida thanks Sam Weber “for his help in the final revision of this text.” Id.
⁶ Id. at 1004.
⁷ Id. at 922.
⁸ Id. at 1006, 1020, 1024, 1030, 1032.
handling what was, after all, a trap he had laid, a dilemma he had posed, for his translator.

In laying his trap, in posing his dilemma, Derrida was exercising power, the power of an author. He was not alone in this; Quaintance too had power, the power of a translator. We can see the traces that Quaintance left of her power, her refractory rebellion against Derrida’s bootless instructions. Take but one example. Derrida is quoting from Benjamin. His text reads: “La police est ignoble parce que dans son autorité ‘la séparation de la violence fondatrice et de la violence conservatrice est suspendue (aufgehoben)’ (in ihr die Trennung von rechtsetzender und rechtserhaltender Gewalt aufgehoben ist,) ‘in this authority the separation of lawmaking and lawpreserving is suspended.’”10 Her text reads: “The police are ignoble because in their authority ‘the separation of the violence that founds and the violence that conserves is suspended’ (in ihr die Trennung von rechtsetzender und rechtserhaltender Gewalt aufgehoben ist, ‘in this authority the separation of lawmaking and lawpreserving is suspended.’”11 Unlike her concealment of the instruction Derrida placed in the first sentence of Force of Law, Quaintance does let us see what appears to be his instruction about how to translate Benjamin’s text into English. And then she ignores it. She gives Benjamin’s text a translation entirely different from the one Derrida supplied. (She also leaves out the parenthesis containing “aufgehoben” after “suspendue,” and ignores Derrida’s repetition of an instruction first given only two pages before to translate “la violence conservatrice” into “lawpreserving violence”—an instruction she also ignored the first time he gave it.)12 She thus displays Derrida’s instruction together with her rebellion against it. Or, perhaps she is simply trying to render Derrida’s French translation of Benjamin faithfully into English. But even while being faithful in one sense, she is being faithless in another: Rendering Derrida’s French faithfully into English is not what Derrida told her to do. Or, perhaps he did tell her. But again, he left no trace of the instruction, if he did.

There are other ways Quaintance breaks her contract with Derrida. He engaged her to translate. Sometimes, even when a perfectly serviceable English word or phrase is available, she refuses to use it and just repeats the French. For example, Derrida writes: “Si l’ordre du droit se manifeste pleinement dans la possibilité de la peine de mort, abolir celle-ci, ce n’est pas toucher à un dispositif parmi d’autres, c’est

10 Derrida, supra note 1, at 1006.
11 Id. at 1007.
12 Id. at 1004. She also ignores his instruction to translate “faire la loi” as “making the law.” Id. at 923. She translates it as “laying down the law;” but this time she does not carry over Derrida’s version into the English text, effectively concealing it. Id. See supra text accompanying note 7.
désavouer le principe même du droit.”13 Quaintance translates: “If the legal system fully manifests itself in the possibility of the death penalty, to abolish the penalty is not to touch upon one dispositif among others, it is to disavow the very principle of law.”14 Dispositif is not a mysterious word. It is not a term of art for Derrida, like différenciation, that must be carried over into the English. Nor is it a technical term peculiar to the French legal system. “Dispositif” describes the purview terms of an act or decree, the scope or limit of a statute.15 So one could simply translate “one dispositif” by “one statute’s scope” or “one statute’s limit.” There was no need to leave this term, bound not to be known to most of Derrida’s anglophone readers, in the French.16

But, of course, leaving a certain portion of the text in French was exactly what Derrida did in the very first sentence of Force of Law. “C’est ici un devoir, je dois m’adresser à vous en anglais. This is an obligation, I must address myself to you in English.” Just as Derrida reports that he has a contractual obligation to the organizers of the conference to speak in English, he violates his obligation by speaking his very first words in French. Derrida breaches what he later refers to as his “contract” in the very act of reporting it.17 He reports it, at first, in his own language, in French, so that many in the audience would not know that he is reporting it, not understanding French. And when he repeats the French in English they would not understand that he was directly translating for them the plain meaning of the French. They would know only that he was saying something in French and then saying something else in English. He would be obscuring from them, the very ones who had to know it, that a translation had just taken place. And for those who did understand French, who knew that the French was followed by an English translation, he would be making it seem that it was his translation that he was reading, not Quaintance’s: he was speaking in French, then he was saying the same words again in English.18 It is only later, when he is discussing the impossibility of translation, that Derrida discloses that the translator of the text was not

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13 Derrida, supra note 1, at 1004.
14 Id. at 1005.
16 Quaintance leaves Derrida’s French word in the English text at several other points, often for very good reason. See, e.g., Derrida, supra note 1, at 923 (droit, Je le dois, Je dois, juste). Several times, she leaves a phrase in French because Derrida obliquely directs it: “Il ne faut pas manquer d’adresse, dirais-je en français,” and “rendre la justice, comme on dit en français,” id. at 948, and “comme on dit en français, que ‘justice est faite,’” Id. at 950.
17 Id. at 925.
18 Most or all members of the audience had photocopies of Derrida’s talk, which, as I recall, did indicate up front that Quaintance was the translator. And most members of the audience were dutifully following the photocopied text as Derrida spoke, as if they were following a score at the opera. But some were not, and the point remains that Derrida set up a situation where misimpression was possible.
he but Quaintance, and corrects the initial misimpression he may have created.\textsuperscript{19} In his very first sentence, then, Derrida commits two injustices, both quickly mended: he breaches his contract with the organizers by speaking in French, and he seems to claim credit for the translation, when credit, according to all the traditions of the relationship between translator and author, must go to Quaintance.

So Quaintance was doing neither more nor less when she breached her contract with Derrida than what Derrida was planning to do, or had already done, in breaching his contract with the organizers. She was doing neither more nor less when she created her misimpression of the literal words in Derrida’s first sentence than Derrida had done, when he created his misimpression in that sentence about the identity of the translator. She was translating not just the essay, but the moral condition, the behavior, of its author. She was translating Derrida, as well as his text.

This struggle, this polemos, between Derrida and his contumacious translator for control of the text puts in question, puts in play, the subject of Derrida’s authority, his authority as an author. He does sign, he does take responsibility for both texts, the French and the English, the one he wrote and the one he did not, the one that instructs his translator and the one by which his translator compels him. But in the place where he signs, in the last sentence of the essay, as if to emphasize her recognition of Derrida’s authority, as if to turn over the reigns to Derrida once he takes responsibility as an author, Quaintance makes a second omission, to mirror and to complement the omission with which her translation of the essay began. The last sentence in the French text belongs to Benjamin, and Derrida presents it three times: “‘Die göttliche Gewalt, welche Insignium und Siegel, niemals Mittel heiliger Vollstreckung ist, mag die waltende heissen’: ‘La violence divine, qui est insigne et sceau, non point jamais moyen d’exécution sacrée, peut être appelée souveraine (die waltende heissen).’”\textsuperscript{20} The translator presents Benjamin’s sentence only twice, once in German and once in Jephcott’s translation of the German into English, now and for the only time following the instructions implicit in Derrida’s text to the letter.

How does Derrida receive this gift of recognition from his translator? (Or is he getting instead a well-earned recompense?) Just before Derrida quotes and translates into French and English Benjamin’s last sentence, he writes: “But who signs? It is God, the Wholly Other, as always, it is the divine violence that always will have

\textsuperscript{19} Derrida, supra note 1, at 925.
\textsuperscript{20} Id. at 1036.
preceded but also will have given all the first names: ‘Die göttliche Gewalt . . .’”21 He takes responsibility for the French text by signing it. But was he also taking responsibility for Quaintance’s translation? After all, his name appears in the same way at the end of both. Did he also sign the English text, or is what appears to be his signature just Quaintance’s translation of his French signature, which he permitted her perforce to affix to the English text? His French signature then is the genuine signature; the English, a signature by sufferance, the signature of a monarch who, for better or for worse, must listen to his counselors and can do no other. He must take responsibility for a text over which he has not even the semblance of control. He must acquiesce in whatever fate has in store. He, like Benjamin, must recognize the sovereignty of divine violence. It is God who is the author; God, who signs. It is God, the “Wholly Other.” For the ultimate responsibility for the text belongs neither to Derrida nor to his translator. His translator takes instruction from his text, but, like any reader, may not understand what it is telling. She too must acquiesce in whatever fate has in store. The translation will be governed by “the law of an implicit third.”22

Thus Derrida’s text points us in the end to God’s authorship, God’s authority. The end of Derrida’s text formed the beginning of mine in the same conference volume, The Idolatry of Rules: Writing Law According to Moses, with Reference to Other Jurisprudences.23 Mine was an exploration of God’s authorship, His authorship of the Five Books and therefore of the universe. Moses wrote the Five Books, but only as God’s amanuensis. Though Moses’ text refers only once to God Himself writing (the tablets on Mt. Sinai), the narrative of the entire history of the universe is God’s writing. God writes by speaking and cannot speak without writing; His speech is immediately transcribed in the universe, as the universe. The universe and its history are God’s writing. The world is text. God’s thoughts are its laws. Man is in the unique position in that universe of having been made in the image of God. As God’s image, in order fully to be that image, he must collaborate with God in the ongoing creation of the universe. He too must have thoughts that are laws. He too must write, must be an author.

The only authority in this way of thinking is the authority of an author.24 Only one who creates a text, leaves a record, has authority. That is why parents have authority over their children: they create their children, make their children in their image, and their children are the

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21 Id. at 1037.
22 Id. at 949.
record of that creation. That is why God is the Master of the Universe: He creates and sustains the universe and its laws, and the universe and its laws record that creation. That is why, more specifically, Moses recognizes God as the Sovereign of his polity: God wrote the novel that establishes its political and legislative structure, that gives its structure authority.

And the novel displays God as its author. God appears in it as the narrative voice in both its registers. As the omniscient narrator, He is Elohim, or “Rulers” (usually mistranslated as “God”). He rules by creating the universe and governing it by law, the physical laws of nature and the seven laws that God revealed to Adam and Noah that are requisite for a minimum state of civilization (the Noachide Commandments). He is the guarantor of the efficacy of those laws, hence justice. As the narrator who is a character in the novel, He is Yud-Hay-Vov-Hay (the Tetragrammaton, usually mistranslated as “Lord”), which Maimonides translates as the Greek “ousia,” hence “being” or “existence.” He is the result of creation, the subject of its laws. He creates the capacity for law, the possibility of the legal subject. He is man’s interlocutor. He can be persuaded to relax the efficacy of His laws, to show mercy.

Derrida, like many who live in the shadow of Spinoza, does not have the faith that we can be partners with God in the ongoing creation of a lawful universe. He does not believe that we can be authors in the sense that God is an author. He does not propound any doctrine of authority. Only God can sign, and He is “Wholly Other.” We can seem to sign, appear to take responsibility, just as Derrida seemed to sign, to take responsibility for Quaintance’s translation. Nevertheless, because we are subject to fate, because we cannot know everything we need to know to be master of our fate, we can never in truth be responsible, never have authority. Derrida would agree, I think, with

25 See Jacobson, supra note 23, at 1080.
26 See id. at 1081.
29 See id. at 1081 n.12.
30 See id. at 1082 n.13.
31 For Derrida authority can be nothing other than self-authorization: “Since the origin of authority, the foundation or ground, the position of the law can’t by definition rest on anything but themselves, they are themselves a violence without ground.” Derrida, supra note 1, at 943. He thus equates the “foundation” of law with its “self-authorization.” Hence law as such (“droit”) and “legitimating or legitimated authority” (“l’autorité légitimante ou légitimée”) are deconstructible, where justice is not. Indeed, the deconstructibility of authority and its associated concepts—law as such (“droit”), legality, legitimacy or legitimization—makes deconstruction possible. Id. at 945.
the proposition that the only conceivable authority is the authority of an author, of the creator of a universe that is lawful to its core, that every other sort of authority is a submission to violence. Where he parts company with Jewish tradition, however, is that he believes that only God can be a true author, only God can be at once just and merciful, only God can at once impose and relax the law. We can take responsibility only for imposing law. God’s attribute of mercy never even enters the mind of a Derrida or a Benjamin. God appears in *Zur Kritik der Gewalt* and in *Force of Law* only as a figure of violence. The only attribute of God available to us is the attribute of justice, so that every time we perform an act of what we may regard as mercy we are condemned to regard it as the imposition of a new law, not as a release from law. Release from law is possible only to one who believes absolutely in freedom of the will, and the signal character of all modern and even post-modern thought, with the possible exception of Kant, is that it assumes one version or another of a law-bound universe and not freedom of the will. For Derrida in particular the stumbling block against freedom of the will would be the laws of the unconscious.

And how could it be otherwise after Spinoza? In this sense, Derrida is Spinoza’s child. Spinoza too believed in God’s authority, that God is the author of the universe and we, as individuals, are the authors of nothing. Spinoza rejected Hobbes’s position that we can be authors of the state, at least for the purpose of its juridical justification. He rejected Hobbes’s very real belief—and all the more real because Hobbes framed this belief as myth—that God taught Adam how to name, and that Adam’s descendants could use this power to create political and legal structures of immense grandeur and power. Spinoza would agree with Derrida that only God names, that we cannot name. But Derrida would certainly reject the tradition, running from Spinoza to Rousseau, that the state—inasmuch as it is the author of its citizens, inasmuch as it is their author through law, inasmuch as it trains them and nurtures them into having certain sorts of personalities, certain sorts of customs, certain allocations of roles—has authority. In that sense, Spinoza and Rousseau have only one foot in the modern world. The other is planted firmly in the Biblical universe, in which states can have authority to the degree that they follow God’s law. Of course, it is not God’s law that Spinoza and Rousseau expect states to follow, but they do entertain the inherent possibility of lawfulness. Derrida does

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34 Id. at ch. 4 (“Of Speech.”).
35 Derrida, *supra* note 1, at 1037.
Nevertheless, we continue to impose law. We are lawless creatures who are constantly imposing law. Derrida wrestles with the awful consequences of this fact in the “Post-scriptum” to *Force of Law*, in both form and content perhaps the most difficult and mysterious moment in an altogether difficult and mysterious text. In the “Post-scriptum” Derrida imagines what Benjamin, following the logic of *Zur Kritik der Gewalt*, would have thought about the final solution, had he lived to know of it. Benjamin, he says, would probably have understood the final solution to be “an extreme consequence” of the logic of Nazism. Derrida associates this logic with the “totalitarian radicalization” of the logic of the state. He associates it, as well, with the “radicalization and total extension” of mythic violence—that is to say, the violence that creates law and preserves it. It was the “radicalization and total extension” of mythic violence that led eventually to “the whole judicial and state organization that marked the techno-industrial and scientific deployment of the ‘final solution.’”

The understanding of Nazism as a paragon of mythic violence suggests to Derrida what is “the most redoubtable, indeed (perhaps, almost) intolerable in this text,” which is “a temptation that it would leave open, and leave open notably to the survivors or the victims of the final solution . . . .” The temptation is to regard the holocaust as a manifestation of what is in every way the opposite of mythic violence: the violence that strikes without warning and kills without shedding blood, the violence that expiates, the violence that annihilates law instead of creating or preserving it. It is this violence that Benjamin names “divine violence.” The holocaust may be understood as a manifestation of this divine violence because, in part, it revealed every state to be a more or less rigorous, more or less pitiless, more or less relentless realization of the logic “radicalized” by Nazism. After the holocaust, no state, ever again, can claim the mantle of lawfulness. That is Europe’s poisoned gift to humanity. For us, God’s attribute of mercy is forever gone.

And so here Derrida does not sign. Everything in the “Post-

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36 Id. at 1041.
37 Id. at 1044.
38 Id. at 1027-29.
39 Id. at 1041. Saul Bellow makes substantially the same point in his novel, *The Dean’s December*. For Bellow all government is, at its core, oriental despotism. The only difference between Bellow’s Chicago and Ceausescu’s Bucharest is that the governing class in Chicago takes the trouble to veil its despotism (both from itself and those it governs) with the rhetoric of equal respect and concern. The governing class in Bucharest did not. The American State was immensely stronger, as a consequence, because citizens look to it to supply what citizens in Bucharest sought from family and friends. Nonetheless, despite the illusions of its citizens, the truth of the American State remains the same: oriental despotism. And because Americans are confused about this truth, family and friends in the United States are one’s worst enemies.
scriptum” comes after Derrida’s signature at the end of *Force of Law* proper.40 He is “terrified at the idea of an interpretation that would make of the holocaust an expiation and an indecipherable signature of the just and violent anger of God,” and so objects to it, refuses to take responsibility for it, won’t sign off on it, even though it is *his* interpretation of what Benjamin would say following a logic Derrida found in Benjamin’s text. What is perhaps more important, however, is that the contents of the “Post-scriptum” put in question the very gesture of signing, of taking responsibility.

For taking responsibility, even whilst knowing that one cannot be responsible, is a response to the demand for justice. Signature avows the capacity to be a legal subject. The holocaust discredited the idea of justice in both its manifestations—in the state as law, and God’s justice. It also proved that it was possible, indeed in one sense inevitable, to strip some group of humans of any potential for legal capacity. (Think today of the unborn.) Today each and every one of us faces the possibility, even the inevitability, that sooner or later what happened to Jews and homosexuals and Gypsies in Nazi Germany will happen to us; and at certain times, in certain places, such as Cambodia under the Khmer Rouge, that possibility is realized for almost all. The gesture of signing, of taking responsibility, says that answering the demand for justice is worthwhile. If Derrida, speaking for Benjamin, is right about the significance of the holocaust, that is no longer true. And so Derrida releases himself from responsibility, both for the words he writes in Benjamin’s name, and also for responsibility altogether. He releases himself from responsibility for responsibility.

He also releases Mary Quaintance. The French text for the “Post-scriptum,” assuming Derrida wrote it in French, assuming he wrote it at all, is simply not there. We have no way of holding Quaintance to account for her translation of the “Post-scriptum.” We have no way of telling whether she did justice to Derrida. Her translation is beyond reproach. As are today both Mary Quaintance and Jacques Derrida.

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40 Remember, the “Post-scriptum” does not properly belong to the text of *Force of Law*. It is a writing-after, belonging to a bastardized version of part of *Force of Law*, the part that was not read at the Cardozo conference, but was read at the UCLA conference later on, and included the “Post-scriptum” as its conclusion. See *supra* note 2. Of course, Derrida has just got through describing Benjamin’s discussion of bastardy at the end of *Zur Kritik der Gewalt*. Derrida, *supra* note 1, at 1037.

41 Derrida, *supra* note 1, at 1045.