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Recommended Citation

Michel Rosenfeld, *Derrida's Ethical Turn and America: Looking Back from the Crossroads of Global Terrorism and the Enlightenment*, 27 *Cardozo Law Review* 815 (2005).

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DERRIDA'S ETHICAL TURN AND AMERICA: LOOKING BACK FROM THE CROSSROADS OF GLOBAL TERRORISM AND THE ENLIGHTENMENT

*Michel Rosenfeld**

INTRODUCTION

Derrida has denied that his work took an ethical turn in the 1980s or 1990s.¹ This may be true in the sense that deconstruction as an interpretive practice has an ethics of its own, a commitment to pursue relevant intertextual links wherever they may lead, regardless of how unconventional or unsettling that may be. Derrida's claim seems less convincing, however, in terms of deconstruction of the ethical implications of major moral, social or political issues, such as law and justice, friendship, hospitality, forgiveness, the death penalty, and most recently, global terrorism. In the latter cases, Derrida engages in the deconstruction of ethics as well as in the ethics of deconstruction. And the deconstruction of ethics is ethical in as much as it is driven by the necessary but impossible call to reconciliation between self and other without compromising the irreducible singularity of either.²

Force of Law,³ Derrida's profound and path-breaking deconstruction of the relationship between law and justice, which more than any other single work marks the advent of his ethical turn, was first presented in a 1989 public lecture in America—at the Cardozo School of Law, which was to become Derrida's American law school and for the matter his law school *tout court*.⁴ That is significant, for

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¹ See JACQUES DERRIDA, VOYOUS 64 (2003) [hereinafter DERRIDA, VOYOUS].

² See Michel Rosenfeld, *Deconstruction and Legal Interpretation: Conflict, Indeterminacy and the Temptations of the New Legal Formalism*, in DECONSTRUCTION AND THE POSSIBILITY OF JUSTICE 152, 158 (Drucilla Cornell, Michel Rosenfeld & David Gray Carlson eds., 1992) [hereinafter Rosenfeld, *Deconstruction*].

³ See Jacques Derrida, *Force of Law: The "Mystical Foundation of Authority"*, 11 CARDOZO L. REV. 919 (Mary Quaintance trans., 1990) [hereinafter Derrida, *Force of Law*].

⁴ Since 1989, and until shortly before his death, Derrida came yearly as a distinguished scholar in residence at the Cardozo School of Law. Ironically, in spite of working on law, justice and many other subjects of great legal import, Derrida was largely ignored by the French legal

America is Europe's "Other" and because it has arguably been much more open to difference over the last quarter century than has Europe. In other words, Derrida's ethics is very much one focused on the other and on difference, and America was both "his" other and more open to difference.

Contrasted to Derrida's America is Habermas's Europe—a Europe where identity predominates over difference and where Kantian reason and the spirit of the Enlightenment have been unleashed (or one may say redeployed) to crush the darker passions that wrought unspeakable destruction during World War Two. Habermas's Europe is one of transnational unity, of "constitutional patriotism."⁵ Habermas, moreover, has in the past condemned Derrida's deconstructive approach as fostering a reversion to a pre-Enlightenment mystique inimical to the project of modernity.⁶

Whether deconstruction is pre-modern and hence a throwback to pre-Enlightenment approaches, or postmodern and accordingly tied to post-Enlightenment thought—be it anti-Enlightenment or an extension and transformation of Enlightenment thought—global terrorism as typified by the 9/11 attacks posed a formidable challenge to deconstruction. As it does to Habermas's modernist approach, steeped in the core values of the Enlightenment. For the deconstructionist Derrida, the question is how can one mount a principled condemnation of terrorism if one has rejected or gone beyond enlightened reason and the value system associated with it? For the Kantian modernist Habermas, on the other hand, the question is how can enlightened reason be still considered relevant given that the era of modernism has seen totalitarianism and the Holocaust followed by global terrorism?

Habermas and Derrida agreed for the first time to share the stage to address these questions.⁷ Significantly, they both dealt with the relationship between terrorism and the Enlightenment, and though they embraced different views of it, they both placed themselves on the side of the Enlightenment. Furthermore, whereas Habermas remained the consummate European he had always been, Derrida, in the end, sided with Europe⁸ thus apparently breaking with his American "identity" that went back to the late eighties. Given Derrida's recent death, this seeming repatriation in Europe culminates the journey begun with his

academy, where the predominant formalism was inherently inhospitable to his deconstructive approach.

⁵ See JÜRGEN HABERMAS, *BETWEEN FACTS AND NORMS: CONTRIBUTIONS TO A DISCOURSE THEORY OF LAW AND DEMOCRACY* 465-66, 499-500 (William Rehg trans., 1996).

⁶ See JÜRGEN HABERMAS, *THE PHILOSOPHICAL DISCOURSE OF MODERNITY* 181-84 (Frederick Lawrence trans., 1990).

⁷ See GIOVANNA BORRADORI, *PHILOSOPHY IN A TIME OF TERROR: DIALOGUES WITH JÜRGEN HABERMAS AND JACQUES DERRIDA*, at xi (2003).

⁸ *Id.* at 116-18.

ethical turn in America. Terrorism is thus not the only key ethical issue addressed by Derrida. But it is the one that casts definitive light on his turn to ethics and on his detour through America to help tease out an ethics of difference and of the other.

The larger normative question raised by global terrorism is whether an ethics of difference is altogether possible and whether its seeming opposite, an ethics of identity, is ultimately relevant. Concerning the ethics of difference, if each singularity is irreducible, then how can the singularity of the global terrorist be cogently condemned as ethically unacceptable when most other singularities are not? Concerning the ethics of identity, on the other hand, how can its condemnation of terrorism be given real bite when the identity it promotes is not a universally uncontestable one, but one closely aligned with that of contemporary Europe, or more precisely, of the European Union?

These questions will be examined below by tracing Derrida's turn to ethics and putting it into perspective against the ethics of identity, as well as by exploring how Derrida's ethics of difference may be aligned or reconciled with the project of the Enlightenment. Part I focuses on Derrida's ethical turn and on its nexus to America. Part II concentrates on the links between terrorism and the Enlightenment and how Derrida's ethics of difference may be reconciled with the Enlightenment project. Part III assesses whether the ethical implications of global terrorism are best handled under an ethics of identity or an ethics of difference. Finally, based on the conclusion that neither the ethics of identity nor that of difference succeeds in coping with global terrorism, Part IV briefly looks at an alternative ethics that is better suited to deal with terrorism and that partakes of both identity and difference, namely an ethics of pluralism.

I. DIFFERENCE IN AMERICA AND DERRIDA'S TURN TO ETHICS

Derrida has always been a philosopher of difference in both its spatial and temporal dimensions⁹—that is, a philosopher of multiplicity and diversity and a philosopher of deferral. Derrida's philosophy of difference, moreover, is firmly moored in continental Europe as it emerges out of a tradition that counts Nietzsche and Heidegger as close antecedents.¹⁰ It is therefore not deconstruction itself, but only its turn to ethics that can be plausibly linked to America.¹¹

⁹ See Rosenfeld, *Deconstruction*, *supra* note 2, at 200 n.24 (deconstruction involves an ontological privileging of differences precluding unification of self and other).

¹⁰ See JACQUES DERRIDA, *MARGINS OF PHILOSOPHY* 109-36 (Alan Bass trans., 1982) (Derrida regards himself as a disciple of Heidegger).

¹¹ In this context, both Europe and America should be taken symbolically and metaphorically

Derrida's use of deconstruction to broach the question of the relation between law, justice and violence in the face of irreducible difference did not just happen to take place in the United States.¹² Indeed, Derrida's conception of justice provides a crucial wholly radical role for difference, and since the 1960s, America, unlike Europe, became increasingly open to difference. One need only refer to America's civil rights movement, feminism and the struggle for gay rights. In contrast, at the time Western Europe was above all bent on converging on a common identity through a supra-national construction that would culminate in the European Union. This process, moreover, required downplaying differences for two separate but related purposes: to move away from past differences, such as in the case of Germany for whom integration into a transnational Europe was a means to distance itself from its Nazi past; and to forge future common identities as partners within the same economic and social space, and hopefully also within the same political space.¹³

Derrida's radical and revolutionary deconstruction of justice both inscribes itself in a tradition going back to Aristotle and stands the latter's conception on its head. For Aristotle, justice requires treating equals equally and unequals unequally.¹⁴ Consistent with this, justice requires adoption of general rules that properly account for relevant differences—i.e., those that determine who is equal or unequal to whom. General rules, however, because they have to be formulated with some degree of abstraction, may not lead to fair applications in certain exceptional cases. To deal with this problem, Aristotle suggests that rules that are *prima facie* universally applicable be qualified by some exceptions to allow for fairness in those relatively few cases in which a combination of factors makes application of the rule in question unfair. In short, for Aristotle justice must be supplemented by equity.¹⁵

Starting from the premise that justice must be predicated on the absolute equality between self and other, and confronted with the irreducible differences that distinguish self from other, Derrida

rather than literally—in other words, for what they stand above all not for what they are in all their manifold complexity.

¹² In addition to the above mentioned 1989 Cardozo presentation where Derrida focused on the first part of his work on justice, he discussed the second part at a conference held at UCLA in 1990. See Derrida, *Force of Law*, *supra* note 3, at 921. So not only did Derrida's ethical turn take place in America, but it did so from coast to coast.

¹³ This is what was attempted through the project of establishing a European Constitution to further bind the EU members together. For such a constitution to be successful, the EU's common identity would have to be strengthened. For an interesting discussion of this need for a strong common identity, see Armin Von Bogdandy, *The European Constitution and European Identity: Text and Subtext of the Treaty Establishing a Constitution for Europe*, 3 INT'L J. CONST. L. 295 (2005).

¹⁴ See ARISTOTLE, NICHOMACHEAN ETHICS, at bk. V (Martin Oswald trans., 1980).

¹⁵ *Id.* at 1137b, lines 27-28.

radicalizes and transforms Aristotle's insight. For Derrida, in every case, justice requires simultaneous compliance with the appropriate universal rule and with its exception, thus making justice both necessary and impossible.¹⁶ Moreover, two important further consequences follow from this: strictly speaking, inasmuch as the law embodies general rules (or even general rules with exceptions), it cannot ever be just; and the pursuit of justice through binding law inevitably leads to violence inasmuch as it coerces the other to act or to refrain from acting in at least partial disregard of the other's particular and irreducible identity, beliefs, and designs.¹⁷

Derrida's conception of justice as irreducibly tied to difference has important affinities at many levels with peculiarly American ways of dealing with law and justice from the 1960s through the 1980s. For one thing, there were actual clashes among different conceptions of justice played out in the American political arena during the relevant period — for example, the African-American conception of racial justice and equality, the feminist conception of gender-based justice and equality, and white male conceptions of justice and equality as applied to issues of race or gender. Furthermore, both the African-American and the feminist struggles for justice projected a complex and differentiated approach to justice and equality that combined reliance on equality-as-identity and equality-as-difference¹⁸ in ways that do not make for tidy unification or harmonization. For example, a claim for equal pay for equal work regardless of race or gender is a claim for equal treatment, equality-as-identity, and universal justice. On the other hand, demands for affirmative action on the basis of race or gender to rectify past injustices or to remedy current disadvantages due to past or present discriminatory treatment are consistent with equality-as-difference and with equitable exceptions to universal justice.¹⁹

One can imagine that for one pondering these dilemmas confronting justice in America, Derrida's deconstruction of justice would have special resonance. Conversely, one can surmise (though there is no factual proof that I know of for this) that if Derrida's focus on justice had been inspired by contemplation of the American dilemma, he would have inevitably been drawn to the ethical turn. In other words, deconstruction of the above-mentioned American

¹⁶ See Derrida, *Force of Law*, *supra* note 3, at 949.

¹⁷ See MICHEL ROSENFELD, *JUST INTERPRETATIONS: LAW BETWEEN ETHICS AND POLITICS* 60 (1998) [hereinafter ROSENFELD, *JUST INTERPRETATIONS*].

¹⁸ See Michel Rosenfeld, *Equality and the Dialectic Between Identity and Difference*, in *MULTICULTURALISM AND LAW: A CRITICAL DEBATE* (Omid A. Payrow Shabani ed., forthcoming 2006).

¹⁹ For an extended discussion of the relationship between affirmative action and justice, see MICHEL ROSENFELD, *AFFIRMATIVE ACTION AND JUSTICE: A PHILOSOPHICAL AND CONSTITUTIONAL INQUIRY* (1991).

dilemmas of justice would quickly make it apparent that all interpretive issues that it raises are imbued with fundamental ethical implications.

The affinities between Derrida and American approaches to law and justice go even deeper. Indeed, Derrida's conception of justice as difference comports better with the piecemeal nature of America's common law approach, characterized by its attempts to reconcile the singularity of every individual case with broader trends over time, than with the deductive model of adjudication prevalent in the civil law systems of continental Europe.²⁰ Furthermore, Derrida's deconstruction of justice meshes well with important trends in American legal theory such as the Critical Legal Studies Movement (CLS) and pragmatism. For example, CLS emphasizes the dichotomy between law and justice and underscores the arbitrary nature of the distinction between the general rule and its exceptions in American Legal doctrine.²¹ CLS, through its critiques of American legal doctrine, shares a negative function with Derrida's deconstructive approach. But the latter exceeds and in a sense surpasses CLS precisely because of its ethical dimension. For both CLS and Derrida justice is impossible, though for CLS it is impossible due to prevailing power relations whereas for Derrida justice is impossible for ontological reasons regarding the irreducibility of self to other. But only for Derrida is the unbending duty to pursue justice as if it were possible also necessary. Finally, Derrida's deconstruction of justice has affinities with American pragmatism, experimentalism, and openness to change and revaluation of tradition in as much as all of these unfold in a world that appears untidy, constantly in flux, and hence per force theoretically under-constructed.

In the last analysis, the above-mentioned affinities between Derrida's deconstruction of justice and America should not be interpreted as meaning that Derrida's ethical turn yields a theory of justice, friendship, forgiveness, etc. that is American in nature or spirit.²² Instead, the role that America plays for Derrida's theory is more modest though nonetheless crucial. Specifically, America's openness to diversity best exemplifies the practical implications of Derrida's theoretical insights. In addition, America plays an indispensable role as Europe's veritable other. In spite of these practical and theoretical moorings in America, however, as we shall now see, Derrida's theory itself is solidly grounded in continental Europe.

²⁰ See generally Michel Rosenfeld, *The Rule of Law and the Legitimacy of Constitutional Democracy*, 74 S. CAL. L. REV. 1307 (2001).

²¹ See, e.g., Roberto Unger, *The Critical Legal Studies Movement*, 96 HARV. L. REV. 561 (1983).

²² As will be briefly discussed in Part II, *infra*, Derrida's deconstruction of friendship, forgiveness, hospitality, etc. all reveal similar conflicts between the universal and the particular, as does his deconstruction of justice.

II. DERRIDA'S ETHICS OF DIFFERENCE, TERRORISM, AND THE ENLIGHTENMENT

In the most general terms, Derrida's deconstruction of ethics and politics draws on two clashing European philosophical traditions: that of Kant,²³ and, as already mentioned, Nietzsche and Heidegger.²⁴ To oversimplify while capturing the essential, on the one hand Derrida's deconstruction of justice as necessary but impossible combines Kantian universalism and the categorical imperative, and on the other draws on the Nietzschean/Heideggerian insight that the living, constantly evolving experience that confronts us in all its complex diversity and vitality can never be neatly captured, much less mastered, by reason. In other words, when Derrida the philosopher of difference turns to the ethical, he encounters at once the strong normative call for a common bond of identity between self and other—a bond that Kant establishes at the level of transcendental idealism—and the obligation to account for the full panoply of differences of the irreducible other, though the self can at best have a partial glance into the diversity at stake.

What emerges from this is an unbridgeable gap between the ethical duty to forge common bonds of identity with the other and the equally compelling ethical duty to account for the differences that cast the other as a singular other self, and to act in ways that accord full respect and consideration to those differences. As already noted, in the context of justice, this gap is that between law and justice.²⁵ One may craft laws with the intent of achieving justice, but these laws are bound to fall short as it is impossible to give full expression at once to the relevant general rule and to all its pertinent individualized exceptions. Moreover, similar gaps emerge in the context of deconstruction of other ethical relationships such as friendship or forgiveness. The gap is between self-regarding and other regarding friendship and between proportional and hence conditional forgiveness and unconditional forgiveness. Thus, to the extent that friendship towards another is based on an expectation of receiving something in return, it cannot be true friendship as it verges on a relationship based on mutual self-interest. True friendship is therefore impossible friendship, such as friendship toward the dead, who cannot be expected to provide anything in return.²⁶ Similarly, forgiveness that is proportional, such as that extended to someone who has acted to rectify a situation or to compensate for a misdeed, is barely forgiveness. On the other hand,

²³ See, e.g., DERRIDA, VOYOUS, *supra* note 1, at 167-94.

²⁴ See *supra* note 10 and accompanying text.

²⁵ See *supra* note 17 and accompanying text.

²⁶ See generally JACQUES DERRIDA, *POLITIQUES DE L'AMITIÉ* 322-29 (1994).

forgiveness that is not self-regarding is disproportionate, amounts to forgiveness of the unforgivable, and is problematic if not impossible.²⁷

The unbridgeable gap between the pole of identity and that of difference is problematic, particularly in relation to determining what specific norms or actions are called for. For example, laws can never be just, but does deconstruction provide the means to determine which laws are more just or less unjust than others? Clearly, laws that blatantly disregard the common ground between self and other or that consciously ignore differences that are generally recognized as constitutive of the other's identity are unacceptably unjust. But what about laws which in their own imperfect way seek to approximate justice?

One plausible answer is that the best that can be done is to craft laws with an eye to justice in good faith, in other words, as best as one can.²⁸ For example, neither laws imposing equal treatment nor those sanctioning affirmative action can promote full racial or gender-based justice. Nonetheless, some may believe in good faith that the former laws come closer to justice, while others may believe in equally good faith the latter laws do. Moreover, since neither of the two kinds of laws involved inherently seems significantly more unjust than the other, adoption of either would result in an acceptable good faith approximation of justice.

However, such approximation, which may be acceptable in the context of justice, friendship, or forgiveness seems clearly inadequate in the context of terrorism. On the one hand, terrorism looms as inherently and unexceptionally unacceptable no matter its cause or context. The random killing of innocent civilians in New York on September 11, 2001, Madrid on March 11, 2004, or London on July 7, 2005 ostensibly involves utter disregard for the other and thus constitutes a direct assault against Derrida's ethics of difference. Upon further deconstruction, on the other hand, the ethical status of terrorism can become much more murky. Thus, for example, one person's terrorism is another's war of liberation. As Derrida observes, "[e]very terrorist in the world claims to be responding in self-defense to a prior terrorism on the part of the state, one that simply went by other names and covered itself with all sorts of more or less credible justifications."²⁹ In terrorism linked to national self-determination, such as that of Basques in Spain, of the IRA in Northern Ireland, or of Palestinians against Israel, the struggle is against

²⁷ See JACQUES DERRIDA, ON COSMOPOLITANISM AND FORGIVENESS 38-39 (Mark Dooley & Michael Hughes trans., 2001).

²⁸ This notion of "good faith" has some resemblance to Sartre's notion of authenticity. See JEAN-PAUL SARTRE, BEING AND NOTHINGNESS 86 n.10 (Hazel E. Barnes trans., 1966) ("authenticity" is self-recovery from "bad faith"). Derrida was influenced by Sartre, see Jacques Derrida, *Il Courait Mort: Salut, Salut*, in 587 LES TEMPS MODERNES 7 (1996).

²⁹ BORRADORI, *supra* note 7, at 103.

a much more powerful and formidable adversary who is perceived as systematically negating and suppressing the core collective and individual identities of the people engaging in terrorism. Moreover, even in global terrorism such as that perpetrated by Al Qaeda, the claim is that globalization aggressively imposes an order that assaults and undermines Islam and is destructive of the core identity of those who adhere to Islam.

If pure disregard of the other is unequivocally unethical in the context of the ethics of difference, self-defense against state terrorism or global terrorism, against the other's attempt to deny the self treatment as an other self, seems *prima facie* ethical. Indeed, if even the quest for justice is inevitably accompanied by violence,³⁰ violence necessary to prevent eradication of the self's identity by the other seems eminently justifiable. More generally, the obligation to forge common bonds of identity with the other must be deferred when it is necessary to engage in self-defense against the other's attempts to destroy the self's identity.

Both global terrorists and those who seek to eradicate them accuse one another of seeking to destroy the other or the other's identity. Accordingly, each seeks to justify violence against the other while condemning the violence of the other. From the standpoint of deconstructive ethics, there is a similar gap between identity and difference in the context of terrorism as there is in those of justice, friendship or forgiveness. Unlike the gap relating to justice, friendship or forgiveness, however, the gap concerning terrorism is unacceptable and unbearable. Indeed, the gap relating to justice, for example, calls for further ethical commitment toward narrowing the divide between law and justice, but each effort in that direction seems acceptable so long as it is conducted in good faith. In contrast, the gap relating to terrorism is unacceptable and unbearable even if approached in good faith because it at once implies self-preservation and annihilation of the other, and because any excess in either direction threatens the collapse of the very pursuit of a deconstructive ethics of difference.

The unacceptable gap in the case of terrorism raises the question of whether the latter will ultimately prove to be the Achilles' heel of a Derridean ethics of difference. In other words, if each self (from its own differentiated perspective) can cast the other as the terrorist, and if there is no way to mediate between these diverse and often diametrically opposed perspectives, then there can be little hope that the self will even attempt any gesture toward the other. And without such an attempt there cannot be ethical life. To assess whether Derridean ethics is actually bound to reach such a dead end, it is now necessary to take a closer look at Derrida's deconstruction of terrorism, and in

³⁰ See *supra* note 17 and accompanying text.

particular at how terrorism as difference fares in relation to the project of the Enlightenment.

Global terrorism as understood by Derrida, unlike all other phenomena, is not amenable to the dialectic dynamic between identity and difference that shapes the deconstructive ethics of self and other. The reasons for this are, in turn, twofold. On the one hand, global terrorism—as symbolized by the attacks of September 11, 2001 which are encapsulated in the sign “9/11”—is not amenable to further reference through language and hence remains beyond the meaning-endowing discourse that allows for the development of ethical links between self and other.³¹ On the other hand, Derrida links global terrorism to something akin to an autoimmune disease of the contemporary Western democratic polity negotiating the passage from the Cold War to globalization, and in particular of the superpower that has led this transition, the United States.³² If, indeed, consistent with Derrida’s assessment, the United States’ push towards globalization and its consequent “victimization” by, and confrontation against, global terrorism are best viewed as an autoimmune attack, then global terrorism is a product or symptom of self-destruction. To the extent that the self attacks itself, moreover, it destroys the very possibility of seeking to build bridges between self and other so as to encompass the full singularity and diversity of each, which is the paramount pursuit prescribed by a deconstructive ethics of difference. In short, by remaining beyond language, global terrorism is destructive of the prime medium of interaction between self and other. Furthermore, as part of an auto-destructive process akin to an autoimmune disease, global terrorism undermines the integrity—in the literal sense of the term—of the necessary interlocutors in any genuine intersubjective ethical project.

Underlying Derrida’s conclusion that global terrorism is “unspeakable” are two principal factors: one quantitative, the other qualitative. As Derrida notes, modern terrorism is not new; it traces back to Robespierre’s Reign of Terror during the French Revolution.³³ What is new with today’s global terrorism, however, is the magnitude of its potential destructiveness through the use of nuclear, biological and chemical weapons.³⁴ Accordingly, the threat posed by global terrorism does not naturally lead to discussion, but to unspeakable fear, panic and trauma.

³¹ See BORRADORI, *supra* note 7, at 147 (“For Derrida, by pronouncing 9/11 we do not use language in its obvious referring function but rather press it to name something that it cannot name because it happens beyond language: terror and trauma.”).

³² See *id.* at 140, 150-59.

³³ See *id.* at 152.

³⁴ See *id.* at 151.

From the qualitative standpoint, on the other hand, what distinguishes global terrorism from nationalist terrorism for Derrida is that the former projects an ideology that lacks any opening to the future.³⁵ Global terrorism, moreover, has no future in at least two different senses. First, it has no future as pure violence breeding further violence. And second, it has no future in as much as Bin Laden and his associates seek imposition of a fanatical pre-modern religious ideology hermetically closed to the Enlightenment, modernity, and the present, let alone the future.³⁶

Before focusing more specifically on the relationship between global terrorism and the Enlightenment, it is necessary to take a brief look at what Derrida characterizes as America's tendency towards autoimmune auto destruction in the context of globalization and global terror. Essentially, at the highest levels of abstraction, the other who sets to destroy the self is located within the latter and finds its weapons of destruction within the self. Thus, the 9/11 hijackers circulated freely in the United States, attended its flight schools, and turned its scheduled commercial jetliners into deadly weapons of terror. Furthermore, by trying to protect itself from the assault of the other within itself, the self ends up becoming other than itself. Thus, an open society with enemies within, like the United States, must sacrifice liberty to security to more effectively protect itself. But in so doing it chips away at its identity as a free and open society.

More specifically, Derrida focuses on the trajectory of the process of autoimmune auto-destruction in the context of the evolution from the end of the Cold War to globalization and to global terror. According to Derrida, this process of auto-destruction has three phases.³⁷ The first phase is traceable to the Cold War itself. An example is the context of opposing the Soviets in Afghanistan, when the United States nurtured and sustained Bin Laden and his mujahadeen who would later turn against it and mastermind 9/11. The second phase is located in the aftermath of the Cold War in the context of the concurrent spread of globalization and global terrorism. The collapse of the Soviet Union has led to an arsenal of unguarded nuclear weapons which makes it all too possible that weapons of mass destruction may fall in the hands of global terrorists. In addition, globalization has opened markets and borders, and the technological revolution in cyberspace has allowed for anonymous, instant world wide communication. All of this inures to the benefit of the global terrorist who can now secretly and anonymously

³⁵ See *id.* at 113. Speaking of Bin Laden and his global terrorism, Derrida observes that "such actions and such discourse *open onto no future and, in my view, have no future*" (emphasis in original).

³⁶ See *id.* at 113-14.

³⁷ See *id.* at 150. The following discussion draws on the account in *id.* at 150-52.

threaten mass destruction without any of the Cold War safeguards such as state control and reciprocal restraints based on the danger of mutual nuclear annihilation. As a consequence of this post Cold War imbalance, global terrorism's potential for mass destruction leads to widespread trauma, panic, and terror in all polities that feel targeted. Finally, the third phase is marked by the cycle of repression that characterizes the reactions to 9/11 and subsequent global terrorist attacks or threats. To protect itself, the state must go against terrorists, and given the nature of the threat, it is often imperative that the state act preemptively. But that leads to massive internal surveillance and repression and sets open societies on a course of self-destruction.

Stripped to its essentials, the project of the Enlightenment can be said to consist in promoting universal adoption of the rule of reason and in ensuring protection of liberty and equality for all. Arguably, the Cold War fits within the Enlightenment project, albeit with distortions and pathologies. Indeed, both liberal capitalism and Marxist socialism rely on rationality and are committed to promoting liberty and equality for all. The main difference between them is that they disagree sharply over what rationality, liberty and equality entail, and that explains why they were in conflict. Nevertheless, the Cold War ideological divide is one that remains by and large within the confines of Enlightenment norms and values.

And so does globalization, at least on first impression. Overall, globalization consists of the spread of liberal capitalism and the rationality it entails worldwide beyond the strictures of nation-state control or regulation. In an important sense, globalization is called for by the very logic of the rationality of liberal capitalism given existing material conditions and capacities. Consistent with all this, moreover, it is only global terrorism anchored in pre-modern religious fundamentalism that stands squarely against the Enlightenment ideology and against any prolongation of the Enlightenment project.

Derrida certainly shares with proponents of the Enlightenment ideology an unequivocal condemnation of global terrorism.³⁸ His assessment of globalization, however, is not consistent with the one suggested above. Moreover, whereas Derrida shares certain goals of the Enlightenment project, such as the development of Kantian cosmopolitanism,³⁹ he remains critical of tolerance and instrumental reason, two key, Enlightenment values and tools. More generally, Derrida's radical ethical commitment to singularity and difference in their irreducible complexity and diversity is arguably incompatible with

³⁸ See *id.* at 113 (Derrida makes it clear that though he has strong reservations concerning how Europe and the United States are handling the war against terror, he remains firmly on their side against terror).

³⁹ See *id.* at 130.

successful pursuit of the Enlightenment project, and perhaps even undercuts the consistency of his unequivocal condemnation of global terrorism. In other words, though there is no doubt about the sincerity of Derrida's condemnation of global terrorism, is such condemnation the mere expression of personal emotion or is it consistent with a deconstructive ethics of difference?

If one regards globalization as the culmination of the Enlightenment project, the end of the Cold War marks the end of a major split over the true legacy of the Enlightenment. Consistent with this, moreover, globalization promises the eventual breakdown of remaining barriers to the world wide spread of instrumental rationality and tolerance; the creation of conditions conducive to cosmopolitan citizenship for all; and democracy beyond the confines of the nation-state. In a word, globalization would thus represent the triumph of reason over prejudices and passions, and global terrorism the last stand of parochial irrationalism. More generally, the Enlightenment project has called throughout for a struggle against the darker side of humanity, and the struggle against global terrorism is but the most recent and quite probably the last chapter in this struggle.

For Derrida, in contrast, if the project of the Enlightenment is properly placed in its actual historical context, the irrational, the partial and the parochial must be located within it, not outside of it. In other words, when viewed historically, the Enlightenment project encompasses within its bounds aporias and contradictions that pose a series of concrete, historically situated challenges. Accordingly, the Enlightenment's ultimate success depends less on repelling outside threats than on charting a course that properly confronts internal obstacles and limitations.

Deconstructive ethics is consistent with the promise of the Enlightenment, namely freedom and equality for all.⁴⁰ The question then is not whether Derrida's theory is contrary to the Enlightenment, but whether his deconstruction of the historicity of the institutions and values associated with the Enlightenment lead to negation rather than to deferral of freedom and equality for all. To be in a better position to answer this question, it is necessary to take a closer look at Derrida's deconstruction of globalization, tolerance, and democracy.

In appearance, both tolerance and globalization are widely encompassing, open to all, and neutral. As Derrida sees them, however, beneath the surface they are both to a significant degree exclusionary and far from neutral. Just as there is for Derrida a gap between law and justice, there is also one between tolerance and hospitality and between globalization and equal cosmopolitan citizenship for all. Finally, there

⁴⁰ *Id.* at 172.

is also an insurmountable divide for Derrida between democracy as it is and the “democracy to come” (*à venir*), between rational pursuit of the will of the majority and the (impossible) equal treatment of the full singularity of every person within the global polity.⁴¹

Derrida approaches tolerance historically and emphasizes that, traditionally, to be tolerated did not mean being treated as an equal, but rather as an object of condescension to whom is extended no more than mere acceptance.⁴² Tolerance is a Catholic virtue,⁴³ and as such is it accorded from a position of strength by those who are confident of possessing the truth to those perceived by those in power as living in error. Tolerance, therefore, is not for Derrida a relationship among equals, but rather a concession by the powerful to the powerless, and one that is subject to change or revocation at will.⁴⁴ Derrida contrasts tolerance to hospitality. For him, hospitality requires unconditional invitation and acceptance of all others to one’s home, community or polity.⁴⁵ Tolerance, on the other hand, amounts to limited hospitality as it seeks accommodation of some but not others, and as it makes such accommodation conditional.⁴⁶ Unconditional hospitality is ethically mandated but politically impossible—indiscriminate hospitality to all comers could prove self-destructive—whereas tolerance though an Enlightenment virtue ends up undermining the latter in as much as it stands in the way of, rather than promoting, equality for all.

Like tolerance, globalization purports to promote freedom and equality for all, but in fact ends up doing the opposite. Ideally, globalization is meant to level the playing field for all humanity by turning the entire planet into a single fully integrated market and a seamlessly conjoined unified world wide polity. In point of fact, however, globalization has consisted of imposition of the sectarian partial and highly contested institutional practices and way of life of the most powerful nation-states on an ever increasing portion of the globe. Consistent with this, viewed through a Derridean lens, globalization is much less a movement of worldwide emancipation from the strictures of the nation-state than a kind of recolonization achieved through the economic might of the most powerful and through rapid spread and strategic use of sophisticated modern technologies.⁴⁷

⁴¹ See *id.* at 120.

⁴² *Id.* at 127.

⁴³ *Id.* at 126.

⁴⁴ In contrast to Derrida, Habermas is convinced that present day tolerance can transcend its Christian origins and become a subject of dialogical give and take among equals. See *id.* at 17-18.

⁴⁵ See *id.* at 127-30.

⁴⁶ *Id.* at 127-28.

⁴⁷ See *id.* at 121-24.

In Derrida's view, globalization sets the globalizing polities, and the United States in particular, on a path of autoimmune self-destruction. This is done in part by unwittingly enabling the global terrorist or other enemy within, and, in part, by alienating the self from itself through repressive actions undertaken in self-defense and through dilution of its identity in the quest for global reach.

The global terrorist is bent on resisting or countering the penetration of globalizing trends and ways of life through terrorizing violence in the name of a fundamentalist pre-modern religion. Significantly, the principal globalizing power, the United States, has also experienced a return to religion, or more precisely, a thorough politicization of religion.⁴⁸ To some extent, consistent with Derrida's assessment, these two convergences toward religion mirror one another as they mark a reaction against the disembodied obstructions produced by the rapidly spreading new technologies.⁴⁹ Thus, both for American and for Islamic fundamentalists, religion provides the means to reestablish links to the concrete, or in other words, to reclaim singularity in the face of the sweeping homogenizing trend spearheaded by the new technologies.⁵⁰

If in spite of the convergence of America and global terrorism toward religion, as we have seen, Derrida unequivocally sides with America,⁵¹ it is that the religion that emerges in globalizing polities arises in a very different context than that in which Islamic fundamentalism prevails. Indeed, notwithstanding its contradictions shortcomings, and pathologies, globalization loosens the barriers erected by the nation state and thus paves the way toward cosmopolitanism and equal citizenship for all the world's inhabitants. Accordingly, even if America's religion, taken by itself, had no more future than that invoked by the global terrorists, America's globalizing enterprise taken as a whole is not without future provided, only that it can be rechannelled away from its autoimmune pathologies. Religious America remains clearly preferable to Islamic fundamentalism, but Derrida regards secular Europe as much more favorable terrain than present day America for cosmopolitanism.⁵² Hence Derrida's return to Europe after 9/11.

The ideal of cosmopolitanism as conceived by Derrida derives from Kant and is thus firmly anchored in Enlightenment thought. As Derrida explains, Kant thought that "we should probably give up the idea of a 'world republic' . . . but not the idea of a cosmopolitical law,

⁴⁸ See *id.* at 117-18.

⁴⁹ See *id.* at 157.

⁵⁰ *Id.*

⁵¹ See *supra* note 38 and accompanying text.

⁵² See BORRADORI, *supra* note 7, at 140.

‘the idea of a law of world citizenship’ . . .”⁵³ Today, Europe with its extensive transnational network, its serious commitments to international covenants such as the European Convention on Human Rights, and its secular vision, looms as propitious grounds for the implantation of world citizenship. In contrast, the United States with its flouting of international law⁵⁴ and hostility towards international organizations and institutions—such as the United Nations⁵⁵ and the International Criminal Court⁵⁶—does not loom as fertile ground for launching world citizenship, notwithstanding its extensive globalizing activities. In the end, whereas Europe holds greater promise for world citizenship, it remains unclear whether the shortcomings and pathologies of globalization may be sufficiently overcome for genuine cosmopolitanism to take hold.

Cosmopolitanism could extend democracy worldwide, but it is insufficient according to Derrida to bring about the “democracy to come[.]”⁵⁷ The latter requires going beyond the limits of world citizenship to allow all persons on the globe to live together consistent with full respect for the irreducible singularity of each and with sufficient room for such singularity to flourish.⁵⁸ Just as deconstruction emphasizes the gaps between law and justice, tolerance and hospitality, globalization and cosmopolitanism, so too it highlights the unbridgeable divide between actual democracy and ideal but impossible “democracy to come.”

Democracy or self-rule by the *Demos* provides the best available means for reconciling self and other, identity and difference. Ordinary democracy dependent on majority rule, however, must systematically sacrifice singularity and difference to rational pursuit of common interests shared by a majority of the polity’s citizenry within the constraints imposed by enforcement of fundamental rights. In democracies on the scale of the nation-state, strangers or non-citizens within and without are essentially left out. Worldwide citizenship overcomes this limitation by making it possible for all human beings to participate in self-government. Moreover, world-wide citizenship without worldwide government allows for multiple centers of

⁵³ See *id.* at 130.

⁵⁴ One notorious example concerns the treatment of the detainees in the ‘war on terror’ held in Guantanamo. See Jordan J. Paust, *Executive Plans and Authorizations to Violate International Law Concerning Treatment and Interrogation of Detainees*, 43 COLUM. J. TRANSNAT’L L. 811, 838-45 (2005).

⁵⁵ See, e.g., Dan Robinson, *US Lawmakers Keep Up Criticism of UN*, THE EPOCH TIMES, April 21, 2005, <http://English.@pochtimes.com/admin/makeArticle2>.

⁵⁶ See *United States Unsigning Treaty on War Crimes Court*, HUMAN RIGHTS WATCH, May 6, 2002.

⁵⁷ See BORRADORI, *supra* note 7, at 130.

⁵⁸ *Id.*

democratic rule and for a wider diversity in clusters of common interests amenable to majority rule.

Nevertheless, no democracy based on majority rule can do justice to democracy in its deepest and most radical sense, the "democracy to come," which must be pursued but inevitably forever deferred. This latter democracy requires self-rule not in pursuit of majority wishes, but in pursuit of what the singularity of each human being requires for that person and for all those with whom the person in question does or may interact. Thus, the majoritarian compromises that shape ordinary democracy prove inimical to the "democracy to come." Moreover, only the latter democracy, if it ever could come in to being, could complete and fully vindicate the Enlightenment's ultimate goal of freedom and equality for all.

Consistent with the preceding analysis, it becomes plain that for Derrida pursuit of the project of the Enlightenment is necessary, but its achievement is impossible. The historical unfolding of the Enlightenment's heritage with its aporias and contradictions is to its ultimate realization in the "democracy to come" like law is to justice. Moreover, tolerance, globalization, global terrorism, and even cosmopolitan citizenship remain far removed and many pitfalls and reversals away from even an incipient breakthrough toward democratic self-rule based on singularity.

Based on this conclusion, is Derrida's unequivocal condemnation of global terrorism and his preferences for America's globalizing mission and ever more intrusive religiosity sufficiently justified from the standpoint of a deconstructive ethics of difference? That depends on the solidity of Derrida distinction between the global terrorists' religion as having no future and America's religion and self-destructive repression as nonetheless open to a better future. As we shall see below, further deconstruction indicates that this distinction is at best shaky.

III. GLOBAL TERRORISM AND THE ETHICS OF IDENTITY VERSUS THE ETHICS OF DIFFERENCE

Consistent with the Enlightenment's promise of liberty and equality for all, ethical assessment pursuant to the corresponding canons of justice requires taking proper account of relevant identities and differences. Ethics of identity based on the Kantian model of transcendental idealism tend to frame identity at such a high level of abstraction as to ignore or downplay relevant differences. Ethics of difference, such as that based on Derridean deconstruction, on the other hand, tend to pursue difference to such a degree as to make establishing

a basis for common identity virtually impossible. As discussed in Part II above, Derrida advances an argument for condemning global terrorism from the standpoint of a deconstructive ethics of difference. Derrida's argument will be examined below and found to be ultimately unsupported by the ethics of difference. On the other hand, Habermas has adapted monological Kantian idealism into a dialogical framework that allows for intersubjective consideration of diverse interests, and thus offers an ethics of identity that better accounts for difference. As will be pointed out below, however, Habermas's dialogical Kantianism is not sufficiently inclusive of diversity to yield a satisfactory balance between identity and difference.

Derrida's abovementioned distinction between the lack of future of the global terrorists' Islamic fundamentalism and the openness to the future of America's globalizing efforts and its further turn toward religion is at best precarious. Indeed, by subjecting this distinction to further deconstruction, it becomes apparent that further differentiation casts doubt on Derrida's claim that fundamentalist Islam has no future and on the proposition that America's turn to religion does not pose a similar threat. If global terrorism's Islamic fundamentalism has no future, it is for at least one of two reasons. First, Islamic fundamentalism is pre-modern and openness to the future requires taking the legacy of the Enlightenment into account, either as Derrida does—by trying to perfect it to meet current historical conditions—or by trying to go beyond its contradictions and limitations and into a yet to be defined post-Enlightenment era. Second, global terrorism, unlike national terrorism, is bent on pure negation and destruction. Thus, an Al Qaeda suicide bomber appears bent on pure destruction, whereas a Palestinian suicide bomber or a Basque ETA terrorist is ultimately motivated by the hope of bringing about liberation and self-government. Furthermore, by combining these two reasons, global terrorism appears to project pure negativity and to irrevocably turn its back to the future.

Further deconstruction indicates, however, that neither of the two reasons discussed above nor their conjunction necessarily support the conclusion that global terrorism cannot be future-looking. First, even if it is conceded that Islamic fundamentalism itself cannot be open to the future, it does not necessarily follow that its political use also need be thus limited. If global terrorism is meant above all as a means of resistance against the evils of globalization, and if its use of Islamic fundamentalism is primarily intended for purposes of countering or slowing down the spread of globalizing forces, then it may well be largely oriented toward the future—a future in which globalization is limited, transformed, or transcended, and in which those whom it displaces, disfavors, or ignores will enjoy greater freedom and equality.

Second, whereas it may seem that Basque, Northern Irish or Palestinian terrorism is less nihilistic than Al Qaeda's global terrorism, careful analysis does not bear out that impression. If national terrorism or that fitted to the scale of the nation-state seems rational in relation to its ends, if not its means, it is because liberation and self-determination are worthy pursuits in the quest for freedom and equality for all. That is at least the case from the subjective standpoint of those who feel unfree and oppressed. Those who perceive themselves unfree and oppressed because of the intrusive inroads of globalization, moreover, are clearly in an analogous position even if their prospects of success are more unlikely—an assumption that is by no means obvious. In other words, if there is any hope of moving closer to liberation and self-determination at a sub-national, national, or supra-national level, then the ends pursued by global terrorists would seem as future-oriented as those motivating their counterparts who act on the scale of the nation-state.

On the other hand, if the current trend towards repolitization of religion in America is pursued to its logical culmination, then the United States may find itself plunged into a pre-modern universe that, for all relevant purposes, would be analogous to that of Islamic fundamentalism. Take, for example, the demand that creationism be taught in public schools.⁵⁹ Creationism has no scientific basis,⁶⁰ and accordingly were it to supplement, or substitute for, the teaching of evolution in public schools, it would violate a basic tenet of Enlightenment thought: the separation between science and religion. Moreover, if this separation were systematically eradicated, American society would return to a pre-modern state where the Enlightenment would have lost all future. Accordingly, from the standpoint of the Enlightenment, there would be little difference between Islamic fundamentalism and full implantation of Christian fundamentalism in the United States.

Consistent with the preceding observations, the deconstruction of global terrorism does not lend sufficient support to Derrida's conclusions regarding lack of openness to the future. Moreover, the gap between globalization and genuine cosmopolitan citizenship without world government and that between actual democracy and the "democracy to come" are unbridgeable and the ways to narrow them uncertain. Accordingly, absolute condemnation of global terrorism cannot be systematically justified from the standpoint of a

⁵⁹ See ADL Online, Religion in the Science Class?, http://www.adl.org/issue_religious_freedom/create/creationism_QA.asp ("proponents of religious theories of creation have recently renewed—efforts to persuade public schools to teach creationism . . . either along side or in place of evolution") (last visited Oct. 24, 2005).

⁶⁰ *Id.*

deconstructive ethics of difference. Since even the pursuit of justice involves perpetration of violence, and since the self is not ethically called upon to forgo violence when confronting the other's threat to annihilate it or to eradicate its core identity, it is impossible to justify an unequivocal condemnation of global terrorism without a full grasp of its meaning. But such a meaning is bound to remain elusive since it cannot be fully ascertained without future interpretation.⁶¹ Thus, for example, terrorism in the pursuit of national liberation against a cruel and repressive authoritarian regime may be justified *ex post* if it proves to have been a necessary step in the transition to a democratic regime that is committed to freedom and equality for all. Similarly, it cannot be foreclosed that the interplay between globalization and global terrorism will lead to an institutional reorganization better suited to freedom and equality for all than would have been possible had globalization been fully realized without encountering any serious opposition or confrontation.

In the final analysis, a deconstructive ethics of difference cannot yield an unequivocal and categorical condemnation of global terrorism. This is because, given its aim to accommodate all differences and singularities, the ethics of difference cannot sustain a sufficiently stable common identity to sift through competing claims regarding what is required for self-preservation and for protection of the core identity of the self. In other words, as radical singularity precludes establishing a common intersubjective criterion to assess conflicting claims issuing from different perspectives, at least in the short run, each claim can only be evaluated from the standpoint of the subjective perspective from which it is made.⁶² Accordingly, without the benefit of long term hindsight, global terrorism could only be unequivocally condemned as nihilistic and without any future if those conclusions could be drawn from within the perspective of the proponents of such terrorism. And they clearly cannot.⁶³

⁶¹ See Rosenfeld, *Deconstruction*, *supra* note 2, at 157.

⁶² The difference between the short run and the long run is attributable to the fact that the hindsight of history (through future interpretations) may clarify whether a particular past subjective claim was compatible with the ethically mandated search for reconciliation between self and other. Thus, if global terrorism were to lead to nothing but nihilism and destruction, then its subjective claim that it is necessary to the preservation of a valuable way of life would become susceptible to *ex post facto* refutation. Conversely, if history were to prove that global terrorism contributed, albeit involuntarily or only partially, to a better reconciliation between self and other, then its subjective claim would receive some degree of *ex post facto* vindication.

⁶³ This is at least the case with respect to the "defensive" claims of Islamic fundamentalist terrorists who see the West and America in particular as the "great Satan" bent on destroying the Islamic way of life through global spread of its economy, culture, and ideology. See, e.g., Scott J. Zentner, *A Just War: Friends, Enemies and The War in Iraq: A View from the Founding*, 9 NEXUS J. OP. 27, 40 (2004). In contrast, the "offensive" or jihadist claims associated with global terrorism may be unequivocally condemned within an ethics of difference to the extent that even within the perspective from which they are made they negate the "infidel's" right to self-

Ethics of identity, such as those derived from Kantian transcendental idealism, on the other hand, have no difficulty in justifying universal unequivocal condemnation of all terrorism. Kant's own moral theory internalizes the Enlightenment's commitment to freedom and equality for all and prescribes its realization at the highest levels of abstraction, thus setting a counterfactual ideal rather than providing moral principles susceptible of implementation through law and politics. Specifically, Kant proposes universally applicable moral norms that are self-imposed. According to Kant, every autonomous individual freely assumes the duties flowing from universally encompassing categorical imperatives derived from the premise that all individuals are of inherent equal moral worth and should therefore treat each other as ends in themselves.⁶⁴ Consistent with the categorical imperative and the duty to treat all persons as ends in themselves, all killings, even those in self-defense—as the latter would involve treating another as a means to my own survival—are strictly morally prohibited. It obviously follows that all terrorism, let alone global terrorism, whether or not it involves killing, is deserving of absolute moral condemnation. Indeed, to terrorize anyone and to instill fear and panic in others are clear proofs of intent to treat others as means rather than as ends.

Kant's categorical imperative rises above all differences in perspective or conceptions of the good and hence reduces every individual to an abstract, purely formal ego.⁶⁵ To the extent that the Kantian moral individual is shorn of all interests, historical or cultural perspective, or conception of the good, all egos are interchangeable, and morality is ultimately susceptible to individual solipsistic derivation rather than to collective intersubjective construction. Moreover, strict adherence to the categorical imperative makes morality impossible in the day to day world of law and politics. Indeed, any contract or search for a majoritarian convergence of interests implies treating others, at least in part, as means to someone else's ends rather than as ends in themselves.⁶⁶

Kant's morals may thus provide a useful counterfactual for purposes of critical analysis but can offer little guidance regarding conflicting agendas launched from diverse perspectives within the realms of law and politics. Habermas seeks to preserve the virtues of

preservation or to his or her own chosen identity and way of life.

⁶⁴ See IMMANUEL KANT, *FOUNDATIONS OF THE METAPHYSICS OF MORALS* 53-54 (Robert P. Wolff ed., Lewis W. Beck trans., 1969).

⁶⁵ Cf. G.W. HEGEL, *PHILOSOPHY OF RIGHT* Paras. 135, 135A (A.V. Miller trans., 1952) (criticizing Kantian morals as being purely formal and hence empty).

⁶⁶ It is noteworthy in this connection that Kant himself places pragmatism ahead of morals when it comes to evaluating law. See Immanuel Kant, *Perpetual Peace: A Philosophical Sketch* in KANT'S POLITICAL WRITINGS 118-19 (Hans Reiss ed., 1970).

Kantian ethics of identity while overcoming its solipsistic isolation and its radical sundering of morals from interests.⁶⁷ Habermas counters Kant's solipsistic monological approach with a dialogical approach,⁶⁸ and rejects Kant's isolation of morals by reintroducing interests, inclinations and political outlooks within the intersubjective dialogical framework designed to yield legitimate moral and legal norms.⁶⁹

Habermas's discourse ethics within a dialogical framework posits an ideal communicative setting within which all participants are oriented towards reaching a consensus and given an equal opportunity to present their claims. Moreover, each of the participants must consider every claim from the perspectives of every other participant in the dialogue.⁷⁰ Only those claims that are universalizable from the standpoint of all perspectives are to command a consensus of all participants and hence to become morally binding on all.⁷¹ In other words, unlike Kant, Habermas allows all interests from all perspectives associated with all conceivable conceptions of the good to be considered in the determination of morally binding norms. However, because only universalizable claims can command consensus, Habermasian morals, just as their Kantian counterpart, must rise above all particular conceptions of the good.

In Habermas's discourse theory, morals and justice remain independent from any particular conception of the good. This dichotomy between the right and the good can be criticized on several different grounds.⁷² For present purposes, it suffices to focus on discourse theory's failure to properly account for difference through consideration of a single example that plays a crucial role in Habermas's justification of his condemnation of global terrorism and of the religious fundamentalism that animates it.

Contrary to Derrida, Habermas considers the pathologies associated with the Enlightenment project as being external to it and external to modernity.⁷³ Thus modernity and communicative ethics require the rational pursuit of freedom and equality for all,⁷⁴ but that pursuit can be thrown off course by irrationalism and communicative

⁶⁷ For a succinct distinction of the main differences between Habermas's discourse ethics and Kant's moral theory, see JÜRGEN HABERMAS, *MORAL CONSCIOUSNESS AND COMMUNICATIVE ACTION* 195, 204 (Christian Lenhardt & Shierry W. Nicholsen trans., 1990).

⁶⁸ *Id.* at 203.

⁶⁹ *Id.*

⁷⁰ *Id.* at 122.

⁷¹ See JÜRGEN HABERMAS, *BETWEEN FACTS AND NORMS: CONTRIBUTIONS TO A DISCOURSE THEORY OF LAW AND DEMOCRACY* 459-66 (William Rehg trans., 1996).

⁷² For some of the main criticisms, see ROSENFELD, *JUST INTERPRETATIONS*, *supra* note 17, at 137-38.

⁷³ See BORRADORI, *supra* note 7, at 13, 70.

⁷⁴ See *id.* at 79.

pathologies.⁷⁵ Religious fundamentalism, moreover, constitutes for Habermas a violent external reaction against the deployment of modernity.⁷⁶ Significantly, in Habermas's view, religious fundamentalism does not depend on the content of the religious beliefs involved but instead on the *modality* of such beliefs.⁷⁷ Indeed, modernity requires that religion see itself through the eyes of others, namely those of science, other religions, and political institutions of the democratic polity.⁷⁸ The religious fundamentalist, however, refuses to relativize his own religion in this manner and hence defies the legitimacy of the Enlightenment project and of modernity.

In terms of discourse ethics, this means that modernity and the relativization of religion should command a consensus as being universalizeable whereas any claim that a particular religion holds the truth could only result from pathological communication. Upon further analysis, however, this conclusion seems to contradict the premises of Habermas's ideal communicative setting. Assuming that both the religious fundamentalist and the modernist are sincere and that both are open to reaching a consensus;⁷⁹ and that both go through the exercise of considering the claims of the other from the perspective of the latter; then it would become apparent that there is no basis for a consensus among the two. Their conceptions of the good are irreconcilable. If one acknowledged that, one could fully account for difference, but would fail to discover any positive norms suited to filling the prescriptive needs of an ethics of identity. If, on the other hand, one built in a requirement of rationality and a presumption in favor of modernity within the communicative framework designed to yield a moral consensus, then the fundamentalist's view could be disregarded or the proponents of fundamentalism would recognize the error of their beliefs on the way to reaching a rational consensus. Either way, the requirements of rationality and modernity are bound to lead to significant suppression of difference.

In spite of his repudiation of Kant's monological approach in favor of an inter-subjective dialogical one, Habermas succeeds no more than does Kant in properly accounting for difference in the context of his ethics of identity. More generally, no theory predicated on positing the

⁷⁵ *Id.* at 64 (Habermas regards terrorism as a communicative pathology).

⁷⁶ *Id.* at 78.

⁷⁷ *Id.* at 72.

⁷⁸ *Id.*

⁷⁹ A Habermasian may counter that a religious fundamentalist is in no meaningful way open to reaching a consensus as he is unwilling to budge from his claim that his religion is the truth, and that it is this very inflexibility that renders the fundamentalist's position communicatively pathological. However, if that is the case, then all opponents of modernism have no room in the communicative process designed to produce consensus on moral norms, with the consequence that such process would exclude consideration of a significant percentage of differences prevalent within the polity.

right and justice above the good is likely to take adequate account of difference. Indeed, all such theories must either ignore *all* the diverse conceptions of the good (Kant) or downplay the differences among them or end up favoring some such conception at the expense of others (Habermas and giving priority to modernity).

In the last analysis, neither the deconstructive ethics of difference nor the ethics of identity provides a sufficient balance between identity and difference to yield a convincing condemnation of global terrorism. I will argue below that such a balance could nonetheless be struck in the context of one theory that does not split justice and the right from the good. That theory is pluralism, or, more precisely, what I have called “comprehensive pluralism.”⁸⁰

IV. RECONCILING IDENTITY AND DIFFERENCE IN THE CONTEXT OF GLOBAL TERRORISM: TURNING TO PLURALIST ETHICS

The advantage of a pluralist ethics is that whereas it seriously aims to accommodate difference, it refuses to treat irreducible singularity as an absolute, thus averting the shortcomings of Derridean ethics of difference. By the same token, pluralist ethics guarantees a genuine, non-trivial *ex ante* equal hearing to all perspectives and conceptions of the good, including those of global terrorists, thus distancing itself from Habermasian and Kantian ethics of identity and from the split between the right and the good. After a brief discussion of the salient features of a strong version of pluralist ethics, namely that of comprehensive pluralism, I will argue that the latter offers the optimal and most systematic condemnation of global terrorism consistent with striving for the best possible balance between identity and difference. Finally, in light of the pluralist case against global terrorism, I will cast a last critical glance at Derrida’s views on global terrorism and at his “return” to Europe after 9/11.

The basic tenet of comprehensive pluralism is that in societies that are pluralistic-in-fact—i.e., comprised of members with competing or conflicting perspectives and conceptions of the good—pluralism as a norm must ensure equal consideration of all points of view and the optimal possible balance between identity and difference.⁸¹ According to comprehensive pluralism, in pluralist societies maintenance, protection, and promotion of pluralism is normatively called for and ought to therefore be the goal of ethics and of law. Specifically, normative pluralism requires striving for equal accommodation of all

⁸⁰ See ROSENFELD, JUST INTERPRETATIONS, *supra* note 17, at 199-234.

⁸¹ For a extensive discussion of comprehensive pluralism on which the following summary is based, see *id.*

existing conceptions of the good within the relevant society consistent with viable coexistence among such conceptions and among their respective proponents. Furthermore, from the normative standpoint of pluralism, what constitutes the relevant society depends on the particular context involved and may range from a single institution within civil society, such as a university, to the entire globe. Accordingly, in the context of globalization and global terror, the most relevant societies are those of involved nation-states and that of the globe as a whole, and all those societies are invariably pluralistic-in-fact.

Comprehensive pluralism, consistent with the Enlightenment's goal of freedom and equality for all, ideally seeks freedom for all to choose their own conception of the good and equality for all persons. It also seeks equality for all perspectives and conceptions of the good held by one or more persons within the relevant society. The above ideal constitutes *the* good from the standpoint of comprehensive pluralism. Comprehensive pluralism is thus a conception of the good, but one that differs from other conceptions in that it depends on inclusion of at least some of the latter for its own viability. Take, for example, Christianity, communism and Serbian ethnocentric nationalism. Each of these constitutes a separate conception of the good⁸² that does not depend for its viability or realization on embracing in part or whole any other conception of the good. Quite to the contrary, the viability of these conceptions is much more likely to depend on rejection of other conceptions than on incorporation or accommodation of them. In the case of comprehensive pluralism, however, unless there are other conceptions to incorporate or accommodate, pluralism itself becomes meaningless. Hence, as a conception of the good, comprehensive pluralism is parasitic on accommodation of other conceptions of the good.

In actual societies, some conceptions of good are favored over others, or promoted to the exclusion of others. Because of this, achieving conformity with comprehensive pluralism requires the performance of two separate tasks. The first is a negative one that requires leveling all hierarchies and preferences and casting all conceptions of good regardless of their content as equal and as *prima facie* equally entitled to recognition and protection. Thus, the conception of the good of the global terrorist stands in the same position as all other conceptions of the good within the same relevant society, at

⁸² Viewed from the outside, each constitutes a distinct conception of the good even if, viewed from the inside, they can split into many such conceptions. Thus, Christianity is a single conception as against atheism, Judaism, or Hinduism, but that does not foreclose there being many different conceptions of Christianity such as Catholic ones and Protestants ones.

least in this first negative moment in the deployment of comprehensive pluralism.

The second task, to be performed in a second moment, is the positive one of attempting to reconcile as much of each competing conception of the good as is consistent with a principle of equal accommodation for all conceptions of the good. This reconciliation should be consistent with peaceful coexistence among them and among their respective proponents. In this second positive moment, although the objective is a maximum of accommodation and inclusion, individual conceptions of the good will fare differently according to their degree of compatibility with competing conceptions. Thus, a conception exclusively bent on eradication of all other conceptions would have to be altogether excluded. And, to the extent that the conception of the good promoted by proponents of global terrorism is solely focused on destruction of those who not share that conception, it would have to be totally excluded and unequivocally condemned. At the other end of the spectrum, a conception of the good that is wide open to diversity and that considers tolerance and accommodation to be paramount would have to be admitted pretty much on its own terms. Finally, in between these two ends of the spectrum, for example in the case of an intolerant proselytizing religion that nonetheless abhors violence, accommodation is warranted but not on that religion's own terms. Instead, such religion should be included on comprehensive pluralism's terms, which may mean that it would have to confine its activities to the private sphere.

In order to systematize what the negative and positive moments of comprehensive pluralism require, a distinction must be drawn between the norms issuing from conceptions of the good vying for recognition on one hand, and accommodation within a society and the norms that emanate from comprehensive pluralism itself on the other. The norms linked to all conceptions of the good other than comprehensive pluralism can be referred to as first-order norms; those pertaining to comprehensive pluralism as second-order-norms. Furthermore, if one breaks down conceptions of the good into the bundle of first-order norms that they promote, then those first-order norms that are compatible with the *deployment* and *functioning* of second-order norms ought to find admission (though not necessarily on their own terms) in a polity committed to comprehensive pluralism. It is important to underscore that not only first-order norms consistent with second-order norms satisfy the above criteria. Indeed, a first-order norm that is inconsistent with second-order norms, but not incompatible with the functioning of the latter, also has a place within a pluralist polity. For example, a fundamentalist religion that believes it possesses the absolute truth but that only seeks to spread its message peacefully and has no design to take over the government runs counter to the basic

tenets of comprehensive pluralism. It ought, nonetheless, be admitted in the pluralist polity in as much as it does not threaten the functioning of an open and inclusive society.

This last example underscores that comprehensive pluralism is more open to difference than Habermas's discourse ethics. Indeed, unlike Habermas—who justifies exclusion of fundamentalist religion on account of its modality of belief—comprehensive pluralism can accommodate fundamentalism so long as it forgoes violence and any design to capture the public sphere. On the other hand, in its negative moment, comprehensive pluralism is compatible with Derrida's insistence on singularity. In its positive moment, however, comprehensive pluralism is committed to limiting deference to difference to the extent necessary to sustain a minimum of common identity within the relevant unit. That minimum of identity is what is required to maintain a fair and workable level of intersubjective give and take to accommodate as much diversity as possible without risking a breakdown of the polity.⁸³ Accordingly, in its insistence that the practical need for unity limit the extent of recognition ultimately accorded to difference, comprehensive pluralism embraces an ethics that is inconsistent with Derrida's conception of an unbreakable bond between the ethics of difference and the ontology of singularity. For comprehensive pluralism, from an ethical standpoint, singularity is only worthy of pursuit so long as it does not threaten the unity of the relevant sociopolitical unit.

Based on the proper integration of its two moments and on reliance on the interplay between first-order and second-order norms, comprehensive pluralism allows for a systematic condemnation of global terrorism that does not suffer from weaknesses similar to those of Derrida's condemnation. Consistent with pluralism, global terrorism must be unequivocally condemned regardless of whether it is purely nihilistic and without any openness to the future or whether it is in the name of a worthy goal that it alone appears capable of bringing about. Terrorist means are contrary to comprehensive pluralism's second-order norms and hence have no place in any polity—at least so long as one cannot justify them as the sole available means to avert personal annihilation or total destruction of a group's ability to live in accordance with the dictates of its conception of the good.⁸⁴ Globalization and

⁸³ This does not foreclose peaceful secession. Comprehensive pluralism is as compatible with designing institutions to share a common space or dividing political space so that each of two incompatible conceptions of the good can rule unhindered within its own space. Of course, at the level of global society, secession is not an option and accommodation becomes mandatory.

⁸⁴ Although it is not possible to elaborate this line of argument any further here, presumably some instances of national liberation terrorism, particularly if directed exclusively against military targets, may be warranted under comprehensive pluralism. This may be the case in the context of a particularly oppressive colonial regime that held the indigenous population in virtual

American economic expansion world-wide may threaten the way of life of religious fundamentalists, but neither seeks to annihilate the proponents of fundamentalist religion nor do they use coercive methods or concerted violence to eradicate such religion. In fact, globalization threatens fundamentalist religion mainly through the spread of ideas and promotion of a way of life that are inimical to fundamentalist tenets. Under these circumstances, the greater threat to fundamentalism is likely to be coming from within as exposure to Western ideas and ways of life are likely to draw certain members of fundamentalist groups away from their religious traditions. Since the second-order norms of pluralism require room for open circulation of ideas among proponents of different conceptions of the good, it is entirely inconsistent with pluralism to shield proponents of particular conceptions of the good from exposure to, and possible influence by, other conceptions of the good. In short, consistent with pluralism, religious fundamentalists are not entitled to exclude other ideologies and viewpoints by peaceful means, let alone by terrorist violence.

Both the message of the global terrorist (as opposed to the means used to convey that message) and that of the proponents of globalization are entitled to full protection within a pluralist polity. Moreover, both fundamentalist religion and the ideology of global capitalism, to the extent they are compatible with the functioning of second-order norms, are entitled to accommodation and protection in a pluralist society. Conversely, within such society, the coercive aspects of fundamentalist religion and of globalization ought to be neutralized or rejected.

The above discussion lays out an ideal pluralist blueprint for handling the clashes between globalization and Islamic fundamentalism. Proponents of global terrorism could argue, however, that, as a practical matter, there is such a huge discrepancy in power between globalizing forces and those determined to resist them that the latter will be simply swallowed up unless they use terrorism as a means to defend their core identity. In other words, in line with this argument, the global terrorist is an analogous position to that of the nationalist terrorist who struggles against virtual enslavement by an authoritarian and repressive colonial regime.

Upon closer inspection, this latter argument is unpersuasive for a number of reasons. Perhaps the most important of these from the standpoint of comprehensive pluralism is that both the Western polities that promote globalization and the Islamic societies where the most concentrated and violent sources of resistance are found are pluralist-in-fact. Indeed, there are debates within globalizing polities, including the United States, concerning the proper scope and limits of globalization.

For example, laid off textile workers may have very different views on the matter than venture capitalists.⁸⁵ Similarly, there are proponents and beneficiaries of globalization in Muslim countries, and in many of these countries there have long been profound divisions among proponents and opponents of Islamic fundamentalism.⁸⁶ Furthermore, the tools and institutional arrangements at work in the process of globalization are radically different from those at play in a repressive colonial regime. Thus, for example, even if the economy were in fact fully globalized, there is no veritable global polity or government. This allows for coexistence of a multiplicity of overlapping clashing and competing layers of pluralist-in-fact social units in which proponents of various conceptions of the good can vie to acquire increased influence and political power. In short, the multiple opportunities for a pluralist give and take available in the evolving relevant contexts belie the claim that terrorism constitutes the sole means to resist, modify, or counter the efforts produced by the forces of globalization.

Concerning religious fundamentalism itself, from the standpoint of comprehensive pluralism, American Christian fundamentalism is no better than Islamic fundamentalism inasmuch as they both seek to impose their own truth, which they deem absolute, on the polity as a whole, be it the nation-state or the entire planet. In contrast, secularism is compatible with comprehensive pluralism so long as it does not trample on religion more than the absolute minimum necessary to ensure the proper functioning of second-order norms. Accordingly, Europe's stance relating to globalization and global terror clearly seems more in tune with pluralist norms and values than does America's stance.

In as much as America's reaction to global terrorism has been religious, authoritarian, intolerant, and coercive, Derrida seems justified in having opted for Europe after 9/11 and wise in his decision to "return" to it. Paradoxically, however, America still looms as more diverse than Europe. Whereas Europe is still consumed with the search for its identity,⁸⁷ America is divided and the turn to fundamentalist religion highly contested.⁸⁸ Accordingly, Derrideans should not lose sight of the American roots of deconstruction's ethical turn. On the other hand, perhaps the return to Europe will underscore that from an ethical as opposed to an ontological standpoint singularity can be taken

⁸⁵ See, e.g., Patrick Conway et al., *The North Carolina Textiles Project: An Initial Report* 3 JTAM no. 3 (Fall 2003).

⁸⁶ See, e.g., Ghassan F. Abdullah, *New Secularism in the Arab World*, <http://www.secularism.org/skeptics/secularism.htm>.

⁸⁷ See Joseph Ramoneda, *Europe: An Identity Against Civil War*, OPEN DEMOCRACY, June 2, 2005, <http://www.opendemocracy.net/xml/articles/2568.html>

⁸⁸ See generally NOAH FELDMAN, *DIVIDED BY GOD: AMERICA'S CHURCH-STATE PROBLEM AND WHAT WE SHOULD DO ABOUT IT* (2005).

too far. In any event, from a pluralist perspective, the optimal equilibrium between identity and difference needs to be struck in a place that stands halfway between Europe and America.

CONCLUSION

Derrida's deconstruction of ethics and the ethics of difference that it propels cast invaluable light on the struggle to bridge the gap between identity and difference and self and other. They also productively recast the Enlightenment's project by placing it in its proper historical perspective and by highlighting its internal challenges and contradictions. Whereas the unequivocal condemnation of global terrorism that Derrida derives from his ethics of difference proves to be right, the justifications he offers for it remain unsatisfactory. This is primarily due to overemphasis of the ethical import of radical singularity. By being so focused on differences, the crucial countervailing identities become blurred. I have argued that comprehensive pluralism can make up for this deficiency by striking a proper balance between identity and difference consistent with the need to provide principled yet specific answers to the crucial ethical questions raised by the encounter between globalization and global terrorism.

There remains one vexing problem that arises in connection with Derrida's conclusion that the apparent vicious cycle that binds globalization, global terrorism and repression together is the result of a process of self-destruction that mimics the progression of an autoimmune disease. The problem in question is that such autoimmune condition may render further pursuit of the Enlightenment project impossible and altogether destroy the very basis for pluralist ethics. Indeed, pluralist ethics require constant relationships between self and other,⁸⁹ the maintenance of a dialogue between them, and the possibility of accommodation and coexistence between them—these being guaranteed by implementation of second-order norms in the context of comprehensive pluralism. If the self attacks itself and becomes its own enemy, and if it cannot avoid harboring its enemies within itself, then dialogue, accommodation, and any relationship between self and other that is not one of pure enmity become impossible. Stated differently, the autoimmune condition associated with global terrorism destabilizes and eventually destroys all relationships between self and other by foreclosing dialogue and accommodation by heading seemingly

⁸⁹ This does not preclude that self and other evolve over time, but it requires that there be at all times relationships between two or more interlocutors that regard one another as self and other.

inexorably toward self-directed violence and enmity against the other within. This leaves no room for any kind of pluralism, let alone comprehensive pluralism.

Whether Derrida's autoimmune analogy is apt, and whether therefore global terrorism may be condemned, in theory, by a pluralist ethics that it, in practice, renders inoperative are questions that must await another day. For the moment, the hope is that adherence to pluralist ethics can lead to breaking up the cycle of violence unleashed by global terrorism instead of being swept away by its unstoppable thrust.