

ARTICLES : SPECIAL ISSUE
A DEDICATION TO JACQUES DERRIDA - MEMOIRS

Specters and Scholars: Derrida and the Tragedy of Political Thought

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“To be or not to be?” – in a sense that has always been the question of ethics, of the life worth living, and philosophy would be the search for the answer to that question. In this essay I would like to propose an alternative formulation and interpret it, rather grotesquely (Shakespeare I’m not), as the following: “To ontologize the ethical or not to ontologize the ethical: that is the question of politics.” Ultimately, I would like to suggest that this is a question that must but cannot be answered, or at least answered by philosophy, by a philosophy that retains the ideal of an “answer” that conforms to the form of knowledge. The vehicle for this exposition will be several texts by Jacques Derrida (primarily “Force of Law: The ‘Mystical Foundation of Authority’”¹ and *Specters of Marx*²). My hope is that this discussion will ultimately justify (or at least excuse) my grotesque paraphrase of Hamlet as well as my rather pretentious subtitle.

First, however, because this is a memorial issue I cannot resist beginning with a personal reminiscence. As it happens I was in the audience at Benjamin Cardozo Law School in 1989 when Derrida first presented “Force of Law: ‘The Mystical Foundation of Authority’” at the conference titled “Deconstruction and the Possibility of Justice.” Although I had heard him lecture before, this was my first opportunity to speak with him on a more personal basis, and I was astonished by how different he was from what I had expected – a man of grace, charm, and (most

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¹ Jacques Derrida, *Force of Law: The ‘Mystical Foundation of Authority,’* in *DECONSTRUCTION AND THE POSSIBILITY OF JUSTICE* (Drucilla Cornell et al, eds., M. Quaintance trans., 1992) [hereinafter *Force of Law*].

² JACQUES DERRIDA, *SPECTERS OF MARX: THE STATE OF THE DEBT, THE WORK OF MOURNING, AND THE NEW INTERNATIONAL* (P. Kamuf trans., 1994) [hereinafter *SPECTERS OF MARX*].

remarkable of all to me at the time) sincere humility. Subsequent occasions gave me glimpses of his wit – he was extremely funny – and of his enormous generosity as well. Hundreds if not thousands of articles written over the past 25 years attest to the fact that Derrida represented the ideal intended audience for a large number of younger scholars. Even my limited personal experiences with him were enough to suggest that that influence (indeed, transference in the Freudian sense) has been as much a function of the quality of his character as of his philosophical brilliance.

In any event, personal memories aside, Derrida's address was a stunning event in a number of ways. He had clearly been provoked by the conference title – some of this comes through in the written text; one has to recall that in 1989, joining together "deconstruction" and "justice" (even its "possibility") was a rather radical intervention into the received notions of deconstruction – and he came prepared to provoke in his turn. And boy, did he, with the simplest of declarative statements, such as (I'll cite the two that stuck with me) "Deconstruction is justice" and "Nothing seems to me less outdated than the classical emancipatory ideal."³

For many in the audience, these statements thrilled or shocked because both in style and substance they represented such an apparently clean break with what we thought we knew about Derrida and deconstruction – his coy refusal to take "a" position (as opposed to "positions," as in the book of interviews with that title), his brilliant but elliptical and etymologically exotic style, and above all, his consistent side-stepping – or what amounted to the same thing, two-handed ("on one hand, on the other hand") – non-approach to questions of ethics and the political (at least in his theoretical writings – we all knew that he identified himself as a "man of the left" in his personal and institutional life). For many in the audience, I think it is fair to say, these simple affirmations represented a disappointing falling away from his most brilliant, Nietzschean insights into the groundlessness of values, the arche-origin behind every ostensible origin, the "violent opening of ethics," the dissemination of meaning in the *différance* of language, and so on. For them (and here I'm engaging in reductive generalizations, I know), even when deconstruction was a useful, even crucial tool of political analysis, in itself it was not "political" and certainly not "ethical" – rather, it was an unsurpassed instrument of cognitive mastery, the theoretical approach *par excellence* for de-mystifying, "seeing through," the metaphysical claims and assumptions surreptitiously lurking beneath every discourse of politics, ethics, or value generally (including the discourse of cognition itself).

³ Jacques Derrida, *Force of Law* at 15, 28.

But for others in the audience that day, myself included, "Force of Law" was a thrilling confirmation of what we had read or felt between the lines of Derrida's cautious two-handedness and analytical rigor, an ethical impulse held in check by its suspicion – indeed, self-suspicion – of all available vocabularies of the ethical and the political, and of the danger of being taken for what that ethical impulse stood most strongly against – "the worst," as Derrida liked to call it, for which the best, including deconstruction, could always be mistaken. The thrill was in watching and hearing Derrida throw that caution to the wind for the Kierkegaardian "madness of the decision" (as he called it in "Force of Law"), an emergence from the protective comfort and mastery afforded by a rigorous (if undecidable) theoretical stance into the black "night of non-knowledge and non-rule,"⁴ the naked, unsupported possibility constituted by an openness to the Other: what Derrida later called the "the unpredictability, the 'perhaps,' the 'what if' of the event, the coming . . . of the other in general, his or her or its arrival."⁵

Again, I do not mean to overstate the break represented by "Force of Law," because its themes are unquestionably foreshadowed in several earlier pieces (as Derrida himself pointed out), nor do I want to oversimplify the audience's reaction to it. But it nevertheless seems clear that "Force of Law" not only firmly established the general question of law and politics within the field of deconstruction, it determined or brought to the foreground many of the themes (the undecidability of the decision, hyperbolic responsibility for the Other, the "spectral," the singularity and *à venir* of justice) that became increasingly significant in Derrida's post-"Force of Law" work. Beyond that, "Force of Law" introduced an overtly "Levinasian mood" into his discourse, if I can call it that, that characterized virtually all of his work on whatever topic ever since.

Here then is the not terribly original question I would like to pose and explore, however briefly, using Derrida's texts as a resource: How does the passage from the theoretical attitude, crudely and approximately exemplified in my story by the "pre-'Force of Law'" reception of Derrida and deconstruction, to ethical or political responsibility (the "post-'Force of Law'" Derrida), take place? What is its mechanism? Is it theoretical or ethical or something else? And if it is not theoretical, then what is the status of Derrida's own discourse in "Force of Law" and his subsequent essays on law and the political? Are these writings political philosophy, as they appear and virtually claim to be, or are they something else

⁴ *Id.* at 26.

⁵ Jacques Derrida, *Psychoanalysis Searches the States of Its Soul: The Impossible Beyond of a Sovereign Cruelty (Address to the States General of Psychoanalysis)*, in WITHOUT ALIBI 278 (Peggy Kamuf, ed. and trans, 2002) [hereinafter *Address to the States General*].

again – such as testimony, or prophecy? It seems notable that some of those who favored the earlier work – and I’m thinking here of some of his most sophisticated and clear-headed interpreters – throw up their hands at Levinas himself (“I need to see an argument here, not just the pious assertion of the ideal,” to quote a private e-mail from one such interpreter) and puzzle over increasing Levinasianism of Derrida’s later years, even when they continued to admire the later work as well. If the mechanism for this passage is theoretical, it is theoretical in a manner that is evidently not immediately recognizable to at least some of his theoretically astute readers.

Moreover (and more interestingly), the radical break that I’m taking “Force of Law” to represent is not just a matter of an historical event in Derrida’s intellectual trajectory but is explicitly thematized in “Force of Law” itself and many of Derrida’s most important subsequent writings, particularly the ones on law and politics. In each case this thematization takes the form of an unresolvable opposition, or *aporia*, between a pole that represents calculative, cognitive or conceptual knowledge, on one side, and on the other, a pole that represents the singularity of an ethical relationship, demand or act that cannot be subsumed under any conceptual schema or mode of knowledge. What each of these *aporias* share – in fact they are all different versions of the same *aporia* – is an undecidable “hiatus,” “moment of suspense,” *épokhè*, “discontinuity” or “interruption” that, while dividing and separating the poles, is not itself primarily negative but is rather the trace of a wholly affirmative ethical response to an Other. And just because each of these *aporias* traverse conceptuality and knowledge in the direction of the non-conceptual singularity of an Other, they cannot finally be described in the language of theory or philosophical conceptuality, but only evoked as an “experience,” an experience marked indelibly by its opening to the “to-come” (*à venir*) of the Other who always remains, structurally, to come.

And so in “Force of Law” we have the *aporia* of (calculable) law and (incalculable, singular) justice, joined and divided by an impossible yet necessary decision that must pass through an “ordeal of the undecidable” that leaves the singularity of the genuinely just decision always “to come” and never in the present judgment. In *Politics of Friendship* it is a matter of the “disjunctive laws of democracy” that dictate, simultaneously and impossibly, the requirement of “calculable majorities” of “stabilizable, representable subjects, all equal” on one hand and an absolute “respect for irreducible singularity or alterity” on the other, a disjunction that issues in a demand for a “democracy to come” that remains unrealizable in any given “present.”⁶ In *The Gift of Death* it is the irresolvable conflict between the “ethical or

⁶ JACQUES DERRIDA, *POLITICS OF FRIENDSHIP* (George Collins trans., 1997).

political generality" that dictates that our ethical/political responsibility extends to all equally, and the singularity of a religious experience that speaks to an absolute responsibility to the one absolute Other, God, that demands the sacrifice of all ethical-political generality.⁷ In *Adieu to Emmanuel Levinas*, it is the hiatus that divides the ethical injunction that unconditionally enjoins a politics and a law, and the "political or juridical content" thus enjoined, which "remains undetermined, still to be determined beyond knowledge, beyond all presentation, all concepts, all intuition."⁸ And, finally, in the "Address to the States General of Psychoanalysis," Derrida concludes by distinguishing the "orders" of the constative (the order of "theoretical or descriptive knowledge") and the performative (the order of "institution"), and insists that between them there is an "absolute cut," an "interruption," a "discontinuity" that gives a chance for a "free responsibility that will never be deduced from a simple act of knowledge." And most pregnantly of all, beyond these two orders Derrida identifies a third, the order of the "impossible" itself, the "event" as "unpredictable alterity" and "*arrivance* of the *arrivant*," "unconditional coming of the other," that can "can and must put to rout the two orders of the constative and performative."⁹

Thus, if Derrida's shift to the language and thematics of ethics in "Force of Law" seemed sudden and theoretically suspect to some, I think it has to be said that Derrida had already anticipated that objection in "Force of Law" itself (and even more so in subsequent elaborations), by articulating the ethical in terms of the necessity of an event that arrives to interrupt the theoretical attitude – the "unconditional coming of the other . . . that can and must put to rout the two orders of the constative and performative," as Derrida put it, for example. In order to sharpen up my ultimate point, I would like to emphasize the "necessity" of the event of ethics in Derrida's account and break it down into three aspects:

(1) First, the ethical moment necessarily pertains to an "arrival" insofar as it is genuinely ethical – the Other of ethics is she who comes to "disturb[] the being at home with oneself [*le chez soi*]," as Levinas puts it.¹⁰ This necessity is the necessity of a pure passivity – the absolute passivity that precedes the opposition between activity and passivity, in the Levinasian formulation, the awaiting without anticipation of the pure unpredictable event of alterity. It is this pure passivity that

⁷ JACQUES DERRIDA, *THE GIFT OF DEATH* (David Wills trans., 1995).

⁸ JACQUES DERRIDA, *ADIEU TO EMMANUEL LEVINAS* 115 (Pascal-Ann Brault & Michael Naas, trans., 1999).

⁹ Derrida, *supra* note 5 at 277-8.

¹⁰ EMMANUEL LEVINAS, *TOTALITY AND INFINITY: AN ESSAY ON EXTERIORITY* 39 (Alphonso Lingis trans., 1969).

determines the prominent place that Derrida gives to the concept of the “dangerous perhaps” in *Politics of Friendship* and similar figures of pure contingency, some of which I’ve quoted above. In any event, if, as I have suggested, Derrida is in fact talking about the interruption of the theoretical attitude by the event of ethical alterity, then one would expect that the “necessity” of this passivity and contingency ought to be primary.

(2) But it seems clear that the “necessity” that Derrida speaks of in these instances is just as much, or even more, the necessity of a traversal, a movement from one pole of the aporetic opposition toward the other, sometimes compelled by a law-like edict or injunction, sometimes called into being as an ethical response, but seemingly always in a motion that is motivated and active, and thus an exercise of a kind of “force” or “power” on behalf of that injunction or call. Two examples, the first from “Force of Law,” the second from the “Address to the States General of Psychoanalysis”:

(a) From “Force of Law”: “This anxiety-ridden moment of suspense – which is also the interval of spacing in which transformations, indeed, juridico-political revolutions take place – cannot be motivated, cannot find its movement and its impulse (an impulse which cannot itself be suspended [that is, is necessary – AT]) except in the demand for an increase in or supplement to justice . . . For in the end, where will deconstruction find its force, its movement or its motivation if not in this always unsatisfied appeal?”¹¹

(b) In the “Address to the States General,” after thematizing the force, potency or power that inhere in the instituting power of the performative speech act in terms of an “I can,” “I may,” and “I must,” Derrida goes on to identify a third order, beyond the order of the “power and the possible” represented by the constative and performative orders – the event of the “unconditional coming of the other” cited above. But he then insists that this higher order itself “can and must put to rout” (my emphasis) the constative and performative – a formulation that seems to put the most active power, potency and force – even violence – back on the side of the (otherwise absolutely passive) ethical event.¹²

Even if this motion, motivation and impulse ultimately remain within the undecidable space of the hiatus (as seems to be the case in “Force of Law,” at least), and thus do not resolve the undecidable aporia in any particular direction or with any particular outcome (by *aufhebung*, etc.), it also seems to me that this rhetoric of

¹¹ Derrida, *supra* note 1 at 20-21.

¹² Derrida, *supra* note 5 at 277-8.

activity, of motion, "motivation," "impulse," of "can and must," plays a large role in giving Derrida's work since "Force of Law" its affirmative character, that is, the sense that Derrida was (finally!) standing up for something, taking a "position," even if that position amounts to nothing more determinate than an affirmative call for an affirmation of the event in general. Moreover, despite Derrida's precautions (and perhaps contrary to his intentions, although that seems doubtful to me) even at this level of indetermination or abstraction one can see at least the outlines – the "spectral outlines," I'm tempted to say – of the founding, instituting violence of law in this affirmative movement. What is one to make, for example, of Derrida's call in the "Address" for an ethical event that "can and must put to rout" all instituting performativity, along with constative (theoretical) appropriations, explanations or justifications for law? Without attempting fully to defend this suggestion, is this not a very deliberate call – the repetition of the "can and must" after the earlier characterizations of the performative in terms of "I can," "I must," cannot be coincidence – under a different name, for something very much like the divine violence that, according to Benjamin, puts all mythological violence to an end? Let us not forget Derrida's long hesitation before Benjamin's notion of divine violence in the second half of "Force of Law" – if I'm right about this, then Derrida's movement on this front seems to be a significant indication of the direction his thought took after 1989.

(3) But, to return to the question I asked above, are these various formulations of the "necessity" of the ethical event, whether passive or active, philosophical defenses or theoretical justifications of ethical/political affirmation, or something else? Can one justify an "experience," such as the "experience of the undecidable" that Derrida says conditions every genuine decision, or only attest to it? It seems to me in this as in parallel areas, Derrida aims quite deliberately to undermine the stability of the categories of the "philosophical" and "theoretical" (or the constative), by, for example, not only thematizing the "perhaps" as a condition of both the ethical and the ontological but also qualifying so many of his own assertoric statements with it. And yet, it also seems to me that something of the ambiguity of the "necessity" of the ethical that I've tried to indicate above – the ambiguity between the necessity of an absolute passivity without which ethics isn't ethics, and a necessity that seems to characterize the motivated self-activity that gives Derrida's rhetoric its affirmative character and that seems to resemble the "force of law" as much as a purely passive opening to alterity – spills over into his rhetoric when it comes to the status of his own claims.

Again two passages, one from "Force of Law" and the other from *Specters of Marx*. In both, what is at stake is, first, the apparent necessity for the appearance of a certain "it is necessary [*il faut*]" in Derrida's thought at key moments even in discourses otherwise given over to the "perhaps," the "undecidable," the

“spectral,” and similar figures of contingency; and second, the wavering of this “it is necessary [*il faut*]” between competing meanings of “necessity” as ethical injunction and “necessity” as fate, as (ontological) truth, as “the way things are” or are compelled to be. The first passage, from “Force of Law,” seems to me to comment ironically on (dare I say deconstruct?) the second:

Toward the beginning of “Force of Law,” Derrida engages in a reading of one of Pascal’s *pensées* as a way of indicating the direction that his own argument will take. Pascal’s *pensée* concerns the relation of justice to force, and begins with the sentence, “It is just that what is just be followed, it is necessary that what is strongest be followed.” He thus draws a distinction between what follows as a matter of the “justness” of “justice” – that is to say, what follows as an ethical matter – and what follows as a matter of the raw necessity of force. However, since, as Pascal goes on to note, justice without force is “impotent” while force without justice is “tyrannical” and “accused of wrong,” they each need the other. Hence, Pascal concludes, “it is necessary [*il faut*] to put justice and force together.” To which Derrida rather drily comments, “It is difficult to decide whether the ‘it is necessary’ in this conclusion . . . is an ‘it is necessary’ prescribed by what is just in justice or by what is necessary in force.”¹³

I trust that the stakes of this undecidability are clear: in Pascal’s *pensée*, if the necessity is “prescribed by what is just in justice,” then the necessity of employing force to achieve justice is an ethical necessity, a necessity that is a justification and an injunction rather than a guarantee, since an injunction can always be disregarded. But if this necessity is prescribed by “what is necessary in force,” then the use of force is not justified but rather tautological – the necessity of force is force itself, or to put it another way, simply a brute fact or reality. In the latter case, there is no question of justifying this necessity or of acting on it or realizing it, but only of recognizing it, of knowing it when one sees it – it simply is. And the alliance with “justice” is tactical rather than intrinsic; force simply requires justice as an ideological cover to avoid inconvenient accusations of “tyranny” and “wrongness.” However, as Derrida goes on to point out, the undecidability of the question doesn’t seem to matter in the precise context of Pascal’s *pensée*, at least to the extent that justice cannot be just without force to enforce it. If “justice, as justice, requires recourse to force,”¹⁴ then justice and force go together as a matter of ethical necessity regardless of its factual necessity and the ambiguity is of no consequence.

¹³ Jacques Derrida, *supra* note 1 at 10-11.

¹⁴ *Id.* at 11.

What then of the “it is necessary” – or rather, the second “it is necessary” – in the following sentence from *Specters of Marx*? The specific context here is a discussion of Alexandre Kojève’s tendentious claims about “post-historical man;” the broader topic, which Derrida is extracting from Kojève’s text, is the aporia cited above (closest in form to the one from *Adieu to Emmanuel Levinas*) between the ethical which “enjoins a law and a politics” and the law or politics thus enjoined, whose content the ethical injunction cannot speak to and which thus remains, from the perspective of ethics, absolutely indeterminate, still to be determined in a future decision-to-come. At ultimate issue, thus, is the essential relationship between the “futurity” of the future and the “politicality” of the political. For Derrida, a denial of that futurity in triumphalist narratives of “post-history” like Kojève’s (Francis Fukuyama’s *The End of History and the Last Man* is his main target in *Specters of Marx*) is not just a premature interment of the promise of Marxism, but a denial of the messianic/ethical impetus of the political itself (and thus Derrida is equally critical of parallel narratives of post-history in certain versions of Marxism as well).

But, as Derrida demonstrates, the future is not so easily disposed of. To make this point, the translator of *Spectres de Marx* quotes the relevant sentence fragment from Kojève in mixed English and the original French to preserve the ambiguity of the French verb *devoir*: “Post-historical man *doit*” Derrida highlights the competing meaning of *doit* as either “must” or “should.” But, for reasons that are complementary to those in the example from Pascal quoted above, he says this ambiguity doesn’t matter – Kojève has been caught in his performative contradiction (I’m paraphrasing Derrida rather freely, of course), because regardless of the injunction issued to post-historical man, whether ethical (“should”) or assigned by law or fate (“must”), what remains the case in either case is that a task is assigned and that therefore there is, or rather there “must/should be” a future even for “post-historical” man. Thus, even in ostensible “post-history,” “it is necessary [that there be] the future [*il faut l’avenir*].”

And then this sentence, which I quote in full:

We must insist on this specific point [i.e., that “it is necessary [that there be] a future” regardless of whether that necessity is a “must” or a “should”] precisely because it points to an essential lack of specificity, an indetermination that remains the ultimate mark of the future: *whatever may be the case concerning the modality or content of this duty, this necessity, this prescription or this injunction, this pledge, this task, also therefore this promise, this necessary promise, this “it is necessary” is necessary, and that is the law.*¹⁵

¹⁵ DERRIDA, *supra* note 2 at 73 (emphasis original).

[T]his “it is necessary” is necessary, and that is the law – Derrida emphasizes this sentence in italics in the original text. We understand the ambiguity of the first, internally quoted “it is necessary” – Derrida has explained it to us, it may signify either the “should” of an ethical injunction or the “must” of legal or factual compulsion, but either way, regardless of the other differences between these two possibilities, “it is necessary” that there be a future.

I don’t think the same can be said for the second “. . . is necessary.” In fact, everything would seem to turn on whether it is a “should” or a “must.” Is the “it is necessary” of the future, its lying before us whether we will it or not, an ethical task given to us from on high by the Absolute Other (“. . . and that is the law”), to give shape and meaning to our lives in the pursuit of justice? Or does the future and its “necessity” simply lie before us as a burden imposed by force of law or mythic fate (“. . . and that is the law,” in another sense), without any further meaning to be had (and lets us recall that Benjamin said, and Derrida did not disagree, that the essence of law is fate)? Doesn’t, literally, everything turn on these alternatives? And yet, as Derrida says of Pascal, “it is difficult to decide whether the ‘it is necessary’ in this conclusion . . . is an ‘it is necessary’ prescribed by what is just in justice or by what is necessary in force.”¹⁶

¹⁶ Strangely, almost sixty years ago (and in a text that Derrida was studying in a seminar shortly before he became ill), Maurice Blanchot identified a similarly corrosive ambiguity within linguistic meaning and gave it the name “literature.” Maurice Blanchot, *Literature and the Right to Death*, in *THE WORK OF FIRE* 344 (L. Davis trans., 1995). Listen as Blanchot interlaces the themes of death, understanding and comprehension, hope and redemption (in the medium of “the creator of the world in man”), and “unhappy fate” in an “irreducible double meaning, a choice whose terms are covered over with an ambiguity that makes them identical to one another even as it makes them opposite”:

Death ends in being: this is man’s hope and task, because nothingness itself helps to make the world, nothingness is the creator of the world in man as he works and understands. Death ends in being: this is man’s laceration, the source of his unhappy fate, since by man death comes to being and by man meaning rests on nothingness; the only way we can comprehend is by denying ourselves existence, by making death possible, by contaminating what we comprehend with the nothingness of death, so that if we emerge from being, we fall outside the possibility of death, and the way out becomes the disappearance of every way out. *Id.*

This “original double meaning,” Blanchot goes on to say, “which lies deep inside every word like a condemnation that is still unknown and a happiness that is still invisible, is the source of literature.” *Id.*

Blanchot’s text is far too rich to address here at any length, beyond noting the virtual identity of the themes Blanchot identifies with those that we have seen structuring the passage from *SPECTERS OF MARX* – redemptive meaning, “hope” and ethical “tasks” on one side, and “unhappy fate” on the other. The difference, of course, is that Blanchot thematizes this ambiguity (and also relates it directly to death)

Allow me to wind down with a few more general observations inspired by this reading. *Specters of Marx* ends with an ethical injunction of its own, one that manages simultaneously to conjure the ghost of Hamlet's father (*Specters* is as much a brilliant literary-philosophical reading of *Hamlet* as it is of Marx), Nietzsche's "philosophers of the future" from *Beyond Good and Evil*, and, in a more critical vein, a certain specter of Marx, the Marx of the "11th Thesis on Feuerbach" who urged philosophers that the point was to change the world, not simply to interpret it. Derrida says, "If he loves justice at least, the 'scholar of the future,' the 'intellectual' of tomorrow should learn [or teach - *apprendre*] it and from the ghost."¹⁷ The "it" that these scholars should learn and teach from the ghost is the question with which I began, the question of ethics, of learning/teaching "how to live" (*apprendre à vivre*), as Derrida puts it in the initial "Exordium" to the book.¹⁸ The "ghost" or "specter" invoked here is the dominant motif of *Specters of Marx* and figures the instability of all of the oppositions that are fundamental to ontology - presence and absence, living and dead, actual and inactual, real and imaginary, and being and non-being ("to be or not to be" in the conventional reading, as Derrida puts it¹⁹), among others. The specter also figures the quasi-transcendental condition of the event as such, and thus also the possibility of ethics as the event of the coming of the Other.²⁰

More to my point, Derrida says that "there never has been a scholar who really, and as a scholar, deals with ghosts." Real, or "traditional," scholars cannot not believe

while (as I have tried to show) Derrida's text exemplifies it. It may be that this difference between the two texts not only itself exemplifies a certain key difference between "the literary" and "the political," but lies at the heart of the ancient quarrel between the two, which runs from Plato's complaints about the tragic poets to the contemporary resistance of most American legal scholars to the new understandings of legal rhetoric and performativity provided by advances in poetics.

¹⁷ DERRIDA, *supra* note 2 at 176.

¹⁸ *Id.* at xvii & 177 n.1.

¹⁹ *Id.* at 11.

²⁰ See, in this regard, *id.* at 189 n.6, where Derrida suggests that the figure of the "specter" can be articulated with a moment of Husserlian phenomenology (the *noeme*) that is neither real ("in' the world") nor a component of subjectivity ("in' consciousness") but which constitutes the "condition of any experience, any objectivity, any phenomenality" and thereby is "also what inscribes the possibility of the other and of mourning right onto the phenomenality of the phenomenon." For Derrida's classic analysis of the inextricable intertwining of phenomenality and the ethical event, see JACQUES DERRIDA, *Violence and Metaphysics: An Essay on the Thought of Emmanuel Levinas*, in WRITING AND DIFFERENCE 79-153 (Alan Bass trans., 1978).

²⁰ DERRIDA, *supra* note 2 at 89.

in the binary oppositions of ontology and remain scholars. Hence the call for “scholars of the future,” who, like Nietzsche’s “philosophers of the future,” will take these ontological categories much less seriously and be willing to learn to live in justice from specters, including the specter of a certain Marx. That specter, or rather “spirit” of Marxism (Derrida distinguishes the two for reasons that I cannot address here) is, Derrida says, a “certain emancipatory and *messianic* affirmation, a certain experience of the promise.” And, Derrida goes on, “a promise must promise to be kept, that is, not to remain ‘spiritual’ or ‘abstract,’ but to produce events, new effective forms of action, practice, organization, and so forth.”²¹ But, Derrida warns, in so doing these scholars of the future must beware of a temptation or error, one that Marx himself did not avoid: “the ontological treatment of the spectrality of the ghost,”²² the reduction of the ghost to the very ontological categories that its spectrality deconstructs.

My question is this: Can anyone, even as astute a “scholar” as Derrida himself, act on a promise, “emancipatory and messianic” or not, in order to produce “events,” “new effective forms of action,” and so on, without an “ontological treatment of the spectrality of the ghost”? Even if that “event” or “new form of action” presents itself as “theoretical” rather than “practical,” and, emptied of all ontological content, is left to stand as the simple affirmation of “emancipatory and messianic affirmation” itself?

I do not know, and what I hope to have suggested by my preceding readings from “Force of Law” and *Specters of Marx* is that this question does not admit of answers in the order of knowledge. The tragedy of political thought – to finally get to my subtitle – is indeed Hamlet’s. “To be or not to be, that is the question,” a question that political thought must but cannot answer, if it is to be genuinely “political” – if it is to “produce events, new effective forms of action, practice, organization, and so forth,” which is also to say, if it is to change the world as well as interpret it, bring about the future as well as recognize and understand it as it happens. It is not just that political thought is caught in Hamlet’s dilemma of whether or not to act, although it suffers that dilemma also, if to act threatens to ontologize the messianic promise that political thought desires to realize, and not to act is to break that promise even more certainly, since, as Derrida says, a promise is always a promise to act. It is that, having acted on that messianic promise, political thought cannot know, it cannot “theorize the question,” of whether or how it has acted – whether the messianic spirit of the promise has been redeemed or ontologized (and thus

²¹ DERRIDA, *supra* note 2 at 89.

²² *Id.* at 91.

broken).²³ And, I would add, this is why Derrida, while he consistently turned to questions of ethics and politics over the past thirteen years, at the same time turned increasingly to categories of religious thought, or rather categories of what he has called “religion without religion” – “faith,” the “secret” of a certain unshareable experience which is paradoxically shared by all, “testimony” (which is always at base testimony of the witnessing of a miracle, as he says), and so on. The ethical enjoins a politics and a law, but all three find their justification and their truth elsewhere.

²³ Again, if I’m right about this, can one not hear in this dilemma much more than an echo of the Benjamin of *Critique of Violence*, for whom divine (“unalloyed”) violence cannot be distinguished from the profane in the order of human knowledge? “Less possible and also less urgent for humankind . . . is to decide when unalloyed violence has been realized in particular cases . . . because the expiatory power of [divine] violence is invisible to men.” (Walter Benjamin, *Critique of Violence*, in 1 *SELECTED WRITINGS* (1913-1926) 252 (Edmund Jephcott trans., 1996). From another direction, Paul de Man’s reflections on the positional structure of language in *ALLEGORIES OF READING*, which move from demonstrations of how this structure leaves our “ontological confidence . . . forever shaken” to analyses of law and justice in terms of the structure of the promise and (blind), would also seem to be relevant here. See PAUL DE MAN, *Social Contract (Promises)*, in *ALLEGORIES OF READING: FIGURAL LANGUAGE IN ROUSSEAU, NIETZSCHE, RILKE, AND PROUST* 123 (1979); see also Adam Thurschwell, *Reading the Law*, in *THE RHETORIC OF LAW* (Austin Sarat and Thomas Kearns eds., 1994).