

## DERRIDA AND THE CULTURE DEBATE: AUTOIMMUNITY, LAW AND DECISION

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### I INTRODUCTION: AN EXCESS OF CULTURE

The debate about cultural relativism has been a defining one for the last twenty five years in the Humanities and Social Sciences in general, and in discussions of human rights and indigenous law in particular. The debate has been marked as much by the determination to advance beyond it, as by clear contributions from one or other 'side'. One example of this is Anthony Langlois' *The Politics of Justice and Human Rights: Southeast Asia and Universalist Theory*,<sup>1</sup> which deploys innovative methodologies from the Social Sciences – in this case, legal theorist Cass Sunstein's concept of 'incompletely theorised agreement' – as a way out of the stalemate. Others, such as Michael Goodhart, present the debate as having been superseded by a focus on the consequences of globalisation. They argue that effective address to the many political and ethical issues globalisation proposes is inhibited by the persistence of the relativistic framework as the 'lens' through which all issues of global relationship continue to be viewed. Goodhart argues that because we are still haunted by the very terms of the debate between a postmodern relativism and an inherited universalism, we are unable to see the potential political common ground between, say, those fighting the unrelenting attack on the welfare state in the West, and those struggling to preserve traditional communal economies, and the social practices that they animate. He writes:

the debate over whether human rights are Western or whether they are compatible with non-Western cultures as they might be presently organized misses the point. We would do better to debate various approaches to realizing values like social security and economic protection within the global capitalist economy. The increasingly

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<sup>1</sup> Anthony J Langlois, *The Politics of Justice and Human Rights: Southeast Asia and Universalist Theory* (2001).

global nature of capitalism suggests that a universal or global approach might be unavoidable.<sup>2</sup>

Here, history, in the form of a burgeoning neo-liberalism that is itself an unrelentingly universalising discourse, exceeds the terms of the culture debate, making the debate itself no less unsettling and problematic, but politically marginal, and perhaps even pointless.

The idea of getting beyond cultural relativism is also a mainstay of the undefeated liberalism that insists on universalism as the only way to underwrite an effective politics. This may take the form of an insistence on a 'moral progress' grounded in universal ethical principles, as in Ruth Macklin's *Against Relativism: Cultural Diversity and the Search for Ethical Universals in Medicine*.<sup>3</sup> On the other hand, it can take the form of an insistence on 'human nature'. Universal principles, in both these arguments, *transcend* culture. Michael Perry writing on this issue quotes Pope John Paul II:

It must certainly be admitted that man always exists in a particular culture, but it must also be admitted that man is not exhaustively defined by the same culture. ... [T]he very progress of cultures demonstrates that there is something in man which transcends those cultures. This 'something' is precisely human nature. This nature is itself the measure of culture and the condition ensuring that man does not become the prisoner of any of his cultures, but asserts his personal dignity by living in accordance with the profound truth of his being.<sup>4</sup>

Although the terms of this argument are rhetorically familiar, they conceal a problem. Human nature here is both what measures human culture and what exceeds it. This excess does not lead to something outside of, or different from, culture. Human nature makes, unmakes and remakes culture. Therefore, the problem with this argument is that the only evidence we have that such a human nature exists is what happens *to culture*. Ironically, human nature here is derived from the idea of human culture, when exactly the opposite was being argued! My point here is not to ridicule Perry (or the late Pope), but to show the complexities that arise when terms like 'human nature', with an intense rhetorical legacy and no clear agreed-upon definition, are invoked to resolve political issues.

We have here then some very different constructions of the excess over culture. One argues that historico-political developments have made the terms of the culture debate outmoded, even inhibiting to the formation of new political alliances demanded by the globalising world. Another sees an excess over culture as the very

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<sup>2</sup> Michael Goodhart, 'Origins and Universality in the Human Rights Debates: Cultural Essentialism and the Challenge of Globalization' (2003) 25(4) *Human Rights Quarterly* 935, 961.

<sup>3</sup> Ruth Macklin, *Against Relativism: Cultural Diversity and the Search for Ethical Universals in Medicine* (1999).

<sup>4</sup> Michael J Perry, 'Are Human Rights Universal? The Relativist Challenge and Related Matters' (1997) 19(3) *Human Rights Quarterly* 461, quoting John Paul II, 'Veritatis Splendor' (1993) 23 *Origins* 297, 314.

definition of the human nature that cannot be contained within any particular cultural value or structure. The aim of this paper is to pursue this logic of the excess of culture by adopting themes and paradigms from Jacques Derrida's later work. The point of this exercise is not to show that one side of the relativist/universalist divide is correct, even though Derrida has commonly been connected—carelessly I believe – with 'postmodernist relativism'. My aim is to show how Derrida's discussions of justice and hospitality demonstrate that relativism and universalism should not be seen simply as alternatives to one another, but exist in a complex relationship that discredits them both as simple political options. Nor, on the other hand, can the rivalry between them be simply surpassed. Derrida neither adjudicates the debate nor does he offer us a way out of, or beyond it. Instead, his work reimmerses us in the complexity of the debate itself, and all its dangers, making simple evaluations and preferences of one side or another not only difficult, but also undesirable, even politically questionable. Yet, Derrida also insists on our duty to make decisions in the midst of this complexity, 'urgent'<sup>5</sup> decisions. My aim is to investigate these questions by reference to Derrida's *Of Hospitality*<sup>6</sup> and the seminal paper 'Force of Law'.<sup>7</sup> The question of the decision, a major theme in Derrida's later work will be clarified in relation to the problematic discussion of the 'unconscious' decision in *Politics of Friendship*.<sup>8</sup>

## II THE LAW AND CUSTOMS OF HOSPITALITY

In *Of Hospitality*, Derrida's aim is to define how the practice of hospitality arises in the world. He starts by developing a distinction he derives from German Enlightenment philosopher, Immanuel Kant. There is, according to Kant, a Law of hospitality which requires that we open our door to whoever might arrive, what Derrida calls 'the law of absolute, unconditional, hyperbolic hospitality. ... Let us say yes to *who or what turns up*, before any determination, before any anticipation, before any *identification* ... to give the new arrival all of one's home and oneself, to give him or her one's own, our own, without asking a name, or compensation, or the fulfilment of even the smallest condition'.<sup>9</sup> Yet this Law contradicts the (plural) laws, or customs of hospitality, 'those rights and duties that are always conditioned and conditional',<sup>10</sup> those regulative, even if unarticulated practices of hospitality deemed appropriate and legitimate in any particular socio-historical context. No society or political entity is without complex protocols and processes that define who can be granted hospitality and how they are to be welcomed, whether it be

<sup>5</sup> Jacques Derrida, *Negotiations: Interventions and Interviews 1971–2001* (Elizabeth Rottenberg trans, 2002 ed) 31.

<sup>6</sup> Jacques Derrida, *Of Hospitality: Anne Dufourmantelle Invites Jacques Derrida to Respond* (Rachel Bowlby trans, 2000 ed) [trans of: *De l'hospitalité*].

<sup>7</sup> Jacques Derrida, 'Force of Law: The "Mystical Foundation of Authority"' in *Acts of Religion* (2002) 228.

<sup>8</sup> Jacques Derrida, *Politics of Friendship* (George Collins trans, 1997 ed) [trans of: *Politiques de l'amitié*].

<sup>9</sup> Derrida, above n 6, 75-77.

<sup>10</sup> Derrida, above n 6, 77.

what must be said and offered to an arriving guest in a home, or formal visa requirements for incoming tourists and migrants.

The relationship between this absolute Law and these customary laws is to be understood, according to Derrida, not as the relationship between nature and culture, nor between ideal principle and realisable practice. The relationship between Law and laws here is one of 'collision'.<sup>11</sup> Derrida writes: 'the two antagonistic terms of this antinomy are not symmetrical. There is a strange hierarchy in this. *The* [L]aw is above the laws. It is thus illegal, transgressive, outside the law, like a lawless law.'<sup>12</sup> The Law is thus not merely an abstract regulative principle to which the laws are to be attuned without us ever believing that they can replicate it exactly. Nor do the Law and laws belong to separate and autonomous domains. They require one another: the Law would not be an absolute Law if it could not connect somehow with practice, with what people actually do. Similarly, the laws must refer to something outside of themselves, a prior call to be as generous and welcoming as you can, even though we know that an absolute unconditional hospitality is impractical, and perhaps simply impossible. It is this idea that hospitality is a general good which makes sense of any particular act of welcoming we may perform.

In other words, the Law and laws need each other and make each other possible. We cannot have laws governing our practices of welcoming, if they did not exhibit in some way some relationship to something beyond themselves, perhaps the very general impetus to hospitality that has given rise to them in the first place. Concomitantly, the Law would be nothing if it did not have the customary laws through which it could appear. 'In order to be what it is, *the* law thus needs the laws,' Derrida writes,

which, however, deny it, or at any rate threaten it, sometimes corrupt or pervert it. And must always be able to do this. ... These two regimes of law, of *the* law and the laws, are thus both contradictory, antinomic *and* inseparable. They both imply and exclude each other, simultaneously.<sup>13</sup>

The notion of inseparability here alerts us to the idea that the relationship between the customary laws and Law of hospitality, then, is not one of a meeting of two separate and alien quantities, but of a contradiction *within* a complex. The Law may exceed and contradict custom, but custom is at the same time, the Law in its operation. Custom may resist and fail the Law, but becomes whatever it is only at the behest of, and as a realisation or instantiation of the Law. In other words, custom is indissociably identified with Law, and vice versa. Each fulfils the other in its very defiance of it. Each arises only in and as the thing that will undermine it. In short, what draws custom out in the first place, and what it draws on to change itself, is not something outside of it, but the very principle by which it could exist in

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<sup>11</sup> Derrida, above n 6, 77.

<sup>12</sup> Derrida, above n 6, 79.

<sup>13</sup> Derrida, above n 6, 79-81.

the first place, the very horizon of all acts of hospitality, that allow it to make sense. Custom is inevitably inadequate to the horizon of itself.

The argument here is not an easy one to grasp. It is important to note, however, that in Derrida's later work – from the paper 'Faith and Knowledge'<sup>14</sup> on – in discussing the pairings that interested him (the absolute Law and customary laws of hospitality; justice and law; the gift and the economy; faith and knowledge; calculability and incalculability) Derrida presented them less as collapsing dichotomies, or deconstructed binarisms, than as singular complexes turned upon themselves. The trope he used for this double relationship with self was 'autoimmunity'. As defined in an interview he undertook with Giovanna Borradori that was published in *Philosophy in A Time of Terror*, an autoimmune condition is one where 'a living being, in a quasi-suicidal fashion, "itself" works to destroy its own protection, to immunise itself *against* its "own" immunity'.<sup>15</sup> Autoimmunity movements 'produce, invent and feed the very monstrosity they claim to overcome'.<sup>16</sup> In the context of this particular interview, the example he gives, perhaps a slightly worn one now, is of Osama bin Laden having been a client, even an agent, of the West that he later attacked. In theoretical terms, autoimmunity describes the way the conditions that produce an event as a culmination of their own logic, find in it something that both fulfils them and undermines them, and that they thus seek to reabsorb and remake.

Derrida then would not simply deride and discount concepts like universal ethical values, or human nature as self-indulgent or authoritarian fantasies. What we call 'culture' does always emerge in relation to something that exceeds it, a horizon that marks the possibility, even necessity, of human beings identifying and representing themselves to one another. But the relationship between any particular culture and the excess that allows it to emerge is not the relationship between expression and essence. It is a relationship of autoimmunity. Culture both fulfils and fails, animates and threatens the logic that incites it. The possibility that allows representations to come into existence, most famously labelled *différance* by Derrida,<sup>17</sup> is both fulfilled and limited by any particular cultural practice. A specific cultural identity is made available by the fact that self-representation is possible, but the limitless possibilities of representation are reduced by the specificity of any particular act of self-representation. The inverse is also true: the open-endedness of the limitless field of the possibility of representation means any particular act of self-representation will inevitably give way to something that will supplant or supersede it. Representation both fulfils and limits what has made it possible. Similarly, the logic of possibility allows and overcomes any particular representation. This is also the logic of autoimmunity at work: what fulfils also defies. Indeed, it can be expressed more strongly than that: the very act of fulfilment is an act of defiance.

<sup>14</sup> Jacques Derrida, 'Faith and Knowledge' in *Acts of Religion* (2002) 40.

<sup>15</sup> Giovanna Borradori, *Philosophy in a Time of Terror: Dialogues with Jürgen Habermas and Jacques Derrida* (2003) 94.

<sup>16</sup> Ibid 99.

<sup>17</sup> See Jacques Derrida, 'Différance' in *Margins of Philosophy* (Alan Bass trans, 1982 ed) 3.

This complexity means that culture is simultaneously local and specific, on the one hand, and a form of generality, on the other. The weakness of cultural relativist arguments is that they reify the specificity of culture and speak as if human beings can inhabit discrete and self-contained domains, each unfolding through the systematic and self-referential logic of its own unique historical time, without relationship to that which exceeds it. The problem with cultural universalism, on the other hand, is that it in turn reifies that which exceeds culture, the liminal spaces in which specific and local cultures reach their limit. This limit is then ontologised, as human nature, or the universal. Both these arguments imply a stable even inert model of culture. In the first, culture is an autonomous monad, a singular entity in a world populated by similar and equally autonomous entities. Each of these cultures is like an individual subject then. In the other argument, humanity itself is a collective individual, who may express him or herself in a variety of styles and regions of signification, but who remains uniform and subject to a singular consciousness called human nature. For Derrida, culture can never be simply analogous to individuality. Instead, it is always in excess of itself, and thus turned on itself. This complex structure of autoimmunity makes both cultural relativism and universalism available, but only as narrow interpretations of the more complex arrangement in which they are both situated.

In sum, particular cultures cannot be treated as if they do not partake of a larger and fluid field of cultural possibilities, the field in which their coming into contact with other cultures causes them to change. On the other hand, this open field that defines what is in excess of any particular individual culture cannot be seen as something distinctive or fixed. It should not be transformed into some imaginary entity like 'human nature'. This field of excess must be recognised as the place where individual cultures inevitably come into question, but not by being judged by the fixed tribunal of an essential and unchangeable human truth. Instead it is the place where we must recognise the inevitability of cultures changing, of critiquing themselves and becoming open to other possibilities. It is this complexity that Derrida labels autoimmune: what allows cultures to develop – the fact that there is always something in excess of them, for example, the simple existence of other cultures – is also what threatens them. The political strategy of insisting that each of these cultures be left unjudged and alone is tantamount to saying that these cultures should not be open to the challenges that make them live and develop which is, in fact, the same provocation that gave rise to them in the first place. On the other hand, to insist that diverse cultures should bend to a general rule pretends that the field where cultures come into contact with one another can be stabilised according to some absolute principle. Attempts to define a constant human nature rely, at best, on rhetorical effect, usually in the form of unquantifiable but impressive and sentimental categories like 'freedom', or at worst on the leverage that one culture has over another because of a coincidental superiority in strategic and cultural power.

## III JUSTICE, LAW AND VIOLENCE

It is important to remember that in the debate between cultural relativism and universalism, both sides claim that they are the ones that offer protection against violence.<sup>18</sup> To cultural relativism, only mutual respect and pluralism can guarantee that individual cultures are protected from being absorbed into the alien logic of an imposed universalism. In the increasingly influential account derived from the work of Lithuanian-French philosopher Emmanuel Levinas, this absorption is defined as the reduction of the other to the same, where a single totalising viewpoint sees every other viewpoint simply as a version of itself, sometimes an equal, but usually an inferior one.<sup>19</sup> On the other hand, universalists argue that only universal values can protect against archaic cultural practices like female genital mutilation, that should not be hidden behind the barrier of an ingenuously respected cultural isolationism.<sup>20</sup> The protection at issue here is protection against different types of violence. If we redefine the culture debate, however, in terms of autoimmunity, violence emerges in a different and altogether more problematic light. As we can tell from the definitions quoted above, autoimmunity involves an irreducible violence to self, the deployment within of something that is intended to protect but that really harms, or rather harms in its action as protector. It is not simple to disentangle this complex and identify that dimension of it that opposes violence, or is even free from it. Violence, in other words, remains an irreducible problem within the logic of autoimmunity, and no Enlightenment progress nor postmodern subversion can be entrusted with offering us exemption from it. It is in the discussion of another autoimmune relationship, that between justice and law in the seminal 1989 paper ‘Force of Law: The “Mystical Foundation of Authority”’, that I will investigate this issue of violence.

The argument of ‘Force of Law’ is well known and I will not rehearse it in detail. To highlight the autoimmune logic at work here, it is sufficient merely to point to some of the key elements of Derrida’s argument. Derrida argues that what we experience as the law in its statutory formulation and institutional enactment is only possible by reference to the pre-legal horizon of justice that calls the law into being in the first place, and to which it always refers. Derrida identifies this justice with deconstruction itself,<sup>21</sup> the philosophical strategy with which he is most famously associated.<sup>22</sup> This justice is not the justice of achieved equity in the social or political sphere, though it does issue an irrepressible call for it. Nor is it the logic of balanced retribution in the legal sphere. It is simply the impulse that gives rise to law in the first place. Law will always become subject to compromise and dilution,

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<sup>18</sup> See eg, Macklin above n 3, and Eva Brems ‘Enemies or Allies? Feminism and Cultural Relativism as Dissident Voices in Human Rights Discourse’ (1997) 19(1) *Human Rights Quarterly* 136.

<sup>19</sup> See especially Emmanuel Levinas, *Totality and Infinity* (1969).

<sup>20</sup> See eg, John J Tilley, ‘Cultural Relativism’ (2000) 22(2) *Human Rights Quarterly* 501.

<sup>21</sup> Derrida, above n 7, 243.

<sup>22</sup> For a clear account of the relationship between deconstruction and justice, see John D Caputo (ed), *Deconstruction in a Nutshell: A Conversation with Jacques Derrida* (1997) 125-155.

and thus to its own diminution. It will inevitably become less than justice. Yet it will always measure itself against something that exceeds it, the very thing that is understood to have called it into existence. 'Deconstructive justice' is not simply a regulative ideal to which real world law will always be aspiring and failing. Deconstructive justice is that possibility of justice always held open in law even as it fails itself. Deconstructive justice is that irrepressible call for justice that is always active within law, but that law in practice cannot finally achieve. In other words, it is that within law that defies its inevitable injustice. In relation to the logic of autoimmunity, then, law always arises in response to a justice that it puts into practice, but that it always fails, and to which it always remains open. Since, on the one hand, justice can only appear in the world through the practice of law, and, on the other, law can never satisfactorily fulfil the call to justice, law as it is practised is both the only way in which justice can become real, and simultaneously the clearest indication of the impossibility of complete justice. Law both exhibits and undermines justice at one and the same time.

However, as the title of Derrida's paper suggests, violence is never alien to the law/justice complex. Derrida provides a reading of Walter Benjamin's landmark discussion of justice and law in 'Critique of Violence'.<sup>23</sup> For Benjamin, the violence in the founding of law contrasts with the violence of the preservation of law. Historically, these may be in contradiction, especially in the revolutionary moment, when the drive for a founding of the new law collides with the will to preserve the already established law. Derrida's strategy is to deconstruct the opposition between these two types of violence. In preservation, the law is constantly being refounded; and the refounding of the law on a new basis 'nevertheless *plays* ... on something from an anterior law that it extends, radicalizes, deforms, metaphorizes, metonymizes'<sup>24</sup> and so forth. Every founding moment is itself a repetition, and every repetition reinscribes the origin. The law thus repeats the violence that founded it in every one of its acts, and its founding violence was itself always an institution of some anterior principle. In sum, the violence of the law is part of the law's constitutional destabilisation of itself, the threat to itself from within that makes it law. The violence of the law then is necessary to law, not an accident that comes to it from the outside, when it is appropriated cynically by some other (political) formation, or when it becomes corrupt and enters into decline.

This is only the beginning of Derrida's analysis of Benjamin's discussion of violence, however. Beyond the distinction between the founding and the preservation of law, Benjamin outlines a contrast between two different types of violence: mythic violence and divine violence. Put schematically, the former is identified with the Greek, the latter with the Jewish tradition. Mythic violence is the violence by which State law is founded. It is the prerogative of kings and the powerful<sup>25</sup> who interpret the logic of fate, but its aim is fundamentally to rationalise

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<sup>23</sup> Walter Benjamin 'Critique of Violence' in *Reflections: Essays, Aphorisms, Autobiographical Writings* (Edmund Jephcott trans, 1986 ed) 277.

<sup>24</sup> Derrida, above n 7, 274.

<sup>25</sup> Derrida, above n 7, 287.

and organise law. In contrast to this mythic violence, Benjamin outlines what he calls divine violence. Derrida writes:

To this violence of the Greek *mythos* Benjamin opposes, feature for feature, the violence of God. From all points of view, he says, it is its opposite. Instead of founding law it destroys it; instead of setting limits and boundaries, it annihilates them; instead of leading to fault and expiation, it causes to expiate; instead of threatening, it strikes; above all – and this is the essential issue – instead of killing with blood, it kills and annihilates *without bloodshed*.<sup>26</sup>

The logic of Benjamin's distinction, Derrida argues, rests on the idea that '[b]lood is the symbol of life'.<sup>27</sup> Killing without bloodshed is a killing that does not compromise the commitment to life itself. Derrida writes: 'the mythological violence of law is satisfied in itself by sacrificing the living, where divine violence sacrifices life to save the living. In both cases there is sacrifice, but in the case where blood is exacted, the living is not respected.'<sup>28</sup> What does it mean the 'living' is not respected? What is this living that is preserved by or at least in spite of killing? It is a principle of a life beyond mere vitality. It is life's preference for itself over and above mere subsistence, what Derrida calls 'life beyond life'.<sup>29</sup> It is life's commitment to the possibility that it might realise and bring justice, the justice that Derrida had contrasted with law in the first half of his paper. Yet in the same way that law and justice are involved in an autoimmune relationship with one another, so too are mythic and divine violence.

For an example we can return to *Of Hospitality*, where Derrida exposes the violence embedded in the autoimmune complex that binds the customary laws of hospitality and the Law of hospitality, by reference to the story of Lot and his daughters.<sup>30</sup> Lot welcomes two angels who have come to deliver him from the apocalypse that awaits Sodom. The people of Sodom call for the angels to be handed over, so that they can be raped. Lot offers his virgin daughters instead. Lot's hospitality towards the angels is absolute. He invites them in without even asking them to identify themselves. But this unreserved, open and general hospitality is built round the exposure to violence of the weakest female members of the household. To Derrida, this story of hospitality by violence to the most vulnerable challenges the apparent moral or political priority of the absolute Law of hospitality. But we are not merely dealing here with the issue of hospitality. The angels have been sent to Lot in order to rescue him from the violence God will wreak on the Sodomites. God kills, but he also saves as he kills. He redeems the virtuous. He has promised Abraham, Lot's relative, that he will save the righteous in Sodom, even if it means not destroying the city. Divine violence is not the violence of pure and total annihilation then. It preserves that which should be preserved. Lot is being rescued as an embodiment of

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<sup>26</sup> Derrida, above n 7, 287-8.

<sup>27</sup> Derrida, above n 7, 288.

<sup>28</sup> Derrida, above n 7, 288.

<sup>29</sup> Derrida, above n 7, 289.

<sup>30</sup> Derrida, above n 6, 151-55.

the living principle that divine violence will preserve. The absolute Law of hospitality then to which Lot's daughters are to be sacrificed, is an enactment of divine violence. Here, both divine violence and the absolute Law of hospitality must be seen as risking the most appalling harm. Derrida writes despairingly: 'Are we the heirs to this tradition of hospitality? Up to what point? Where should we place the invariant, if it is one, across this logic and these narratives? They testify without end in our memory.'<sup>31</sup>

This story however is also an episode of mythic violence. It is the principle of the worst kind of patriarchal prerogative that allows Lot to offer his daughters to the Sodomites as an alternative to the angels. This is the violence of the constituted law of the household. What is important is that these instances of violence do not merely operate as alternatives here. Mythic violence is evoked as a way of protecting the angels, and thus allowing divine violence to work. Mythic violence facilitates divine violence.

In sum, the customary laws of hospitality involve a violence to the weakest members of the political community. On the other hand, the general Law is no less a violence. Indeed the two forms of violence combine in a single event. In terms of the issue of violence in the culture debate, what we have is not rival alternatives each claiming to liberate from violence, but different violences that appear in every dimension of the complex, and that even act in combination, facilitating one another. Divine violence offers to destabilise the political identities on which the power structures within individual communities may rely, thus shaking the patriarchal logic of which Lot's disregard for his daughters is an exemplum. However, the divine itself is not a simple guiding light of a liberatory advance to another cleaner domain; or, to be more accurate, even when it is such a guiding light, it can also bring with it another violence. In 'Faith and Knowledge', in a discussion of what he identifies as the messianic impulse that can be seen to lie behind divine violence, Derrida writes:

The messianic exposes itself to absolute surprise and, even if it always takes the phenomenal form of peace or of justice, it ought, exposing itself so abstractly, be prepared ... for the best as for the worst, the one never coming without opening the possibility of the other.<sup>32</sup>

In the autoimmune complex of culture, in which specific cultures emerge only in relation to that which also exceeds them, there is no simple refuge from violence. There is no culture so un-violent that it deserves to be allowed to pursue its own trajectory without being subject to critique, and thus change. On the other hand, there is no logic of excess – either universal or even deconstructive – that is itself so pure of violence that it can be trusted as an ultimate resort.

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<sup>31</sup> Derrida, above n 6, 155.

<sup>32</sup> Jacques Derrida, above n 14, 56.

## IV AUTOIMMUNITY AND THE UNCONSCIOUS DECISION

It was Derrida's apparent preference for the divine or messianic violence Benjamin identified with the revolutionary moment which triggered much of the controversy surrounding 'Force of Law'. Dominick LaCapra argued that in such a messianic politics 'the rational estimation of the efficacy of means and a concern for consequences do not limit – or help to demystify – the allure of violence'.<sup>33</sup> The risk run by this apparent romanticisation of violence was that it either generalised violence so much as a rhetorical concept that it became diffuse and meaningless,<sup>34</sup> or worse, as LaCapra argued, it failed to distinguish itself from the Nazi cult of violence.<sup>35</sup> This accusation of a naïve indistinction between deconstruction and Nazism became more the focus of debate with the claim that Derrida did not pay sufficient attention to Benjamin's interest in the work of Nazi Germany's most prominent legal theorist Carl Schmitt.<sup>36</sup>

To provide an accurate account of Derrida's discussion of law and violence, we must look briefly at some aspects of the relationship between Derrida's work and Schmitt's. Derrida provided an extensive critique of Schmitt's work in the latter part of his career, especially in the books *Politics of Friendship* and *Rogues: Two Essays on Reason*,<sup>37</sup> as a way of clarifying his own distinctive ideas about law and politics. Schmitt had argued that sovereign power rested in the ability to make a decision on the state of exception.<sup>38</sup> Sovereign power in this definition rests in the hands of a figure who is entrusted with the power to suspend the law if circumstances require it, for example in a declaration of a state of emergency. Ironically, according to Schmitt's argument, this super-legal right to suspend the law may be, in an extreme situation, the only way in which the law can be protected. The executive act of this miraculous,<sup>39</sup> almost theocratic figure, the sovereign, takes the form of the power to decide that the law as regularly constituted and conventionally practiced should no longer hold, and that this act of the suspension of law is in fact an enactment of the essential nature of law. Giorgio Agamben has famously argued that in the contemporary world, the state of exception has been generalised, and has come 'increasingly to appear as the dominant paradigm of government in contemporary politics'.<sup>40</sup> The accusation then has become that Derrida, by playing down the affiliation between Schmitt and

<sup>33</sup> Dominick LaCapra, 'Violence, Justice and the Force of Law' (1990) 11 *Cardozo Law Review* 1065, 1077.

<sup>34</sup> Stephen P Wink and Walter Wink, 'Domination, Justice and the Cult of Violence' (1993) 38 *Saint Louis University Law Journal* 341, 345.

<sup>35</sup> LaCapra, above n 33.

<sup>36</sup> See eg, Horst Bredekamp 'From Walter Benjamin to Carl Schmitt via Thomas Hobbes' (1999) 25 *Critical Inquiry* 247.

<sup>37</sup> Jacques Derrida, *Rogues: Two Essays on Reason* (Pascale-Anne Brault and Michael Naas trans, 2005 ed) [trans of: *Voyous*].

<sup>38</sup> Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (George Schwab trans, 1985 ed) 5.

<sup>39</sup> Renato Cristi, *Carl Schmitt and Authoritarian Liberalism* (1998) 163.

<sup>40</sup> Giorgio Agamben, *State of Exception* (2005) 2.

Benjamin, has signed up to a religious conception of politics that is seduced and fascinated by an irrational and unaccountable authoritarianism grounded in violence. Under this accusation, political developments in the postmodern world make Derrida a collaborator with illiberal right-wing challenges to civic and political rights.

John P McCormick defends Derrida by arguing that Schmitt's 'decisionism', his assertion of the 'state of exception' as the essential definition of fundamental political authority, conforms more to what Benjamin calls mythic violence, rather than divine violence. McCormick writes:

Schmitt sought to recall the violence of ordinary decision, reminders, in a hyper-Machiavellian and hyper-Hobbesian sense, of the fear and terror of the pre-political and the constructive violence that established order by eradicating the chaos that came before it. ... Derrida identifies this kind of violence as Greek, as enlightenment, as 'mythic'.<sup>41</sup>

Schmitt's decision then is in line with a conservative tradition of political thought that understands sovereignty in terms of humanity's need for a structure of law and order that can protect us from the chaos and violence that is our natural state. To Benjamin, this practice of instituting a system of laws was indeed a style of violence – to Benjamin there is no law without violence – but of mythic violence, the violence of social order and control. Elsewhere, in a discussion of 'Force of Law', McCormick sums up the contrast between Schmitt's commitment to mythic violence and Derrida's interest in Benjamin's alternative divine violence, quite succinctly: 'any association of Derrida and Schmitt on the basis of this essay would blatantly misunderstand the different types of force with which they sympathize – respectively, mystic and mythical violence'.<sup>42</sup> To McCormick, Derrida is off the hook because of the separation between mystical/divine/messianic violence (it goes by all these names!) on the one hand, and mythic violence on the other. Derrida would be affiliating himself to divine violence according to this argument.

There are two problems with this defence. Firstly, Derrida resists any simple identification between his own position and divine violence. In 'Force of Law' he distinctly expresses a distrust of Benjamin's enthusiasm for divine violence, arguing that it 'seems to me finally to resemble too closely, to the point of specular fascination and vertigo, the very thing against which one must act and think, do and speak'.<sup>43</sup> In other words, for Derrida, Benjamin remains too fascinated by, even too attracted to, the distinctive style of violence he defines as divine.

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<sup>41</sup> John P McCormick, 'Derrida on Law; or, Poststructuralism Gets Serious' (2001) 29(3) *Political Theory* 395, 405.

<sup>42</sup> John P McCormick, 'Schmittian Positions on Law and Politics?: CLS and Derrida' (2000) 21 *Cardozo Law Review* 1693, 1715.

<sup>43</sup> Derrida, above n 7, 298.

This reservation leads directly to the second point. Derrida is not arguing for a simple preference of one alternative over another here – or in fact anywhere – because the relationship between all pairs is never one of simple alternatives. How could we forget the most basic idea in deconstruction? Divine and mythic violence are not options to be systematically evaluated and then one preferred to the other. The relationship between them is one of autoimmunity. There is no simple disentangling of one from the other, nor, and this is perhaps the most important point, is there any way in which one of these options can be seen as simply and resolutely defensible. Any engagement with the complex of mythic and divine violence always involves engagement with both because of the way they are embedded in one another, according to the logic of autoimmunity, in which they simultaneously promote and attack one another as a necessary part of their operation. In short, there is no signing up to either mythic or divine violence in exactly the same way that there is no simple choice between cultural relativism and cultural universalism.

Yet, after spending a lifetime insisting on this kind of complexity, Derrida refuses to let us rest. It would never be enough to pretend that we can resign ourselves to defeat at the hands of this complexity, and a consequent political and ethical paralysis. Derrida, like Schmitt, also insists that politics must be a site of decision. In fact, the very undecidability of a complex like those we have identified as autoimmune is what defines decision. He writes:

There is no decision without the undecidable. If there are no undecidables, there is no decision. There is simply programming, calculation. There must be political, ethical decisions, but these decisions are possible only in situations where the undecidable is a necessary dilemma.<sup>44</sup>

A decision then is not a decision if it is based on certainties, and merely involves applying fixed knowledge. It would be not a decision, then, but a mere act of calculation. In order for a decision actually to be a decision, it must involve some element of uncertainty, or undecidability. The undecidability of autoimmune complexes then makes them the home of the decision, not a place where the duty to decide can be abdicated.

Yet how is this decision different to Schmittian decision? We have seen above that because of the fact that mythic and divine violence cannot be dissociated, there is no way in which Derrida's decision cannot be in relationship with Schmitt's. But what exactly is this relationship and does it make Derrida's decision the same as Schmitt's, a trust placed in a powerful individual above the law? In a discussion of decision in *Politics of Friendship*, Derrida argues that a decision, because of its openness on the incalculable, cannot rely on the idea of a sovereign person, self-identical, and identified with authority and subjectivity.<sup>45</sup> For decision to be considered truly a decision, it must be open to the incalculability that represents

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<sup>44</sup> Derrida, above n 5, 31.

<sup>45</sup> Derrida, above n 8, 68.

Otherness, or that which is different. In its openness to incalculability, decision accepts the intrusion of that which is Other. This acceptance of intrusion means that there must be a passivity in decision,<sup>46</sup> or there must be some dimension to decision beyond conscious processes of evaluation and adjudication. This 'beyond of consciousness' Derrida connects unsurprisingly with the psychoanalytic notion of the unconscious: '*In sum, a decision is unconscious* – insane as that may seem, it involves the unconscious and nevertheless remains responsible.'<sup>47</sup> The Derridean decision will always exceed the Schmittian one, in the way that the unconscious marks out the limit and is in excess of consciousness.

The sovereign authority of the state of exception is not simply excluded from Derridean decision. It will always remain part of the complex logic of the decision as one of its possible forms. Derrida is not presenting unconscious decision as a different and preferable type of decision. Since decision always involves an engagement with what cannot be absolutely and clearly known, it is connected inevitably and ineluctably with what Derrida calls 'the undecidable'. Decision will always involve some leap in the dark, some enactment of arbitrary authority. However, in Derrida's hands, this will never be the complete story. Decision will always be partly the consequence of an assertion of authority, but it will also be open to something very different, indeed perhaps opposite. It must be open to the Otherness beyond reason. The unconscious dimension of decision always places sovereign decision in relation to that which it would like to deny. It insists that sovereign decision must always be answerable to that which it finds different, confusing and immeasurable, in short, to that which defies singular authority. Decision in Schmitt's hands was an enactment of an authority that was unaccountable. To Derrida, there will always be a sovereign dimension to decision – how could we take on moral responsibility at all if we were too timid to ever act! – but it must not deny the other side of decision: its necessary openness to that which is outside, beyond or simply different to it.

How does this idea of the unconscious decision help us with autoimmunity? The problem we are confronting is: in one example, cultural relativism and cultural universalism, or, in another divine violence and mythic violence, are inextricably bound into one another even as they undermine one another, in what we've called an autoimmune situation. Given this, how can we begin to make decisions about what to do in any particular circumstance, even as Derrida exhorts us that we must decide? The decision that opts for the simple preference of a relativism of culture, on the one hand, or for a moral universalism, on the other, is not a decision, according to Derridean logic. It is in flight from the complexity and incalculability of decision by taking refuge in the certainty of a fixed position. Such fixity is a mere illusion. The fixed position is an attempt to reduce complex political situations to one of their dimensions, to pretend, for example, that diverse cultures unfold on their own and not in a relationship with one another that both threatens and enlarges

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<sup>46</sup> Derrida, above n 8, 68.

<sup>47</sup> Derrida, above n 8, 69.

them, and displays their instability. Or, it would be to pretend that it is possible to formulate a definition of universal human nature and human ethics that was not in some way derived from specific cultural and historical circumstances, and formulated according to the conventions of an equally historicised discourse.

The only decision that can truly be considered a decision is one that insists on undoing both the logic of authority within specific cultures, and one that resists the totalising authority of a universalism. Traditionally, the relativity of culture has been undone in the name of 'human' principles deemed to apply universally. Symmetrically, universalism has been undone by an insistence on the specificity of cultures and their difference one from another. Yet, too often, this difference is frozen at the level of the cultural, ethnic, language or religious group, and not pursued to its end, where in fact, there is no end. What this means is that a stable hierarchy is formed, asserting either relativism or universalism above its other as a fixed and final principle. By pursuing the logic of Derrida's unconscious decision, on the other hand, the authority structures of both specific cultures and a transcendental universalism are undone not by simply asserting the greater reality or higher priority of the other, but by insisting on the irreducibly autoimmune relationship in which the two must find themselves, one in which each is perpetually bringing the other undone while defining it. In this complex, there can be no resort to a stability.

And here, perhaps, we reach the limit of the idea of autoimmunity. This logic will not make available some principle that we can simply apply in any particular circumstance. It unsettles such principles and would argue that they can only be formulated by arbitrarily defying the complex and unstable situation in which they appear. In the same way that a law that denies any relationship with a justice that exceeds it, or the customary laws of hospitality deny that at some level they can only emerge as a version of an absolute Law of hospitality, any principle that purports to override all others – even in a liberal context of the pluralistic cohabitation of rival but mutually exclusive ideas – is in denial of its own unstable nature. The aim of Derrida's thought is to outline the way different identities are related to one another, how they form in an indissociable bond with one another, and how they cannot ever be resolutely, finally or clearly closed off from one another. This complexity will not decide issues for us – that again would merely be to reduce decision to calculation – but will always reveal what is at stake when we have to make such judgements, as we must.