BETWEEN LAW AND JUSTICE:

KANT, DERRIDA, AND RELIGIOUS VIOLENCE

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ABSTRACT

Although a number of approaches to the issue of religious violence are already available for academic consumption, this study attempts to approach the problem of the violent tension between religious principles and secular socio-political realities from a new perspective. We argue that religious violence is best conceptualized as a moment of crisis in the relationship between law and justice, considered as both intimately related (in Kant's analysis of the rightful condition) and peculiarly disjointed (in Derrida's reflections on the possibility of "justice beyond law"). We provide a preliminary account of the necessary conditions for a future theory of religious violence based on our effort to recontextualize the discussion of the corresponding issues by paying close theoretical attention to the interaction between the concepts of law, justice, violence, and religion. We conclude that any theoretical reevaluation of religious violence must inevitably widen its scope to include not only such customary problems as the relationship between "faith" and "knowledge" or the relationship between "private beliefs" and "public duties," but also an account of the peculiarly religious motivational framework that often implicitly guides our conversations about any future human condition of peace and justice.

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Fiat iustitia, pereat mundus.

I

Introduction: Situating the Problem of Religious Violence.

The role of religion in modern life is an issue that has been continuously drawing attention from a variety of angles, but lately, especially after the events of 9/11, from a peculiar perspective of investigating the role of religion in sanctioning, condoning and even requiring acts of violence. This essay hopes to be an addition to a larger field of the study of the relationship between *religion* and *violence*. Our overall goal is to craft a conceptual framework for dealing with the contemporary resurgence of religiously motivated violence, or, as we will refer to this relationship between religion and violence throughout this essay, *religious violence*. This term has suffered the rather unfortunate fate of being used to describe such a wide variety of examples of behaviors that its continued use in this essay seems like a rather foolish endeavor. However, as we hope to argue, it is partially this overuse and this lack of conceptual sophistication that will allows us to initiate the necessary task of rethinking the very issues involved in any serious discussion of religious violence. Our general intention in this essay is to *decontextualize* the problem of religious violence, that is, to take a closer look at the usual framing of the problem by shifting certain ideas, assumptions, prejudices and foregone conclusions around in order to see if a better, more nuanced and more effective

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framework might be constructed. This new framework can only be given in a preliminary promissory form, yet this essay intends to present an argument that would allow us to *recontextualize* the problem of religious violence in such a manner as to allow a future researcher to proceed in a number of fruitful directions. The issue of religious violence, we insist, is certainly an important one both in terms of its own peculiar problematic and in terms of its ability to shed light on a number of important contemporary problems.

Raising the issue of religion today and proposing to reassess its lasting influence is no longer an odd theoretical move. This is the case, for the most part, because we have learned, despite general hopes of modern secularism, that religion is not disappearing from the public sphere and is not likely to diminish its influence in the near future. Although we have talked about the religious influences during the past couple of centuries in terms of secularization, it is clear from even a superficial look at the most recent events in the world that religion is asserting itself as never having left the public debate. The typical narrative of secularization (and the resulting secular condition) recounts the story of a gradual liberation of human reason and human spirit from the superstitious bounds of religious prejudice in the wake of the horrible sectarian wars of sixteenth and seventeenth century Europe.[1] This narrative describes the eventual advance of science and undoing of religious belief as humans became more self-sufficient,

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[1] Cf. Roy Wallis and Steve Bruce, "Secularization: The Orthodox Model," in *Religion and Modernization: Sociologists and Historians Debate the Secularization Thesis* (Oxford: Oxford University Press, 1992), 8-30; Steve Bruce, *God is Dead: Secularization in the West* (Oxford: Blackwell Publishing, 2003); Pippa Norris and Ronald Ingleheart, *Sacred and Secular: Religion and Politics Worldwide* (Cambridge: Cambridge University Press, 2004), esp. chapter 1-3; Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity* (Stanford: Stanford University Press, 2003). See also Charles Taylor's latest book – *A Secular Age* (Cambridge: Belknap Press, 2007) – that deals with a larger context of secularization and related matters.

rational, progressive and modern. In this common narrative, secularism and religion function as opposites.

The starting point of much of the contemporary discourse on secularism is often traced back to the ideas of the Enlightenment: religious superstition is a sign of human immaturity and dependence on the authority of tradition; any sensible liberation of human spirit from the bonds of superstition, unquestioned obedience and slavery of ignorance must involve the weakening of religion and its institutions. The imagery of liberation is essential for any secularist discourse on religion. The Enlightenment, of course, as a rather complex historical movement, if such ever existed in any unified and easily identifiable way, produced a great variety of responses to religion, ranging from Voltaire's hostility to religion to Kant's attempts to justify "rational faith."[2] However, it is clear that this very distinction between private (religious) and public (secular) spheres, as José Casanova argues, is essential to any modern social secular order.[3] Religion as a private affair of the citizens is constitutive of Western modernity in the dual sense: on one hand, it points to a freedom of conscience (internal freedom) as a precondition of all modern freedoms; on the other hand, it points to a process of institutional differentiation where religion is "progressively forced to evacuate the modern secular state and the modern capitalist economy."[4]

The resurgence of the interest in religion today is undoubtedly caused by the events of 9/11 and the revelation that all of the perpetrators were, in fact, religious

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[2] For an overview of Enlightenment's ideas on religion, among many other valuable sources, see Dorinda Outram, *The Enlightenment*, 2nd ed. (Cambridge: Cambridge University Press, 2005), chapter 8: "The Rise of Modern Paganism? Religion and Enlightenment," 109-25. Cf. Peter Gay, *The Enlightenment: The Rise of Modern Paganism* (New York: W.W.Norton & Company, 1995).
[3] José Casanova, "Private and Public Religions," *Social Research* 59:1 (Spring 1992): 17-57.
[4] Casanova, "Private and Public Religions," 18.

persons who conceived of their actions as following a religious prescription. After the attacks of 9/11, a great number of reactions shook the public sphere in the US. The general mood was that of puzzlement, shock and, eventually, anger and frustration. In February 2002, for example, a group of 60 or so American intellectuals signed a "Letter from America: What We Are Fighting for," drafted by Jean Bethke Elshtain.[5] The letter was a curious combination of appeals to universal human rights, calls for justice, and a sophistical argument in the favor of war against those who hate "American values" and "American way of life."

If the letter's only evidence was a delusional reference to "international Islamicist network, active in as many as 40 countries, now known to the world as Al Qaeda," evidence that has been thoroughly discredited and exposed as being based on nothing but a propagandistic effort to justify a war, this letter could be easily dismissed as another hysterical conservative overreaction.[6] However, the signatories presented their justification of "war on terror" in terms of the need to reestablish that "the best of what we too casually call 'American values' do not belong only to America, but are in fact the shared inheritance of humankind, and therefore a possible basis of hope for *a world community based on peace and justice*."[7] Duncan Forrester insightfully points out the following essential contradiction at the heart of this document and many similar reactions to the events of 9/11:

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[5] The letter originally appeared on the website of Institute for American Values (http://www.americanvalues.org/html/wwff.html), a conservative think tank. It was later republished as an appendix to Elshtain's book *Just War Against Terror: The Burden of American Power in a Violent World* (New York: Basic Books, 2003), 182-98.
[6] Cf. Jason Burke, *Al Queda: The True Story of Radical Islam* (London: I.B. Tauris Publishers, 2004), 7-8.
[7] Elshtain, *Just War*, 185. Emphasis added.

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After declaring that 'We are united in our belief that invoking God's authority to kill or maim human beings is immoral and is contrary to faith in God', the signatories appeal to the tradition of the just war and say that, 'there are times when waging war is not only morally permitted, but morally necessary, as response to calamitous acts of violence, hatred and injustice. This is one of these times'. Apparently waging a 'just war' in the course of which many innocent non-combatants will be killed is acceptable *provided the name of God is not invoked*.[8]

It is indeed not the appeal to "American values" and the universal rights and ideas of peace and justice in the world that is so peculiar about much of the post 9/11 reaction, but a peculiar blindness vis-à-vis the issues of serious engagement with the issue of religious violence. On one hand, the above mentioned letter clearly promotes "deepening and renewing our appreciation of religion by recognizing religious freedom as a fundamental right of all people in every nation," yet, on the other hand, this appreciation of religion ends as soon religion turns violent as "killing in the name of God is contrary to faith in God and is the greatest betrayal of the *universality of religious faith*."[9] There is no doubt, we are told, that in such cases we are witnessing "*a world-threatening evil* that clearly requires the use of force to remove it. Organized killers with global reach now threaten all of us. In the name of *universal human morality*, and fully conscious of the restrictions and requirements of a just war, we support our government's, and our society's, decision to use force of arms against them."[10]

In this essay we would like to explore a possibility of another conceptual approach toward the issue of religious violence that not only attempts to decode the various conceptual clichés, including the most powerful one, it seems, of religious

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[8] Duncan Forrester, *Apocalypse Now? Reflections on Faith in a Time of Terror* (Burlington: Ashgate Publishing, 2005), 3.
[9] Elshtain, *Just War*, 188, 183. Emphasis added.
[10] Elshtain, *Just War*, 192. Emphasis added.

violence as *evil*, used to describe the present struggles against the evils of religion, but allows us to rethink and to reconfigure the number of essential concepts necessary for any adequate theory of religion and violence. Before we proceed, we will provide a short overview of the recent literature dedicated explicitly to the problem of religious violence. Although this overview is far from being inclusive of all the work done in the field, it is representative of the main more or less influential approaches to the problem of religious violence. These are the approaches that we will argue are in need of major rethinking and decontextualization. In what follows we identify the defining characteristics of a number of takes on the issue of religious violence and discuss what we judge to be the particular problems of this or that conceptualization of religious violence.

1. Religious Violence: The State of Research.

The matter of religious violence has received a rather disproportionate amount of attention after the attacks of 9/11. Where previously only a few interested specialists, either academics or security experts and consultants, claimed expertise and attempted to provide a theoretical analysis of the subject matter, now there is a multitude of disciplinary perspectives. Although the distinction between pre-9/11 and post-9/11 research might appear somewhat unjustified, there were plenty of instances of religiously motivated acts of violence, including religious terrorism, before 9/11, we agree with Hector Avalos who, among others, introduces such distinction and argues that it indicates a different *attitude* to the issue of religious violence, an approach that no longer considers

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it a marginal and insignificant subject matter.[11] Indeed, the attacks of 9/11 have revived

an interest not only in religious violence, but also in the role of religion in general. We

think that a great variety of approaches to the problem of religious violence can be

classified into four major groups according to the main emphasis of each approach:

religious violence as a result of particular *scriptural* interpretation, religious violence as

an indication of a *psychological* conflict, religious violence as a result of *civilizational*

clash, and, finally, religious violence as a form of *apocalyptic* violence.

    The relationship between religious violence and its scriptural justifications is

often presented in a more or less traditional "history of religion" approach first

formulated and exemplified by Mircea Eliade. In his classic book *The Sacred and the*

Profane: The Nature of Religion, Eliade proposes to call "history of religion" a special

"branch of knowledge": "The science of religion, as an autonomous discipline devoted to

analyzing the common elements of the different religions and seeking to deduce the laws

of their evolution, and especially to discover and define the origin and first form of

religion, is a very recent addition to the sciences."[12] This new science of religion

attempts to formulate the essence and the history of religion.

    The example of the recent study of the relationship between religion and violence

based on the assumption that religious people commit acts of violence in the name of

their beliefs derived from their sacred texts is a study of monotheism – *The Curse of*

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[11] Hector Avalos, *Fighting Words: The Origin of Religious Violence* (New York: Prometheus Books, 2005), esp. 39-90.

[12] Mircea Eliade, *The Sacred and the Profane: The Nature of Religion*, trans. Willard R. Trask (New York: Harcourt, Brace & World, 1959), 216.

Cain: The Violent Legacy of Monotheism – by Regina M. Schwartz.[13] Although a great number of studies exist on the issue of how particular religious texts allegedly encourage violent behavior, Schwartz's book can be taken as an excellent representative of this approach in that it deals with texts of monotheism as producing a distinctive collective identity that in turn spawns violence. In other words, Schwartz's essential assumption is that acts of religious violence originate in the *interpretation* of foundational sacred texts and the ultimate influence this interpretation plays in a formation of collective identity of believers. Violence of identity formation is thus original violence that expresses itself in some secondary acts of violence that are aimed at protecting collective identity when it is perceived to be under threat.

Schwartz "locates the origins of violence in identity formation, arguing that imaginary identity as an act of distinguishing and separating from others, of boundary making and line drawing, is the most frequent and fundamental act of violence we commit."[14] Referring to Judaism, Schwartz writes: "Identities have of late come to be thought of as provisional, constructed, arbitrary, and one way to understand the biblical stories is to see them engaged in efforts to strengthen the precariousness of collective identity formations."[15] This emphasis on identity formation as an essential violent act can be further confirmed by recent work of Amartya Sen who in *Identity and Violence* also argues that violence arises from an imposition of a singular and a non-negotiable

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[13] Regina M. Schwartz, *The Curse of Cain: The Violent Legacy of Monotheism* (Chicago: University of Chicago Press, 1997).
[14] Schwartz, *The Curse of Cain*, 5.
[15] Schwartz, *The Curse of Cain*, 17-8.

religious or cultural identity.[16] If such collective identity is formed as a result of communal reading and interpretation of the sacred texts, we are told, then our attempts to deal with religious violence must involve knowledge of these texts and history of their interpretation.

Although much of Schwartz's study deals with monotheistic religions and much of her discussion can be labeled a kind of "cultural criticism," we are calling her description of violence *scriptural* because much of it is based on the assumption of a very close (yet not fully explored) connection between religion's texts and its general behavioral standards.[17] This model works even for religions that do not have a strict set of authoritative books like three major monotheistic religions discussed by Schwartz because the general approach is to assume a closer relationship between the external signs of authority (texts, rites, tradition, geographic location, clergy, ethnicity and so on) and internal disposition of those who claim to be adherents of a particular religion. This assumption is the weak point of this approach precisely because it tends to identify a privileged site of authority in its attempts to understand religion and its violent expressions. It relies primarily on insider testimonies, whether it is actual religious

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[16] Amartya Sen, *Identity and Violence: The Illusion of Destiny* (New York: W. W. Norton, 2006). Cf. Sudhir Kakar, *The Color of Violence: Cultural Identities, Religion and Conflict* (Chicago: University of Chicago Press, 1996).

[17] For an excellent criticism of this assumption in relation to Schwatz's book, see Peter Berkowitz, "Thou Shall Not Kill," *The New Republic* (June 23, 1997), 41-45. Berkowitz argues that Schwatz interprets biblical texts in such a way as to present their violent destructive interpretations while avoiding confronting an obvious possibility of reading these biblical texts productively and positively. "The Bible does have a dark side, and Schwartz has confronted it with gusto. But the Bible's dark side is not the Bible's whole story, and it will be misunderstood if it is wrenched from context, if it is read reductively, if the interpreters who have lived with and transmitted the text are ignored, if its self-presentation as a document that depicts the revelation of the one God, creator of the heavens and earth, is imperiously dismissed out of hand as so much superstitious stuff and nonsense. Had Schwartz approached the Bible with the respect for multiplicity that she preaches throughout her book, she would have contributed more effectively to a venerable tradition of moral criticism. For the curse of Cain is not easily or smugly dispelled. And one of the blessings that the Bible bestows is an understanding of why not." (45)

people who share their views on the matter or texts and other institutions of tradition that can be interrogated on the subject matter. [18] The essential issue with this approach is not so much its insistence that the origin of religious violence lies in the interpretative practice that makes a number of assertions about the meaning of this or that particular text. We are not contesting that certain interpretations *do* encourage certain types of behavior. Yet the interpretation itself does not take place in a vacuum. The question that we must ask vis-à-vis approaches to religious violence as resulting from a violent interpretation is the following: how is this violent interpretation produced? It is certainly not impossible to assume that some texts or doctrinal propositions can be and often are understood as encouraging violent behavior by those who adhere to a specific religion. However, our general approach in this essay is to look for an overall theoretical framework that makes violent interpretations possible and here we think that to delegate the issue of religious violence to the issue of textual interpretation, whether the causal links are presented as simple and direct or as complex and indirect, is to ignore a larger issue of the conditions of possibility of particular interpretations of texts that encourage violent behavior.

The next large group of sources that deals with religious violence is the group of studies of *psychology* of religious violence. Here again we need to point out that studies of religion and its psychological structures come before the actual application of these

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[18] For more studies of religious violence from a scriptural perspective see, among other studies, Peter Partner, *God of Battles: Holy Wars of Christianity and Islam* (London: HarperCollins, 1997); John Kelsay and James Turner Johnson, eds., *Cross, Crescent, and Sword: The Justification and Limitation of War in Western and Islamic Tradition* (New York: Greenwood, 1991); Karen Armstrong, *The Battle for God* (New York: Alfred A. Knopf, 2000); Nancy Tatom Ammerman, *Bible Believers: Fundamentalists in the Modern World* (New Brunswick: Rutgers University Press, 1987). For a counter-argument, see James G. Williams, *The Bible, Violence, and the Sacred: Liberation from the Myth of Sanctioned Violence* (San Francisco: Harper, 1991).

psychological theories to the study of violence. The major difference in interpreting religious violence as a psychological violence is that it does not really concern itself with the explicit religious message and does not rely solely on the insider accounts. According to the psychological interpretations, it is not specific texts or theological positions that cause religious violence but a certain psychological dysfunction such as accumulated aggression, envy, sexual repression and so on. Of course, any discussion of psychology of religious violence would be incomplete without a mention of Freud who articulated many of the basic notions in *Totem and Taboo* and *The Future of an Illusion*.[19]

Freud's general approach to the analysis of religion is premised on his view that human society is only possible in a situation where individual humans must repress their instinctual sexual and aggressive desires.[20] Freud's position on religion and violence is additionally premised on his generally pessimistic view of human nature where actual conflicts, wars and other examples of aggression are only secondary expressions of some primary violent identity formed by demands of coexisting with others. For Freud, religion is essentially and inherently a violent affair of fighting, killing, and sacrificing both animals and humans in the name of religious beliefs, even if this explicitly murderous agenda is often unconsciously covered up with an elaborate network of texts, rituals, and beliefs. The scholar who has paid much attention to this Freudian tradition and who gained much prominence attempting to articulate a view of religious violence from this psychological perspective is René Girard whose work on the issues of religious

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[19] Sigmund Freud, *Totem and Taboo*, trans. and ed. James Strachey (New York: W. W. Norton, 1950) and Sigmund Freud, *The Future of an Illusion*, trans. and ed. James Strachey (New York: W. W. Norton, 1961). For a general introduction to the relationship between Freud's psychoanalysis and religion, see Erich Fromm, *Psychoanalysis and Religion* (New Haven: Yale University Press, 1950) and Gregory Zilboorg, *Freud and Religion: A Restatement of an Old Controversy* (Westminster: Newman Press, 1958).
[20] Cf. Michael F. Palmer, *Freud and Jung of Religion* (London: Routledge, 1997) and Donald Capps, *Freud and Freudians on Religion: A Reader* (New Haven: Yale University Press, 2001).

violence have remained highly influential, even if still controversial. For the purposes of

this introduction we can mention his early book *Violence and the Sacred*. Girard,

however, continued to engage the themes of religion and violence throughout his career.[21]

Girard views religion, not unlike Freud, as an outlet for our repressed aggression

and sexual desires. Yet for Girard, religion's role in defusing and redirecting this

aggression into a more socially acceptable and ultimately manageable way is essential for

any attempt to deal with the issues of religion and violence. Girard contests Freud's view

of aggression as coming from our instincts and suggests that the true source of violence is

found in human culture that creates and encourages "mimetic desire" that is based on

envy and jealousy: "the subject desires the object because the rival desires it."[22] Girard

argues that this mimetic desire is at the very basis of human culture and creates

aggression that can only be released in a ritualized way of religious sacrifice.

> Religion invariably strives to subdue violence, to keep it from running wild.
> Paradoxically the religious and moral authorities in a community attempt to instill
> nonviolence, as an active force into daily life and as a mediating force into ritual
> life, through the application of violence… Primitive religion tames, trains, arms
> and directs violent impulses as a defensive force against those forms of violence
> that society regards as inadmissible. It postulates a strange mix of violence and
> nonviolence. The same can perhaps be said *of our own judicial system of
> control*.[23]

This last reference to the similarity between religion's attempts to regulate violence and

law's overall task of managing violence is important as it indicates a connection between

religious institutions, rituals, and secular institutions of law and order that, of course,

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[21] René Girard, *Violence and the Sacred*, trans. Patrick Gregory (London: Continuum Press, 2005). See also his *Things Hidden Since the Foundation of the World*, trans. Stephen Bann (Stanford: Stanford University Press, 1987), *The Scapegoat*, trans. Yvonne Freccero (Baltimore: Johns Hopkins University, 1989), and *I See Satan Fall Like Lightning*, (Maryknoll: Orbis Books, 2001).

[22] Girard, *Violence and the Sacred*, 154-55.

[23] Girard, *Violence and the Sacred*, 21. Emphasis added. Cf. "Religion shelters us from violence just as violence seeks shelter in religion." (25)

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historically have interacted throughout the history of humanity. Ultimately Girard's thought-provoking analysis is an important example of a speculatively rich cultural analysis, even if it seems to lack a genuine anthropological and pragmatic research angle. Girard's theory and its implications are build on a psychology of culture and its rituals, and are suggestive in many productive ways, especially in terms of building a broad theoretical base in any attempts to think about such large topics as "religion" and "violence."

Girard's work remains controversial precisely because of its seeming lack of experimental data and its very broad theoretical sweep. The important point of contention is whether there is a demonstrable relation between Girard's symbolic violence of religious rituals and real violence of religiously motivated acts of murder and terrorism? Mark Juergensmeyer, whose work we will discuss shortly, suggests that this is precisely the problem with Girard and others who propose a theory of symbolic violence without necessarily tying it to specific instances of "real" violence.[24] However, if we return for a moment to "history of religion" approach exemplified by the likes of Mircea Eliade and Rudolf Otto, we will see that their theoretical discussions of the essence of religion are also only tangentially based on experimental data and ethnographic observations. For example, Rudolf Otto's influential work on the idea of the holy – *The Idea of the Holy* – is very much a theological rather than social scientific study.[25] Yet the very impulse to theorize religion (and violence) in terms of essential

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[24] See Juergensmeyer's introduction to the collection of essays on the matter, "Editor's Introduction: Is Symbolic Violence Related to Real Violence?" in *Violence and the Sacred in the Modern World*, ed. Mark Juergensmeyer (London: Frank Cass, 1991).

[25] Rudolf Otto, *The Idea of the Holy: An Inquiry Into the Non-Rational Factor in the Idea of the Divine and Its Relation to the Rational*, trans. John Wilfred Harvey (Oxford: Oxford University Press, 1931). For an

characteristics, although unfashionable after the various critiques of essentialism and foundationalism, is still very much the bread and butter of any serious attempt at thinking about religion and violence. Girard's theorization of religious violence is therefore firmly situated in the great tradition of Feuerbach, Marx and Freud's sweeping generalizations that paradoxically produce a necessary effect of thinking about religion's role in human society with enough theoretical power to change our very perception of religious violence, the way we must approach it, and, ultimately, the way we must confront it.

Although this essay's main motivation is to situate religious violence in a different conceptual framework, we are sympathetic to Girard's overall intention of providing us with a broad cultural presentation of religion. While it seems to pursue the study of religious violence in a very universalizing and even totalizing manner, suggesting that *all* religions and their rituals come from some universal characteristic of human nature and human culture, we believe that the real value of Girard's contribution is its *prescriptive* presentation of the subject matter. When Girard suggests that all religious violence is based on mimetic desire that attempts to manage and regulate the resultant aggression, it is possible to read him as prescriptively arguing that this is how we *must* understand religious violence and that all other instances of violence that do not fit the theoretical model should thus be excluded. This emphasis on the normative

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short and excellent discussion of Otto's approach see chapter 5 of Seth Daniel Kunin, *Religion: The Modern Theories* (Baltimore: Johns Hopkins University Press, 2005), 62-68.

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impulse of any theorization of religious violence is something that we will borrow from Girard and other psychological interpretations.[26]

The next group of theoretical engagements with religious violence takes religious conflicts to be resulting from larger geopolitical encounters between various civilizational units. This encounter between religious and cultural identities can be understood as both a *real* and a *perceived* conflict of civilizational identities. We will first consider what is now widely regarded as an influential theoretical model of the "clash of civilizations," a model that has been criticized for an unfair imposition of the Western view of religion and culture on the complex realities of international conflicts. This idea of civilizational conflict comes from Samuel Huntington's often-referenced book *The Clash of Civilizations and the Remaking of World Order*.[27] The reason we are drawing attention to this work is found in Huntington's choice to define his civilizational associations along the lines of religious affiliation. Civilization here is a unit that transcends particular nation-states and cultures, and forms a larger collective entity that Huntington chooses to designate using the language of religion rather than ethnicity, nationality, race, or geographical location (all of these ultimately contribute to the final collective civilizational identity but none is preferred to any other). A civilization is, according to

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[26] For more on Girard and his psychological interpretation of religious violence see Gil Baillie, *Violence Unveiled: Humanity at the Crossroads* (New York: Crossroad, 1995); Paisley Livingston, *Models of Desire: Rene Girard and the Psychology of Mimesis* (Baltimore: Johns Hopkins University Press, 1992); Andrew J. McKenna, *Violence and Differenc: Girard, Derrida, and Deconstruction* (Urbana-Champagne: University of Illinois Press, 1992); *Violence Renounced: Rene Girard, Biblical Studies and Peacemaking*, ed. Willard Swartly (Telford: Pandora Press, 200); Baruch Levine, "Rene Girard on Job: the Question of the Scapegoat," *Semeia* 33 (1985): 125-133. For a critical discussion of Girard's mimesis, see Philippe Lacoue-Labarthe, "Typography," in *Typography: Mimesis, Philosophy, Politics*, trans. Christopher Fynsk (Cambridge: Harvard University Press, 1989), 102ff. [43-138]

[27] Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York: Simon and Schuster, 1996).

Huntington, the "highest cultural grouping of people and the broadest level of cultural identity people have short of that which distinguishes humans from other species."[28]

The source of conflict between various civilizational groupings is the perceived threat to one's civilization and its religious culture. Violence is then a legitimate attempt to maintain the integrity of one's civilizational identity. Violent defense of one's religion and culture is then perceived as necessary and justifiable, regardless of the means. This thesis that most of the contemporary conflicts must be understood in terms of the larger clashes between various collective identities is an attractive (and very convenient) way of making sense of the increasing amount of violence, allowing us to interpret most of the violence as implicitly religious due to civilizational identity's inherent religiosity.

Yet there are plenty of voices that contest not so much the theoretical power of Huntington's thesis or its practical potency but its ultimately hegemonic nature of prescribing perhaps too much.[29] In other words, if we accept Huntington's notion that we must interpret contemporary conflicts as conflicts of civilizations rather than nation-states or international entities, we are allowing the simplicity of our theory to undermine the inherent complexity of any conflict.[30] This, of course, is the inherent danger of any attempt at theorization of such a complex relationship as that between religion and violence. It is here that we need to mention a number of approaches to the issue of

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[28] Huntington, *The Clash of Civilizations*, 43.

[29] For an excellent critique of Huntington's awkward labeling of civilizations along the lines of religion and culture see Tariq Ali, *The Clash of Fundamentalisms: Crusades, Jihads and Modernity* (London: Verso, 2003), 273ff.

[30] For a number of engagements with "Huntington's thesis" see the essays that originally appeared in *Foreign Affairs* magazine and later republished as *The Clash of Civilizations? The Debate* (New York: The Council of Foreign Relations, 1996). For a different take on the matter, see *The Clash of Civilizations? Asian Responses*, ed. Salim Rashid (Dhaka: The University Press, 2003). See also Dieter Senghaas, *Clash Within Civilizations: Coming to Terms with Cultural Conflicts* (London: Routledge, 2002), chapter 7 and Lee Harris, *Civilization and Its Enemies: The Next Stage of History* (New York: Simon and Schuster, 2004), 44ff.

religious violence that are less grandiose and hegemonic, yet that still rely on the language of religious and cultural identity. Attempts by such authors as Jessica Stern and Mark Juergensmeyer to understand why specific religious organizations encourage and perpetrate violence can be categorized as social scientific, descriptive, and even journalistic approaches, yet we argue that both Stern and Juergensmeyer are still caught up in a sort of analysis that, if pushed further along its argumentative lines, can lead us to ideas of civilizational conflict approach represented by Huntington.

Jessica Stern's book – *Terror in the Name of God: Why Religious Militants Kill* – aims to explain the main motivations behind much of religious violence and relies primarily on insider accounts.[31] Religious terrorism, argues Stern, "arises from pain and loss and from impatience with a God who is slow to respond to our plight, who doesn't answer. Its converts often long for a simpler time, when right and wrong were clear, when there were heroes and martyrs, when the story was simple, when the neighborhood was small, when we knew one another."[32] Stern's methodological approach is very simple – talk to terrorists and see what they have to say about their own motivations and their own justifications. Stern is driven by her desire to find out "how people who claim to be motivated by religious principles come to kill innocent people in the service of ideas," as if the notion of violence in the name of ideas and ideological positions is a complete novelty.[33] This methodological naiveté – all we need to do is ask them why they want to kill innocent people and they will tell us – is found in the very assumption

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[31] Jessica Stern, *Terror in the Name of God: Why Religious Militants Kill* (New York: HarperCollins, 2003).
[32] Stern, *Terror in the Name of God*, xi.
[33] Stern, *Terror in the Name of God*, 281.

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that we need to "completely empathize with the pain and frustration"[34] of religious activists, yet it makes Stern's analysis strangely thought-provoking because it allows her to present her own views on the matter as an occasional commentary and as a seemingly secondary framing of the issues. Like other civilizational accounts of the reasons for religious violence, Stern presents the issues of civilizational conflict in terms of perceived dangers of globalization. As Thomas Mockaitis puts it, referring to Stern's work, "the homogenizing effect of globalization threatens to make every place just like every other place, creating social and psychological dissonances that produce violence."[35] Stern's combination of psychological and civilizational explanation of religious violence, although somewhat theoretically superficial, reminds us once again of the need to theorize religion and violence in broader terms than one is usually advised to do.

Stern's reliance on testimonial accounts of the perpetrators of religious violence, despite her warnings that such accounts cannot always be trusted, allows us to see the main weaknesses of her descriptive approach: the majority of concepts that need to be explained and questioned remain in the background. We are to assume that everyone already knows what religion, violence, terrorism, identity, injustice and so on are. All we have to do at this point, Stern suggests, is to shape our domestic and foreign policies based on our research so that most of the violence-triggering issues are successfully avoided.

Unlike Stern, Mark Juergensmeyer's study of religious violence – *Terror in the Mind of God: The Global Rise of Religious Violence* – dedicates only a half of the book

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[34] Stern, *Terror in the Name of God*, xvi.
[35] Thomas R. Mockaitis, *The "New" Terrorism: Myths and Reality* (Westport: Praeger Security International, 2007), 45.

to the accounts of witnesses and perpetrators of religious violence, while the second half of the book is dedicated to attempts to provide a theoretical framework.[36] Juergensmeyer is guided by a similar set of concerns as that of Stern and others who approach the problem of religious violence from a more or less commonsensical point of view of essentially peaceful nature of religion:

> Most people feel that religion should provide tranquility and peace, not terror. Yet in many of these cases religion has supplied not only the ideology but also the motivation and the organizational structure for the perpetrators… What puzzles me is not why bad things are done by bad people, but rather why bad things are done by people who otherwise appear to be good – in cases of religious terrorism, by pious people dedicated to a *moral vision of the world*."[37]

This concern with morality was already a point of interest in Stern's study that suggested that religious terrorists act out of certain sense that gross injustices have been committed and all legitimate ways of confronting such injustices have been exhausted. This "enormous amount of moral presumption"[38] that allows religious terrorists to justify their acts of violence is fully illustrated in the first six chapters of the book in which Juergensmeyer presents the results of the multiple interviews he has conducted with a number of prominent supporters of religious violence from several religions. It is the second part of the book, however, that provides us with an attempt to theorize religious violence: "The very adjectives used to describe acts of religious terrorism – symbolic, dramatic, and theatrical – suggest we look at them not as tactics but as *performance violence*."[39]

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[36] Mark Juergensmeyer, *Terror in the Mind of God: The Global Rise of Religious Violence*, third revised ed. (Berkeley: University of California Press, 2003).
[37] Juergensmeyer, *Terror in the Mind of God*, 5, 7. Emphasis added.
[38] Juergensmeyer, *Terror in the Mind of God*, 11.
[39] Juergensmeyer, *Terror in the Mind of God*, 126.

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Whether all of the acts of violence described in the book can neatly fit Juergensmeyer's definition of "performance violence" can be debated, but what is essential to his argument still stands, i.e., religious violence is concerned not only (and maybe even not so much) with the protection of some cultural-civilizational identity, but with the appeal to some universal symbols of *higher law and justice*. In one of the more powerful chapters of the book – "Cosmic War" – Juergensmeyer gathers various threads of his discussion into a picture of a "culture of violence": "[The] images of divine warfare are persistent features of religious activism. They provide the content and the themes that are played out in the grand scenarios that lie behind contemporary acts of performance violence."[40] The essential connection between rituals of symbolic violence, often found in many religious creeds and practices, and "real acts of violence," writes Juergensmeyer, is the connection we ought to examine more carefully:

> The question of why images of cosmic struggle are translated into real acts of violence is complicated, since the line between symbolic and actual violence is thin. Symbols are sometimes more than just fictional representations of the real thing. Rites of sacrifice, for instance, often involve killing, and feats of martyrdom lead to death. The symbiosis between symbolic and real violence is profound and goes to the very heart of the religious imagination.[41]

Although Juergensmeyer seems to imply throughout that "real violence" consists in actual physical murder or physical harm done to others, while symbolic violence only *represents* such acts, it is clear that he is not sure about this very distinction himself and attempts to articulate a more sophisticated position that escapes the usual definition of violence as physical violation and presents religious violence as primarily a violence of ideology and its performance or its acting out of the cosmic battle. In the final chapter of

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[40] Juergensmeyer, *Terror in the Mind of God*, 149.
[41] Juergensmeyer, *Terror in the Mind of God*, 164.

the book – "The Mind of God" – Juergensmeyer presents but does not fully develop the prescriptive theory of how we must understand and deal with religious violence. One of the most important aspects of Juergensmeyer's analysis is an effort to escape the limitations of seeing religious violence as a defense of performative cultural-civilizational identity and an attempt to think religious violence in terms of a juxtaposition between juridico-political authority of the earthly powers and divine authority that brings ultimate justice to those who actively seek it.

2. Religious Violence and Apocalyptic Faith.

The value of a civilizational approach is found in its insistence that contemporary conflicts be evaluated not on a level of nation-states fighting each other for resources or influence, but on a level that transcends the geographical and political limitations of nation-states and looks for a larger international perspective. However, thinking of religious violence as civilizational or identity-oriented violence puts the main emphasis on cultural, social or religious identity that is perceived to be under threat and needs to be defended. Charles Selengut in his study of various theories of religious violence – *Sacred Fury: Understanding Religious Violence* – identifies a group of theoretical approaches that insist that only violence in the name of some future ideal society is to be labeled "religious violence."[42]

In a way continuing Juergensmeyer's discussion of "cosmic war," Selengut writes that, according to some religious believers, the "establishment of God's order will not come easily. The forces of good will have to confront the forces of evil and a terrifying,

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[42] Charles Selengut, *Sacred Fury: Understanding Religious Violence* (Lanham: Rowman & Littlefield Publishers, 2003), chapter 3.

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cataclysmic event causing great suffering and destruction – the apocalypse – will transform the universe and usher in the new age of peace and harmony."[43] Although the coming of the new age is usually placed above any human agency in most established religions, writes Selengut, there's always a number of marginal groups that promote the need to hasten the coming apocalypse, "break through the boundaries of everyday life and achieve a sacred reality."[44] This notion of transcending the ordinary world and reaching a radical and alternative reality combined with a search for ultimate justice often creates an antinomian sentiment of opposing all "rules, norms, and legalities of the established order."[45]

Religious violence as *apocalyptic violence* then is based not only on the opposition to the present socio-political situation, often characterized as that of injustice and chaos, but also on the very clear insistence that this old world must be *destroyed* in order to make room for the new age of peace and justice. However, unlike revolutionary movements with their reliance primarily on human agency and active political change, apocalyptic violence attempts to trigger the catastrophe by acts of violence that are aimed to provoke, to threaten the status quo, to terrorize those who are either aware of the problems but are complacent or in need of conversion to this vision of the new age. This vision of religious violence as violence in the name of the future age of peace and justice, despite its clear religious imagery, however, introduces an essential element into any

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[43] Selengut, *Sacred Fury*, 95-6.
[44] Selengut, *Sacred Fury*, 98.
[45] Selengut, *Sacred Fury*, 100. Cf. Charles Selengut, "Eschatology and the Construction of Alternative Realities: Towards a Social Conflict Perspective on Millennialism," in *The Return of the Millenium*, ed. J. Bettis and S. K. Johannesen (Barrytown: New Era Books, 1984).

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discussion of religious violence an element of social and political struggle against injustice.[46]

It is essential to add, however, that Selengut often confuses so-called "apocalyptic groups" and their actions with what he initially purported to describe as theorizing religious violence *as* apocalyptic violence, which suggests that only those acts that are committed in the name of the soon to be revealed new age are to be considered examples of religious violence and everything else needs a different theoretical framework. In other words, the confusion is between the claim that apocalyptic violence is a *type* of religious violence and the claim that apocalyptic violence is the *only* type of violence that can genuinely be described as religious. It is essential to repeat this point vis-à-vis all of the views of theorizing religious violence discussed so far: religious violence as scriptural, psychological, civilizational, or apocalyptic violence. When attempting to understand the essential characteristic of a violent act that makes it an act of *religious* violence, as opposed to other types of violence, we cannot simply state that it is an act committed by religious persons in the name of some religious principles. All of the discussed approaches attempt to go further than that and propose to have identified, more or less successfully, a certain defining characteristic that allows us to explain what separates acts of religious violence from other violent acts.

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[46] For more discussions of apocalyptic religious groups and ideologies, see Norman Cohn, *Cosmos, Chaos, and the World to Come: The Ancient Roots of Apocalyptic Faith* (New Haven: Yale University Press, 1993); Paul Boyer, *When Time Shall Be No More: Prophecy Belief in Modern American Culture* (Cambridge: Belknap Press, 1994); Daniel Wojcik, *The End of the World As We Know It: Faith, Fatalism and Apocalypse in America* (New York: New York University Press, 1999), esp. chapter 7; Richard K. Fenn, *Dreams of Glory: The Sources of Apocalyptic Terror* (Burlington: Ashgate Publishing Company, 2006). For an interesting theological treatment of apocalyptic sensibilities of the twentieth century, see Ulrich H. J. Körtner, *The End of the World: A Theological Interpretation*, trans. Douglas W. Scott (Louisville: Westminster John Knox Press, 1995) and Duncan B. Forrester, *Apocalypse Now? Reflections on Faith in a Time of Terror* (Burlington: Ashgate Publishing, 2005), esp. chapter 5.

Although a more sophisticated theory of religious violence might include several of the discussed perspectives, we are keeping them separate in order to better articulate the issues at hand. We argue that the last theoretical *framework* of presenting religious violence as apocalyptic violence, with some necessary changes discussed in this essay, will serve best the purposes of articulating the rising number of acts of violence committed in the name of religious beliefs. In order to support this claim and to move our discussion along, we would like to end this review of literature on religious violence with a look at two authors whose perspectives on the matter have been influential in our attempt to initiate a different take on the matter of religious violence.

The first author, James F. Rinehart, is a political scientist who lately has been drawing attention to the issue of apocalyptic or millennial violence in his books on religious terrorism and millenarianism.[47] The second author, Hent de Vries, is a philosopher who wrote two seminal works that connected recent philosophical trends to what he labeled "the turn to religion" and paid close attention to the issue of "apocalyptics" in Derrida and Kant.[48] Both authors both posit the problem in an original way so as to displace the issue of religious violence from its traditionally marginal status of extremist activity of the few crazed fanatics and reintroduce the issue of religion and violence and place it into the very heart of the debates about law, justice, violence, force, freedom and other essential topics of contemporary public conversation.

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[47] James F. Rinehart, *Revolutions and the Millennium: China, Mexico, and Iran* (Westport: Praeger, 1997) and idem, *Apocalyptic Faith and Political Violence: Prophets of Terror* (London: Palgrave Macmillan, 2006)

[48] Hent de Vries, *Philosophy and the Turn to Religion* (Baltimore: Johns Hopkins University Press, 1999) and idem, *Religion and Violence: Philosophical Perspective from Kant to Derrida* (Baltimore: Johns Hopkins University Press, 2001).

Rinehart's recent study of millenarianism builds on already significant research done in this area, research that conclusively shows the error of associating "end of times" (or millenarian) movements only with the three monotheistic religions.[49] Rinehart presents us with a carefully argued picture of a terrorist who, as it happens, is never really quite *secular*, despite the fact that most of Rinehart's examples do not come from what is traditionally understood as religious violence: "…to become a terrorist one must possess two congruent cognitions: (1) a worldview that clarifies one's conceptualization of what is *just and unjust* in some highly satisfactory way, and (2) the establishment and sustainment of an identity consistent with that worldview."[50] Rinehart's "millenarian terrorists" use violence in order to achieve a perceived *sacred* cause, and "although they possess a firm loyalty to the conventions of stable and orderly daily life within their society and are obliged to ensure their longevity, under certain conditions of disorientation, disharmony, and/or foreign impingement that threaten the institutions and norms of their way of life, they are driven to invoke traditional images of cultural salience."[51]

Apocalyptic violence then, according to Rinehart, is not an anarchic violence that is aimed at total destruction of lawful society as such, but an effort to correct the present situation of depravity and degradation in order to reestablish the proper order to things. Such a potentially violent position then involves a sophisticated ideological litmus test that allows one to recognize the condition of injustice and disorder and to experience this

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[49] Among a number of studies one might list here, see Vittorio Lanternari, *The Religions of the Oppressed: A Study of Modern Messianic Cults* (New York: Mentor Books, 1965); Michael Barkun, *Disaster and the Millennium* (New Have: Yale University Press, 1974); Susan Naquin, *Millenarian Rebellion in China: The Eight Trigrams Uprising of 1813* (New Haven: Yale University Press, 1976); D. W. Brackett, *Holy Terror: Armageddon in Tokyo* (New York: Weatherhill, 1996).

[50] Rinehart, *Apocalyptic Faith*, 27. Emphasis added.

[51] Rinehart, *Apocalyptic Faith*, 28. Emphasis added.

condition as a violation of sacred norms. This peculiar connection between an always in some way defective "how things are" and an always ideal and coming "how things should be," notices Rinehart, is not just a feature of this particular way of thinking about the relationship between socio-political demands and sacred duty to correct the situation, but is, in fact, "the intellectual mother of all political ideologies. It is the ultimate belief system. No other set of ideas offers such a compelling message and provides such a powerful tool for influencing the popular mind. It is the definite articulation of discontent and a powerful unifying force that provides the most effective meaning to popular grievances."[52]

This destructive power of "apocalyptic faith" is nothing new. However, we think about it in terms of a simple pronouncement: any and all human institutions, including basic ideas of morality and legality, are *finite* because they are constructed for the sake of peaceful human coexistence. When such coexistence is perceived as being impossible, when the present moral and legal standards are no longer corresponding with those of higher justice, one is *justified* in overthrowing the corrupt order in order to usher in the new order. This justification, however, always comes from the *outside* of any present moral and legal order, and this outside is always identified as transcending any human institution and therefore sacred. This transcendent nature of the outside justice that judges the present state of affairs, argues Rinehart, is nothing but a religious idea of justice, or justice presented as a sacred duty in an implicitly or explicitly religious

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[52] Rinehart, *Apocalyptic Faith*, 30. Cf. the concluding paragraph of the study: "Violence comes to be seen as a tool for abolishing the old and accelerating the new. Nonetheless, in each of these cases [Peru, Iraq and Japan, discussed in detail in the book] the resources to actually affect substantive change were scarce. Out of desperation, yet imbued with a sacred sense of destiny, they resorted to the use of an instrument that could render the anticipated denouement: terrorism." (167)

language. What makes this appeal to higher justice an example of "apocalyptic faith" is the insistence on both the possibility of the continual moral and socio-political improvement in view of the standards of this higher justice and the ultimate faith in the future, even if always to come in some cases, ideal state of peace, justice and harmony (either literally in the form of perfect religious community, or ideally as an orienteer for present decisions).

Hent de Vries' insightful analysis of how contemporary philosophical discussion is experiencing a "turn to religion" is then a way of addressing some of the issues of what he labels "apocalyptics" raised by Rinehart's analysis of specific millenarian movements. De Vries' two works on religion and philosophy can be read as two volumes of the same project dealing with the role of religion and its violent expressions in the contemporary philosophical discourse. [53] The first book's project is self-professedly humble as de Vries proposed to analyze "the theoretical significance of religious and theological citations in writings whose roots lie in the phenomenological tradition, although by historical accident they came in the United States to be associated first with 'structuralist controversy' and then with poststructularism and its purported godfathers, Nietzsche, Marx, and Freud."[54] The second book continues to discuss the same phenomenological tradition and now adds that we have to state that there is "no violence without (some) religion; no religion without (some) violence."[55]

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[53] In fact, in the Preface to *Philosophy and the Turn to Religion* de Vries announces the forthcoming "sequel" that was provisionally titled *Horror Religiosus* and subsequently became *Religion and Violence*. See de Vries, *Philosophy and the Turn to Religion*, xi.
[54] De Vries, *Philosophy and the Turn to Religion*, xi.
[55] De Vries, *Religion and Violence*, 1.

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Although de Vries surveys a great number of contemporary thinkers, the primary figure in both works is Jacques Derrida. In fact, as several reviewers pointed out, the titles of the works are somewhat misleading because they promise but do not deliver either in terms of explicitly showing the philosophy's recent "turn to religion" or in terms of providing "philosophical perspectives from Kant to Derrida," as the subtitle of the second book clearly indicated.[56] Both books however are magisterial studies of the works of such a great number of scholars, even if ultimately only in connection with the thought of Derrida, that any attempt at a summary would not do them justice. Derrida's deconstructive attempts at reassessing the philosophemes of the Enlightenment, writes de Vries, present us with a unique effort to identify a certain "apocalyptic genre" at the very heart of the most of the Enlightenment philosophy, Kant being one of the main representatives of such philosophical position.[57] Derrida, notes de Vries, directly encounters Kant's discussion of the law and finds all sorts of uncomfortable gaps and suppressed movements in it. The main point of Derrida's critique of Kant is the repressed narrativity of the moral law that is reduced to a set of formal criteria and therefore lacks material substance and practicality. This criticism, of course, is a peculiar version of Hegel's famous critique of Kant's formalism, yet, writes de Vries, Derrida's attitude is not to reject Kant but to rethink his approach, now explicitly with a discussion of religion in mind. The "apocalyptics" of Enlightenment, according to de Vries, consists in a vision of humanity that, while aware of its own finitude, establishes a kind of secular

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[56] See, for example, Martin Kavka, "Review of Hent de Vries, *Philosophy and the Turn to Religion*," *MLN* 116:5 (December 2001):1119-23 and Charles K. Bellinger, "Review of Hent de Vries, Religion and Violence: Philosophical Perspectives from Kant to Derrida," *Journal of the American Academy of Religion* 72:1 (2004): 247-49.
[57] De Vries, *Philosophy and the Turn to Religion*, 361.

religion of law and order, enthusiastically affirming rationality and moral progress as all but necessary elements of any human development. The theme of religion thus, or rather of "rational theology," comes prominently to the forefront of any discussion of Kant and other Enlightenment thinkers who affirm the secular neutrality of reason:

> [Any] attempt to immunize reason against all seduction by preventing it from making a surreptitious slip from the noumenal into the phenomenal… also confronts thought with the danger of yet another eclipse or apocalypse. For, the defense of neutrality of tone in philosopher, the pretense that philosophy could leave tonal differences behind, ultimately comes down to condemning it to a certain death.[58]

De Vries analyzes Derrida's engagement with Kant, yet he does not have time or space for the notion of "religious violence," despite the very title of the book – *Religion and Violence*. De Vries' analysis of Derrida's engagement with religious and theological themes is thorough and comprehensive, and yet it leaves enough conceptual space for us to fill the large gaps, especially since de Vries' explicit perspective on the matter is an *exegetical* study of the late phenomenological tradition. Our task on the other hand is to approach the issue of religious violence from a perspective of its conceptual involvement with the notion of justice, the notion that is not completely absent from de Vries' analysis, but that also does not receives as much attention as we think it should.[59] To put it differently, de Vries does not emphasize the connection between philosophy's turn to religion, violence and the call for justice in a way that would reveal the possible ways of rethinking the problem of "religious violence," as his most important concern, after a need to carefully summarize and articulate the discussed positions, is to present a more

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[58] De Vries, *Philosophy and the Turn to Religion*, 380.
[59] De Vries writes about justice in *Philosophy and the Turn to Religion* almost exclusively in terms of Derrida's analysis of it in "Force of Law" as "emphatic, excessive, paradoxical, or even aporetic notion of 'justice'." (91)

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nuanced and sophisticated version of the a history of contemporary phenomenological tradition's recent conceptual developments.[60] However, de Vries' studies give us a conceptual framework of thinking about religious violence in terms of a larger set of philosophical concepts, rather than approaching it scripturally, psychologically or sociologically.

3.Why Kant and Derrida?

Although not the first one to point out the relationship between religion, violence and apocalyptic violence, de Vries is certainly the first one to give it a more or less detailed attention.[61] However, our primary goal in this essay is to take a much closer look at some aspects of Kant's practical philosophy and Derrida's late engagement with the issues of law and justice in order to clarify the relationship between religion and violence in terms of the difference (and the tension it creates and maintains) *between law and justice*. This difference, we argue, is what first produces the sense of dissonance in any pursuit of a more just and harmonious society, the pursuit that we characterized as driven by "apocalyptic faith" in transcending moral depravity and stifling legal formalism. Although we accepts that there exists a number of possible conceptual ways of approaching the issues at hand, we intend to argue that our appeal to the thought of

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[60] It would be unfair to forget here another important work on Derrida's ideas of "apocalyptics" and "messianic without messianism" that, however, do not directly connect these to religious violence but contain insightful analyses of Derrida's concepts, namely John D. Caputo, *The Prayers and Tears of Jacques Derrida: Religion without Religion* (Bloomington: Indiana University Press, 1997), especially chapter II "The Apocalyptic" and chapter III "The Messianic."

[61] We must mention, however, another scholar – Peter Fenves – who also approached the issue of this relationship, although not in such detail as de Vries, first in his essay on Kant and Derrida "Topicality of Tone," in *Raising the Tone of Philosophy: Late Essays by Immanuel Kant, Transformative Critique by Jacques Derrida*, ed. Peter Fenves (Baltimore: Johns Hopkins University Press, 1993), 1-48 and then in his book on late Kant *Late Kant: Towards Another Law of the Earth* (London: Routledge, 2003), esp.126ff.

Kant and Derrida produces the most potent combination of insights vis-à-vis the problem of religious violence.

Although comparing the work of Kant and Derrida is not an absolutely novel theoretical move, the coupling is rather unusual. In fact, what philosophical interaction that will take place between Kant and Derrida in this essay can very well be described in terms of a *forced encounter*. This methodology of a forced encounter, if one were to give it a short explanation, is aimed at comparing the philosophical ideas rather than philosophical persons or the corpuses of writing. Even though it is not difficult to show that Derrida indeed engaged Kant in many of his texts, the point of this study is not necessarily to establish any sort of philosophical lineage from Kant to Derrida.[62] Our task instead is to establish a connection between certain conceptualizations of law, justice, religion and violence in Kant and Derrida. In this sense, it is our task to *force* Kant and Derrida, or rather their peculiar ways of approaching a number of issues, to encounter each other's concepts and to see what happens. The task may be more difficult and treacherous than it may appear at first glance, but we are certain that it is not impossible to demonstrate that when it comes to the discussions of law, justice, religion and violence, Kant's and Derrida's thinking spins around the same axis.

If there is a sense in which Kant and Derrida are both pursuing similar philosophical projects, for example, both can be characterized as "critical philosophers" in Kantian sense, there's also a way to see the two as almost diametrically opposite. Kant

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[62] For Derrida's explicit discussion of Kant, see, for example, Jacques Derrida, "On a Newly Arisen Apocalyptic Tone in Philosophy," in *Raising the Tone of Philosophy: Late Essay by Immanuel Kant, Transformative Critique by Jacques Derrida*, ed. Peter Fenves (Baltimore: Johns Hopkins University Press, 1993), 117-71 or Jacques Derrida, *Truth in Painting*, trans. Geoffrey Bennington and Ian McLeod (Chicago: University of Chicago Press, 1987), 37ff. For a study that suggested early on that Derrida's philosophy was deeply rooted in European Continental tradition see Rodolphe Gasché, *The Tain of the Mirror: Derrida and the Philosophy of Reflection* (Cambridge: Harvard University Press, 1983).

was a system builder, regardless of some of the issues discussed in his final and never published work.[63] Derrida was a system destroyer, regardless of his continuous protestations against misreading "deconstruction" as "destruction." Kant agonized in "a pain like that of Tantalus" over the possibility that he will die without being able to complete his system that is, "both as regards its means and its ends, is capable of completion."[64] Derrida agonized over the apparently intentional refusal to understand his thought by those who, without much engagement and familiarity with his texts, in advance declared him a fraud and a charlatan, without any interest in advancing the discussion of essential issues.[65] Yet both were driven by a certain concern for justice: Kant understood justice as a system of laws and a socio-political order that would eventually lead us to "perpetual peace," while Derrida insisted that justice is outside of the law, that it is "what gives us the impulse, the drive, or the movement to improve the law, that is, to deconstruct the law."[66] For Kant, justice can be achieved through a harmonization of human wills that, while giving up certain rights, are united in their respect for the law, while Derrida argued, again and again, that justice implied "non-

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[63] Eckart Förster, for example, have argued that Kant's *Opus Postumum* gives us a set of notes on what was to become a work labeled "Transition from the Metaphysical Foundations of Natural Science to Physics" that, in a sense, would complete Kant's system by showing how physics was possible. As late as 1798, writes Förster, Kant agonized over an alleged "gap" in his "uncompleted philosophy." Kant repeatedly asserted that what was eventually published as Opus Postumum would be his most important work, yet the work did not receive much attention and it is still quite unclear what we should make of it. See Eckart Förster, *Kant's Final Synthesis: An Essay on the* Opus Postumum (Cambridge: Harvard University Press, 2000), chapter 3; Eckart Förster, "Fichte, Beck and Schelling in Kant's *Opus Postumum*," in *Kant and His Influence*, eds. George MacDonald Ross, Tony McWalter (London: Continuum, 2005), 146-69.
[64] Ak. 12:257. Cited in Immanuel Kant, *Philosophical Correspondence, 1795-99*, trans. and ed. Arnulf Zweig (Chicago: University of Chicago Press, 1967), 251.
[65] See, for example, Derrida's letter to Gerald Graff published as "Afterword: Toward an Ethic of Discussion," in Jacques Derrida, *Limited Inc.*, trans. Samuel Weber (Evanston: Northwestern University Press, 1988), 111-60.
[66] Jacques Derrida, *Deconstruction in a Nutshell: A Conversation with Jacques Derrida*, ed. John D. Caputo (New York: Fordham University Press, 1997), 16.

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gathering, dissociation, heterogeneity, non-identity with itself, endless inadequation, infinite transcendence."[67]

Whether justice is a perfect union of a multitude of humans in the rightful condition, or it is something that is always beyond this legal arrangement and pushes for improvement of the law, it is clear that both Kant and Derrida agree that there is a need to make a conceptual distinction between law and justice. Although the phrase "between law and justice" in the title of this dissertation comes from Derrida's discussion of the issue, we will argue that it is applicable to Kant's presentation of the issue as well, because, as we will see, we take Derrida's fundamental insight – that only with the concept of justice as something extraneous to the order of law is there a possibility to *improve, not just change,* the law – to be essential to any conversation about justice. However, the opening of the space of difference between law and justice does not come without a price. We will attempt to formulate a theoretical approach to violence in the name of religion, interpreting this sort of violence to be a reaction to the ever-widening gap between the finitude of the law and the infinitude of justice. In this sense, if Kant comes to us as an essential thinker of the rightful condition of the law, Derrida fulfills a "quasi-prophetic function of simply pointing out the finitude of law [which is] justice."[68]

Our choice of Kant and Derrida is by no means arbitrary. Kant provides us with a theory of the rightful condition that stands between the early modern theory of social contract and natural law and the late modern formalization and unification of law that eventually resulted in legal positivism's erasure of any significant difference between the ideas of law and justice. Kant's theory of right, as we will see, allows us to frame our

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[67] Derrida, *Deconstruction in a Nutshell,* 17.
[68] James K. A. Smith, *Jacques Derrida: Live Theory* (London: Continuum, 2005), 66.

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discussion of law and justice in a way that does not completely ignore or exclude the issues of coercion, violence and religion. Kant's conceptualization of right (*Recht*) and justice (*Gerechtigkeit*) gives us an opportunity to take a look at the development of certain models of the relationship between law and justice that reveal some intriguing difficulties and inconsistencies. Despite Kant's efforts to formulate his practical philosophy in terms of smoothing over any possible conflicts between moral ideals of reason and practical goals of political activity, there remains in his work a clear sense that there is an irreparable fracture within the law itself. This fracture is made explicit in the work of late Derrida. Although Kant is not the only target of Derrida's critique of contemporary discourse of legal positivism, thought here as any discourse that aims to explain the notion of justice away as an embarrassing atavism of religious belief in God's law as natural law, we believe that isolating certain aspects of Derrida's critique and forcing them to encounter certain aspects of Kant's discourse will allow us to gain some useful insights into the workings of law, justice, violence and religion. In one sense then, we claim that Kant's discussion of law, justice, violence and religion is blind to certain aspects of this problematic that are visible to Derrida only. Yet, at the same time, Derrida's theoretical engagement is itself blind to certain aspects that we have adopted from Kantian tradition and bringing Kant's theory of right back would allow us to articulate them better. In the end, however, the goal of this essay is not that of a comparative study in the works of Kant and Derrida, but an attempt to articulate a better approach to the issues of religious violence. In the rest of this introductory chapter we want to summarize and succinctly present our overall argument.

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4. The Summary of the Argument

In order to make the complex matter of this essay more easily accessible, and therefore better understood, in what follows we will provide here a short overview of the general structure of our argument. The argument of this essay could be formulated as the following: It is impossible to properly assess the legitimacy (and therefore the illegitimacy) of certain acts of violence without the proper analysis of the very notion of legitimacy or lawfulness (the example of the so-called "religious violence" serves this purpose the best, as is our contention) that contain within itself a *simultaneous* forceful foreclosure of any possible challenge to itself (the concept of *law* that guarantees its stability and endurance) and an implicit opening of the possibility of its own destruction (the concept of *justice* that guarantees its continual change and transformation). The example of "religious violence" is a privileged example because it allows us both to analyze a number of juridico-political postulates concerning the nature of law and justice (and corresponding social arrangements) and to provide any future discussion of religion and violence with a new theoretical framework (even if *not yet* a fully developed theory of religious violence). To put it differently, the problem of religious violence, framed properly and examined in its relation to the concepts of law and justice, serves as a privileged entry point not only into the subject matter of the present societal tensions related to violent expressions of religious faith (or, at least, as taken to be such expression), but also into the discussion of the very foundation and maintenance of the contemporary Western (and therefore global) conceptualization of the role of law and justice.

The issue of religion and its public role, having received some attention recently, needs to be further rethought in light of its apparent role in promoting violent behavior. However, the traditional approaches of attempting to identify the source of religious violence are limited due to their tendency to isolate the question of religion and violence it allegedly condones from the overall socio-political structure of legality and legitimacy (law, right, justice, coercion, and religion). In order to achieve the task of an adequate rethinking of the role of religion in the public sphere, we must identify those elements of religion's involvement with acts of violence committed in its name that reveal its implicit connection to the concepts of law and justice, or rather its connection to the very problem of the theoretical articulation of the relationship between law and justice. These terms, law and justice, although long accepted as secular (or rather secularized) ideas, are found to be still not entirely divorced from their religious origins in any serious analysis of the possibility of violence not only as a violation of the law (criminality), but as a suspension or even a cancellation of the law in the name of the higher justice (revolution). A peculiar case of such opposition to the order of law that, we argue, provides us with a better insight into the workings of law and justice (and by proxy of human society in general) is a case of suspension of law in the name of justice. Such radical challenge to the order of law in the name of higher order of justice is impossible to understand and theorize without an explicit reference to the notion of *religion*.[69] Religious violence, therefore, becomes a conceptualization of this challenge to the order of the law in the name of justice.

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[69] See, for example, Harold J. Berman's discussion of the relationship between law and religion in *The Interaction of Law and Religion* (Nashville: Abingdon Press, 1974).

The suspension of the law in the name of justice is a peculiar conceptual knot that can only be untied in the context of a political theory that accounts for both the appearance of lawful or rightful condition and the continuous presence of the idea of justice that regulates, directs and, in case of need, transforms the existing law. Kant's political theory, based on the theorization of the transition from the state of nature to the state of law, is the theory of law/right (*Recht*) that reveals, even if not always willingly, the fundamental issue at the very heart of our formulations of legality, legitimacy, or lawfulness: as soon as human beings enter (voluntarily or through coercion) into a rightful condition and thus establish legality, they are obligated to take the next logical step, in the name of justice, and proceed to the next level of international and then cosmopolitan rightful condition, thus finding themselves compelled (and morally obligated) to insure that rightful condition spreads until it includes every single individual, thus making the initial decision to establish the rightful condition less an act of freedom and more an act of necessity. Yet, for Kant, the rightful condition, potentially spread over the whole of earth's surface, is the ultimate incarnation of freedom, even if individuals that find themselves in a less than perfect (just) state of law are not allowed to forcefully change it but can only hope that their enlightened leaders would eventually reform it, if they are inclined to do so. Kant's theory of rightful condition, although based on familiar articulations of social contract ideas, thus perceives the force and the logic of any lawfulness as, positively, continuously propelling itself toward a better (more just) societal arrangement and, negatively, continuously eliminating any possibility of ever returning to the state of nature, that is, any possibility of suspension or cancellation of the order of law.

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The discrepancy between the promised stability of law and the continuous transformational requirement of justice, situated in a peculiar Enlightenment-influenced understanding of human institutions and their history, constitutes the space of difference between law and justice that Kant attempts to adequately account for, and his failure to do so satisfactorily, as we will insist, is as instructive as it is inevitable. Derrida's engagement with the issues of law and justice reveals the fact the above-mentioned discrepancy is not accidental but constitutes the very founding moment of modern articulations of the nature of law and legality: any attempt to ground the idea of law in a narrative of a voluntary transition from a lawless state of nature to a lawful state that guarantees rights, even if presented as a pure hypothetical decision theorized for the sake of an argument, reveals a hidden movement of *excluding* any reference to the transcendent (religious) idea of justice as true exteriority to the order of a newly established law, that is, as a truly external criterion that can be applied to any given legal arrangement. Derrida's reflections on the issues of law and justice, read in the context of Kant's initial formulations of the corresponding questions, allow us to articulate and thus better understand a peculiar contemporary complaint of the subjects in the rightful condition that feel that they are no longer able to reference and insist on such seemingly archaic notions as justice. Certainly, the idea of justice is far from gone in contemporary moral and political conversations, and yet it appears less in legal contexts and more in religious contexts. The paradox of "it is legal but it is unjust" is more often articulated by appeals to extra-legal notions of transcendent justice and judgment rather than some higher institution of a specific legal system. To act in the name of justice today is often to act outside of or even directly against a given legal condition.

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It is essential at this point to realize that religious violence is never a problem of particular individuals committing acts of violence against other individuals in the name of some religious beliefs, but always a socio-political problem of the relationship between individuals in a larger societal arrangement. Still, even this seemingly clear distinction between religious violence as an ethical issue and religious violence as a legal or political issue is quickly problematized if we take a look at a comprehensive philosophical effort to think both ethics and politics as a part of one practical philosophy. We therefore do not intend to ignore ethical and individual aspects of religious violence, but only suggest that if all previous efforts to understand the causes of such violence were mainly oriented toward problem *solving*, we are intending in this essay to ask a series of questions connected to problem *setting*, i.e., we are interested first and foremost in trying to understand what kind of problem is this problem of religious violence? A disclaimer, then: while the problem of religious violence primarily exists as an ethical and political problem, our concern is with religious violence in a philosophical context.

II

Kant's Dilemma: On Morality and Legality.

We begin our investigation with a look at Kant's philosophical treatment of the problem of law and justice.[1] Kant is one of the few philosophers to make a comprehensive attempt at a practical philosophy that is still influential and still in need of much elaboration and application.[2] Our primary purpose in this chapter is to show that the problem of the relationship between religion and violence cannot be properly formulated (and therefore properly addressed and dealt with) without a series of questions related to the very foundation of our societal arrangement based primarily on our trust in the force of law. Kant's practical philosophy provides us with not just an example of the possible conceptualization of the relationship between individuals in the state of law, but with an ultimate realization and articulation of the modern ideals of a perfect society that go back to the philosophical exercises of the Enlightenment. To paraphrase early Marx's

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[1] In Kantian vocabulary, we mean the notions of *Gesetz* (law), *Recht* (right) and *Gerechtigkeit* (justice). The latter two roughly correspond to Latin *ius* and *iustitia*. The problem of an adequate translation of these terms into English is well known and is discussed, among many other places, in Mary J. Gregor, "Translator's Note On the Text of The Metaphysics of Morals," in Immanuel Kant, *Practical Philosophy*, trans. Mary J. Gregor (Cambridge: Cambridge University Press, 1996), 357-358. See also John Ladd, "Translator's Introduction," in Immanuel Kant, *Metaphysical Elements of Justice: Part I of The Metaphysics of Morals*, trans. John Ladd (New York: The Bobbs-Merrill Company, Inc., 1965).

[2] Among the most important applications of Kantian insights in contemporary practical philosophy are those of John Rawls whose magisterial *A Theory of Justice* is still an essential read for anyone interested in issues of justice. See John Rawls, *A Theory of Justice*, revised ed. (Cambridge: Harvard University Press, 2001). See also John Rawls, *Justice As Fairness: A Restatement* (Cambridge: Harvard University Press, 2001) and *John Rawls: Foundations and Method*, ed. Chandran Kukathas (London: Routledge, 2003), Part 8: "Rawls and Kant," 343-84.

reflection on the nature of private property – "private property has made us so stupid and partial that an object is only *ours* when we own it"[3] – we can characterize Kant's ultimate articulation of the social relations in terms of law and right as having made us so stupid that we can only think of a lasting social bond and a genuine political interaction in terms of guaranteed rights and enforced laws. Any more or less serious attempt to question the total reign of law and legality is usually characterized as anything from petty criminality to evildoing and sociopathic disposition. To think about the present societal arrangement outside of its reliance on legality is one of challenges that we believe we are still facing and we are still not taking seriously enough. The present analysis of religious violence, even if initially in its vulgar representation as violence committed by religious fanatics in the name of some irrational ideals, allows us to attempt to get an access to a whole other level of socio-political inner workings of contemporary life. Kant helps us see the paradoxical nature of the rightful condition. Our analysis of Kant's practical philosophy, however schematic, will show us both the problem of law in its rejection of the (transcendent) idea of justice and the solution that we will further articulate with help from Derrida.

Describing what Kant's philosophy is all about is never easy, regardless of one's level of expertise. It is, however, clear from Kant's own testimony and a multitude of references throughout his texts, that *practical* philosophy is indeed his central concern. Although usually (and unfortunately) the complex discussion of the conditions of the possibility of knowledge in *Critique of Pure Reason* receives most attention, it is important to remember that all of that preparatory work is done in order that we can put

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[3] Karl Marx, *Early Writings*, trans. T.B. Bottomore (London, Watts & Co., 1964), 159.

our practical philosophical doctrines on a firm ground. This view is confirmed by Kant himself who, in the final sections of the first *Critique*, states:

> Until now, however, the concept of philosophy has been only a scholastic concept, namely that of a system of cognition that is sought only as a science without having as its end anything more than the systematic unity of this knowledge, thus the logical perfection of cognition. But there is also a *cosmopolitan concept* (*conceptus cosmicus*) that has always grounded this term, especially when it is, as it were, personified and represented as an archetype in the ideal of the philosopher. From this point of view philosophy is the science of the relation of all cognition to the essential ends of human reason (*teleologia rationis humanae*), and the philosopher is not an artist of reason but a legislator of human reason.[4]

This clear evaluation of the true task of philosophy as dealing with the "ends of human reason" and not only with a necessary but, if done for its own sake, ultimately vain, systematization of knowledge, is a good example of Kant's ultimate desire to make philosophical science serve the overall practical goal of all humanity (*cosmos*). It is essential that we keep in mind our overall goal of clarifying the relationship between the notions of law, justice, violence and religion as, we argue, these constitute the backbone of Kant's articulation of the ideal of human society.

It is fair to observe with Otfried Höffe that "from the very outset of Occidental legal thought, philosophers have asked whether positive law is committed to [some] general moral principles."[5] Such assessment of the situation can be explained in very general terms as a need for practical philosophy that encompasses *both* ethical theory of individual action *and* a political theory that regulates the actions of all the members of a political unit. The question of the relationship between positive law and its (moral) foundation cannot be adequately addressed without a central concept of *justice*.

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[4] Ak. A839/B867, *CPR*, 694-95.
[5] Otfried Höffe, *Kant's Cosmopolitan Theory of Law and Peace*, trans. Alexandra Newton (Cambridge: Cambridge University Press, 2006), 79.

Although Kant regularly associates justice with the judiciary, he also suggests that, as Höffe puts it, "justice is to be equated with the moral concept of right."[6] In fact, Kant compares any attempt to theorize justice and law without reference to the universal moral principles to "the wooden head in Phaedrus's fable, a merely empirical doctrine of right is a head that may be beautiful but unfortunately it has no brain."[7] Although Kant's concerns with practical philosophy are found throughout his corpus, it is in the later work specifically dedicated to the articulation of his political theory that we find the most promising (and most puzzling) discussions.

1. Kant's Doctrine of Right.

Kant's most detailed elaboration of the issue of law and justice is found in his late work *The Metaphysics of Morals*. This book consists of two large sections – the doctrine of right and the doctrine of virtue – and attempts to articulate Kant's understanding of the issues of law and justice (gathered under the discussion of *Recht*) and virtue (fulfilling the early promise to supplement the discussions of formal structures and conditions of the possibility of ethics with the corresponding discussion of the material content). The purpose of "The Doctrine of Right" is to demonstrate the general mistake of *empirical* jurisprudence. Although Kant states that only the state of law is the state of the *possibility* of justice, it is clear that justice itself is not a simple descriptor of the sum of positive laws. No matter how smoothly a legal system runs or how law-abiding the citizens are, the only way to have a *just* legal order is through a careful theoretical

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[6] Höffe, *Kant's Cosmopolitan Theory*, 79.
[7] Ak. 6:230, *MM*, 387.

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analysis of the principle of justice: what makes this and not that arrangement of laws just or unjust?

Kant's discussion of justice in "The Doctrine of Right" begins with a setting of boundaries. The discussion of these preliminary matters falls under the rubric of the "universal criterion" by which one knows what is *just* and what is *unjust* in the body of laws.

> In contrast to laws of nature, [the] laws of freedom are called moral [*moralisch*] laws. As directed merely to external actions and their conformity to law they are called *juridical* [*juridisch*] laws; but if they also require that they (the laws) themselves be the determining grounds of actions, they are *ethical* [*ethisch*] laws, and then one says that conformity with juridical law is the legality of an action and conformity with ethical law is its morality. The freedom to which the former laws refer can be only freedom in the *external* use of choice [*Willkür*], but the freedom to which the latter refer is freedom in both the external and internal use of choice, insofar as it is determined by laws of reason.[8]

Kant clearly distinguishes between morality and legality here as two distinct *perspectives* of evaluation of the *same* action. It is not the case that some actions are moral and some are legal, but that the same action, considered from two perspectives of freedom, is either moral or immoral and legal or illegal (four basic combinations would be "moral and legal," "immoral and legal," "moral and illegal," and "immoral and illegal"). The possibility that an action can be immoral but legal and, the most interesting case in our judgment, that an action can be moral but illegal is clearly implied in Kant's definition. We have to emphasize this point once again by stating that for Kant all laws regulating human behavior are *moral* laws and therefore they all must pass the test of the categorical imperative. To put it differently, it is not the case that morality as such can be closed off from any discussion of legality, and legality cannot be either grounded or evaluated

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[8] Ak. 6:214, *MM*, 270.

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without any reference to morality. This distinction between morality and legality is not necessarily unique as the attempts to articulate a political theory with an explicit reference to virtue go back as far as Plato's *Republic*. What is unique about Kant's approach is his refusal to disconnect morality from legality and to articulate an inner realm of moral disposition separately from an outer realm of external conformity. A kind of reaction that often underlies an ascetic withdrawal and otherworldliness of some political theories with a strong emphasis on virtue is absent from Kant. Although Kant often speaks of an individual moral agent, it is implied that this particular individual is able to share in the common humanity and therefore is always already responsible before other individuals. Ultimately, if we are rational beings and if our behavior is regulated by reason, we must all be able to arrive at the same conclusion vis-à-vis what is and is not the right thing to do in specific circumstances. Kant's thorough rationalism does not allow him to think otherwise. If our behavior and our socio-political relationships are not rational and therefore are not based on rational principles, there is no possibility of a *theory* of morality or legality. In this sense, there is already a strong sense of *faith* in human rationality that allows Kant to proceed with his practical philosophy.[9]

Based on his distinction between morality and legality, Kant will first discuss the laws of freedom that have to do with external freedom, i.e. external use of choice. The concept of justice as related to right, according to Kant, has to do *only* with the external relation of *one person to another*, insofar as their actions can have (direct or indirect)

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[9] Although only a tangential observation in the context of our essay, we might reference here Adorno's intriguing analysis of Kant and Freud in his *Negative Dialectics* (esp. section "The metacritique of practical reason") that potentially raises a question: what would Kant say about Freudian insight that our behavior is ultimately based on irrational impulses? Cf. Theodor W. Adorno, *Negative Dialectics*, trans. E.B. Ashton (New York: Continuum, 2007), 210ff.

influence on each other: "Right [*das Recht*] is therefore the sum of the conditions under which the choice [*Willkür*] of one can be united with the choice [*Willkür*] of another in accordance with a universal law of freedom."[10] According to this definition, Kant proposes the following "the universal principle of right": "Any action is right [*recht*] if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law."[11]

Morality and legality are part of the same order of freedom, although one deals with the determining ground of action as well as its conformity with the law (morality) and the other only concerns itself with external conformity (legality). This peculiar distinction between the "inside" (moral intention) and the "outside" (external conformity) will eventually create some issues for Kant in his attempts to articulate the difference between law and justice. For now we will only note that if legality as regulation of the external use of choice appears only after humans have entered into the state of law, it is reasonable to assume that in the (hypothetical) state of nature there did not exist any distinction between internal and external moral laws, and thus no true interiority or exteriority vis-à-vis laws of human behavior. In this sense, the very decision to abandon the state of nature in order to enter the state of law is also the decision to delimit a certain *interiority* of moral law (intention) and distinguish it from a certain *exteriority* of moral law (conformity).

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[10] Ak. 6:230, *MM*, 386. John Ladd translation uses "justice" for *Recht*: "Justice is therefore the aggregate of those conditions under which the will of one person can be conjoined with the will of another in accordance with a universal law of freedom." Immanuel Kant, *The Metaphysical Elements of Justice: Part I of The Metaphysics of Morals*, trans. John Ladd (New York: Macmillan Publishing Company, 1965), 32
[11] Ak. 6:230, *MM*, 386.

The section that introduces the universal principle of justice is followed by a short, but extremely important section on the relationship between justice and coercion [*Zwang*]. Kant's justification of coercion is important for his overall theory of justice: "Resistance that counteracts the hindering of an effect promotes this effect and is consistent with it."[12] It is completely justifiable, for Kant, to see coercion as connected with justice. In fact, as Kant argues, it is not the case that there is an obligation in accordance with a law and *then* an authorization to coerce someone to fulfill it. "Instead, one can locale the concept of right directly in the possibility of connecting universal reciprocal coercion with the freedom of everyone."[13] Thus, the concept of right is conceptually dependent on the concept of coercion, and not the other way around: without enforcement of an obligation to obey a specific law, that law is not only powerless, but, strictly speaking, is not a law at all. Any imposition of the state of law then comes prepackaged with the certain amount of necessary violence.

If we now draw our attention to Kant's discussion of the public right [*das öffentliche Recht*], we see that it has three major sections: the right of a *state* [§§43-52], the right of *nations* [§§53-61], and *cosmopolitan* right [§62]. As one can see, it is not a very balanced part of "The Doctrine of Right" with main emphasis being on the right of the state [*das Staatsrecht*]. Kant's overall system of public right or public justice is found in §43. Here he argues that "public right is therefore a system of laws [*ein System von Gesetzen*] for a people, that is, a multitude of human beings, or for a multitude of peoples, which, *because they affect one another*, need a rightful condition under a will uniting

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[12] Ak. 6:231, *MM*, 388. This is a Kantian version of the unfortunately confrontational and divisive slogan often used by politicians: "Those who are not with us are against us."
[13] Ak. 6:232, *MM*, 389.

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them, a constitution (*constitutio*), so that they may enjoy what is laid down as right."[14]

At the end of §43, Kant argues that as individuals in the state of nature found themselves wanting a civil society that would guarantee their otherwise provisional rights, and as a group of nations (if not all the nations) might find (or should find) itself wanting a civil international community, eventual result of this movement toward a universal human community will be a state of nations (*Völkerstaat*) that would unite all individuals into one *cosmopolitan* community:

> Since the earth's surface is not unlimited but closed, the concepts of the right of a state [first form of rightful condition] and of a right of nations [second form of rightful condition] lead inevitably to the idea of a *right for a state of nations* (*ius gentium*) or cosmopolitan right (*ius cosmopoliticum*).[15]

Kant's vision of humanity is clearly based on his discussion of the *three* interconnected forms of rightful condition. Kant's famous discussion of the possibility of "perpetual peace" comes from his vision of the founding of civil society as a *coerced* transition from the state of nature into the state of law. In "Toward Perpetual Peace," Kant identifies the condition of peace with the founding of civil society.

> A condition of peace among men living near one another is not a state of nature (*status naturalis*), which is much rather a condition of war, that is, it involves the constant threat of an outbreak of hostilities even if this does not always occur. A condition of peace must therefore be *established*; for suspension of hostilities is not yet assurance of peace, and unless such assurance is afforded one neighbor by another (as can only happen in a lawful condition), the former, who has called upon the latter for it, can treat him as an enemy.[16]

In a footnote to this passage, Kant argues that we cannot even describe this conflict in the state of nature in terms of *legitimate* hostilities since we usually describe hostilities in

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[14] Ak. 6:311, *MM*, 455. Emphasis added.
[15] Ak. 6:311, *MM*, 455.
[16] Ak. 8:349, *PP*, 111-12.

terms of someone's reaction to being *wronged*.[17] However, in the state of nature, there is

no universal criterion that would define "right" and "wrong" and thus "a human nature

(of a nation) in a mere state of nature… already wrongs me just be being near me in this

[lawless] condition, even if not actively (*facto*) yet by the lawlessness of his condition

(*statu iniusto*), by which he constantly threatens me; and I can coerce him either to enter

with me into a condition of being under civil law or to leave my neighborhood."[18]

The state of nature is not, by the definition, a state of war or chaos. In fact,

certain agreements between individuals (for example, acquisition of property) in the state

of nature can hold *provisionally*.[19] The state of nature is not the state of injustice

precisely because there is no universal criterion of justice. It is a condition entirely

devoid of justice. This is, however, a rather ambiguous position, even if we clarify

various aspects of Kant's understanding of justice. In the state of nature, there is no

justice, no rightful arrangement, no objective external laws, and no legality. But, of

course, the state of nature is a state where there are provisional rights that are based on

the idea of natural law.[20] In fact, it is clear that individuals in the state of nature are still

called to be acting on the basis of the categorical imperative, even though Kant does not

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[17] Cf. Ak. 6:312-13, *MM*, 455-56: "It is true that the state of nature need not, just because it is natural, be a state of *injustice* (*iniustus*), of dealing with another only in terms of the degree of force each has. But it would be still a state *devoid of justice* [*Rechtlosigkeit*] (*status iustitia vacuus*), in which when rights [*das Recht*] are *in dispute* (*ius controversum*), there would be no judge competent to render a verdict having rightful force. Hence each may impel the other by force to leave this state and enter into a rightful condition; for although each can acquire something external by taking control of it by contract in accordance with concepts of right, this acquisition is still only provisional as long as it does not yet have the sanction of public law, since it is not determined by public (distributive) justice and secured by an authority [*Gewalt*] putting this right into effect."

[18] Ak. 8:349note, *MM*, 111.

[19] See an interesting recent study of this issue by Elisabeth Ellis, *Kant's Politics: Provisional Theory for an Uncertain World* (New Haven: Yale University Press, 2005) and her most recent book *Provisional Politics: Kantian Arguments in Policy Context* (New Haven: Yale University Press, 2008).

[20] For a detailed and insightful discussion of Kant's relationship with the natural law tradition, see Lloyd L. Weinreb, *Natural Law and Justice* (Cambridge: Harvard University Press, 1987), 67-96.

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often discuss this particular angle. It is clear that some justice exists in the state of nature, but not justice as an enforceable external conformity, only as an internal disposition of moral behavior. This common root of justice – human rationality – defines that relationship between morality and legality in the state of law.

Otfried Höffe, one of the leading authorities on Kant's political philosophy, opens his recent book on Kant with a following general description: "Kant did not develop his philosophy of right and law [*Recht*] and peace haphazardly. It forms an integral component of *his entire thought* and, as an ethics of law and peace, is founded on his general ethics."[21] Kant's philosophy of right does not stop with the discussion of the nation state, but takes us all the way to the level of cosmopolitan right. While the idea of cosmopolitanism was by no means Kant's invention, the centrality given to it in his ethical and political writings is worth a closer look.[22] As we mentioned already, Kant distinguishes between three specific types of political relationships: between individuals, between nation-states, and between individuals or communities that belong to different nation-states. All three types of relationships can be either in the state of nature [*Naturzustand*] or in the state of law [*Rechtszustand*]. Kant, consequently, identifies three forms of rightful condition, the condition that he is paying the most attention to, as it is the only condition that allows for peaceful and prosperous coexistence and progress: a rightful condition of a nation-state (individuals under a common enforceable law), a

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[21] Otfried Höffe, *Kant's Cosmopolitan Theory of Law and Peace*, trans. Alexandra Newton (Cambridge: Cambridge University Press, 2006), 19. Emphasis added.

[22] Centrality of cosmopolitan ideas in Kant is far from a widely accepted view of Kant's practical philosophy, despite the abundance of evidence. It is partially the secondary task of this study to draw attention to Kant's cosmopolitan vision not as an additional peculiar element of his philosophy of right, but as a central reference point, a leitmotif of the whole Kantian project. For a short outline of a conceptual history of cosmopolitanism, see Otfried Höffe, *Demokratie im Zeitalter der Globalisierung* (Munich, 2002), chapter 8.

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rightful condition of the relationship between nations, and a cosmopolitan rightful condition. In "The Doctrine of Right," Kant takes considerable time and effort to demonstrate the *interdependence* of these three forms of rightful condition in order to show that cosmopolitan rightful condition is the *final realization* of human project of peaceful coexistence. This peaceful coexistence is, on the one hand, external lack of war due to the existence of proper means of resolving all conflicts, whether between persons or between larger societal units; and, on the other hand, it is an internal connection of wills into a "kingdom of ends," an expression that we will discuss further in this chapter.

Kant's cosmopolitan project can be summarized in the following terms: in order to enjoy their rights and coexist peacefully, individual humans are compelled to form a lawful society in which they all rely on the authority and power of the state and its law [*Recht*] to resolve their disputes and guarantee their freedom. However, when the question of the relationship between the various *states* arises, Kant's logic propels the argument further and suggests that, in order for a security of rights and freedoms to continue to exist in the form of a nation-state, each state *must* enter into a rightful condition of international law and, ultimately, a cosmopolitan rightful condition. The international rightful condition would guarantee that strong states do not violate the rights of weak states and, therefore, each state is allowed to exist as an equal partner in a larger coalition of states under a common law. And yet this international rightful condition is further supplemented with a cosmopolitan rightful condition that guarantees that the citizens of particular nation-states have certain rights as citizens of the world. The distinction between international level and cosmopolitan level is rather perplexing at first, but it is a distinction that would allow one to guarantee not only the rights of travelers

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and tradesmen, as Kant originally intended, but also provide a rightful condition that would juxtapose the individual level of national citizenship and the global level of cosmopolitan citizenship. Ultimately, we have only *one* rightful condition, *one* state of law that consists of three levels: national, international and cosmopolitan.

It is essential to realize that were *one of the stages* in the development of human rightful condition to fail, the whole project would be doomed to disintegrate either immediately or under any considerable pressure in the future.[23] Kant's vision of "perpetual peace" is a vision of a *final* state of humanity. The relationship between cosmopolitanism and this vision of peace is difficult to miss in Kant's overall presentation of his political theory.

> The formal condition under which alone nature can attain this its final aim is that condition in the relations of human beings with one another in which the abuse of reciprocally conflicting freedoms is opposed by lawful power in a whole, which is called *civil society*; for only in this can the greatest development of the natural predispositions occur. For this, however, even if humans were clever enough to discover it and wise enough to subject themselves willingly to its coercion, a *cosmopolitan* whole [*Weltbürgerliches Ganze*], i.e., a system of all states that are at risk of detrimentally affecting each other, is required.[24]

This global peace, as theorized by Kant, cannot be based on an idyllic vision of harmony. One needs little persuasion to agree with Kant in his description of human "unsociable sociability."[25] However, Kant's practical philosophy, both ethical and political theory, is unique in its rejection of human inclinations and its insistence on the role of *a priori* principles. Kant's discussion of "perpetual peace" is firmly situated within the realm of

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[23] Cf. Ak. 6:311, *MM*, 455: "So if the principle of outer freedom limited by law [justice] is lacking in *any* of these three possible forms of rightful condition, the framework of all others is *unavoidably undermined and must finally collapse*." Emphasis added.

[24] Ak. 5:432-3. Cited from Immanuel Kant, *The Critique of the Power of Judgment*, trans. Paul Guyer and Eric Matthews (Cambridge: Cambridge University Press, 2000), 300.

[25] Ak. 8:21, *PP*, 32.

right or law. The prohibition against war is a prohibition against war as *inadequate* means of conflict resolution. The point of "perpetual peace" is not a utopian lack of conflict. Kant nowhere suggests that individuals and states would exist without conflicts. However, what makes a war an illegitimate way of dealing with conflicts is the fact that in the state of law, all conflicts could and should be solved by the means of an appropriate lawful procedure. We might describe this process of bringing about the condition of lasting peace as *pacification through legalization*: no one would need to go to war against anyone else if every possible conflict is preemptively resolved through an appeal to the legal authority of right.

Much of this discussion of cosmopolitanism is currently being brought back as a viable option for the present condition of a globalized or a "flat" world, as Thomas Friedman likes to call this particular condition.[26] The world is becoming more and more global, we are told, and the Kantian image of the sharing of the surface of the earth is becoming more and more vivid. However, it is important to bring up a point concerning the Kantian vision of cosmopolitan condition that might or might not fit with the present day discussions of globalization. For Kant, the cosmopolitan condition is defined first and foremost in terms of *right*, not in terms of mobility or accessibility or "flatness" of our geographic and economic interactions. That is to say, if we imagine the world as Kant would want it to be, it would be a world of nation-states (first level of rightful condition) that guarantees their citizens all the necessary protections of the law united under a common international *enforceable* agreement (second level of rightful condition)

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[26] See Thomas Friedman, *The World Is Flat: A Brief History of the Twenty-First Century* (New York: Farrar, Straus and Giroux, 2006). For a critique of Friedman's approach, see David Harvey, *Cosmopolitanism and the Geographies of Freedom* (New York: Columbia University Press, 2009).

that guarantees the rights of individual nations with a special cosmopolitan agreement that all citizens of the world belong to both a specific nation-state and a larger cosmopolitan community (third level of rightful condition). What is peculiar about this image is the complete absence of any space/place that is not in the rightful condition. That is to say, the state of nature, although originally posited as hypothetical, is completely eliminated with each possible violation of law being addressed on an appropriate level of law (national, international, and cosmopolitan). There is no longer any chance of exiting the rightful condition in this ideal future situation as every possible conflict can be and must be resolved by appealing to a particular law. Kant's cosmopolitanism therefore, whether intentionally or not, gives us an image of the world in the state of law without any real need to appeal to an *external* authority of such concepts as justice. It is a world of *total* law that covers every area of human relations.

Although this might appear as a rather unusual move, both in terms of the general structure of our discussion and in terms of traditional order, we would like to further demonstrate our insight that Kantian ideal cosmopolitan order is, in fact, an order that is so thoroughly dominated by law to the detriment of justice by taking a look at Kant's discussion of morality in terms of "respect for law" and Kant's discussion of the "kingdom of ends" in its connection to the configurations of external freedom. Our decision to discuss Kant's legality before taking a look at his discussion of morality is motivated by several conceptual intentions of this essay. Contextually, of course, it makes more sense to follow Kant's own order and to think about the individual level of morality before we attempt to envision the collective level of legality as having to do with human interactions. However, we are not trying to repeat Kant's deduction here but

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only to learn from it, assuming that we are already familiar with Kant's main arguments concerning morality. Postponing the discussion of "respect for law" and "kingdom of ends" until after we have presented Kant's overall vision of the ideal state of humanity allows us now to draw certain contrasts between the external arrangements of legality and the internal conceptualization of morality. We hope now that when talking about "moral law" in terms of Kant's ethical theory we are constantly reminded of the larger context of his practical philosophy of total legality. In this sense, having looked at Kant's general arrangement for humankind, we can now "zoom in" and discover what grounds, or purports to ground, this arrangement.

2. Kant on Respect for Law.

Kant's fascination with the issues of regularity, lawfulness and, ultimately, legality has been discussed by various scholars on many occasions.[27] As the story goes, Kant began his philosophical career as a philosopher of nature, or as someone who today would be considered a philosopher of science.[28] His early ethical ideas were rather pessimistic in light of what he considered to be the implications of Newton's mechanistic picture of the world.[29] However, as Kant himself testified with enthusiasm, after his discovery of Rousseau in 1760s, he abandoned his "blinding superiority" and "learned to

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[27] Cf. Gottfried Martin, *Kant's Metaphysics and Theory of Science*, trans. P. G. Lucas (Manchester: Manchester University Press, 1955).

[28] Cf. Herman Jean De Vleeschauwer, *The Development of Kantian Thought: The History of a Doctrine*, trans. Alistair Duncan (New York: T. Nelson, 1962), 8-11; Martin Schönfeld, *The Philosophy of the Young Kant: The Precritical Project* (Oxford: Oxford University Press, 2000), 17-70.

[29] Cf. Paul Arthur Schilpp, *Kant's Pre-Critical Ethics* (Evanston: Northwestern University Press, 1938), 15-21; Paul Menzer, "Der Entwicklungsgang der Kantischen Ethik in den Jahren 1760-1785," *Kant-Studien* 2 (1897): 290-322 and 3 (1898): 40-104.

honor human beings" and their *rights*.[30] Reading Rousseau and some British moralists,

Kant reassessed his scientific quest for knowledge and understanding in light of a very

different set of concerns dealing with issues of justice and equality.[31] Kant's new

intention was to develop an adequate view of practical philosophy that would ultimately

play the most important role in his metaphysical system: while science, with all of its

sophistication and scale, can only tell us what *is*, morality teaches us what *must be*. If

Kant's discovery of Newton gave him an enthusiasm to become a philosopher of nature,

Kant's encounter with Rousseau brought him to awareness of the importance of practical

philosophy:

> Newton saw for the first time *order* and *regularity* combined with great
> simplicity, where before him was found disorder and barely paired multiplicity;
> and since then comets run in geometrical courses. Rousseau discovered for the
> first time beneath the multiplicity of forms human beings have taken on their
> deeply buried *nature* and the hidden *law* by the observation of which providence
> is justified."[32]

One might argue that with these two elements of Kant's early philosophical interests –

the order of nature and the law of humankind – the later developments and breakthroughs

were all but predetermined.

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[30] Ak. 20:44. Cited in Immanuel Kant, *Notes and Fragments*, ed. Paul Guyer, trans. Curtis Bowman at el. (Cambridge: Cambridge University Press, 2005), 7: "One must teach youth to honor the common understanding on the basis of moral as well as logical grounds. I am myself by inclination an investigator. I feel a complete thirst for knowledge and an eager unrest to go further in it as well as satisfaction at every acquisition. There was a time when I believed that this alone could constitute the honor of mankind, and I had contempt for the rabble who knows nothing. *Rousseau* brought me around. This blinding superiority disappeared, I learned to honor human beings, and I would find myself far more useless than the common laborer if I did not believe that this consideration could impart to all others a value in establishing the rights of humanity."

[31] For a discussion of the relationship between Kant and British moralists, see Dieter Henrich, "Hutcheson und Kant," *Kant-Studien* 49 (1957/58): 49-69.

[32] Kant, *Notes and Fragments*, 9. Emphasis added.

Kant's arguably best known passage that involves the ideas of order and moral law is found in Conclusion to his *Critique of Practical Reason*. In a moment of seemingly uncharacteristic poetic inspiration, Kant writes:

> Two things fill the mind with ever new and increasing admiration and reverence [*Ehrfurcht*], the more often and more steadily one reflects on them: *the starry heavens above me and the moral law within me*… The first begins from the place I occupy in the external world of sense and extends the connection in which I stand into an unbounded magnitude with worlds upon worlds and systems of systems, and more over into the unbounded times of their periodic motion, their beginning and their duration. The second begins from my invisible self, my personality, and presents me in a world that has true infinity but which can be discovered only by the understanding…[33]

This glorious vision of the two worlds – one of "countless multitude of worlds" that makes us feel so insignificant and unimportant, another of "purposive determination" of our very existence by the moral law – is what inspires and excites us, writes Kant, to pursue our philosophical work of clearing out the "path of wisdom which everyone should travel."[34] This "reverence" for the moral law is the synonym for Kant's other phrase – *respect for law* – that is the basis of his theory of morality and, arguably, the most innovative idea in the moral theory since Aristotle.[35]

It seems that the theme of *religion* is never too far away from the idiom of "respect for law." Kant's description of his reaction to the presence of the moral law in us in terms of awe [*Ehrfurht*] is not accidental. In fact, we might suggest that such language is completely appropriate in Kant who, for example, writes in his late (1796) essay "On a Recently Prominent Tone of Superiority in Philosophy":

> Now every man finds in his reason the idea of duty, and *trembles* [*zittert*] on hearing its brazen voice, when inclinations arise in him, which tempt him to

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[33] Ak. 5:161-62, *CPrR*, 268-69.
[34] Ak. 5:163, *CPrR*, 270.
[35] Cf. Ak. 6:488, *MM*, 600: Kant uses the world *Achtung* [respect] and *Ehrfurcht* [awe] as synonyms.

disobedience towards it. He is persuaded that, even though the latter all collectively conspire against it, *the majesty of the law*, which his own reason prescribes to him, must yet unhesitatingly outweigh them all, and that his will is therefore also capable of this. All this can and must be presented to man, clearly if not scientifically, if he is to be made aware both of the *authority of his reason*, which *commands* him, and also of its actual *commandments*; and is to that extent theory. Now I put it to man, as he puts it to himself: What is it in me which brings it about that I can *sacrifice* the innermost allurements of my instincts, and all wishes that proceed from my nature, to a law which *promises* me no compensating advantage, and threatens no loss on its violation; a law, indeed, which I *respect the more intimately, the more strictly it ordains*, and the less it offers for doing so?[36]

Even a superficial look at all the highlighted terms suggests a rather reverent attitude toward the majesty and the authority of the law that commands without promising any reward or threatening any punishment. Yet the stricter the command, the more I respect it.

The notion of "respect for law," however, needs a closer look before we can better understand any of the religious overtones in Kant's moral theory. In *Groundwork of the Metaphysics of Morals* Kant writes:

> *Duty is the necessity of an action from respect for law* [*Achtung fürs Gesetz*]. For an object as the effect of my proposed action I can indeed have *inclination* but *never respect*, just because it is merely an effect and not an activity of a will… Only what is connected with my will merely as ground and never as effect, what does not serve my inclination but outweighs it or at least excludes it altogether from calculations in making a choice – here the mere law for itself – can be an object of respect and so a command."[37]

Duty concerns the (determining) *ground* of the will and requires no incentive for action "other than the representation of the moral law itself."[38] This representation of the moral law itself, this respect for law then necessitates obedience not through external coercion

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[36] Ak. 8:402. Emphasis added. Cited from Immanuel Kant, "On a Recently Prominent Tone of Superiority in Philosophy," in *Theoretical Philosophy After 1781*, ed. Henry Allison and Peter Heath, trans. Gary Hatfield et al. (Cambridge: Cambridge University Press, 2003).
[37] Ak. 4:400, *Groundwork*, 55. Original emphasis.
[38] Förster, *Kant's Final Synthesis*, 127.

but through, as Allen W. Wood puts it, "the *inner rational self*-constraint that you exercise over yourself from respect for correct principles. To act from duty, in short, is to do something because you know that an objectively valid moral principle demands it, so that this gives you a good reason for deciding to do it, and *then making yourself do it*."[39] The key distinction for Kant is the distinction between the *external* pressure to perform one's duty (and the resulting action in conformity with duty out of fear or other pathological inclination) and the *internal* self-coercion motivated by the respect for law. In his *Lectures on Pedagogy*, Kant puts it succinctly as "To do something from duty means: to obey reason."[40] Reason here is what grounds not just this or that law, but lawfulness itself. Reason legislates; it is the source of law, of order, as the first *Critique* so eloquently proclaimed on many occasions. To obey reason is to be compelled by the moral law to perform one's duty which consists in doing "whatever you know you have most reason to do, and what you want to constrain yourself to do because you are aware of this."[41] On the one hand, it simply cannot get more rationalist than this, and Kant therefore represents, despite his innovative way of thinking about ethics, the whole rationalist tradition of conceptualization of law, norm, and their role in human life (both individual and collective) that might be traced all the way back to the Socratic pronouncement that knowledge is virtue and ignorance is vice. On the other hand, Kant's particular formulation of the issues of ethics and politics pushes the rationalist discourse to the very limit where, as we will show with Derrida, it ultimately breaks and reveals its

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[39] Allen W. Wood, *Kantian Ethics* (Cambridge: Cambridge University Press, 2008), 26. First emphasis is original, second emphasis added. Further cited as *Kantian Ethics*.
[40] Ak. 9:483. Cited from Immanuel Kant, *Anthropology, History and Education*, trans. and eds. Robert B. Louden and Günter Zöller (Cambridge: Cambridge University Press, 2007).
[41] Wood, *Kantian Ethics*, 159.

internal inconsistencies and shortcomings. Let us pay attention particularly to the way in which the distinction between the internal disposition that is allegedly available only to the individual making a decision to act morally and the external conformity constitutes a kind of dualism that slowly undermines the possibility of the transition from the individual to the social level. In other words, if law and justice, for Kant, only deal with external use of freedom and therefore must exclude any reference to the internal dispositions of the agents, then the danger of complete erasure of the significance of these internal dispositions is clear. If all that is required is that the subjects obey the laws and the ideal arrangement is such that this obedience as an external use of freedom of one subject does not interfere with the obedience of another subject, then the discussion of the moral ground of any obedience to the law ("respect of law") recedes into the background or disappears completely (for example, in legal positivism). However, Kant grounds both ethics and politics in the rational idea of duty. It is our obligation to act morally, both in terms of proper internal disposition and proper external conformity.

Kant's discussion of duty ultimately raises the question of the role of freedom and autonomy in his practical philosophy. The autonomy expresses itself in the simple fact that "every rational being, as an end in itself, must be able to regard himself as also giving universal laws with respect to any law whatsoever to which he may be subject."[42] According to Kant's view of the significance of human freedom and autonomy, the very ability to *self-legislate*, to be a "lawgiving being," is what makes one a person. The categorical imperative itself is based on this peculiar ability to regard oneself as a universal lawgiving being, i.e. to regard every law that one makes for oneself as also a

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[42] Ak. 4:438, *Groundwork*, 87.

universal law.[43] Without this ability to self-legislate, for Kant, there is no autonomy of

the will and, therefore, no morality.[44]

However, from the very beginning there is a tension at the very heart of Kant's

discussion of duty, law, freedom and autonomy. Allen W. Wood describes this tension of

Kant's concept of autonomy as "depending upon whether we emphasize the '*autos*' or

the '*nomos*' – the rational being's will as author or legislator of the moral law, or the law

itself as objectively binding on the same will."[45] While the Romantic interpretations of

Kant's autonomy emphasized the '*autos*', argues Wood, it is the '*nomos*' part of Kantian

doctrine that deserves additional explication.[46] Kant's view of the law, Wood points out,

referring to Kant's "Lectures on Moral Philosophy," suggests that "merely statutory or

positive legislation does not, properly speaking, give 'laws' at all, but only

'commands'."[47] In other words, any true legislation is always self-legislation. The state

that simply coerces its subjects to obey its regulations produces a series of external

commands, but does not, properly speaking, legislate, because coercion as the only form

of external compulsion aims at enforcing the command while the *true obligatory force* of

any regulation comes from internal affirmation based on one's reason:

> The sovereign does not require that a subject pay his taxes *willingly*, but ethics
> does demand this. Both he who pays willingly and he who pays from compulsion

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[43] For a detailed discussion of Kant's "categorical imperative," see the classic study by Herbert James Paton, *The Categorical Imperative: A Study in Kant's Moral Philosophy* (Philadelphia: University of Pennsylvania Press, 1971).

[44] Cf. Ak. 4:400, *Groundwork*, 55: "Autonomy of the will is the property of the will by which it is a law to itself (independently of any property of the objects of volition). The principle of autonomy is, therefore: to choose only in such a way that the maxims of your choice are also included as universal law in the same volition."

[45] Wood, *Kantian Ethics*, 106.

[46] Wood, *Kantian Ethics*, 107.

[47] Wood, *Kantian Ethics*, 109. Cf. Ak. 27:273. All references to Kant's lectures are from Immanuel Kant, *Lectures on Ethics*, trans. Peter Heath, eds. Peter Heath and J. B. Schneewind (Cambridge: Cambridge University Press, 1997).

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are equally subjects, since they have both made payment. The disposition cannot be required by the sovereign, *since it is not known*, in that it is internal. But now ethics tells us to act from a good disposition.[48]

Let us explore this image a bit. The sovereign that requires that we pay taxes, only requires that we pay taxes and not that we also like it. Now, of course, a wise sovereign will attempt to explain the need for a particular level of taxation and show its immediate and lasting benefits to the taxpaying public, but even if the public is left unpersuaded by the argument, it does not affect the legal obligation to pay taxes. The law in this sense disregards our internal attitude toward its rulings. It attempts a dispassionate stand that only demands external obedience. However, Kant continues, as *moral* persons, having listened to the reasonable argument in favor of taxation, we must not only pay taxes, but also do it willingly, i.e. with a good (moral) disposition (which, of course, still does not mean that we have to *like* it, just that we feel obligated to do it). In other words, we are not obligated to have a certain disposition while paying taxes when we are called to obey the external law (legality), yet as subjects in the rightful condition we are under moral obligation to follow the law willingly, with only our reason being the judge of our intentions (morality).

It is of course easy to imagine immoral but law-abiding citizens where internal disposition and external conformity clash, as well as moral and law-abiding citizens where internal disposition and external conformity coincide, but what about the situation in which we have a moral reason to disobey the law? Is there ever such a situation? What are we to make of a situation where, for example, one's moral position prevents one from paying taxes in a case when one knows that these taxes will be used to finance

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[48] Ak. 27:273. Emphasis added. My translation.

an unjust war? [49] Kant's position on such a matter is easy to conceive, given his strict distinction between external and internal freedom: despite our moral disagreement with legitimate taxation policies, we *must* pay taxes because the law prescribes that we do, even if we might have some moral quibbles about the use of our tax money. However, Kant also suggests that moral disposition does not require that we pay our taxes in such scenario quietly and without raising the issue in the public discussion. This discussion, however, is problematized by Kant's very important assumption that what gives the sovereign body the legitimacy to tax us is our very consent, therefore, whatever laws the sovereign body produces are laws that we obey because we take them as laws we have given to ourselves: "[Hence] the will is not merely subject to the law but subject to it in such a way that it must be viewed as also giving the law to itself [*als selbstgesetzgebend*] and just because of this as first subject to the law (of which it can regard itself as the author)." [50]

If we obey a law of taxation not because it is imposed on us by a powerful sovereign body, but because we ourselves established this law (by delegating our legislative authority to the sovereign body) and therefore perceive the situation in terms of being subjects to our own laws, then any discrepancy between internal disposition and external conformity must eventually become an issue, because our ideal is precisely a situation in which moral and legal attitudes coincide thus problematizing the very distinction between morality and legality. In addition to this problem, we are also

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[49] Although we are using an example of a group of conscientious tax evaders in a merely hypothetical fashion, it is of course not without many parallels in Kant's own use of such examples, most notably in "What is Enlightenment?" where three groups of citizens are explicitly discussed in terms of private and public freedoms: soldiers, tax payers and clergy. See Ak. 8:37-38, *PP*, 42-43.
[50] Ak. 4:431, *Groundwork*, 81.

confronted with a rather paradoxical dimension of self-legislation. As Allen Wood points out, this self-legislating ability is a part of our rational *nature*. In fact, it is basically what our rationality consists of vis-à-vis practical reason. Moreover, this very rationality is shared by other rational beings and allows for the possibility of an ethical commonwealth (ideal ethical community). *My* will is only subject to the law that it gives to itself in accordance with the given rational nature that allows for such self-legislation. As Wood puts it,

> If the will that gives the moral law is not *my* will but an ideal rational will present as much in others as it is in me, then there seems nothing left of the assertion that the legislative will is mine. If the moral law is a law whose validity rests on objective values that are independent of what anyone wills, then it seems we should just stop talking about 'autonomy' and 'self-legislation' and simply say that when we obey the moral law we are forcing ourselves to do what is *morally right* (or 'rational') and not at all doing what *we will* to do."[51]

We have before us Kant's idea of lawfulness expressed in the fact of reason ("moral law in us") that commands us unconditionally, yet we also have an ability to go against our self-legislating will and thus disobey the law, because we are free. In our example of conscientious tax evasion, we might wonder if our decision not to pay taxes for a number of reasons we judge to be valid is really an example of *immoral* behavior, because our objection to the perceived injustice of the law cannot be objectively valid, i.e. be in accordance with the moral law as required by categorical imperative since it cannot be universalized, as Kant would likely to argue. In order to imagine any scenario, therefore, in which it is moral to disobey the law, we must be able to better articulate the distinction between morality and legality. Such articulation is impossible if we stay on the level of

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[51] Wood, *Kantian Ethics*, 109. Original emphasis.

individual morality motivated by the respect for law and must include a larger communal perspective.

3. Kant's Moral World.

Before Kant's major work on religion – *Religion Within the Limits of Reason Alone* – the problem of morality was addressed primarily from the point of view of individual agent. In *Religion,* we read for the first time about our "duty *sui generis*, not of human beings toward human beings but of the human race toward itself. For every species of rational beings is objectively – in the idea of reason – destined to a common end, namely the promotion of the highest good as a *good common to all*."[52] Kant's individual moral agent is, of course, never alone, even if the majority of the discussion is presented from the *perspective* of an individual moral agent. In fact, Kant's vision of the moral universe, a universe that would encompass all of the moral agents and their actions, appears already in the final sections of the first *Critique*:

> In its *speculative* use reason led us through the field of experience, and, since it could never find complete satisfaction for itself there, it led us on from there to speculative ideas, which in the end, however, led us back again to experience, and thus fulfilled its aim in a way that is quite useful but *not quite in accord with our expectation*. Now yet another experiment [*Versuch*] remains open to us: namely, whether pure reason is also to be found *in practical use*, whether in that use it leads us to the ideas that attain the *highest ends of pure reason* [*die höchsten Zwecke der reinen Vernunft*] which we have just adduced, and thus whether from the point of view of its practical interest reason may not be able to guarantee that which in regard to its speculative interest it entirely refuses to us.[53]

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[52] Ak. 6:97, *Religion*, 132. Emphasis added. Cf. Sharon Anderson-Gold, "Ethical Community and the Highest Good," in *Proceedings: Sixth International Kant Congress*, Vol. II/2, ed. Gerhard Funke and Thomas M. Seebohm (Wshington, DC: Center for Advanced Research in Phenomenology and University Press of America, 1989), 231-24.
[53] A804/B832, *CPR*, 676. Emphasis added.

In this enlightening summary Kant clearly proposes to address the issue of a larger *practical* interest of reason giving us the satisfaction of our initial expectation [*Erwartung*] that was frustrated by the *speculative* use of reason. What is this expectation? It is the expectation, one might deduce from Kant, to reach the highest end [*Zwecke*] of reason: "Reason is driven by a propensity of its nature to go beyond its use in experience, to venture to the outermost bound of all cognition by means of mere ideas in a pure use, and find peace [*Ruhe zu finden*] only in the completion of its circle in a self-subsisting systematic whole."[54] This systematic whole is nothing other than the unity of reason. The initial "scandal" of reason, for Kant, is the "scandal of the seeming contradiction of reason with itself [*das Scandal des scheinbaren Wiederspruchs der Venunft mit ihr selbst*]."[55] Human reason's "peculiar fate" and "perplexity" is what initially thrusts Kant into the investigation of pure reason.[56]

Now at the close of his investigation, his critique of reason, Kant is able to finally solve the problem of reason's seeming contradiction by demonstrating that "the ideas of pure reason can never be dialectical in themselves; rather it is merely their misuse which brings it about that a deceptive illusion arises from them; for they are given as problems for us by the nature of our reason, and this *highest court of appeals* [*dieser oberste Gerichtshof*] for all rights and claims of our speculation cannot possibly contain original deceptions and semblances."[57] The "court of justice" announced in the Introduction to the first edition has delivered its verdict regarding the rightful use of speculative ideas

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[54] A797/B825, *CPR*, 673.
[55] Ak. 12:258. From September 21, 1798 letter to Grave. My translation.
[56] Avii, *CPR*, 99. Cf. A642/B670, *CPR*, 590. On reason's "peculiar fate" see Peter D. Fenves, *A Peculiar Fate: Metaphysics and World-History in Kant* (Ithaca: Cornell University Press, 1991).
[57] A669/B697, *CPR*, 605. Emphasis added.

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that, having been misused before Kant's critique and having led to either dogmatism or scepticism, are now limited to the "sphere of reason" that is our field of experience.[58]

This image of the court of law goes along with Kant's extensive use of the juridical metaphors including, if one were to accept Dieter Henrich's explanation, the central aspect of the structuring of the first Critique around the juridical demonstration of reason's legitimate and illegitimate use of its capacities in the Transcendental Deduction.[59] In other words, the critique of pure reason demonstrates that there is only one *legitimate* arrangement of intuitions, concepts and ideas. Kant's presentation of reason as a legislator and a judge, i.e. his extensive use of juridical metaphors, despite frequent complaints about the inability of metaphors and examples to truly communicate that which is being expressed through them, is essential as it allows us to get a glimpse of a larger picture that Kant has in mind. This larger picture is that of the lawful and peaceful human coexistence. If only we can set before us a high enough goal of an ideal civil society with all of its necessary components, we can judge our present progress by comparing our situation to that ideal.

Kant's critical philosophy thus clears the metaphysical rubble and allows us to clearly conceive of the ideal state of human coexistence. However, reason is still not quite satisfied with this situation. To use the Kantian metaphor, reason is able to find a "resting-place" [*Ruheplatz*], but certainly not a "dwelling-place [*Wohnplatz*] for permanent residence."[60] In order to find this final dwelling-place, writes Kant, we need

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[58] Axii, *CPR*, 101 and A762/B790, *CPR*, 654-55.
[59] See Dieter Henrich, "Kant's Notion of a Deduction and the Methodological Background of the First Critique," in *Kant's Transcendental Deductions*, ed. Eckart Foerster (Stanford, Stanford University Press 1989), 29-46. Also see A740/B768, *CPR*, 644 and A751/B771, *CPR*, 649.
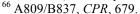[60] A761/B789, *CPR*, 654.

to answer the following question: "If I do what I should, what may I then hope?"[61] We certainly cannot hope for any sort of definitive knowledge of the "systematic unity of nature in accordance with speculative principles of reason," as the critique of pure reason has demonstrated. However, Kant argues, these speculative principles of reason "have objective reality in their practical use, that is, in the moral sense."[62] He continues:

> I call the world as it would be if it were in conformity with all moral laws (as it can be in accordance with the freedom of rational beings and should be in accordance with the necessary laws of morality) a *moral world*. This is conceived thus far merely as an intelligible world, since abstraction is made therein from all conditions (ends) and even from all hindrances to morality in it (weakness or impurity of human nature).[63]

This idea of a moral world is the answer to the question of hope. It is therefore to the practical reason and the moral law what knowledge is to the theoretical reason and the natural law.[64] To hope for a moral world in the *future* is to provide "a necessary context for meaningful action in the *present*. To hope for something does not assure that it will come to pass. But neither is hope reducible to fancy or idle wishing."[65] We hope for future happiness, for a future, permanent, dwelling-place: "the system of morality is therefore inseparably combined with the system of happiness, though only in the idea of pure reason."[66] This inseparable connection leads us to assume the existence of the highest reason, the morally most perfect will, that is, the *ideal of the highest good*. Enter God:

> It is necessary that our entire course of life be subordinated to moral maxim; but it would at the same time be impossible for this to happen if reason did not connect

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[61] A805/B833, *CPR*, 677.
[62] A807/B835, *CPR*, 678.
[63] A808/B836, *CPR*, 678.
[64] A805/B833, *CPR*, 677.
[65] Carl A. Raschke, *Moral Action, God, and History in the Thought of Immanuel Kant* (Missoula: Scholars Press, 1975), 87. Emphasis added.
[66] A809/B837, *CPR*, 679.

with the moral law, which is a mere idea, an efficient cause which determines for the conduct in accord with this law an outcome precisely corresponding to our highest ends, whether in this or in another life. Thus without a God and a world that is now not visible to us but is hoped for, the majestic ideas of morality are, to be sure, objects of approbation and admiration but not *incentives for resolve and realization*, because they would not fulfill the whole end that is natural for every rational being and determined a priori and necessarily through the very same pure reason.[67]

Kant is quick to add that the idea of God does not serve as a direct incentive for a moral action. God is a postulate of practical reason that guarantees the *consistency* of our moral reasoning in the same way that geometrical postulates guarantee the consistency of a geometrical proof. The idea of God then serves as a "frame of orientation for moral reasoning."[68] Whether Kant completely succeeds in keeping the idea of God from providing any motivational force is rather unclear, even if we take as evidence his own caution and continuous repetition of the same warning to keep God out of motivation for moral behavior.

In the final sections of the third *Critique*, Kant returns to the idea of God and presents "the moral proof of the existence of God."[69] Such demonstration might appear to be going against Kant's very own repudiation of the traditional proofs of the existence of God in the first Critique. However, it is easy to see that such "moral proof" is

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[67] A812/B840, *CPR*, 681. Emphasis added.

[68] Raschke, *Moral Action, God, and History*, 99. For a detailed analysis of the role of God in Kant's moral thinking, see Chapter II – "God as Moral Agent" – in *Ibid*, 85–141. Cf. *Critique of Practical Reason*, Book II ("Dialectic of pure practical reason"), Chapter 2, section V ("The existence of God as a postulate of pure practical reason"): "What belongs to duty here is only the striving to produce and promote the highest good in the world, the possibility of which can therefore be postulated, while our reason finds this thinkable only on the presupposition of a supreme intelligence; to assume the existence of this supreme intelligence is thus connected with the consciousness of our duty, although this assumption itself belongs to theoretical reason; with respect to theoretical reason alone, as a ground of explanation, it can be called a *hypothesis*; but in relation to the intelligibility of an object given us by the moral law (the highest good), and consequently if a need for practical purposes, it can be called *belief* and, indeed, a pure rational belief since pure reason alone (in its theoretical as well as in its practical use) is the source from which it springs." (Ak. 5:126, *CPrR*, 241)

[69] Ak. 5:447-452. Cited from Immanuel Kant, *Critique of the Power of Judgment*, trans. Paul Guyer and Eric Matthews (Cambridge: Cambridge University Press, 2000), 313-17.

illustrative of Kant's peculiar discussion of the transcendental *idea* of God: its validity in the practical aspect of reason is without doubt, even though its validity in the theoretical aspect of reason is forever unknown. In a sense, Kant's discussion of God in the third Critique is a culmination of a long engagement with the topic, as we mentioned before, raised in the first Critique. It might be useful to recall that, according to the first Critique, "because regulative principles function as *imperatives* rather than *assertions*, they do not make cognitive claims, but merely give directions for systematizing empirical knowledge."[70] That is why, in *Religion*, Kant observes that "so far as theoretical cognition and profession of faith are concerned, no *assertoric* knowledge is required in religion (even the existence of God), since with our lack of insight into supersensible objects any such profession can be well hypocritically feigned…"[71]

Religion then is not about a particular type of duties, but about our *attitude* toward our duties. This attitude is described with a following example:

> Even when it is said: "One ought to obey God before human being," this only means that whenever statutory commands [*statutarische Gebote*], regarding which human being can be both legislators and judges, conflict with duties which reason prescribes unconditionally – and God alone can judge whether they are observed or transgressed – the former must yield precedence to the latter.[72]

This is a very important observation in light of Kant's discussion of what in the *Groundwork* he labeled "the kingdom of ends." For Kant, there is "the *religious disposition* which universally accompanies all our actions done in conformity to duty."[73] God, or rather more accurately, the idea of God – the minimum of "it is possible that

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[70] Jill Vance Buroker, *Kant's Critique of Pure Reason: An Introduction* (Cambridge: Cambridge University Press, 2006), 285. Emphasis added.
[71] Ak. 6:154note, *Religion*, 177 .
[72] Ak. 6:154note, *Religion*, 177. Emphasis added.
[73] Ak. 6:154note, *Religion*, 177. Emphasis added.

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there is a God" – serves as a reference point, as a guide that allows us to resolve the potential conflicts between the statutory commands of the external authority of legislators and judges and the internal authority of the unconditional duties of reason. In one sense, such conflicts are conflicts between law and justice. The gap between internal disposition and external conformity vis-à-vis Kant's discussion of law is thus reaffirmed as problematic but also as ultimately answered in the idea of God that can see *both* the internal dispositions and compare them with the external actions in conformity with the law. The idea of God then serves as a guarantor that the initial distinction between law and justice would not result in any sort of permanent divorce between the two. Kant therefore attempts to prevent the appearance of any sort of transcendent notion of justice but reaffirming and reemphasizing, even if to his own ultimate detriment, the need for the idea of God and therefore religion. We will return to Kant's discussion of religion later in this essay once we have worked our way through a number of necessary conceptual steps that would allow us to better appreciate Kant's views.

Kant discusses the "kingdom of ends" [*ein Reich der Zwecke*], using this very formulation, only in the *Groundwork*. However, the notion of a final ethical commonwealth is found throughout Kant's work.[74] Kant's "kingdom of ends" is a "systematic union [*Verbindung*] of various rational beings through common laws [*durch gemeinschaftliche Gesetze*]."[75] These laws determine ends in terms of their universality, yet without completely disregarding individual private ends. Such systematic union arises only through "common objective laws" [*gemeinschaftliche objective Gesetze*], that is, a

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[74] Outside of Ak. 4:433-440 (*Groundwork*, 82-89) Kant uses the expression "ein Reich der Zwecke" only twice in his notes on metaphysics R 6149 and R 6159 (Ak 18:469, 471).
[75] Ak. 4:433, *Groundwork*, 82.

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kingdom or commonwealth [*Reich*]. As such, only the kingdom *of ends* is an ideal, while a systematic external union of rational beings is quite possible as a juridical arrangement of "common laws," i.e. a rightful condition.

What makes this Kantian vision of ethical commonwealth interesting is the connection between such seemingly *secular* juridical order and explicitly *religious* formulations. Namely, if "Kant holds that a person can rationally act in pursuit of a given end *only so long as he believes* that this end is possible of attainment through the course of action he is taking," then the ideas of God and of the kingdom of ends serve as a system of coordinates that allows one to assume that a "world governed by a wise providence would be a *just world*, in which our moral endeavors could be expected to bear fruit."[76] If an ethical community is to come into existence, all of its members must be under public moral laws. The morality of actions as a matter of internal disposition, however, cannot be subject to public laws that can only regulate our external freedom. "There must therefore be someone other than the people whom we can declare the public lawgiver of an ethical community."[77] This someone is "the concept of God as a moral ruler of the world," and the ethical community is "conceivable only as a people under divide commands, i.e. as a *people of God*."[78] This ethical community as a people of God is a sort of a parallel world to that of a political community: "It can exists in the midst of a political community and even be made up of all the members of the latter… It has

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[76] Allen W. Wood, *Kant's Rational Theology* (Ithaca: Cornell University Press, 1978), 21, 26. Emphasis added.
[77] Ak. 6:99, *Religion*, 133.
[78] Ak. 6:99, *Religion*, 134.

however a special unifying principle of its own (virtue) and hence a form and constitution *essentially distinct* from those of [political community]."[79]

This most peculiar situation of a kind of "state within state," as Kant suggests, has a well-grounded rational objectivity and the duty to join such an ethical state is consistent with our moral thinking. Is it possible however to imagine a scenario in which an ethical community formed according to an ethical principle finds itself within a juridical state that either indirectly disregards its rationale for existing or directly and openly confronts and oppresses such an ethical community? Is it possible to imagine an ethical community that is convinced that the political community it is a part of is unjust in violating the community's internal freedom? Most certainly, and Kant's own experience of censure and general contemporary lack of religious freedom should lead us to believe that he could have easily imagined such a scenario. However, what is most important about Kant's formulation is the notion that the ethical community, both as an actually existing community and as an ideal "kingdoms of ends," is essentially distinct from the political community, both as an actually existing political community and as an ideal cosmopolitan peaceful community (to come). On the one hand, we have Kant's notion of moral law that expresses itself in a proper internal disposition ("respect for law") and in an external conformity to the specific laws, i.e. there is one moral law that has two sides and cannot be thought of as only an internal disposition or only an external conformity. On the other hand, we have Kant's insistence that there are two orders of lawfulness that are essentially distinct, an ethical community (either secular or religious) and a political community (either secular or religious).

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[79] Ak. 6:94, *Religion*, 130. Emphasis added.

Kant emphasizes, again and again, the obligation that we have an internal moral disposition and externally conform to the requirements of the law. This "ought" is grounded in Kant's early discussion of the nature of reason and its ability to command us categorically. However, Kant is also aware that it is impossible to create and maintain a rightful condition without coercion, even if it is strictly limited to the external conformity to the law. If the law and its enforcement are the necessary elements of any rightful condition, and this law is judged to be just and this enforcement is judged to be justified, then any disobedience to the law is either a breaking of the law as criminality or a challenge to the very idea of law and legality. In a sense, Kant's legal and political theory is an attempt to dispense with any possible reason to challenge the order of law as such and to concentrate on the conceptualization and eventual elimination of criminality. A violation of this or that law is unavoidable due to human weakness. Coercion is necessary and justified in any and all cases of such violations. Any social arrangement, then, must consist of both a code of law and an enforcement apparatus. However, the problem of coercion runs into difficulties precisely at the point where the distinction between an ethical and a political community becomes visible, i.e. where the demands of law and legality run into the demands of justice and morality.

4. Law, Justice and Coercion.

As we pointed out above, Kant clearly demonstrates that a state of public justice requires two elements: the sanction of public law [*die Sanction eines öffentlichen Gesetzes*] and the authority [*Gewalt*] that can enforce such law. Without the authority, or power, to enforce the public law, civil society cannot come into existence. The use of

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force [*Gewalt*], argues Kant, is fully justified from the very beginning in compelling individuals to *join* civil society. As Georg Cavallar puts it, "because of the very lawlessness of the state of nature, one has the right to force or compel others to enter a civil society, or a common rightful condition."[80] Allen D. Rosen adds: "We may rephrase Kant's argument: choosing to remain in the state of nature is equivalent to abrogating all rules of justice, in which case no one can commit as injustice against anyone else, and then no rights can be violated if someone is compelled to join civil society."[81] This coercion is directed at those who are *not yet* in the state of law.

Since "The Doctrine of Right" is primarily dedicated to the discussion of *a priori* rightful condition, Kant insists that we do not need the input of our experience of human violence [*Gewaltthätigkeit*] in order to justify the necessity of "coercion [*Zwang*] through public law."[82] The idea of a "public lawful external coercion" lies *a priori* in the rational idea of civil society. Kant uses three words for what could be construed as indicating one idea of external force exerted upon an individual in a civil society: coercion [*Zwang*], violence/power [*Gewalt*] and force [*Macht*]. Even though these three notions are not simply interchangeable, they seem to occupy the same conceptual place in Kant's analysis of the *founding* of civil society that will later apply to both a founding of a

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[80] Georg Cavallar, "Kant's Society of Nations: Free Federation or World Republic?" *Journal of the History of Philosophy*, 23:3 (1994), 469 [461-482]

[81] Allen D. Rosen, *Kant's Theory of Justice* (Ithaca: Cornell University Press, 1993), 120. See also similar views on the matter in Howard L. Williams, *Kant's Political Philosophy* (Oxford: Basil Blackwell, 1983), 91-94; Robert Pippin, "On the Moral Foundations of Kant's Rechtslehre," in *The Philosophy of Immanuel Kant*, ed. Richard Kennington (Washington, DC: Catholic University of America Press, 1985), 109; Roger Sullivan, *Immanuel Kant's Moral Theory* (Cambridge: Cambridge University Press, 1989), 239-243; Christine Korsgaard, *Creating the Kingdom of Ends* (Cambridge: Cambridge University Press, 1996), 32.

[82] Ak. 6:312, *MM*, 456. Cf. Ak. 6:205, *MM*, 365: "For the doctrine of right, the first part of the doctrine of morals, there is required a system derived from reason which could be called the *metaphysics of right*… empirical concepts cannot be brought into the system as integral parts of it but can be used only as examples in remarks."

community of nations and of a cosmopolitan community of all nations. From a close reading of §44 of "The Doctrine of Right," it is clear that Kant talks about *both* a coercion to join a civil society and a external power that will be exercised on the individuals who will find themselves *in* this civil society. One can discern what can be labeled, without yet any connection to Walter Benjamin's discussion of *Gewalt*, "law-establishing" and "law-enforcing" authority. In a sense, one might agree with Otfried Höffe who claims that Kant here "deals precisely with the *power of ought*, both with the authorization to enforce that belongs conceptually to the law as such and with its public protection, which is to say, its enforcement by means of a state."[83]

What makes forcing individuals into a rightful condition of a civil society *justifiable*? It is certain that for Kant any justification of "law-establishing" coercion must be *a priori* and thus cannot be based on such empirical grounds as security or happiness of individuals in a rightful condition. A shorter account that should suffice for our overall line of argument might look to the concept of freedom and its rational components, such as freedom of choice [*Willkür*], for guidance. How can a concept of freedom of choice, considered rationally, justify the coercion of free individuals into a civil society where, by definition, their freedom would be constrained? If one thinks of freedom in terms of a lack of any constraints upon one's will, then Kant's argument will make little sense. However, as Kant already pointed out in the *Groundwork*, freedom is nothing but autonomy, that is, "the will's property of being a law to itself… to act on no other maxim than that which can also have as object itself as a universal law."[84]

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[83] Otfried Höffe, *Categorical Principles of Law: A Counterpoint to Modernity*, trans. Mark Migotti (University Park, PA: The Pennsylvania State University Press, 2002), 281. Emphasis added.
[84] Ak. 4:447, *Groundwork*, 44.

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However, in the state of nature, each person must be a judge in her own matters and the conflict of (provisional) rights can only be resolved through use of force. Thus it is in the interest of preserving human freedom that one is justified in coercing others to join a civil society. Kant argues that it is one's *duty* to enter a rightful condition and also a duty to compel other to enter civil society. "A rightful condition is that relation of human beings among one another that contains the conditions under which alone everyone is able to *enjoy* his rights, and the formal condition under which this is possible in accordance with the idea of a will giving laws for everyone is called public justice."[85]

The very condition of public right, for Kant, is an *a priori* law – "you ought to enter this [rightful] condition" – that holds for "all human beings who could (even involuntarily) come into relations of rights with one another *ought* to enter this condition."[86] The justification of coercion of others into a rightful civil society follows "analytically from the concept of *right* [*Recht*] in external relations, in contrast with *violence* (*violentia*)."[87] In the state of nature, "no one is bound to refrain from encroaching on what another possesses if the other gives him no equal assurance that he will observe the same restraint toward him."[88] Thus it is clear from the very logic of the concept of right that it is beneficial for all to enter a common rightful relationship that would guarantee rights and would protect individuals from lawless violence [*Gewaltthätigkeit*].[89] As Christine M. Korsgaard puts it, since any right is "an

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[85] Ak. 6:306, *MM*, 450.
[86] Ak. 6:307, *MM*, 452.
[87] Ak. 6:307, *MM*, 452.
[88] Ak. 6:307, *MM*, 452.
[89] "Given the intention to be and to remain in this state of externally lawless freedom, men do one another no wrong at all when they feud among themselves… But in general they do wrong in the highest degree by willing to be and to remain in a condition that is not rightful, that is, in which no one is assured of what is his against violence." Ak. 6:307-8, *MM*, 451-52.

authorization to use coercion, anyone may defend his right against another. Disputes will inevitably arise, and there is no way to settle them, except by violence… This licenses us to use coercion against one another to establish a juridical state of affairs – a state in which rights are guaranteed rather than provisional. So we have a right and, indeed, a duty to coerce others to enter into political society with us."[90]

Kant's vision of human society as existing under the protection of law is peculiar in its persistent attempts to guarantee the external conformity of everyone with the law, if necessary, through coercion and punishment of criminals, while at the same time crafting a conceptual framework that would allow for an non-invasive rule of law that leaves the matters of internal motivation or disposition up to the individual's discretion. Kant is very clear both in his endorsement of force directed at criminality and his endorsement of what is traditionally referred to as "freedom of thought": one must obey the law and will be coerced if one chooses to break the law, but one must not be forced to have a particular disposition about the law, the external obedience and conformity is all that is required and can be regulated.

However, Kant also insists on the need to ground legality in reason's capacity for self-legislation, that is, in reason's capacity for self-rule which is morality as a correspondence between an internal disposition and an external conformity. Although Kant insists that we must preserve the idea of God as a guarantor of harmonization of our internal disposition, he is not yet talking about religion, but about a certain transcendental level that allows us to hope for a final realization of our human destiny. The split between the "inside" and the "outside" of the moral law (in the internal and the external

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[90] Christine M. Korsgaard, *Creating the Kingdom of Ends* (Cambridge: Cambridge University Press, 1996), 32.

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use of freedom) ground then the split between justice as a principle of reason and law as a realization of that principle. The ultimate test case of consistency of this arrangement is the case of *revolution* as an act of direct and explicit defiance of some specific rightful condition in the name of a better, more just, societal organization. The case of revolution here does not concern the violation of this or that law, but a challenge to the rightful condition as a whole. In Kantian terms, revolution is an attempt to exit the rightful condition, if only to reenter it as soon as a better configuration of laws is proposed and accepted by the people. Although much has already been written about Kant's discussion of revolution, our main task here is to suggest that revolution does not simply create a set of uncomfortable questions for Kantian theory of justice, but it, in fact, challenges its very consistency.

5. Revolution: Testing Kant's Theory of Justice.

After reviewing Kant's theory of right, one might find some aspects of it to be similar to those of scholars from previous generations. In fact, Kant never explicitly claims to be making an original contribution when it comes, for example, to the idea of the "original contract" or the state of nature.[91] What *is* innovative about Kant's approach is his insistence that even though leaving the state of nature would be *advantageous* to those who have only provisional rights and are under a constant threat of violence, the main reason that we have to form a civil society is because it is a moral obligation. Human beings are obligated to form a civil society, and thus, following Kant's logic, the

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[91] In one sense, Kant's political theory is the ultimate elaboration of the long tradition of the social contract. Patrick Riley argues that Kant's is the "most adequate of the social contract theories." Cf. Patrick Riley, *Will and Political Legitimacy* (Cambridge: Harvard University Press, 1982), 125.

pursuit of global justice is a *moral obligation* that reason dictates us to fulfill. Kant holds that human beings "will do wrong in the highest degree by willing to be and remain in a condition that is not rightful, that is, in which no one is assured of what is his against violence."[92] In a footnote to this passage Kant adds: "…they do wrong in the highest degree, because they take away any validity from the concept of right itself and hand everything over to savage violence, as if by law, and so subvert the right of human beings as such."[93] This last reference to the possibility of subversion of the state of law is an essential point, because, as we will see in a moment, it is precisely Kant's position on the so-called "right to resist" that poses an important question that, when addressed, will significantly complicate Kant's position.

Kant's refusal to grant the subjects of an unjust sovereign any right to resist [*Widerstandsrecht*] and to revolt is famous, or rather, infamous. This topic has been covered repeatedly and in great detail.[94] Kant's refusal to grant this right is peculiar from a number of perspectives, but the most intriguing one, considering our discussion of coercion and its relation to right, is the following: according to Kant, it is perfectly justifiable to force those in the state of nature to *join* the civil society because it is our moral obligation to do so, yet it is absolutely forbidden to force others *out* of the

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[92] Ak. 6:308, *MM*, 452.

[93] Ak. 6:308n, *MM*. 452n

[94] For a good summary of the arguments and main sources, see Thomas Seebohm, "Kant's Theory of Revolution," *Social Research* 48:3 (1981), 557-87; Thomas E. Hill, "A Kantian Perspective on Political Violence," *The Journal of Ethics* 1:2 (1997), 105-40; Christine Korsgaard, "Taking Law in Our Own Hands: Kant on the Right to Revolution," in Christine Korsgaard, *The Constitution of Agency: Essays on Practical Reason and Moral Psychology* (Oxford: Oxford University Press, 2008), 233-262. See also Werner Hänsel, *Kants Lehre vom Widerstandsrecht: Ein Beitrag zur Systematik der Kantischen Rechtsphilosophie* (Berlin: Pan-Verlag, 1926) and Hans Reiss, "Kant and the Right of Rebellion," *Journal of the History of Ideas* 17:1 (January 1956): 179-92.

established state of law, even if this state is abusive, constricting, *unjust* and detrimental to our autonomy and our very humanity.

If we go a step further and remind ourselves that *we* are never in the position to either decide to join a rightful condition or experience being forced into joining one, since "original situation" or "the state of nature" is only a logical construction, not a historical situation of lawlessness as such, then we realize that we find ourselves always already in the specific state of law and if we find this state of law to be unjust, we cannot *forcibly* affect any considerable change, but must operate within the limitations of this particular rightful condition. This description might suffer from some simplifications of Kant's complex take on the matter. However, we believe, it is adequate enough to raise an important question: how does one identify and fight specific instances of injustice in the rightful condition without having a right not only to overthrow the legitimate authority but even to question its very legitimacy?

Regardless of how one feels about Kant's apparently reactionary stance that people cannot revolt against the legitimate sovereign under any circumstances, Kant does spend a great deal of argumentative energy trying to show that although revolutions and rebellions are found throughout human history, if one takes a careful look at the concept of right as such, there is no *right* to revolt that can be rationally deduced from it. Any legitimate constitution "cannot contain any article that would make it possible for there to be some authority in a state to resist the supreme commander in case he should violate the law of the constitution, and so to limit him."[95]

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[95] Ak. 6:319, *MM*, 462.

A provision to resist the legitimate authority in any constitution would be an example of self-contradiction. Moreover, although Kant finds "estimable men who maintain that under certain circumstances a subject is authorized to use force against his superiors," it is clear that any violent resistance or revolution "would make every rightful constitution [*alle rechtliche Verfassung*] insecure and introduce a condition of complete lawlessness (*status naturalis*), in which all rights cease, *at least to have effect*."[96] Since the state of nature is a hypothetical state completely devoid of justice, any violent action directed at the state of law itself, if successful, does not return us to the state of nature but allows us to exit the existing rightful condition in order to eventually enter the future, more just, rightful condition. This intermediary space between a former law and a future law is not, properly speaking, a state of nature, but a state of suspension of law that might eventually lead to a complete cancellation of law, if revolutionaries fail to establish another rightful condition.

It is important to remember that Kant's argument against the right to revolt is set against his own rather progressive, for the time, views on the actual revolutions that took places during his lifetime. Kant, as is well-known, was enthusiastic about the French Revolution, to cite just one example: "The [French] revolution of a gifted people which we have seen unfolding in our day may succeed or miscarry… this revolution, I say, nonetheless finds in the hearts of all spectators (who are not engaged in this game themselves) a wishful *participation* that borders closely on enthusiasm…"[97] When,

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[96] Ak. 8:301, *PP*, 80. Emphasis added.
[97] Ak. 7:85, *CF*, 302. Original emphasis. Kant was also reportedly in favor of the American Revolution as well, although we have only anecdotal evidence of such support in Kurt Joachim Grau, ed. *Kant-Anekdoten* (Berlin: Verlag von Georg Stilke, 1924), 18. On Kant's attitude toward the French Revolution, see Karl Vorländer, "Kants Stellung zur Französischen Revolution," in *Philosophische Abhandlungen, Hermann*

reacting to the French Revolution, Johann Georg Heinzmann published in 1795 his *Appell an meine Nation* [Appeal to My Nation], he included Kant and Kantianism among the radicals who were distributing dangerous ideas that can lead to unrest.[98] In addition to this clear allegiance to the liberal causes of the time, Kant provides us with a number of texts that can be read as leaving some room for an alternative interpretation.

The issue at hand is, again, Kant's worry that any legitimate right to resistance would create a treacherous condition of a state of nature *within* or *alongside* a state of law. If we accept Kant's overall argument that such right would be logically self-contradictory, then the question becomes not so much of the right to resistance as such, but of the relationship between the state of nature and the state of law in their seeming continuous interaction in any *actual* resistance to the legitimate authority. What are we to make of this danger of falling back into the state of nature, a possibility of a "relapse" [*Rückfallargument*], as Peter Unruh calls it, which is supposedly present in any attempt to justify the overthrow of the legitimate authority?[99] Kant's argument is very clear on this matter: since right can only be realized in the state of law, and to enter this state is to let oneself be represented by the sovereign, to use violence against the legitimate sovereign is "to step back into the state of nature… a state without realized right, *status justitia vacuus*."[100]

Cohen zum 70 Geburtstag (Berlin, 1912) and George P. Gooch, *Germany and the French Revolution* (London: Longmans, 1920).

[98] Johann Georg Heinzmann, *Appell an meine Nation: Über die Pest der deutschen Literatur* (Bern, 1795) cited in John Christian Laursen, "The Subversive Kant: The Vocabulary of 'Public' and 'Publicity'," in *What Is Enlightenment? Eighteenth-Century Answers and Twentieth-Century Questions*, ed. James Schmidt (Berkeley: University of California Press, 1996), 263.

[99] Peter Unruh, *Die Herrschaft der Vernunft. Zur Staatsphilosophie Immanuel Kants*, (Baden-Baden: Nomos, 1995), 199-204.

[100] Thomas Seebohm, "Kant's Theory of Revolution," *Social Research* 48:3 (1981), 576.

We find ourselves then in a rather peculiar situation: a people are formed by an expressed consent of the individuals who are deciding to leave the state of nature and form a civil society, yet because such "true republic is and can only be a *system representing* the people," its aim is also "to protect the rights of citizens in the name of the people."[101] It is precisely because "the supreme authority from which all rights of individuals as subjects must be derived," that we cannot propose and defend that we also allow ourselves to exit the state of law that ceases to satisfy us.[102] That is, although the initial formation of the state of law is seemingly voluntary, once the law is established and the right of specific legislation and enforcement is delegated to the sovereign, as Kant puts it, "whether it be a king, nobility, or the whole of the population, the democratic union," the people who thus formed the state of law cannot leave it by attempting to suspend its rule. In other words, there are no "do-overs" in the establishment of the rightful condition.

Clearly, Kant does not argue his position based on the empirical historical data. However, this is only complicating the matter further, i.e. if Kant is not referring to the historical formations of the first human state of law, "an actual contractarian origin of the state," then, as Christine Korsgaard eloquently argues, Kant postulates the right of government and claims that "we should take it for granted that the existing governments are legitimate representatives of the general will of the people who are ruled by them, as if they originated in social contracts."[103] Even in cases where the legitimate government

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[101] Ak. 6:341, *MM*, 481. Translation slightly altered.
[102] Ak. 6:341, *MM*, 481.
[103] Korsgaard, "Taking the Law Into Our Own Hands," 244. Cf. Ak. 6:319, *MM*, 462: "…the presently existing legislative authority ought to be obeyed, whatever its origin."

is abusing its authority and becomes despotic, it is better, argues Kant, to endure the injustice than to rebel and attempt to "abolish the entire legal constitution."[104]

In a long footnote to the discussion of the impossibility of people to judge their own case against the abusive government, Kant adds an interesting image of the "state suicide": there is a special horror, Kant argues, in the idea of the formal execution of the sovereign, this horror is a moral feeling that results from the idea of the complete overturning of all concepts of right.[105] While a "regular" criminal might violate the law making himself an exception to the rule, an ultimate criminal is rejecting the authority of the law itself and acts against his very own reason. Or, if we may put it differently (and possibly provocatively), the ultimate violation of law is the belief that there is a *higher law* that can be used to question and judge the existing state of affairs, a kind of law of justice that revolutionaries can use to *justify* their overthrow of the legitimate authority. The ultimate crime therefore is that of the formal execution of the sovereign by his own people:

> …while his *murder* is regarded as only an *exception* to the rule that the people makes its maxim, his *execution* must be regarded as a complete *overturning* of the principles of the relation between a sovereign and his people (in which the people, which owes its existence only to the sovereign's legislation, makes itself his master), so that violence [*Gewalttätigkeit*] is elevated above the most sacred rights brazenly and in accordance with principle. Like a chasm that irretrievably swallows everything, the execution of a monarch seems to be a crime from which the people cannot be absolved, for it is as if the state commits suicide.[106]

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[104] Ak 6:320, *MM*, 463.
[105] Ak. 6:321, *MM*, 464.
[106] Ak. 6:322, *MM*, 465. Original emphasis. Interestingly enough, later in his discussion of cosmopolitan right in *Rechtlehre* Kant uses the same word – *Gewalttätigkeit* – to designate the "acts of violence" that, committed in one part of the globe would be felt all over the world. (Ak. 6:353, *MM*, 490) Earlier, in the second *Critique*, Kant gives several examples of contrasts (for example, truthfulness versus lying) and the opposite of "justice" [*Gerechtigkeit*] is not "injustice" but "violence" [*Gewalttätigkeit*]. (Ak. 5:61, *CPrR*, 189)

The peculiarity of Kant's language is obvious: in the struggle against the unjust sovereign, the people actually struggle against themselves; and in the execution of the sovereign, they execute themselves. If the relationship between the people and the sovereign authority is disturbed, the monstrous chasm opens and consumes all. Like a monster that cannot be simply killed, the sovereign is *formally* executed as to give the proceedings the "appearance of punishment," thus the people commit an unforgivable sin (*crimen immortale, inexpiabile*) of committing a crime in the name of some future justice.

These acts of violence and injustice, according to the legitimate authority, in the name of future justice are indeed very peculiar acts. As Korsgaard puts it, "a revolutionary undertakes to destroy the government, and so undertakes to destroy justice… [yet] his aim is to improve the juridical condition. He thinks that justice will rise revivified from its own ashes, like the Phoenix; he hopes to bring about a new and better system of justice, which will come closer to doing its job, which is guaranteed freedom."[107] In this sense, we are not talking about examples of extremist violence aimed at the complete destruction of the state and its institutions. Such violence *can* be theorized in terms of our discussion, but we choose to set it aside in order to better understand the instances of violence directed at undermining the existing rightful condition in the name of a future more just rightful condition. The paradox of the Kantian distinction between law and justice as a distinction between an external conformity that can and must be enforced and an internal disposition that cannot be made

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[107] Korsgaard, "Taking the Law Into Our Own Hands," 253. Cf. Ak. 6:353, *MM*, 490:"…the pretext of revolutionaries within a state [is] that when constitutions are bad it is up to the people to reshape them by force and to be unjust once and for all so that afterwards they can establish justice all the more securely and make it flourish."

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explicit is the following: Kant presents us with a theoretical description of human society that allows for constant progress and betterment of the human condition, yet he also provides us with a set of evaluative criteria that allows us to judge the adequacy of the present societal arrangement vis-à-vis its ideal form, encouraging us to strive for that future condition of justice "where the people can be influenced by the mere idea of the law's authority, just as if it were backed up by physical force, so that they will be able to create for themselves a legislation ultimately founded on right."[108]

While the revolutionary overthrow of the legitimate authority that is judged to be unjust is out of the question for Kant personally, both theoretically as going against the idea of right and pragmatically as fraught with possible abuses, it is not out of the question for Kant's philosophical distinction between law and justice. The danger, on the one hand, is the collapsing of the issues of law and the issues of justice, and Kant attempts to avoid this danger by theorizing the distinction between the internal and the external uses of freedom. Yet, on the other hand, the danger is that justice is to be understood as a transcendent, rather than transcendental, criterion that allows one to evaluate and, if necessary, violently change any regime that fails to live up to the standards of such justice. The violence is thus inevitable and Kant chooses to align himself with the violence of lawfulness over against the violence of lawlessness. However, Kant's personal preference here, clearly defined by his own political views, can be said to be irrelevant if we take Kant's *theory* as a guide.

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[108] Ak. 8:354, *PP*, 115.

6. Between Law and Justice.

Let us summarize the main issues of this chapter and place them in the overall context of this study. We have discovered that Kant's political philosophy in its comprehensive grasp concerns itself with all aspects of a person's life: morality as an internal disposition and legality as an external conformity that allows for maximum possible freedom. We have asked a series of questions about the relationship between morality and legality, especially in view of the possibility of the conflict between the two. If human beings as political subjects find themselves in a state (hypothetically having chosen to enter such arrangement through an original contract), and if they also choose to form an ethical community, then it is very likely that at some point this ethical community might find itself in disagreement with the political authorities. Clearly, if we all acted rationally, argues Kant, we would all be living in a peaceful condition in which our internal dispositions would coincide with our external juridical conformity. However, we do not live in such an ideal world and therefore we often find ourselves in situations where our moral persuasions contradict those of the external political order. The very distinction between morality and legality, then, is a distinction that is made in order to theorize our weakness as our inability to be thoroughly rational, thus proposing to establish the real possibility of a discrepancy between our ethical views and the view of that political community to which we belong. Moreover, the state might not only propose and enforce laws that go against our ethical values, but in fact attempt to impose those particular values on us. Kant advises the state against such behavior, but offers little in terms of actual resistance to such policies, except for his insistence on the need to allow for a public critique of oppressive policies in the public debate (which, of course,

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depends on the oppressive regime's reasonableness in allowing for such debate to take place to begin with).[109]

In an appendix to "The Doctrine of Right," Kant states quite unequivocally that we are to act according to the following *categorical imperative*: "Obey the authority who has power over you," only to add parenthetically "in whatever does not conflict with inner morality."[110] Let us recall, again, our scenario in which a group of political subjects refuses to pay taxes out of conviction that their taxes will be used to support a war effort that they reject on moral grounds. According to Kant, they are encouraged to voice their discontent in the public sphere and pursue their case for the change of official policy. However, they are also to pay their taxes as long as the legitimate government does not change its policy. That is, they are to try to *reform* the system, not to *resist* it by either breaking the law or by attempting to undermine the legitimacy of the state.

Regardless of the course of action in this situation, we are assuming that the conflict is indeed genuine, that is, that the group is *genuinely* convinced that its position cannot be compromised and in its conflict with legality it sides with morality, in its conflict with law it insists on confronting it in the name of justice. Kant, as we have seen in his reflections on revolution, seems to be at loss when it comes to such situations, assuming that all humans can reach a reasonable consensus on conflictual matters and

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[109] We are by no means dismissing Kant's proposal for an open debate in the public sphere as naïve and politically weak. In fact, Kant's discussion of the public sphere can be interpreted as an attempt to theoretically articulate the mediating link "between morality and politics, reason and policy" as Dana Richard Villa puts it in *Public Freedom* (Princeton: Princeton University Press, 2008), 183. Still, we find Kant's proposition that "*freedom of the pen… is the sole protector of the people's rights*" [Ak. 8:304, *PP*, 82] to be insufficient in face of all the oppressive politics that has unfolded since Kant's statements.
[110] Ak. 6:371, *MM*, 505. Bouterwek's review is republished in Ak. 20:445-53. Cf. Kant's fragment R 8051 [Ak. 19:595] where to his comment about nonresistance he adds a curios qualification: "…welche gar nicht in die *unionem civilem* kommen können, *e. g.* religionszwang. Zwang zu unnatürlichen Sünden: Meuchelmord *etc. etc.*" ("…except in those cases that cannot belong to a civil union, e.g. religious compulsion. Compulsion to unnatural sins: murder etc etc." My translation)

peacefully coexist in one political community.[111] We are concerned here with a situation

that does not produce such consensus and, in fact, results in a conflict between a group

that claims moral authority in its resistance to the juridico-political order that it *perceives*

as unjust, i.e. in violations of not only its moral standards but also in violation of some

higher law of justice. The question for now is not so much how we *deal* with this

peculiar conflict between a group of conscientious citizens resisting the legitimate

authority in the name of justice, but what allows for such conflict to *appear* in the first

place.

We hope that this chapter demonstrates that such conflict appears as a result of

differentiating between morality and legality, between internal and external freedom,

between law and justice. The idea of justice in this case is posited as something that is

located, by definition, *outside of law* and therefore can be used as a criterion for

evaluating any legal condition. Although Kant attempts to articulate a principle of justice

as a "sum of conditions under which the choice of one can be united with the choice of

another in accordance with a universal law of freedom," he ultimately does not

completely eliminate a sense of justice as an external criterion, not unlike that of "natural

law" or, for that matter, the law of *reason*.[112] This gap between legality and its immanent

legitimacy (granted by the people) and morality that relies on ideas of reason that in this

sense *transcend* the limitations of any particular juridico-political arrangement creates a

possibility of a violent reaction against the constrictions of any particular political system

in the name of better, more just, future of humankind.

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[111] Jürgen Habermas has been a forceful proponent of such Kantian rational consensus-oriented political theory. See, for example, his *Toward a Rational Society*, trans. Jeremy J. Shapiro (Boston: Beacon Press, 1970).
[112] Ak. 6:230, *MM*, 387.

Let us now imagine that the ethical community that we have used as an example so far is a *religious* community that perceives itself as being persecuted and marginalized by the secular government and attempts to fight back against this perceived marginalization using violent means. The question here is, again, not whether such violent resistance should or should not be allowed, clearly for Kant any permission of violence is out of the question. The real issue here is how we can explain the particular force of religious passion and its motivational drive to pursue justice. If we pay attention to Kant, we learn that our religious community is not different from any other ethical community that attempts to organize itself around a set of "laws of virtue." And yet religious violence is not a simple matter of ethics or politics. Indeed, our argument in this essay is that if there is anything distinctive about religious communities vis-à-vis ethical and political communities it is its more acute *awareness* of the very difference between the way things are (law/legality) and the way things must be (justice/morality). In sum, a religious community is not a community of certain *kinds* of duties but a community of certain *attitudes* toward duties. The issue of religious violence then is the issue of *both* ethics and politics as it forces us to ask not only a question of what motivates religious groups to commits acts of violence, but, most importantly, how that which motivates them comes about. As we take a look at Derrida's discussion of justice and violence in the next two chapters, we hope to clarify this statement about religious violence and eventually be able to be more specific in our attempts to articulate the economy of such violence.

The task before us then is the following: if Kant's practical philosophy represents (even if it does not ultimately embody) an ultimate theorization of the whole of Western

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moral and legal tradition, then it is our task to attempt to understand why the very distinction between juridical and ethical laws introduced to preserve the internal freedom of faith of a private individual serves as a justification for violence in the name of justice. To put it differently, we argue that it is impossible to consistently argue that the world could be a better and more just place without, on the one hand, proposing an external (transcendent) criterion of justice and, on the other hand, insisting that, despite being theoretically located outside of the order of law, this criterion of justice is intimately connected to the such order. Religious violence, we attempt to argue, ultimately exposes the paradoxical nature of the arrangement between the concepts of law, justice, and violence in that it raises the question of justice in such a way as to counter all the attempts to foreclose the open discussion of the legitimacy of the present societal constitution.

III

Force of Law and the Imperative of Justice

Our discussion of Kant's practical philosophy was aimed at giving us a wide enough context in which to place the issues of law, justice, force, religion and violence. Kant's insistence that we abandon the state of nature and its provisional right in order to establish and to expand the state of law and justice grounds much of contemporary political theorization of the new global reality of human interaction. Although a critique of a thorough legalization of human interactions is beyond the scope of this essay, it is essential to point out that Kant's practical philosopher emerges as a staunch defender of the necessity of legality: even the worst and most abusive state of law is superior to the best possible state of nature because of the guarantees of justice in the state of law and the complete lack of such guarantees in the state of nature.

In this chapter we will proceed with our discussion of law, justice and religious violence through a reading of Derrida's thought-provoking essay "Force of Law." This essay, although not directly concerned with issues of religious violence, brings several problems to our attention, the most important being, as we will see, the problem of the paradoxical relationship between law and justice that allows us to approach the issues of violence and religion from a novel perspective. In a way quite similar to Kant, Derrida raises the issue of the difference between law and justice as the difference between

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morality and legality, while pursuing a vision of justice that might be located neither on the side of morality nor on the side of legality, but can be defined as a *movement* between the two, the movement that has its positive and negative aspects. The movement between law and justice thus creates a space, an opening that provides for an understanding of the nature of violence as suspension/overcoming of lawfulness.

In order to properly engage Derrida's insights concerning the nature of the relationship between law and justice, we may describe Kant's approach as an attempt to theorize any violence against the law as a *violation* of law (immanent plane), not as a suspension or *cancellation* of legality as such (transcendent plane). Kant then is attempting not only to foreclose any possibility of exiting the existing rightful condition, as we tried to show in the previous chapter, but also to erase any reference to justice as true *exteriority* to the order of law. Justice is theorized as a sum total of conditions that guarantee our freedom (immanent plane), yet when the conflict between our idea of justice and our experience of law arises, we are advised to refrain from asking the questions of legitimacy of our (or any, for that matter) rightful condition, but only to try to reform it without, however, leaving the existing rightful condition (transcendent plane). Kant then aims to theorize the difference between law and justice as always already located in some rightful condition, that is to say, as always already arising in the immanent context of the state of law with only a hypothetical reference to the state of nature. It seems, however, that Kant is unable to completely flatten the relationship between law and justice, and erase all references to the possibility of the notion of justice as constituting a truly exterior other to the order of law. In sum, Kant attempts to prevent any violent clash between law and justice, while admitting that such clashes are not only

possible, but found throughout human history, including the contemporary examples of the French Revolution, by limiting our access to the true exteriority of justice in a similar manner that he has already limited our access to the knowledge of things outside of the possibility of experience in his theoretical philosophy. By engaging with Derrida's provocative reading of this very Kantian tradition of thinking about law and justice we hope to further explore this very potent subject matter of the relationship between law and justice, and the corresponding relationship between religion and violence.

1. Deconstruction and the Possibility of Justice.

A suitable *entry point* for the continuation of our discussion of the issues of law, justice and religious violence is found in Derrida's essay "Force of Law: The 'Mystical Foundation of Authority'." [1] In the first part of the address Derrida discusses the issue of justice and its relationship with law in the context of deconstruction. He raises a number of thought-provoking questions, but the most important ones are related to the idea of a *just* action and its relationship to a *moral* action. "If I were content to apply a just rule, without a spirit of justice and without in some way inventing the rule and the example for each case, I might be protected by law (*droit*), my action corresponding to objective law, but I would not be just." [2] This contrast between a just action and a legal action is similar,

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[1] The part of the essay was originally delivered at a conference at the Cardozo Law School and published in *Cardozo Law Review*: Jacques Derrida, "Force of Law: The 'Mystical Foundation of Authority'," *Cardozo Law Review* 11 (1989-1990): 920-1045. This essay was later reprinted in a collection of essays that gathered other papers from the same conference: Jacques Derrida, "Force of Law: The 'Mystical Foundation of Authority'," in *Deconstruction and the Possibility of Justice*, eds. Drucilla Cornell, Michel Rosenfeld, and David Gray Carlson, (New York: Routledge, 1992), 3-67. Latest publication of the same essay with slightly improved English translation can be found in Jacques Derrida, "Force of Law: The 'Mystical Foundation of Authority'," in *Acts of Religion*, ed. Gil Anijar (New York: Routledge, 2002): 230-298.

[2] *FL*, 245.

Derrida proposes, to Kant's distinction between morality (internal disposition of respect for law) and legality (external conformity with the norm). Derrida describes a *legal* action in the following terms: "I would act, Kant would say, *in conformity* with duty, but not *through* duty or *out of respect* for the law. Is it possible to say: an action is not only legal, but also just? A person is not only within his rights but also within justice?"[3]

Derrida identifies the *just* action with that action that is done through duty and out of respect for law. He claims, by identifying Kant as his point of reference, that what he labels "*just* action" is connected to what Kant labels "*moral* action." If Kant's discussion of the distinction between morality and legality raised primarily a question of the relationship between internal and external freedoms, Derrida's insistence on the idea of justice rather than morality or legality raises questions of the relationship between morality and justice and, most importantly, legality/lawfulness and justice.

The question of justice, for Derrida, is inevitably the question of deconstruction. Despite the term's popularity, "deconstruction" has been a rather elusive philosophical concept that, Derrida's own protestations aside, has been firmly attached to his work, even though Derrida himself has apparently ceased to use it as a designation of his project very early on (if he ever did use it in such a simplistic manner). A wide array of possible interpretations of both the word's meaning and the philosophical procedure it stands for are available for public and academic consumption.[4] Derrida's discussion of

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[3] *FL*, 245. Original emphasis.

[4] The amount of literature dedicated to introducing "deconstruction" is extensive. One might identify several important early studies: *Derrida and Deconstruction*, ed. Hugh J. Silverman (New York: Routledge, 1989); John Caputo, *Deconstruction in a Nutshell: A Conversation with Jacques Derrida* (Fordham University Press, 1996). See also some of the more recent introductions such as Barry Stocker, *Routledge Philosophy Guidebook to Derrida on Deconstruction* (Routledge, 2006); Penelope Deutscher, *How to Read Derrida* (New York: W.W.Norton, 2006) and Jason Powell, *Derrida: A Biography* (Continuum, 2006).

the relationship between deconstruction and the possibility of justice is structured as a general response to a rather common accusation that "deconstruction does not in itself permit any just action, any valid discourse on justice [*discours juste sur la justice*] but rather constitutes a threat to law [*droit*], and ruins the condition of possibility of justice."[5] Addressing this accusation, of course, is only an entry point for Derrida's engagement with the concepts of "justice" and "law," engagement that would renew his attempts to (re)formulate the discourse on the status of deconstruction within his philosophy, here using the familiar (perhaps *too* familiar, one might add) ideas of justice, law (*droit*), and rule/regulation (*loi*).

The question that opens the discussion of justice is following: "Does deconstruction insure, permit, authorize the possibility of justice? Does it make justice possible, or a discourse of consequence on justice and the conditions of its possibility?"[6] From the first paragraphs Derrida situates this larger issue of the possibility of justice in terms of the *difference* between justice and law (*droit*). Deconstruction's alleged lack of rules and definitive criteria, "what makes it suffer and what makes those it torments suffer," in the context of the discussion of the possibility of justice points out "equivocal slippages" [*des glissments équivoques*] between justice and law.[7] There are three important elements to Derrida's presentation: law-as-rule (*loi*), law-as-right (*droit*) and justice (*justice*). The body of positive laws forms a lawful condition of right [*droit*,

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[5] *FL*, 231. Mary Quaintance, the translator of Derrida's address, originally written in French, is very consistent in rendering *droit* as "law," *loi* as "the law" and *justice* as "justice." It might be helpful to recall that Derrida takes *droit* to be equivalent to German *Recht*, *loi* to *Gesetz* and *justice* to *Gerechtigkeit*. Thus, just like German *Recht*, *droit* may also mean "right" as in *droits et responsabilités* [rights and responsibilities] or *Déclaration universelle des droits de l'homme* [the universal declaration of human rights].
[6] *FL*, 231.
[7] *FL*, 231.

Kant's *Recht*], i.e. a condition in which positive laws (*loi*) are adequately enforced. However, while discussing the phrase "to enforce the law," Derrida complicates this situation with a peculiar distinction between justice itself (*justice*) and justice as expressed in law (*droit*):

> Applicability [of any positive law], "enforceability," is not an exterior or secondary possibility that may or may not be added as a supplement to law [*droit*]. It is the force essentially implied in the very concept of *justice as law* [*justice comme droit*], of justice as it becomes law [*droit*], of the law [*loi*] as law [*droit*]. I want to insist at once to reserve the possibility of a justice, indeed of a law [*loi*] that not only exceeds or contradicts the law [*droit*] but also, perhaps, has no relation to law [*droit*], or maintains such a strange relation to it that it may just as well demand law [*droit*] as exclude it.[8]

This is a fascinating passage in itself, but it becomes even more interesting if we situate it in the relevant discussion of this essay. Not only is Derrida suggesting, here being in agreement with Kant, that force is not a supplement to law, but is its essential component, i.e., what *makes* it a law, but also that we might be looking for a different kind of justice, justice that would not only be divorced from juridical framework, but would also directly contradict it, exceed it, maybe even attempt to destroy it completely. This new kind of justice is indeed both inside and outside of the juridical framework of laws. This new kind of justice purports to regulate the relationships between individuals outside or beyond any system of enforceable laws, outside of any rightful condition, yet still be conceptualized as justice.

Recalling the discussion of Kant's position on the so-called "right to resist," we might say that the peculiar *space* of justice as true exteriority to the order of law is created by a suspension of lawfulness and can only become visible under the condition of true "unauthorized" (illegal and illegitimate) cancellation of the law in any true resistance

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[8] *FL*, 233.

to the conditions of injustice. Derrida's attempt to conceptualize this new type of justice that maintains a "strange relation" (a relation of *true* exteriority, we might add) to everything that law usually stands for is a move that urges us to seek another perspective on the very concepts of lawfulness, regularity, rule and order. Recalling our earlier reference to a paraphrase of Marx, we might ask ourselves a question that seems to be guiding Derrida's discussion of the issues: does the law, in fact, make us unable to even imagine the possibility of *just* human interactions outside of the order of law?

Deconstruction, as some argue, lacks rules, norms and definitive criteria "to distinguish in an unequivocal manner between law and justice."[9] Any discussion of the distinction between justice and law is thus jeopardized precisely because of deconstruction's alleged lack of consistent manner of articulating *any* distinction. If deconstruction fails to contribute to our discussion of the difference between justice and law, it is because, one seems to imply, it is generally confused about *any* difference, it collapses all the differences due to its lack of established criteriology. Mark Lilla suggests as much in his critique of Derrida's politics when he writes that "neutralization of all standards of judgment" leaves legality and politics "open to the winds of force and caprice."[10] According to Lilla, Derrida's deconstruction annihilates responsibility

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[9] *FL*, 231. The amount of literature dedicated to introducing "deconstruction" is extensive. One might identify several important early studies: *Derrida and Deconstruction*, ed. Hugh J. Silverman (New York: Routledge, 1989); John Caputo, *Deconstruction in a Nutshell: A Conversation with Jacques Derrida* (Fordham University Press, 1996). See also some of the more recent introductions such as Barry Stocker, *Routledge Philosophy Guidebook to Derrida on Deconstruction* (Routledge, 2006); Penelope Deutscher, *How to Read Derrida* (New York: W.W.Norton, 2006) and Jason Powell, *Derrida: A Biography* (Continuum, 2006).
[10] Mark Lilla, *The Reckless Mind: Intellectuals in Politics* (New York: New York Review of Books, 2001), 174.

because it manages to introduce doubt and uncertainty into our fundamental discourses of morality and legality through its discussion of "aporetic justice."[11]

Derrida, of course, nowhere suggests that because we are confronted with the obvious conclusion that no legality is ever firmly founded, that somehow we undermine *any* attempts at grounding law and justice. The goal of Derrida's essay is to *question* the very nature of any adequate articulation of the difference between law and justice (the condition of its possibility, one might say) and the very necessity to establish the norm, to invent a criterion, to ground a judgment. Derrida then ultimately attempts to problematize the distinction between the *inside* ("rightful condition" that aims to eliminate all true exteriority) and the *outside* of the law ("justice beyond law" as a true exteriority, as lawlessness). However, even though Derrida muses about the justice-to-come and the possibility of another kind of societal arrangement, he is rightly criticized for a rather obscure vision of such a society: What would the world of the future justice beyond law look like? What sort of practical political advice can Derrida give to the present generation? It is in this sense, that Derrida indeed is still unable to think the possibility of genuine exteriority to the juridico-political order of the law and its corresponding concept of justice.

2. Mystical Foundation of Authority: Law, Justice and Force.

"Force of Law" opens with a seemingly insignificant discussion of Derrida's need to address the audience in English. "C'est pour moi un devoir, je dois m'adresser à vous

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[11] For additional critiques of deconstruction's inadequate political theory, see Russell Berman, "Troping to Pretoria: The Rise and Fall of Deconstruction," *Telos* 85 (1990), 4-16; Catherine Pickstock, "Postmodern Theology," Telos 110 (1998), 167-79 and Nancy Fraser, *Unruly Practices: Power, Discourse, and Gender in Contemporary Social Theory* (Minneapolis: University of Minnesota Press, 1989).

en anglais. This is for me a duty, I must address myself to you in English."[12] What kind of duty is this duty to address one's audience in their native language? Derrida proposes three basis formulations of this obligation. *First*, one must use the language of the audience because "one has made this for me a sort of obligation or condition [*une sorte d'obligation ou one condition imposée*] by a sort of symbolic force or law [*une sorte de force symbolique*] in a situation I do not control."[13] In other words, one is *forced* into this address, forced by *law*. *Second*, one must use the language of the audience because it is the language of the majority, thus it is more just, more appropriate or adequate [*juste*], to use the language that will be understood by the majority because it is this majority that sets the rules, "makes the law" [*faire la loi*]. *Third*, one must use the language of the audience because it is the norm of hospitality: "it is more just to speak the language of the majority, especially when, *through hospitality*, it *grants speech* to the stranger or foreigner."[14] This question of language and idiom/norm/rule is the guiding thread for Derrida's discussion of the relationship between law and justice.

To combine all of the three formulations of the above mentioned obligation, one might say: one is forced into an idiom of the majority by the symbolic force of the rule of the situation, the situation in which, through hospitality, one is granted the right to speak. The very granting of the right to speak, Derrida argues, already contains within itself a certain enforcement of the "rule of the land," the rule of those who grant the right. A host of seemingly familiar issues springs to our attention as we read these opening lines of the essay. These issues have to do less with the "juridico-ethico-political" sense of justice or

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[12] *FL*, 231.
[13] *FL*, 232.
[14] *FL*, 232.

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law and more with "traditional" Derridian concern with language and its operations, its rules, its law. What does it mean to be forced into an idiom of the majority? What kind of *force* is at work here in the very structure of the address? One can see then why Derrida poses the initial question of the discussion in a following way:

> How to distinguish between this force of the law [*loi*]… and the violence that one always judges unjust? What difference is there between, *on the one hand*, the force that can be just, or in any case judged legitimate (not only an instrument in the service of law [*droit*] but the practice and even the fulfillment, the essence of law [*droit*]), and, *on the other hand*, the violence that one always judges unjust?[15]

Thus already from the very start the relationship between law and justice is problematized by the issues of legitimate force and illegitimate violence. The triad is thus: *law*, *justice* and *force*. What kinds of relationships are established between these three terms? Since the colloquium was dedicated to the question of the possibility of justice, one might formulate one possible combination in the following way: Does the possibility of *justice* depend on the adequate relationship between the *law* and the *force* that is judged legitimate in its enforcement of the law?

In fact, we have *six* terms in this discussion of the possibility of justice. *Justice*, as Derrida points out throughout the essay, can be perceived either as designating a crypto-theological idea of universal divine Good or as simply referring to correctness or adequacy (*justess*). *Law* has a double meaning as well since it is a translation of both *droit* and *loi*. We thus have law as right [*droit*], and law as rule or regulation [*loi*]. *Force* doubles into force as (legitimate) enforcement and force as (illegitimate) violence. However, and this seems to be the point of Derrida's talk, as soon as the terms double – justice into divine justice and adequacy, law into right and rule, and force into

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[15] *FL*, 234.

enforcement and violence – they simultaneously cover over this very ambiguity of their constitution. In this sense, on one hand, we have a positivist discourse that refuses the grant the notion of justice any legitimacy outside of its immediate description of the positive law ("if it is legal, it is just"), refuses to grant "right" any other status than a configuration of legal statutes, and considers the state monopoly on force as entirely justified and above reproach or review.[16] Yet, on the other hand, we have a long history of thinking about justice as an irreducible transcendent criterion that cannot ever be made explicit in human legal order of any sort where law comes from the "outside" and force is as inexplicable and overwhelming as God's final appearance to Job.

Commenting on the English expression "to enforce the law," Derrida notes that "if justice is not necessarily law or the law [*le droit ou la loi*], it cannot become justice legitimately or *de jure* [*de droit ou en droit*] except by holding force or rather by appealing to force from its first moment, from its first word. At the beginning of justice there will have been logos, speech or language [*le langage ou la langue*], but this is not necessarily in contradiction with another incipit, which would say, 'In the beginning there will have been force.'"[17] Derrida has already pointed out on multiple occasions the complicity between *logos* and *force*. For example, in "Violence and Metaphysics" he describes this complicity in terms of "the ancient clandestine friendship between light and power, the ancient complicity between theoretical objectivity [*logos*] and technico-

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[16] Cf. H.L.A. Hart, *The Concept of Law*, second ed., eds. P. Bulloch and J. Raz (Oxford: Clarendon Press, 1994). For a critique of Hart's position see Ronald Dworkin, *Law's Empire* (Cambridge: Harvard University Press, 1986). For a succinct description of "legal positivism," see Jules L. Coleman and Brian Leiter, "Legal Positivism," in *A Companion to Philosophy of Law and Legal Theory*, ed. Dennis Patterson (Oxford: Blackwell, 1999), 241-260. For a critique of "legal positivism," among many other excellent resources, John Finnis, "On the Incoherence of Legal Positivism," in *Philosophy of Law and Legal Theory: An Anthology*, ed. Dennis Michael Patterson (Oxford: Blackwell, 2003), 134-43.
[17] *FL*, 238.

political possession."[18] How is this complicity to be approached in terms of the relationship between law and justice? Derrida cites Pascal's formulation of such relationship in terms of force/power:

> La justice sans la force est impuissante [Justice without force is powerless – in other words, justice is not justice, it is not achieved if it does not have the force to be 'enforced'; a powerless justice is not justice, in the sense of law – J.D.]; la force sans la justice est tyrannique. La justice sans force est contredite, parce qu'il y a toujours des méchants; la force sans la justice est accusée. Il faut donc mettre ensemble la justice et la force; et pour cela faire que ce qui est juste soit fort, ou que ce qui est fort soit juste [force without justice is tyrannical. Justice without force is gainsaid, because there are always offenders; force without justice is condemned. It is necessary then to combine justice and force; and for this end make what is just strong, or what is strong just].[19]

This is, according to Derrida, a dominant context and the conventional interpretation of the relationship between law [*droit*] and justice modeled on the relationship between *logos* and *force*, even if, in the case of Pascal, this dominant tradition goes in a direction of "pessimistic, relativistic and empiricist skepticism" of equating power/force with justice: we are unable to make what is just strong, so we have made what is strong just.[20] Derrida's analysis, according to his own presentation, will run counter to this tradition.

Pascal refers back to Montaigne who suggested that "laws [*lois*] are not in themselves just but are rather just only because they are laws." This is what Montaigne calls "mystical foundation of authority" [*fondement mystique de l'autorité*].[21] Derrida will address this issue at length in his discussion of Benjamin. However, it is clear that Pascal, despite a certain cynicism, pointed out "the premises of a *modern* critical philosophy, even a critique of juridical ideology, a desedimentation of the superstructures

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[18] Jacques Derrida, *Writing and Difference*, trans. Alan Bass (Chicago: University of Chicago, 1978), 91.
[19] *FL*, 238. Cited from Blaise Pascal, *Pensées et opuscules*, ed. Léon Brunschvicg (Paris: Hachette, 1961), frag. 298, 470.
[20] *FL*, 239.
[21] *FL*, 239.

of law that both hide and reflect the economic and political interests of the dominant forces of society."[22] Justice is thus law enforced, law judged legitimate by an authoritative source. Justice is law as the idiom of the majority, law as the rule of majority. Justice, interpreted this way, is a predicate of law [*droit*] and the laws [*lois*]. Laws, however, depend on the force of the constituting *authority*, on the force of "enforced law." Pascal's position, argues Derrida, is not a simple proposition that law is in the service of force/authority, but that law maintains "a more internal, more complex relation to what one calls force, power or violence [*la force, le pouvoir ou la violence*]."[23]

Justice as law [*droit*], i.e., justice considered a predicate of lawfulness, is never simply put "in the service of a social force or power, for example an economic, political, ideological power that would exist outside or before it and that it would have to accommodate or bend to when useful. Its very moment of foundation or institution, besides, is never a moment inscribed in the homogeneous fabric of a story or history [*le tissue homogène d'une histoire*], since it rips it apart with one *decision*."[24] This notion of decision should not be misread as Derrida's insistence on a kind of decisionism that he, for example, criticized in his discussion of the work of Carl Schmitt.[25] William W. Sokoloff argues that collapsing Derrida's discussion of decision and Schmitt's decisionism is far from fair, as Derrida's take on the notion of decision has "more in

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[22] *FL*, 241.

[23] *FL*, 241.

[24] *FL*, 241. Emphasis added.

[25] Cf. Jacques Derrida, *Politics of Friendship*, trans. George Collins (London: Verso, 1997), 83-171.

common with Kant including the affirmation of respect, the centrality of freedom, an imperative form for justice, and the distinction between right and justice."[26]

Derrida is distinguishing between justice as a predicate of law [*loi* and *droit*] that, according to both Pascal and Montaigne, is perceived to be in the service of power, and justice beyond law, justice (not yet or no longer) connected to law that is yet to be sufficiently described and understood. Justice as a predicate of law is that which is legitimized by the power/authority/force, i.e. that which is established as legal, is *judged to be just*. Therefore, the source of pessimism is the rule of "might makes right." However, because justice as a predicate of law is never simply and directly in the service of power, the "might makes right" formula is philosophically naïve and simplistic. In "Force of Law" justice is established through an operation that, Derrida claims, consists of "a *coup de force*, of a performative and therefore interpretative violence that in itself is neither just nor unjust."[27] This statement contains, one might argue, the crux of Derrida's essay on the relationship between "deconstruction and the possibility of justice." It is interesting to notice that Derrida has used a similar expression to describe what he judged to be a paradoxical situation of the founding of the Unites States in "Declarations of Independence":

> The 'we' of the declaration speaks 'in the name of the people'. But this people do not yet exist. They do *not* exist as an entity, it does *not* exist, *before* this declaration, not *as such*. If it gives birth to itself, as free and independent subject, as possible signer [of the declaration], this can hold only in the act of the signature. The signature invents the signer… It is still 'in the name of' that the 'good people' of America call *themselves* and declare *themselves* independent, at the instant in which they invent for themselves a signing authority. They sign in the name of the laws of nature and in the name of God. They *pose* or *posit* their

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[26] William W. Sokoloff, "Between Justice and Legality: Derrida on Decision," *Political Research Quarterly*, 58:2 (June 2005), 344n14 [341-352].
[27] *FL*, 241.

institutional laws on the foundation of natural laws and by the same coup (the interpretive coup of force) in the name of God, creator of nature.[28]

What is this interpretive *coup de force* that allows the law to be established as if *ex nihilo*? If there is no legitimate authority that can authorize the law [*droit*], as in the American "Declaration of Independence", that produces not only a new nation or a new people but a new law, then how does the state of law, championed by Kant, come into existence? Clearly, according to *both* Kant and Derrida, it comes into existence through a *decision* to establish the state of law. However, this very decision is clouded with a mysterious mist of notions that do not allow us to see clearly *who* decides and concerning *what* one decides in this decision to leave one state and to enter another state. If law appears as a result of this decision to leave nature, as Kant argues, then how is it possible to enter a rightful condition, except by creating one in this very decision to enter? Kant's solution to this problem was to ground lawfulness in the very structure of reason: humanity in the state of nature does have an idea of law and right, but only provisionally, therefore its decision to enter into an agreement and thus establish a more permanent condition of right is based on their rational nature. And yet, as we have already pointed out, if humanity's decision is based on a preexisting notion of reason, then it is not an absolutely *free* decision as it simply follows the necessary logic of the obligation to enter into a rightful condition. The problem for Derrida here is that he does not presuppose any existing rational structures that would allow us to somehow already have that which we are attempting to create in a decision. Therefore if we are, in fact, creating the new

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[28] Jacques Derrida, "Declarations of Independence," trans. T. Keenan and T. Pepper, *New Political Science* 15 (Summer 1986), 10, 11.

law out of nothing (*ex nihilo*), this nothing does not disappear once the new law is in force; this nothing, using Derrida's vocabulary, *haunts* the very order of law.

The very difficulty of properly formulating the problem that faces us here is what Derrida's analysis draws to our attention and provokes us to consider seriously. In "Force of Law," Derrida labels this "interpretive coup de force" a *discourse at its limit*. The discourse of law, of the state of law, exhibits its limit in its very performative power to *authorize itself*. It is precisely this that Derrida proposes to call the "mystical foundation of authority."[29] Properly speaking, we cannot say anything about this mystical moment of self-authorization. "There is here a *silence* walled up in the violence of the founding act; walled up, walled in because this silence is not exterior to language."[30] The question of violence reappears here yet again. The issue of (legitimate) force/power that Derrida discussed in the previous sections of "Force of Law," becomes the issue of (illegitimate) violence. "Since the origin of authority, the founding or grounding, the positing of the law [*loi*] cannot by definition rest on anything but themselves, they are themselves a violence without ground."[31] Therefore, law is deconstructible because "its ultimate foundation is by definition unfounded."[32] This deconstructible structure of law "also ensures the possibility of deconstruction. Justice in itself, if such a thing exists, outside or beyond law, is not deconstructible. No more than deconstruction itself, if such a thing exists. *Deconstruction is justice*."[33]

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[29] *FL*, 242.
[30] *FL*, 242. Emphasis added.
[31] *FL*, 242.
[32] *FL*, 242.
[33] *FL*, 243.

4. Between Law and Justice: "Deconstruction Is Justice."

"Deconstruction is justice" – to understand this expression in the context of "Force of Law" and thus to avoid using it as a catchy Derridian cliché, we must, as we attempted so far, place it in the context of the discussion of the *difference* between law and justice. It is also important to keep in mind that Derrida's very purpose in this essay is to show that deconstruction is not some useful philosophical methodology that can be *applied* to legal studies. It is, in fact, legal studies in general and Critical Legal Studies in particular that are exposed as methodologies that are always already aware of deconstruction, participate in deconstruction, even if without clear understanding of how deconstruction works. It is so because "exercise of deconstruction… always proceeds *to* questions of law and to the subject of law."[34] If one understands "law" here as not being limited to legality but as a rule, regulation, norm, then Derrida's observation on the interconnection between deconstruction and rule/regulation/norm is not very surprising. Since law, rule, norm are by definition constructible, it is nothing new or particularly controversial to suggest that this very constructability makes deconstruction possible. What is new is Derrida's insistence on the existence of justice that is *undeconstructible*.

The constructible law and undeconstructible justice *both* make deconstruction possible. That is, deconstruction is a result of the interplay between law and justice. "Deconstruction *takes place in the interval* that separates the undeconstructibility of justice from the deconstructibility of law."[35] What is this interval between undeconstructibility (of justice) and deconstructibility (of law)? Derrida writes: "Deconstruction is possible as an experience of the impossible, there where, even if it

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[34] *FL*, 243.
[35] *FL*, 243.

does not exist, if it is not *present*, not yet or never, *there is* justice [*il y a la justice*]."[36] Thus Derrida interprets the subtitle of the conference ("Deconstruction and the possibility of justice") as suggesting the following: "justice as the possibility of deconstruction, the structure of right or of the law, the founding or the self-authorizing of law as the possibility of the exercise of deconstruction."[37]

For Derrida the question of justice is closely connected not to the issues of some legal system, but to the structure, or more precisely, to the self-authorization of the law. Justice, as part of "deconstruction is justice," is then not a predicate of law. To speak of "just" or "unjust" law is confusing, we only need to retain such predicates as "legitimate" or "illegitimate." This could be read as Derrida's very short answer to legal positivism. Justice without connection to law plays a significant role in that self-authorization of law that Derrida already labeled *mystical* and *violent*. He repeats his characterization of the problem as *mystical* a couple of paragraphs later (while peculiarly avoiding discussing violence), and combines this predicate with the reformulated reference to experience, this time it is "the very experience of the *aporia* that is not unrelated to what we just called the mystical."[38]

> Law is not justice. Law is the element of calculation, and it is just that there be law, but justice is incalculable, it demands that one calculate with the incalculable; and aporetic experiences are the experiences, as improbable as they are necessary, of justice, that is to say of moments in which the *decision* between just and unjust is never insured by a rule.[39]

Justice that manifests itself as a *law*, as a *rule*, as a *regulation*, is calculable precisely because such is the structure of rule and regulated behavior. Justice as such, however, as

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[36] *FL*, 243. Original italics.
[37] *FL*, 243.
[38] *FL*, 244.
[39] *FL*, 244.

that which makes the experience of the rule, the experience of the passage (from rule to behavior and back, i.e. of regulation) possible, is beyond, or before, calculation, or regulation. If justice cannot be calculated or regulated, but itself makes calculation or regulation possible, then how can one speak, with Kant and Derrida, of *self*-authorization of the law? If regulation is made possible (is made calculable) by something outside of it, then it does not authorize itself. Yet this is precisely the paradoxical formulation that Derrida repeats over and over again in a great variety of scenarios to a point of using it as a sort of trope even in his multiple interviews.[40]

5. The Imperative of Justice.

So far Derrida has used "decision" and "address" as ways of shedding light on the complex notion of "justice." If, in both cases, one is *forced* to address and one is *forced* to decide, then does that suggest one is also *forced* to be just? And if it is possible to speak of being forced to be just, then *who or what* is forcing one to be just? In other words, Derrida asks: "How to reconcile *the act of justice* that must always concern singularity… with rule, norm, value, or *the imperative of justice* that necessarily has a general form, even if this generality prescribes a singular application in each case?"[41] The act of justice is always singular and thus unique, irreplaceable, inexplicable in terms

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[40] Cf. 1989 interview with Jean-Luc Nancy Derrida says: "…if I speak so often of the incalculable and the undecideable it's not out of a simple predilection for play nor in order to neutralize decision: on the contrary, I believe there is no responsibility, no ethico-political decision, that must not pass through the proofs of the incalculable or the undecideable. Otherwise everything would be reducible to calculation, program, causality, and, at best, 'hypothetical imperative'." Jacques Derrida, "'Eating Well', or the Calculation of the Subject," in *Points… Interviews, 1974-1994*, ed. Elizabeth Weber (Stanford: Stanford University Press, 1995), 273.
[41] *FL*, 245.

of law or rule. For Derrida that means that one is never able to say "I know that I am just… Such confidence is essentially impossible."[42]

If justice, on the one hand, is concerned with singularity and thus *only* appears in singular cases and does not have any rule, then any *theory* of justice is out of the question. There is no rule to justice, no rigor, no possibility of predicting or even applying certain principles and thus producing a "just act" or "just ruling." On the other hand, however, the imperative of justice, "just *call* for justice,"[43] necessarily concerns a kind of generality that, even if one would hesitate to call it "universality," deals with *more than one* case of law. If justice is concerned with "the other or myself *as* other," then law, by implication, is concerned with the *same*, with identity, with the possibility of repetition (iterability).[44]

Derrida returns to his example of being forced to speak in the "language of the other" in order to explain how any attempt to speak of "just law" is impossible precisely because to be just to the other in speaking her language is to "appropriate it [language] and assimilate it according to the law [*loi*, rule, norm] of an implicit third."[45] This appeal to the third party strips the act of justice of its singularity, or more precisely, the third party insists on *some* regularity in the application of the principles of justice and thus on the possibility of some positive criterion for identification of justice (*criteriology* of justice).

What are the implications of Derrida's constitution of the space (of difference) between law and justice? In his own words, "deconstruction would not at all correspond

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[42] *FL*, 245.
[43] *FL*, 244.
[44] *FL*, 245.
[45] *FL*, 245.

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to a quasi-nihilistic abdication before the ethico-politico-juridical question of justice and before the opposition between just and unjust, but to a *double movement*."[46] The two moments of this movement of deconstruction are the two moments of the movement of justice, because, as Derrida already suggested, "deconstruction is justice" and also because we "know nothing more just that what [we] call today deconstruction."[47] On the one hand, Derrida claims, deconstruction deals with the "task of recalling the history, the origin and the sense [*sens*], thus the limits of concepts," in our case it is concepts of justice, law [*loi*] and right [*droit*].[48] On the other hand, deconstruction also deals with "apparently ahistorical" logico-formal paradoxes.[49]

Derrida explicitly interprets the movement of deconstruction here in terms of the two poles between which the movement of deconstruction takes place: law and justice. More precisely, deconstruction "finds its privileged site, or rather, its privileged instability" in the *space of difference between law and justice*.[50] It is this space, this site that interests us immensely, not only because "deconstruction always find itself and moves itself between these two poles," but also because we hope to show that this peculiar difference (both as a gap and an interval) is essential for our understanding of the economy of religious violence. [51]

> Everything would still be simple if this distinction between justice and law were a *true distinction*, an opposition the functioning of which was logically regulated and masterable. But it turns out that law claims to exercise itself in the name of justice and justice demands for itself that it be established in the name of a law that must be put to work (constituted and applied) by force 'enforced'.[52]

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[46] *FL*, 247. Emphasis added.
[47] *FL*, 243, 249.
[48] *FL*, 247.
[49] *FL*, 250.
[50] *FL*, 249-50.
[51] *FL*, 251.
[52] *FL*, 250-51. Emphasis added.

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If justice is of the order of incalculable, excessive, and limitless, and law is of the order of calculable, limited and masterable, then deconstruction is justice in a sense of being neither one nor the other, but a movement between the two, a movement that is made possible by the *discrepancy* between the demands of justice and actualities of law. Justice is infinite, incalculable, rebellious to the rule, asymmetric, heterogenic, heterotropic, limitless. Law represents legitimacy, legality, a stabilizable, statutory and calculable apparatus, a system of regulated and coded prescription.[53] The appearance of violence has already disturbed the fragile balance of the relationship of law and justice, and Derrida pushes the matter even further by suggesting that the gap between law and justice is impossible to bridge, unless we are ready to destroy the very institution of law in the name of justice. The peculiar discrepancy between law and justice conceals a monstrous potency for destruction, the same potency that frightens Kant and is evident in his description of the ultimate "unforgivable sin" of revolution. If Kant's ultimate task is to foreclose any possibility of ever directly encountering the real difference between law and justice, Derrida seems eager to emphasize this difference explicitly and often, yet even this fearless deconstructor will shy away from some of the implications of his own analyses when the matter of religion and violence make their inevitable appearance.

Derrida's essay ends with three examples of the *aporetic movement of justice*. These are precisely examples that are meant both to summarize previous discussion and set a stage for any future engagement of this topic. The *first* example of the aporia deals with the paradox of any *just* decision: if one simply follows the legal rule, one's action can only be legal or legitimate but never just, because justice implies a suspension of

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[53] *FL*, 250.

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legality and yet law operates on the assumption that it is exercised in the name of justice. In this example, the movement of justice is precisely the *constitution* of the space of difference between justice and law: despite the fact that law claims to operate "in the name" of justice and justice finds its association with lawfulness to be most "natural," the destabilizing movement of justice prevents this "logically functioning and masterable" distinction from appearing, or rather, from stabilizing into an opposition. Just decision, in fact, any decision, Derrida argues, create a unique movement that both unities and disrupts the calculable and the incalculable.

The *second* example of the aporia of justice continues the discussion of the structure of decision: "no justice is exercised, no justice is rendered, no justice becomes effective nor does it determine itself in the form of law, without a decision that cuts and divides."[54] However, the decision is never final, i.e. it is never *really* made. One decides to make a judgment, to find a suitable rule or law and apply it to the singular case under consideration, but, if we read Derrida carefully, such decision never proceeds by the way of calculation; there is always a remainder, an excess, that is, that which cannot be decided, the *undecidable*. This undecidable haunts every decision, especially a just decision: "the test and ordeal of the undecidable, of which I have just said it must be gone through by any decision worthy of this name, is never past or passed, it is not a surmounted or sublated moment in the decision. The undecidable remains caught, lodged, *as a ghost at least*, but an essential ghost, in every decision, in every event of decision."[55] What is most important about this ghostliness is that it eliminates all "assurance of presence, all certainty or all alleged criteriology assuring us of the justice

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[54] *FL*, 252.
[55] *FL*, 253. Emphasis added.

of a decision, in truth of the very event of a decision."[56] Thus if rule or law are of the

order of calculable and have a certain criteriology, a certain logic and reason to their

application, then justice is "a madness, and perhaps *another* kind of mysticism."[57] Justice

is madness here represents that which is not ultimately based on reason (like law, as Kant

argues). It is unreason, *unlaw*, if we are to invent a term to designate this aspect of

Derrida's discussion.

The imperative of justice is categorical and cannot be rejected or delayed. If,

however, a decision is never made, if it is continually being delayed, then is this

suspension itself, as a lack of a just decision, the greatest injustice? Indeed it is, argues

Derrida, because the *third* example of the aporia of justice is precisely this problem:

"…justice, however unrepresentable it remains, does not wait. It is that which must not

wait. To be direct, simple and brief, let us say this: a just decision is always required

immediately, right away, as quickly as possible."[58] Decision, as Derrida continuously

emphasizes throughout the essay, is not of the order of calculable and theoretical, it

cannot come as a result of theoretical calculation, as the consequence or the effect of

deliberation, since "decision always marks the interruption of… deliberation that

precedes it, that *must* precede it."[59]

6. Messianic Time of Justice and Religious Violence.

The mentioned examples of the aporia of justice lead Derrida to some general

conclusions about his project as dealing with a larger transformation of the legal and the

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[56] *FL*, 253.
[57] *FL*, 254. Emphasis added.
[58] *FL*, 255.
[59] *FL*, 255.

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political situation. Justice is described as a "to-come" [*à-venir*], as that which has not lost the openness to the coming of the other:

> Justice remains *to come*, it remains *by coming* [*la justice reste à venir*], it *has to* come [*elle a à venir*] it *is* to-come, the to-come [*elle est à-venir*], it deploys the very dimensions of events irreducibly to come. It will always have it, this à-venir, and will always have had it. *Perhaps* this is why justice, insofar as it is not only a juridical or political concept, opens up to the *avenir* the transformation, the recasting or refounding [*le refondation*] of law and politics.[60]

No matter how mysterious and alluring all this talk of "undecideable" and "incalculable" is, we still need to make a decision, a decision about a particular situation while, at the same time, grounding our decision in some universal legal framework, some "rightful condition." In other words, it is essential to ask, at this point, the following question: Considering all the talk of "justice to come" and its aporetic structure, how do we speak of justice and pursue justice *today*? Derrida's understanding of justice is self-professedly bound with his understanding of a peculiar temporality of decision, a temporality he often refers to as "messianic." This notion of messianic is superbly discussed in the works of John D. Caputo, especially his study of Derrida's "religion without religion."[61]

Caputo argues that Derrida's discussion of justice is "deeply resonant with the prophetic notion of justice, of being faithful to the coming of justice, making justice happen, now, for justice, which is to come, cannot wait."[62] If Derrida takes justice to be a sort of prophetic (transcendent) justice, than, writes Caputo, his understanding of the temporality of justice is clearly that it is a *messianic* time, because "the time to come is the time of the justice to come, that disturbs the present with the call for justice, which

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[60] *FL*, 256-57. All italics are original.
[61] John Caputo, *The Prayers and Tears of Jacques Derrida: Religion Without Religion* (Bloomington: Indiana University Press, 1997).
[62] Caputo, *Prayers and Tears*, 81. Cf. Maurice Blanchot, *The Writing of the Disaster*, trans. Ann Smock (Lincoln: University of Nebraska Press, 1986).

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calls the present beyond (*au-delà*) itself."[63] The greatest injustice in this case would be to close off any possibility of this justice to come in positivist identification between legality and justice. Derrida's understanding of justice prophetically preaches a kind of openness that never allows for an ultimate closure, as it points toward the outside of all human mastery and control, i.e. "beyond present" which in Derrida's terms is always beyond self-identical presence. Caputo labels this peculiar idea of justice that never comes but only promises a final realization of itself in the infinitely approaching future, "an apocalypse sans apocalypse."[64]

Derrida carefully distinguishes between the determinate *content* of particular messianisms and the messianicity itself as a *form* of the promise. Despite Derrida's own hesitation to think of his "idea of justice" in terms of Kant's "regulative ideas," it is not difficult to see the similarities between the two, while avoiding complete assimilation.[65] In a book written immediately after "Force of Law" – *Specters of Marx* [66]– Derrida pays a very close attention to the themes of messianic time in Marx and shows that

> [T]he messianic appeal belongs properly to a universal structure, to that irreducible movement of the historical opening to the future, therefore to experience itself and to its language (expectation, promise, commitment to the event of what is coming, imminence, urgency, demand for salvation and for justice beyond law, pledge given to the other inasmuch as he or she is not present, presently present or living and so forth).[67]

The messianic, for Derrida, designates a "structure of experience," a *form*, not a particular set of religious beliefs, a structure of experience that exposes any attempt at

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[63] Caputo, *Prayers and Tears*, 81.
[64] Cf. Caputo, *Prayers and Tears*, 88-101.
[65] Cf. *FL*, 254: "I would hesitate to assimilate too quickly this 'idea of justice' to a regulative idea in the Kantian sense…"
[66] Jacques Derrida, *Specters of Marx*, trans. Peggy Kamuf (London: Routledge, 1994).
[67] Derrida, *Specters of Marx*,167.

setting down the law to the dangers of the future apocalyptic destruction and annihilation: "The messianic, including its revolutionary forms (and the messianic is always revolutionary, *it has to be*), would be urgency, imminence but, irreducible paradox, a waiting without horizon of expectation."[68] This idea of messianic time or messianic temporality being an essential part of our experience, of our day-to-day lives, is illustrated in Derrida through a metaphor of a "disjointed or dis-adjusted time."[69] This *disjointed* time is the time that is never securely and orderly closed off from cataclysmic changes. It is the opposite of the time of "metaphysics of presence" that requires that human experience is regimented according to a strict set of rules, norms, laws.[70]

Justice in this sense is always in a double danger: on the one hand, it is in danger of being neutralized and identified with legality, on the other hand, it is in danger of being a motivation for change, for going beyond the present, for violence "in the name of justice" that refuses to take some perceived injustice as the final state of affairs. If our discussion of Kant could help us avoid the first danger, our discussion of Derrida, however, does not guarantee that we are able to completely *pacify* the dangerous violence "in the name of justice." In fact, if we take a rather forceful interpretation of Derrida's discussion of this messianic temporality, and claim with Caputo that "the movement of justice is a movement beyond the hinges and fixed junctures of the law," then our discussion of the relationship between religion and violence is provisionally located in this very movement beyond the law.[71]

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[68] Derrida, *Specters of Marx*, 168. Emphasis added.
[69] Derrida, *Specters of Marx*, 170. Cf. especially Chapter 1, 3-48.
[70] Cf. Caputo, *Prayers and Tears*, section "Messianic Time Is Out of Joint," 122-25.
[71] Caputo, *Prayers and Tears*, 123.

Caputo argues, summarizing a great deal of Derrida's texts and weaving an intricate and complex web of arguments that we cannot reproduce here, that "religion as a universal messianicity despoiled of all messianism, as a faith without dogma advancing in the risk of absolute night, is the foundation of the law, the law of the law, the origin of institution and constitution, the performative event which does not belong to the whole that it founds or inaugurates, which Derrida elsewhere called the 'mystical force' of law."[72] Derrida argues for a *messianic dimension* of any pursuit of justice, a pursuit that, by definition, is not constrained by legal limitations of this or that system. This pursuit of justice in the face of perceived injustices that are not addressed by the legal system (because they as such *cannot* be addressed) often motivates those who commit acts of violence in the name of religion.

It might be useful here to approach the question of "religious violence" in the following still provisional way: Is religious violence a particular reaction to some perceived injustice? Is it possible to isolate a specific aspect of this complex idea and question it vis-à-vis its reaction to the perceived injustices of the secular age? In a sense, as we pointed out before, the ideas of apocalyptic finitude of human history are not unique to Abrahamic monotheisms that, to one degree or another, contain messianic elements that emphasize the possibility of divine intervention and final realization of the world's potential. If messianicity is a religious dimension of contemporary experience, if the call for ultimate justice is still very strong both among religious communities and secular political communities, then is it possible to locate religious violence among the various forms of violence in the name of justice, and justice to come? Let us once again

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[72] Caputo, *Prayers and Tears*, 155.

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return to our example of conscientious tax evaders who refuse to pay taxes that, they argue, support a war they believe is not necessary or justified. This decision to evade taxation, although not usually considered an act of violence, is a *violation* of law, i.e. the members of the group can be arrested and tried in court for tax evasion. However, even if the legality of the case is not directly affected by moral or political motivations, it is hardly a desirable feature of any civil society to proclaim them absolutely irrelevant. The issue at hand seems to be firmly lodged between issues of morality and issues of legality. In this sense, it is an impossible task for any legal system to attempt to bridge this gap, to articulate the difference between morality and legality without a supplement of issues that are neither moral nor legal, or, more dangerously, are both.

Let us imagine now another group of conscientious tax evaders that is, in fact, a *religious* group that believes in the sanctity of life and refuses to pay taxes because, it argues, they go to support various practices that contradict the views of this pro-life group. Although formally there is little difference between pacifism of the first group and the pro-life motivations of the second, our examples being purely hypothetical, there is a sense in which we regularly group the first among the secular (even if radical) groups and the second among the religious (even if extremist) groups.

Before we take a closer look at the issues of violence in the next chapter, let us briefly present a view of religious violence that, informed by our analysis of both Kant and Derrida, can be conceived not in terms of particular beliefs or positions, but in terms of a complex *motivational matrix* that produces violent acts, a matrix imbued with a peculiar sense of the ultimate deconstructibility of human juridico-political structures. If we note, with Derrida, that any attempt to bridge the gap between law and justice cannot

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succeed due to the incommensurability of the calculable (executable) nature of law and the incalculable nature of justice, then we can approach the problem of religious violence from a new point of view, the point of view of a particular struggle in the name of justice, conceived as that which is always beyond the (human) law.

However, is such approach to the issue of religious violence not an implicit and rather disingenuous attempt to defend certain instances of violence when the clear political (and cultural) agenda of modernity is concerned precisely with complete elimination of all violence and conflict? How does this proposed *initial* conceptualization of the notion of religious violence keep us from ultimately endorsing violence in a pursuit of justice? This issue is quite serious, in fact, as we will see in Derrida's discussion of Benjamin's critique of violence in the next chapter, it is the issue that gave Derrida pause in his somewhat enthusiastic endorsements of messianic as disruption and un-gathering.[73] The short answer to the above objections is the following: dismissing all violence out of hand as undesirable and therefore philosophically suspect is a move that prevents us from understanding not only what violence is and how it functions (which is a project much larger than the present study), but also how to deal with its more extreme and destructive expressions. In other words, we cannot adopt a stance against all violence before we attempt to understand where it might be coming from and what motivates its continuous development. Let us pose another question: What is it that often makes passionate pursuit of the cause of justice so violent, even if this violence is not directly physical (but only expresses itself in so-called "non-violent" forms)? If we reject violence without any careful consideration of its nature, its causes,

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[73] For Derrida's analysis of justice as *Un-fug* (dis-jointure) in his reading of Heidegger's analysis of justice as *Fug* (dike), see *Specters of Marx*, 23-28.

and its consequences, then we are foreclosing the possibility that even such practices as personal devotion to the cause, societal movements in the name of human rights, equality, and tolerance, and other larger reform movements aimed at radically changing the status quo are indeed often *violent but just*. If all violence is necessarily rejected as suspect, then we are forever foreclosing a possibility of finding out whether it has any emancipatory potential.

Since we have reached this relevant midpoint of our study and have already conducted some theoretical analyses of a number of philosophical notions essential for a better understanding of the problem of religious violence, this could be a good point to restate our main hypothesis: religious violence is best conceptualized as a particular example of articulation of the space of difference between law and justice. If Kant's discussion of law and justice have taught us that even the most rational and secular versions of contemporary theories of morality and legality are not without their peculiar difficulties, then Derrida's emphasis on both positive and negative aspects of any articulation of the space of difference between law and justice has shown us the precise way to approach these difficulties: we must take seriously the always present danger that a discrepancy between law and justice (the space of their difference) would explode in a violent outburst aimed as correcting the injustices perpetrated in the name of law and under its close supervision. To put it differently, the present chapter presented Derrida's case that the relationship between law and justice is always already problematized by violence (and its various incarnations such as coercion, force, power, and so on). In fact, both law and justice are contaminated with the possibility of violence, as we will see in the next chapter of this study. However, if Kant's presentation of the matter of our duty

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to enter a rightful condition and to remain in it is correct and is adequate, and if Derrida's insistence that messianicity as a peculiar characteristic of our experience of justice is to be taken seriously, then taking the discussion of religious violence out of the usual contexts (discussed in the first chapter of this essay) and placing it in the midst of the issues of law and justice seems not only appropriate but necessary.

Derrida's articulation of the imperative of justice and his presentation of the imperative's inherent forcefulness also revealed to us the need to avoid two extremes in our analysis of the space of difference between law and justice: on the one hand, we cannot advocate for a simple divorcing of justice from law because, as Kant points out, such a split would ultimately lead to the dissolution of any rightful condition by returning the decision concerning justice or injustice to private individuals, stripping the sovereign of all the authority. On the other hand, we cannot advocate for a complete and final bridging of the gap between law and justice as it will inevitably lead, as Derrida insists, to the same destruction of the very institution of law. If we are take a hint from Derrida, we are to correct our initial proposal that religious violence is violence in the name of justice by reminding ourselves that, in a manner similar to Kant's critical turn, Derrida forbids any objective and universal knowledge of what constitutes justice, as such. That is to say, if religious violence is violence in the name of justice, then it is also violence that aims to correct only a *perceived* injustice, as it is not legitimately able to make a valid claim to know what is and is not just, although it constantly *does* make such claims. The paradoxical nature of religious violence that often puzzles scholars ("why do such moral people commit such immoral acts?") can be reassessed here in a following formulation: violence in the name of justice, motivated and driven by its pursuit of better societal

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arrangement and tighter social bond, is often judged to have done so through what is perceived to be acts of utterly unjust violence. One might note that the worse the perceived injustice that is being confronted in the act of religious struggle, the more likely we are to see more extreme outbursts of violence that seem to clash with the very notion of justice in the name of which they are committed. The destructive and ultimately unmanageable character of this violence cannot be properly understood without a closer look at the inner dynamics of the relationship between ideas of justice and violence to which we are now turning our attention.

IV

Justice and Violence.

In the second part of "Force of Law" Derrida proposes a reading of Walter Benjamin's essay "Zur Kritik der Gewalt" ("Critique of Violence").[1] This paper was read at the opening of the colloquium "Nazism and the 'Final Solution': Probing the Limits of Representation" held at the University of California-Los Angeles in 1990. Derrida's inclusion of this talk within the discussion of the Holocaust is later explained as a contribution to the critique of representation that he now launches from a different, yet familiar, perspective of the complicity between law, force, and language. At first look, the theme of the difference between law and justice is somewhat less prevalent in this part of the essay. However, Derrida makes some important observations that, compared with those in the first part of the essay, shed some light of the problem of justice, violence, and religion. These observations should be considered not in terms of their interpretative value for our understanding of Benjamin's essay, but in terms of furthering the conceptualization of the difference between law and justice pursued in this essay and the effect that this conceptualization produces in terms of our interest in the notion of religious violence.

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[1] Walter Benjamin, "Critique of Violence," in *Reflections: Essays, Aphorisms, Autobiographical Writings*, ed. Peter Demetz (New York: Schocken, 1986), 277-300. Further cited as "Critique of Violence."

1. Derrida on Benjamin's *Critique of Violence.*

Benjamin's essay, Derrida argues, is "haunted in advance by the theme of radical destruction, extermination, total annihilation, and first of all the annihilation of the law, if not of justice."[2] Although most of the discussion will be dedicated to Benjamin's peculiar distinction between law-establishing and law-preserving violence, Derrida clearly proceeds with a single goal in mind: to show that Benjamin's political philosophy and its critique of violence/authority/force [*Gewalt*] "puts to work an interpretation of language – of the origin and the experience of language – according to which evil, that is to say lethal power, comes to language by way of, precisely, *representation*, that is to say, by that dimension of language that is *re-presentative, mediating, thus technological, utilitarian, semiotic, informational…*"[3] This critique of representation, although a known Derridean preoccupation, acquires new strength precisely due to Derrida's more forceful explication of the complicity between violence and signification. This time we are directly confronted with political and juridical violence and their connection to the various regimes of representation.

Derrida's essay on Benjamin's "Critique of Violence" consists of two main parts: one is a commentary on the essay itself; another is a preface and a postscript added later to the already finished essay. The importance of this structure consists in the fact that Derrida's reading of Benjamin can be shown to differ in the earlier and later layers of the

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[2] *FL*, 258
[3] *FL*, 259.

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work.[4] This difference has to do with the way Derrida perceives some of the implications of Benjamin's discussion of "divine violence," especially vis-à-vis the theme of the Holocaust. Namely, it reveals Derrida's hesitation to embrace his own interpretation of Benjamin, considered in light of his overall project of the critique of representation.

The main thread of Derrida's reading of Benjamin deals with the latter's insistence that any critique of violence, in order to be successful, needs to accept the basic theoretical distinction between "law-establishing" (*die rechtsetzende Gewalt*) and "law-preserving" (*die rechtserhaltende Gewalt*) violence. Benjamin argues that the problem of violence is ultimately connected to the problem of law and legality, as such, or rather that the problem of violence is inseparable from the problem of law and its binding force. The proposed distinction cannot stand, Derrida's deconstructive reading reveals, because "having begun by distinguishing between two sorts of violence, founding violence and preserving violence, Benjamin must concede at one moment that the one cannot be so radically heterogeneous to the other since the violence called founding violence is sometimes 'represented', and necessarily repeated, in the strong sense of that word, by the preserving violence."[5] To put it differently, if there is an original founding violence and there is a secondary preserving violence that represents this original founding violence, then the relationship between the two, once framed in terms of representation, is immediately complicated due to representation's economy.

This reference to representation is not accidental. Derrida will go on to argue in the main body of the essay that the opposition between foundation and preservation does

[4] See, for example, Robert Zacharias, "'And Yet': Derrida on Benjamin's Divine Violence," *Mosaic: A Journal for the Interdisciplinary Study of Literature*, 40:2 (June 2007), 103-116.
[5] *FL*, 260.

not stand precisely because the two seemingly different types of violence interact in the contamination that is brought about in representation: despite the intention of the strict distinction between founding violence and preserving violence that Benjamin proposes in order to understand (and thus critique) violence, neither *pure* founding nor *pure* preservation is possible. This point is essentially restating Derrida's critique of what he often labeled the "metaphysics of presence," meaning that sort of metaphysical yearning for pure presence, pure unadulterated instance in which something *just is*.[6] It is for this reason that Derrida's critique of Benjamin's essay is chosen for our discussion of law, justice, violence, and religion. Derrida, like no one else, sees the issues of law and justice contaminated by the problem of violence and provides us with a potent critique of this contamination in his general critique of *representation*, a critique that does not aim to eliminate contamination and, in fact, shows that it is impossible to do so.

To make his point, Derrida takes Benjamin at his own word and accepts the proposed distinction between law-establishing and law-preserving violence as essential to any critique of violence/power. This acceptance, however, is not merely hypothetical and is not aimed at the subsequent dismissal once the inconsistencies are exposed. Derrida's deconstructive reading then neither *destroys* the argument (by revealing its inconsistencies) nor uncritically *accepts* the argument (by smoothing out its inconsistencies). Derrida uncovers in Benjamin's essay an *economy of violence* that, despite Benjamin's own hesitation, will lead us to the theme of violence as "divine manifestation," and violence as *religious* violence.

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[6] For more on Derrida's "metaphysics of presence" see, for example, Jacques Derrida, *Speech and Phenomena*, trans. David Allison (Evanston: Northwestern University Press, 1973) , 26ff; Jacques Derrida, *Of Grammatology*, trans. Gayatri Spivak (Baltimore: Johns Hopkins University Press, 1998), 49.

Derrida perceives Benjamin's critique (*Kritik*) of violence as belonging to the Kantian tradition of critique. This could be read as suggesting that in order to understand what violence is and to be able to deal with its often unpredictable and unmanageable expressions we need to approach it with a kind of critical scrupulousness that allowed Kant to describe and limit the activity of reason and understanding. Such critique then would lead one to clearly state and describe the order of violence: "The concept of violence belongs to the *symbolic order of law, politics and morals* – of all forms of authority and of authorization, of claim to authority, at least."[7] By limiting violence to its proper place as part of the symbolic order of law, Benjamin is able to avoid the kind of theoretical confusion that sometimes accompanies the discussion of violence *in general*.

Benjamin's critique of violence is also Kantian in that he is asking a series of questions about the conditions of possibility of violence: although traditionally conceived as an issue of means (violent means to reach certain ends), the real question, according to Benjamin, is whether such "criteriology would then concern only the application of violence, [and] not violence *itself*."[8] The task then is to take violence out of the familiar space of the distinction between means and ends, that is, out of the space of *representation*. Derrida very quickly introduces the theme of the critique of representation as signification, yet it is important to understand why this move is not a simple reduction of Benjamin's complex issues to a number of Derrida's "favorite" topics. In fact, this very relationship between violence, law, and language (here designating a range of issues related to signification, representation, and logocentrism) will quickly reveal a kind of *secret conspiracy* between the workings of the law (any law,

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[7] *FL*, 265. Emphasis added.
[8] *FL*, 265.

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rule, or regulation, in fact) and injustice (oppression, exploitation, and "violence of metaphysics"). This secret connection between law and injustice is exposed by Benjamin as a paradoxical scenario: more law does not produce more justice, because more law means more violence and violence cannot ground and promote justice, at least not the kind of justice that Benjamin would want to endorse.

As soon as Derrida mentions the fundamental distinction between law-establishing and law-preserving violence, he is quick to point out that this distinction is one of *several* crucial distinctions of Benjamin's critique. While distinguishing between founding and preserving violence in relation to the law, Benjamin introduces the distinction between this positive founding-preserving activity and "the destructive violence that annihilates the law."[9] It is precisely this second distinction, argues Derrida, that more than anything else undermines Benjamin's critical gesture of confronting the violence. The distinction between law-making and law-destroying violence leads to a larger distinction between "all mythical lawmaking" and "all divine end making."[10] In other words, Derrida points out, what begins as a focused look at the possibility of the critique of violence vis-à-vis the symbolic order of law ends up being an "archeo-eschatological" theology of (divine) violence. Before we take a closer look at this "theology of (divine) violence" and its implications for Derrida's analysis of the relationship between law and justice, let us attempt to understand all of the connections between Benjamin's critique of the instrumentality of violence and Derrida's own project of articulating the concept of justice. As we suggested above, however, these connections do not necessarily serve an exegetical task of attempting a comparative

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[9] *FL*, 265.
[10] Benjamin, "Critique of Violence," 295.

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analysis of the works of Derrida and Benjamin, but allow us to further conceptualize the problem of the relationship between law, justice, and violence.

2. Justice and the Politics of Pure Means.

While discussing the positive aspects of Benjamin's critique of violence, Derrida points out the distinction between "the order of means" and "order of manifestation":

> Once again it is very much a matter of the violence of language, but also of the advent of non-violence through a certain language. Does the essence of language consist in signs, considered as *means* of communication as re-presentation, or in manifestation that no longer (or not yet) has anything to do with communication through signs, that is to say, from the means/end structure?[11]

The critique of violence, therefore, is a critique of language perceived in terms of the order of means/ends, that is, as an *instrument* of communication. This particular turn could be understood as a variation of Derrida's critique of logocentrism (and metaphysics in general), a variation that picks up a theme of instrumentality of reason and the implications of such interpretation of rationality for the contemporary juridical systems and their theoretical justifications. We are more interested, however, in how Derrida's critique of representation and the related issues of instrumentality help us in the analysis of the phenomenon of violence in general and religious violence in particular.

The politics of pure means (*reine Mittel*), argues Derrida, introduces a "*whole other violence*, a violence that would no longer allow itself to be determined in the space opened up by the opposition means/end."[12] This is a crucial point as it allows us to see that this "other violence" is primarily directed at the very configuration of the opposition of means and ends, not some specific societal institution. By attempting to articulate the

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[11] *FL*, 284.
[12] *FL*, 285. Emphasis added. Cf. Benjamin, "Critique of Violence," 290.

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way violence interacts with the regime of law, Benjamin thus proposes to reassess the very role of the space that is opened up by the distinction between human law and divine justice that he will discuss further in the essay. What then distinguishes this "other violence" from the types discussed by both Benjamin and Derrida is its intention to renegotiate its own role by not allowing itself to be articulated by the imposed difference between law and justice. The regime of this "other violence" imposes itself and proposes its own articulation of the difference between law and justice. This imposition is both more and less violent than law-establishing and law-preserving violence that Benjamin's critique initially targets.

The "other violence" is further interrogated in the analysis of the strike that ultimately leads Benjamin to a rather unclear, even if highly provocative, introduction of the "law-destroying violence of God," as Peter Fenves notes in his essay on Benjamin's politics of pure means:

> [T]he politics of pure means is the enactment of a pure violence; more specifically, the proletarian general strike carries out the law-destroying violence of God. This identification cannot be ascertained because, as Benjamin writes at the end of the essay, divine violence "cannot be recognized with certainty." But the force of the essay, perhaps even its own critical violence, consists in this outlandish suggestion: the politics of pure means enacts a destructive but nondivisive, hence divine, violence. Purified of all ends, the strike for which Sorel serves as a prophet makes way for the sole end that purifies itself of all means: *justice*.[13]

This justice, for Benjamin, as Fenves understands it, is an enactment of the politics of pure means, and the pure means here are "analogous to those which govern peaceful intercourse between private persons."[14] This relationship between private persons, i.e. a

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[13] Peter Fenves, "'Out of the Order of Number": Benjamin and Irigaray Toward a Politics of Pure Means," *Diacritics* 28:1 (Spring 1998), 46 [43-58]. Emphasis added. Further cited as "Out of the Order."
[14] Benjamin, "Critique of Violence," 290-91.

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relationship that is located outside or beyond the violence of the legal system, is an example of a possibility of a nonviolent resolution of any conflict: "Nonviolent agreement is possible whenever a civilized outlook allows the use of pure means of agreement."[15] What are these "pure means"? They are related to the private resolution of conflicts through conversation or "coming to an understanding": just as private persons resolve their conflicts without any reference to the legal system, Benjamin seems to argue, so classes or nations can resolve their conflicts through arbitration that is not of the order of the law (beyond law).[16] Can these non-violent, non-confrontational arbitrations be an example of an alternative public sphere, even if Benjamin still uses the language of "private resolution of conflict"? It seems that such positing of the issue of conflict resolution enables us to think a possible political arrangement without any explicit reference to legality, yet not constituted only by an agreement of private individuals and their morality.[17]

However, this politics of pure means will always find itself in opposition to the "legal order" (*das Recht*), because, for Benjamin, in the legal order the "final purposes are not only *not* suspended but extended in ever more invasive and homogenizing ways: the legal order maintains itself *only apparently* for the sake of justice, in truth for the sake of its own life."[18] Thus the goal of Benjamin's critique of violence is to attempt to identify and describe this dimension of justice that is only *apparently* connected to the

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[15] Benjamin, "Critique of Violence," 289.

[16] Benjamin, "Critique of Violence, 290-91. Cf. *FL*, 285: "Arbitration is nonviolent in this case because it is beyond all order of law and therefore beyond violence." See also Peter Fenves, "Out of the Order," 47.

[17] One of the possible articulations of such a public arrangement without an explicit governmental system and the accompanying legality is the long tradition of anarchism. For a history of anarchist ideas see Peter Marshall, *Demanding the Impossible: A History of Anarchism* (London: Harper Perennial, 2008), Part IV.

[18] Walter Benjamin, *Selected Writings*, eds M. Bullock and M. Jennings (Cambridge: Harvard University Press, 1996), 232. Cited in Peter Fenves, "Out of the Order," 47. Emphasis added.

order of the law. Derrida, in turn, attempts to follow Benjamin's discussion in a direction that the latter failed to adequately address: "Of the spaces and time over which no legal order can preside Benjamin has little to say except that they are spaces and time of *language*."[19] And, we may add here, they are spaces and time of *God* as well since "law-destroying violence" is also "divine violence." We can now see why Benjamin's analysis of law and justice would attract Derrida's attention. For Derrida, the very problem of means/ends and instrumentality of language underlines the repression of difference and "play of signification" by traditional metaphysical logocentrism. Without being able to go into great detail about Derrida's overall project (if such exists), it is important to notice the emphasis on certain notions in Benjamin's analysis of the legal system and its violence: "only by exposing the space in which and the time during which final purposes [ends] are *suspended* can one disclose the dimension of pure means," argues Fenves.[20] For Benjamin (and Derrida) this space (and time) of the pure means is the space (and time) of *justice beyond law*.[21]

According to Derrida, Benjamin "wants to conceive of a finality, a justice of ends that is no longer tied to the possibility of law, in any case to what is always conceived of as universalizable."[22] To conceive of such finality is to leave the sphere of law not only in its juridical sense, but also, it seems, in its general regulatory sense as any set of rules or prescriptions. So what precisely is Derrida's strategy here in his own pursuit of conceiving of justice outside of the order of calculability? Derrida interprets Benjamin's

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[19] Peter Fenves, "Out of the Order," 47. Emphasis added.
[20] Peter Fenves, "Out of the Order," 47. Emphasis added.
[21] Cf. Eric Jacobson's excellent study of Benjamin's "prophetic justice" that includes first English translations of some recently discovered texts by Benjamin, *Metaphysics of the Profane: The Politcal Theology of Walter Benjamin and Gershom Scholem* (New York: Columbia Unviersity Press, 2003), especially Part III, "A Redemptive Conception of Justice."
[22] *FL*, 286.

references to God who is "above reason and universality" as a reference to the "irreducible singularity of each situation," and "justice without law, a justice beyond law [that] is just as valid for the uniqueness of the individual as for the people and for the language, in short, for history."[23] The reconsideration of language and its mediatory function, its instrumentality and calculability in favor of its inherent character of manifestation, of having "no other aim than to show and to show itself," is what will eventually lead Derrida's analysis to a more or less legible theory of "justice beyond law."[24]

3. Theology of (Divine) Violence: Instrumentality and Manifestation.

The distinction between law-making (founding and preserving) violence and law-destroying violence is necessary, argues Benjamin, in order to critique the present discourse on violence as only dealing with the order of means and ends. The proper critique of violence ought to address the "question of an evaluation and a justification of violence in itself," and both natural law and positive law traditions fail to do so.[25] They fail precisely because they deal with the role of violence in terms of its instrumentality, i.e. in terms of its justified or unjustified use *within* the sphere of law. What undermines the law and the legal system that establishes and maintains it is not the critique of violence as improper means to certain ends, but the critique of violence as making the very founding-preserving of the law possible. If law establishes itself, authorizes itself, either in the Kantian conceptualization of social contract or in the Derridean

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[23] *FL*, 286.
[24] *FL*, 286.
[25] *FL*, 265.

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conceptualization of iteration, and this self-positing is *ex nihilo*, then Benjamin's insight seems to be that this nothing from which the law first emerges is the nothing of primordial violence.

The only way to get at this (violent) condition of the possibility of "the order of law in general" is to consider a test case of the "right to strike," argues Benjamin. Derrida calls this test case a "discriminating example": "the right to strike is guaranteed to workers who are therefore, besides the state, the only legal subject to find itself guaranteed a right to violence and so to share the monopoly of the state [on violence] in this respect."[26] What is important about this "right to strike," points out Derrida, is the very paradoxical nature of such sharing of power between the state and the workers who, by the very gesture of the strike, expose the complicity between the exercise of law and the exercise of violence. Derrida's analysis of the right to strike clearly parallels our earlier presentation of Kant's analysis of the right to resist (revolution).

The right to strike is the right to contest not this or that condition of labor, this or that law, but the very foundation of the legal system, the state itself. Even though Benjamin's discussion of the "general strike" relies primarily on the work of Georges Sorel, there are also visible elements of what Carl Schmitt described as the "right to resistance" in *Legality and Legitimacy* and other works.[27] As John P. McCormick puts it, legitimacy, for Schmitt, "depends not on the overt compliance of those over whom

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[26] *FL*, 267. Cf. Benjamin, "Critique of Violence," 281.

[27] In his *Constitutional Theory* Schmitt argues that "basic rights are not legal entitlements, but rather spheres of *freedom*, from which rights, more precisely defensive rights, stem. That character of right is most clearly evident in the liberty rights, which historically signify the beginning of the basic rights. Under this idea, freedom of religion, personal freedom, property, right of free expression of opinion exist *prior to* the state… [that] *facilitates* their protection and herein generally finds the justification of its existence. The individual's *right to resistance* is the most extreme instrument of protection of these rights." Carl Schmitt, *Constitutional Theory*, trans. Jeffrey Seitzer (Durham: Duke University Press, 2008), 202.

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authority is exercised but rather on their choice not to resist such authority. This particular phrase – 'right to resistance' – raises a specter that 'consent' alone does not: the presence of violence that hovers over a legitimate system."[28] For Schmitt, as for Benjamin, an individual's right to resistance has a "suprastate quality" and cannot be taken away and "diverted" into any legal right to simply contest the specific legal circumstances, because in such cases right to resist the state is transformed into right to petition the state to change its policies.[29] Schmitt's take on the right to resistance is in a certain way a direct critique of Kant's liberal position that, Schmitt argues, rejects the possibility of revolution because it attempts to preserve "the idea of the unity of the state."[30] Maintaining such unity however, Schmitt insists, makes any legislative state into nothing more than a "rather complicated absolutism" and its "unconditional claim to obedience would be an open, coercive act of domination."[31]

The critique of violence, for Derrida, leads one to conclude fairly quickly that "violence [or power] does not consist essentially in exerting its power or a brutal force to obtain this or that result but *in threatening or destroying an order of given law*."[32] In other words, despite the appearances, the state is only able to *manage* the order of violence through reducing its sphere of influence to the instrumentality of means/ends structures of public life. What shows itself in the "revolutionary situation" of the general

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[28] John P. McCormick, "Identifying Or Exploiting the Paradoxes of Constitutional Democracy? An Introduction to Carl Schmitt's *Legality and Legitimacy*," in Carl Schmitt, *Legality and Legitimacy*, trans. Jeffrey Seitzer (Durham: Duke University Press, 2004), xxiv. For Georges Sorel's discussion of the general strike, see Georges Sorel, *Reflections On Violence*, ed. Jeremy Jennings (Cambridge: Cambridge University Press, 1999).

[29] Schmitt, *Constitutional Theory*, 203.

[30] Carl Schmitt, "Ethic of State and Pluralistic State," in *The Challenge of Carl Schmitt*, ed. Chantal Mouffe (London: Verso, 1999), 196 [195-208]

[31] Schmitt, *Legality and Legitimacy*, 20.

[32] *FL*, 268. Emphasis added

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strike, argues Derrida, is the fact that violence that "threatens law already belongs to it, to the right to law [*au droit au droit*], to the origin of law."[33] It is not the state and its legal system that use violence to found and maintain itself, but the violence itself that uses the state and its structures to express itself, to manifest itself, but in the end also to contain itself. This particular way of considering the role of violence could be labeled "theology of violence" where this expression would signify primarily not the use of violence to promote or impose theological beliefs, but a kind of theorization of violence that both Derrida and Benjamin refer to as "divine violence" and associate with the concept of *justice*. We label this insight that violence uses law and state to articulate itself in such a way as to ultimately preserve itself a *theology* of violence because such interpretation of violence posits a true exteriority from which this violence appears and where it remains by concealing aspects of itself that are not articulated in the order of law and state.

The distinction between "divine violence" and "mythic violence" finally comes through as the real point of Benjamin's critique of violence. Derrida is clearly uncomfortable with such infusion of *theological* references as he points out in a Post-Scriptum later added to the original essay:

> What I find, in conclusion, the most redoubtable, indeed perhaps almost unbearable in this text… is a temptation that it would leave open, and open notably to the survivors or the victims of the "final solution," to its past, present and potential victims. Which temptation? The temptation to think the holocaust as an uninterpretable manifestation of divine violence insofar as this divine violence would be at the same time annihilating, expiatory and bloodless… When one thinks of the gas chambers and the cremation ovens, this allusion to an extermination that would be expiatory because bloodless must cause one to shudder. One is terrified at the idea of an interpretation that would make of the holocaust an expiation and an indecipherable signature of the just and violent anger of God.[34]

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[33] *FL*, 269.
[34] *FL*, 298.

How did we go from the discussion of the "general strike" that undermines the very foundation of the modern legal state to "the just and violent anger of God"? Through his attempts to "de-theologize" Benjamin's account of "divine violence," Derrida returns the discussion to the topics that he is most comfortable with, that is, violence/power and language/signification. It is precisely Benjamin's (mis)understanding of the incredible destructive force of "divine violence," as shown in his deconstruction of Benjamin's "critique of violence," that frightens Derrida into a somewhat incoherent ending of the essay and solicits the later caution vis-à-vis the Holocaust cited above. However, once Derrida recovers, he learns to appreciate this strange theological twist of Benjamin's critique of violence/power precisely because he realizes that complexity of this complicity between calls for justice and "divine violence" that is summoned to act upon these calls. If, in Kant, God acts as a guarantor of the order of law and the final reward for our moral behavior, in Benjamin and Derrida, God necessarily transcends the human institutions of law and politics. God, in fact, stands outside of any (constructible) human institution as an ultimate judge of human affairs. "Divine violence" here is violence without any reason, meaning both as purposeless and ultimately irrational violence. The postulation of God as a source of such violence, a transcendent source we might add, guarantees that our discussion of the finite institutions of law and its accompanying legal violence will not slide toward some more updated version of the positivist fallacy. Derrida however does not accept Benjamin's analysis of "divine violence" without question.

4. The Revolutionary Instant Of Iterability.

In order to understand Derrida's problem with Benjamin's distinction between law-founding and law-preserving violence, and therefore with the whole of Benjamin's argument about the nature of "divine violence" of manifestation, we need to pay close attention to the reintroduction of Derrida's familiar term: *iterability*. Derrida's first move is to neutralize the charged political notion of the "general strike" by proposing to compare it with "deconstruction": "Can what we are doing here resemble a general strike or a revolution, with regard to models and structures, but also modes of readability or political action? Is that what deconstruction is?"[35] Although Derrida's answer is "yes and no," it is easy to see that the tone of the argumentation so far suggests his heavy leaning towards the "yes" part of the answer: deconstruction "assumes the right to contest, and not only theoretically, constitutional protocols, the very charter that governs reading in our culture and especially in the academy."[36] This contestation, however, is mainly theoretical, despite Derrida's promissory "not only," and the main theoretical tool in this "strategy of rupture" is the Derrida's notion of iterability:

> I shall propose the interpretation according to which the very violence of foundation of positing of law (*Rechtsetzende Gewalt*) must envelope the violence of the preservation of law (*Rechtserhaltende Gewalt*) and cannot break with it. It belongs to the structure of fundamental violence in that it calls for the repetition of itself and founds what ought to be preserved, preservable, promised to heritage and to tradition, to partaking… Positing is already iterability, a call for self-preserving repetition. Preservation in its turn refounds, so that it can preserve what it claims to found.[37]

This use of the notion of "iterability" is aimed at showing that Benjamin's distinction collapses because "there is no more pure foundation or pure position of law, and so a

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[35] *FL*, 271-72.
[36] *FL*, 272.
[37] *FL*, 272.

pure founding violence, than there is a purely preserving violence."[38] There is no

rigorous opposition between the moment of foundation and the activity of preservation,

but only "differential contamination" – this has been Derrida's position regarding not just

this particular opposition, but vis-à-vis *any* attempt to erect and defend a rigorous

opposition of *any* kind. Deconstruction is thus nothing but the "thought *of* this

differential contamination – and the thought *taken by* the necessity of this

contamination."[39] This contamination "effaces or blurs the distinction, pure and simple,

between foundation and preservation. *It inscribes iterability in originarity*, and this is

what [we] would call *deconstruction at work*."[40] If there is no pure original state of

origin, then the notion of iterability is essential, because it demonstrates how although we

may posit a beginning, we cannot posit an origin and therefore we cannot, even if

hypothetically, propose that there exists any pure state of nature, state of law, or justice

that does not already contain some contamination, some impurity, some complexity that

prevent any simple theorization.

In an essay "Signature Event Context" (first published in 1972) Derrida tackles

the issue of iterability in his analysis of the written sign.[41] This essay provides our

interpretation of Derrida's reading of Benjamin's with unexpected parallels. "A written

sign," argues Derrida, "is a mark that subsists, one which does not exhaust itself in the

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[38] *FL*, 272.
[39] *FL*, 272. Original emphasis.
[40] *FL*, 275. Emphasis added.
[41] Derrida's "Signature Event Context" first appeared in English translation by Samuel Weber and Jeffrey Mehlman in the first volume of *Glyph* in 1977. Another English translation of the essay by Alan Bass appeared in *Margins of Philosophy* (Chicago: University of Chicago Press, 1982), 307-330. In this discussion I will refer to the first translation because of its inclusion in a later collection *Limited Inc*. (Evanston: Northwestern University Press, 1988) that also contains Derrida's rejoinder to John S. Searle's response to "Signature Event Context" both of which originally appeared in the second volume of *Glyph*. Cf. Gerald Graff, "Editor's Foreword," in Jacques Derrida, *Limited Inc*., vii-viii.

moment of its inscription and which can give rise to an iteration in the absence and beyond the presence of the empirically determined subjects who, in a given context, have emitted or produced it."[42] There's nothing inherently controversial or innovative about the above statement – a written mark, in order to be a mark, must be repeatable. However, Derrida insists that this repeatability is never a simple repetition that guarantees the transmission of marked meaning, i.e. pure communication. "At the same time, a written sign carries with it a force that breaks with its context, that is with the collectivity of presences organizing the moment of its inscription."[43] This "at the same time" [*de même coup*] is absolutely essential for Derrida's point because it clearly implies that the time of the inscription of the written sign (founding) and the time of the necessary positing of its repeatability (preservation) collapse here into the same instant ("ungraspable revolutionary instant," perhaps). [44]

Derrida describes the situation of inscription of the written sign here in terms of both *establishing* a context (every written mark only functioning in a system of differences that is language) and potentially *destroying* a context as a "collectivity of presences" due to the sign's very own *force du rupture*: "This force of rupture is tied to the spacing [*espacement*] that constitutes the written sign."[45] We can summarize this initial introduction of iterability as a condition of both possibility and impossibility of "pure communication" or "a hermeneutic deciphering, the decoding of a meaning or

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[42] *Limited*, 9.

[43] *Limited*, 9. Cf. translation by Alan Bass in *Margins of Philosophy*: "By the same token, a written sign carries with it a force of breaking with its context, that is, the set of presences which organize the moment of its inscription." (317)

[44] *FL*, 274.

[45] *Limited*, 9. Cf. Alan Bass: "This force *is due to* the spacing which constitutes the written sign…" *Margins of Philosophy*, 317. Emphasis added.

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truth."[46] Iterability is the quality of a sign (and an economy of signification in general) both to mean something within a specific context and to be detachable and repeatable within a completely different context, i.e. to mean one thing *here* and a slightly different thing *there*.

This discussion leads us from the very specific linguistic questions of meaning and communication, to larger philosophical issues of particularity and universality. If a context as a "collectivity of presences" is always unique, i.e. uniquely constituted by the particular combination of circumstances ("presences") at the moment of inscription, then this particularity cannot be suppressed (despite all the efforts to do precisely that) in a transmission of the meaning into another situation where a mark would be used to refer to the same meaning. The notion of iterability functions for Derrida as a demonstration that at the very heart of the law of signification there is a contaminating presence of *another law*, the law of iterability as a differentiating *dissemination* rather than a simple re-presenting repetition of the meaning of any sign. It is precisely Austin's refusal to accept iterability as a law of signification that initiated Derrida's criticism in "Signature Event Context": "the value of risk or exposure to infelicity [of the sign]… is not interrogated as an essential predicate or as a *law*. Austin does not ponder the consequences issuing from the fact that a possibility – a possible risk – is *always* possible, and is in some sense a necessary possibility."[47]

If we return now to Derrida's reading of Benjamin, we can say that the figure of iterability enters the conversation in order to problematize the clear distinction between

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[46] *Limited*, 21.
[47] *Limited*, 15. Original emphasis. For an insightful discussion of the Derrida-Austin-Searle debate, see Gordon C. F. Bearn, "Derrida Dry: Iterating Iterability Analytically," *Diacritics* 25:3 (Fall 1995), 3-25.

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foundation and preservation, the distinction that, according to Derrida, once questioned, gives way to a strange *new law* of contamination found in the very founding act of the state and its legal system. This new law does not supersede the old law as in a revolutionary overthrow of the state; it takes issue "with the body of law itself, in its head and its members, with the laws and the particular usages that law adopts under the protection of its power."[48] Derrida draws a conclusion that would fit quite well with his discussion of signification and iterability: the threat to the law does not come from the outside (just like the threat to communication does not come from outside of the system of signs and the workings of signification), because "the law [*le droit*] is both threatening and threatened by itself."[49]

In his discussion of violence and how it complicates the relationship between law and justice, Derrida can be read as revising his earlier stance that is generally well-known under the rubric of "there is nothing outside the text" (which in this case can be rephrased as "there is nothing outside the law"): if in early Derrida we find an argument against any exteriority or an outside criterion, then in late Derrida, especially after his turn to the issues of religion, we find a cautious argument in support of incalculable, undecideable, excessive justice. This justice is "justice beyond law" and therefore, although existing in some relationship with law, ultimately separable from any and every specific rightful condition. This justice is both transcendental (it makes law possible) and transcendent (it makes evaluating law possible), yet any attempt to articulate it is fraught with dangers of explosive violence. In order to make sense of these insights, we must again return to the overall framework of this essay. If we follow Kant and accept the general contractual

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[48] *FL*, 275.
[49] *FL*, 275.

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view of the establishment of law as a largely voluntary transition from the lawless state of nature to the lawful state of right, then any discrepancy between established law and a rational idea of justice is to be addressed in terms of reform, not revolution. Any negotiation between the law-making sovereign authority and its subjects is to be a matter of a public rational discourse, not acts of violent resistance, yet if the very presence of an external criterion that allows one to judge the present rightful condition as unjust is troubling in itself. It is necessary in order to move the human society along toward a better (more just) condition of peaceful coexistence; yet it is also troubling because it ultimately grounds justice in morality and not exclusively in legality. If a society is judged to be just, then it is us, members of that society, individuals in the public sphere, who judge it to be just, it is not just in and of itself simply because it fulfills certain conditions.

Derrida's articulation of the contamination of law and justice by violence complicates the matter further by suggesting that a transcendent criterion of justice and violence in the name of justice constitutes a theology and cannot be properly articulated and address without reference to religion. Although we have delayed the discussion of religion until now, we have attempted to understand how thinking about religious violence in terms of the distinction between law and justice might allow us to take a look at the issue from a novel perspective. In one sense, the tension between law and justice causes violence in the name of justice (or in the name of law, legitimate, authorized violence of legal system, although we have not paid much attention to this violence in our reflections) as violence aimed at correcting the present situation of injustice in the name of future justice, understood as a more perfect sum of legal conditions, not as a

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destruction of law, as such. However, the very possibility of this *corrective* violence reveals, according to Derrida's reading of Benjamin, the inner workings of violence that, once unleashed, quickly become destructive and anarchic. This "divine violence" no longer pursues any means with its violent ends, it goes beyond the present lawful condition and in its radical destructiveness reveals its primordial presence before the law: what Kant's call a "rightful condition" thus becomes, after Derrida's analysis, a small and fragile island of human society that is continuously on the verge of destroying itself in the name of some better version of itself.

If religious violence is to be situated in these discussions of the workings of law, justice, and violence, it is to be, first and foremost, conceptualized not so much as attempts to commit acts of violence (bombings, assassinations, sabotage etc.) as attempts to provoke violence by exploiting the very tension between law and justice that we have been talking about in this essay. Religious violence as a *provocation* thus allows us to think of it in terms of the apocalyptic violence we have discussed in the opening chapter of this study, i.e. as violence that, unlike secular revolutionary violence, goes beyond reliance on human agency. In order to understand why our hypothesis about religious violence required all of these conceptual twists and turns, we must take a closer look at religion as it is articulated in the respective projects of Kant and Derrida. Having done that in the next chapter, we will conclude our study with a more straightforward account of how we think any future theory of religious violence should proceed.

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V

Kant and Derrida on Religion.

Although we have already mentioned religion on several occasions throughout this essay, we have delayed a closer look at this notion until now for two main reasons: stylistically, we wanted to delay this discussion due to previous attempts to discuss religious violence mainly in terms of religion; conceptually, we wanted to delay this discussion in order to show how a reframing of the various components of the problem of our investigation can be achieved if we place the question of religion in a new context of the difference between law and justice. As we pointed out in the opening chapter, there are a number of theoretical approaches to the issue of religion and violence, and most put their theoretical weight on some notion of defective misuse of genuinely pure, peaceful, religious motivations. Our main intention in this study was to recontextualize the issues of religion and violence and place them in the context of notions of civil society, morality, legality, and coercion. We have spent most of the rhetorical energy so far doing precisely that, while maintaining a fairly simple assumption: religious violence as a type of violence has to do not with an essentially unique "religious" core that promotes violent behavior, but with a motivational matrix organized primarily around the problem of justice. Having discussed the issues of morality and legality in Kant, we have identified a

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peculiar gap between them, neither moral nor legal, a gap that produces the tension we have identified with, after Derrida, the problem of justice.

If Kant's overall solution to the problem of justice as a problem of discrepancy between the ideals of ethical community of "kingdom of ends" and the realities of political community of legal order could be seen as a positing of the ideal of cosmopolitan justice articulated as a total legalization (and formalization) of human social relations in a quasi-apocalyptic closure of the space of difference between law and justice, then Derrida's main contribution was his refusal to allow for such a closure, as he has rejected a possibility of articulating justice in either moral or legal terms. The space of difference between law and justice, we noted with Derrida, describes a movement in the interval between the particularity of decision and the universality of any law. Justice demands that the perceived injustice is addressed immediately (regardless of its ultimately subjective – "perceived" – status), and yet also insists that the solution be final. All of these issues were additionally problematized when it was revealed that a fundamentally law-destroying violence was at work in all the possible articulations of the relationships between law and justice. Namely, Derrida's reading of Benjamin's critique of violence, aimed at clarifying the nature of the relationship between the legitimate violence (of law) and the illegitimate violence (of justice), revealed the impossible task of such an articulation. In fact, if we are to accept Derrida's interpretation, the space of difference between law and justice is not simply present and ready to be filled with either political ideas of messianic justice or religious ideas of divine justice, but is always already in the process of being determined by the very discourses that attempt to make sense of it. To put it differently, a positivist discourse of law and order does not simply

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cover over the difference between legality and morality, but determines this difference as conceptually irrelevant, while a theological discourse of (apocalyptic) divine justice and the world to come determines it as constituting the most essential difference vis-à-vis human society and its ultimate destiny. The conceptual relation between certain forms of violence and certain conceptualizations of law and justice, discussed in Derrida's reading of Benjamin, have come forward and allowed us to finally raise the question of religion that we intend to discuss in this chapter. We will proceed by taking a look at Kant and his rational theology and Derrida who will appear as a faithful descendant of Kantian philosophy, and yet also as a careful reader and critic of the Enlightenment-inspired dismissal of religion, especially *public* religion.

1. Kant's Rational Theology.

Kant's theory of religion has been characterized as being of "profound ambivalence."[1] The concise version of this ambivalent attitude, a version that should suffice for the purposes of the present discussion, could be formulated as the following: the only acceptable motive for acting morally is acting out of respect for moral law, yet this pure motive, due to human weakness, is to be supplemented with an additional encouragement to think of moral obligations as *divine commands*. In other words, for Kant, if we were purely rational, the only motivation we would need to act morally (both

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[1] A. W. Moore, *Noble in Reason, Infinite in Faculty: Themes and Variations in Kant's Moral and Religious Philosophy* (London: Routledge, 2003), 147. Kant's attitude toward religion has been a subject of a great number of excellent studies. For some of the recent engagements with the issue see Philip J. Rossi and Michael W. Wreen, eds. *Kant's Philosophy of Religion Reconsidered* (Bloomington: Indiana University Press, 1991); Stephen R. Palmquist, *Kant's Critical Religion* (Aldershot: Ashgate Publishing, 2000); Chris L. Firestone and Stephen L. Palmquist, eds. *Kant and the New Philosophy of Religion* (Bloomington: Indiana University Press, 2006); Adina Davidovich, *Religion as a Province of Meaning: The Kantian Foundations of Modern Theology* (Minneapolis: Fortress Press, 1993); Elizabeth Cameron Galbraith, *Kant and Theology: Was Kant a Closet Theologian?* (San Francisco: International Scholars Publications, 1996).
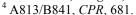
internally and externally) would be the rationality of the categorical imperative. However, we are not purely rational, therefore we need religion (and the idea of God) to provide additional perspective on the matter. One should hesitate to call this religious perspective an additional *motivation*. Kant explicitly suggests that only rational calculation of the categorical imperative can truly motivate one to act morally. Religion, therefore, provides a way of *accessing* this rationality of moral choice through a *supplemental* presentation of the matter:

> *Religion* is (subjectively considered) the recognition of all duties as divine commands. That religion, in which I must first know that something is a divine command in order that I recognize it as my duty, is *revealed* religion (or a religion which requires a revelation); by contrast, that religion in which I must first know that something is duty before I can acknowledge it as a divine command is *natural religion*. Anyone who declares natural religion as alone morally necessary, i.e. a duty, can also be called *rationalist* (in matters of faith).[2]

As Kant explains in the footnote, "this definition of a religion in general obviates the erroneous representation of religion as an aggregate of *particular* duties immediately relating to God…"[3] If religion is a way of *seeing the duty* as a divine command, it is essential for Kant to emphasize, again and again, that ideas of "a God and a world that is now not visible to us but is hoped for, the majestic ideas of morality are, to be sure, objects of approbation and admiration [*Gegenstände des Beifalls und der Bewunderung*] but not incentives for resolve and realization…"[4] Religion as a supplemental perspective on the matter of fulfilling one's duty still makes sense to us when we occasionally describe someone's dedication to some cause as "religious" or doing something "religiously."

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[2] Ak. 6:154, *Religion*, 177. Original italics.
[3] Ak. 6:154n, *Religion*, 177n. Original italics.
[4] A813/B841, *CPR*, 681.

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It is only due to human weakness and inability to rely completely on the rationality of the moral law that religion acts in providing not an additional incentive – to act out of any incentive but respect for moral law is "evil" – but a supplemental angle of approaching the problem of moral motivation. For Kant, "we will not hold actions to be obligatory because they are God's commands, but will rather regard them as divine commands because we are *internally obligated to them*."[5] However, if this were the whole picture, we would not be describing Kant's attitude toward religion as that of "profound ambivalence." It seems that this standard (deist) enlightened view of religion as a support system for the weak humanity is supplemented in Kant with a view that the idea of God is indeed *necessary* for humankind, and not only as a way to encourage moral behavior, but also, and most importantly, as a way to tie all the human ends together into a comprehensive view of moral and political reality, either present or future. In other words, the idea of God has a practical use in the discussion of morality and is supplemented in Kant with the idea of God that has a logical use in the discussion of the overall ends of human history. As Allen W. Wood puts it, combining the two aspects, "The essence of religion for Kant consists in recognizing the duties of rational morality as commanded by God, and in joining with others to promote collectively the highest good for the world."[6]

For Kant, the "idea of God" is never merely an empty idea, a sort of subjective posit that allows one to act "as if" God existed and commanded us to act a certain way. In fact, we agree with Peter Byrne who argues that in Kant "the idea of God is necessary to sustain belief in human perfectibility, since through the idea of God we maintain the

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[5] A819/B847, *CPR*, 684. Emphasis added.
[6] Allen W. Wood, *Kant* (Malden: Wiley-Blackwell, 2005), 20.

thought that something others than blind natural causality controls the world and thus our destiny."[7] Eckart Förster observes that, for Kant, God's existence is "the condition of the possibility of the *obligatory force* of the moral law."[8] The idea of the moral law's *binding force* is explained through a reference to the idea of God, but the rationality of the moral law remains the only true motivation:

> Reason sees itself compelled either to assume such a thing [the intelligible world under a wise author and regent], together with life in such a world… or else to regard the moral laws as empty figments of the brain [*leere Hirngespinste*], since without that presupposition their necessary success, which the same reason connects with them, would have to disappear. Hence everyone also regards the moral laws as commands [*Gebote*], which, however, they could not be if they did not connect appropriate consequences with their rule *a priori*, and thus carry with them promises and threats [*Verheißungen und Drohungen*].[9]

Does this mean that religious ideas of God and the afterlife act here as supplementary promises and threats that only "work" when we *represent* the law to ourselves *as* divine command? This connection between the moral law and its enforcement is one of the essential aspects of Kant's discussion of the idea of God and the role of religion vis-à-vis morality. The basic question that Kant feels obligated to address again and again is simple: If the genuine affirmation of human freedom requires that the only (moral) law one chooses to follow is the (moral) law one sets for oneself, then how does this act of self-legislation produce the necessary motivational *force* to follow one's own law? In other words, how do my own laws acquire their *obligatory force*?[10] Kant's answer is

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[7] Peter Byrne, *Kant on God* (Burlington: Ashgate Publishing Company, 2007), 9.

[8] Eckart Förster, *Kant's Final Synthesis: An Essay on the* Opus Postumum (Cambridge: Harvard University Press, 2000), 121. Original emphasis. Cf. A634/B662, *CPR*, 585: "Since there are practical laws that are absolutely necessary (the moral laws), then if these necessarily presuppose any existence as the condition of the possibility of their binding force [*verbindenden Kraft*], this existence [of God] has to be postulated."

[9] A811/B839, *CPR*, 680.

[10] Förster argues that only after the initial reception and critical reactions to *Critique of Pure Reason* did Kant realize the need to present his understanding of morality in a more precise way. It was his task to demonstrate that the categorical imperative, the essential rational instrument of self-legislating, was not

short but complicated: the reason determines the will according to the moral law and thus gives it the necessary incentive to act morally, yet at the same time, it also requires a vision of reality that reassures it that its laws are not "empty figments." It must assure itself that it is not dreaming, if we are to reference the famous Cartesian image, and it must assure itself that its efforts are not in vain, that *there is justice*. The moral law's binding force comes from *both* "inside" as a self-legislative decision to establish and to follow a certain law *and* from the "outside" as one is guided by a larger vision of humanity under the universal law of benevolent and wise God. Religion, therefore, cannot be dismissed as an "afterthought designed to comfort the vulgar," but an essential part of *any* discussion of morality and, we should add, politics.[11]

It would be inaccurate, however, to suggest we need to *believe* in God in order to assure ourselves that our efforts at betterment of humanity are not in vain. This is precisely where Kant's *rational* theology gives us a notion of "rational faith" that supports our rational morality of self-legislation. The idea of reason's self-motivation could appear to be a very weak point of Kant's moral theory: if there is no forceful external incentive (in this sense both "promise" and "threat" would qualify as such an incentive), then how can I guarantee that once I give the law to myself I will not change my mind and decide to go against it? However, this is where the unique Kantian insight of the workings of self-legislation is extremely important to understand. Henry E. Allison puts it this way: "it is precisely because the moral law provides a motivating force that the failure of an agent to act according to its dictates cannot be regarded merely

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producing moral laws that were but "empty figments of the brain." Cf. Förster, *Kant's Final Synthesis*, 123-25.

[11] Byrne, *Kant on God*, 9-10. Cf. John E. Hare, "Kant on Recognizing Our Duties as God's Commands," *Faith and Philosophy* 17:4 (October 2000): 236-77.

as the result of the law's *failure to motivate* (serve as an incentive)."[12] In other words, if the moral law is established but not followed, then, in Kantian terms, the will is determined to adopt a maxim that cannot be universalized, thus producing a contradiction. The distinction between the rational procedure of the categorical imperative and the practical application of the law in the willful action is essential for Kant's argument. It is the same distinction that grounds the difference between morality as internal disposition (determination of will) and legality as external conformity (action based on determination of will). It is in the context of this distinction that we are to be challenged by the possibility of immoral and illegal actions. If moral law (regulating both internal and external freedoms) is based on our ability to self-legislate, and if the rationality of the categorical imperative guarantees that our actions are consistent with our dispositions, then how does one explain the possibility of rational and calculated violation of the moral law? Although Kant mostly talks about the violation of moral law within the framework of morality and legality, that is to say, within the framework of an already-established rightful condition, we might ask ourselves whether Kant's discussion is relevant to our engagement with Derrida and his postulation of an external violence of justice aimed at the destruction of law as such. The question then is not only how rational individuals can go against the rationality of law, but also how rational individuals can aspire to destroy the order of law, as such, in the name of some higher justice beyond law. In a sense, going against the order of law, as such, is the case that puzzles Kant the most since simple criminality can still be understood as acting upon a contradictory maxim, while revolutionary activity clearly goes against the rational notion of right.

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[12] Henry E. Allison, *Kant's Theory of Freedom* (Cambridge: Cambridge University Press, 1990), 148. Emphasis added.

It certainly is not the law's insufficient motivational force that is to blame, argues Kant, but rather the agent's "evil disposition" [*böse Gesinnung*] or "evil principle" or "evil power of choice" [*böse Willkür*] that is responsible for immoral action. [13] This, of course, leads Kant to his famous discussion of the "radical evil" in human nature. Again, in order to avoid an unnecessarily detailed introduction to the topic that was already covered in many excellent studies, our discussion will only touch upon aspects of Kant's presentations that are connected to the theme of this chapter.[14] We are interested in Kant's discussion of "radical evil" vis-à-vis the general thread of obligation and its force, i.e. how the issue of "radical evil," as presented by Kant in *Religion within the Boundaries of Mere Reason*, helps us understand his view of the binding force of the law and its relationship to notions of justice, violence and religion.

2. Radical Evil and the Force of (Moral) Law.

Kant's notion of "radical evil," used to describe and to conceptualize a certain human propensity to commit evil acts, has always been and to a certain extend remains a rather controversial topic. One may suggest that there are two general traditions of approaching Kant's discussion of "radical evil." On the one hand, there are thinkers who suggest that Kant's "radical evil" is nothing but an attempt to "philosophically

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[13] Ak. 6:23n, *Religion*, 72n.

[14] Some of the discussions of Kant's notion of "radical evil" in *Religion within the Boundaries of Mere Reason* include, but are not limited to, the following works: Chris L. Firestone and Nathan Jacobs, *In Defense of Kant's* Religion (Bloomington: Indiana University Press, 2008), Ronald Green, *Religious Reason: The Rational and Moral Basis of Religious Belief* (New York: Oxford University Press, 1978), Allen W. Wood, *Kant's Rational Theology*, (Ithaca: Cornell University Press, 1978), Carl A. Raschke, *Moral Action, God and History in the Thought of Immanuel Kant* (Missoula: American Academy of Religion and Scholars Press, 1975), Olivier Reboul, *Kant et le problème du mal* (Montréal: Presses de l'Université de Montréal, 1971), Ann L. Loades, *Kant and Job's Comforters* (Newcastle upon Tyne: Avero Publications, 1985), Gordon E. Michalson, Jr. *Fallen Freedom: Kant on Radical Evil and Moral Regeneration* (Cambridge: Cambridge University Press, 1990).

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appropriate the old Christian doctrine of original sin."[15] In this case, one is easily

reminded of Goethe's reaction to Kant's idea of "radical evil": in his letter to Herder he

interprets Kant's newly published discussion of evil as an unfortunate attempt to secure

the respect of the Christians. According to Goethe, Kant spent so much time and effort

"purifying his philosophical mantel from various prejudices," only to "taint it with a stain

of radical evil [*Schandfleck des radikalen Bösen*]."[16]

On the other hand, Kant's discussion of evil is interpreted as his attempt to

develop a sort of "moral anthropology," a view of human nature in its moral capacity that

would account for all the evil, a continuation of Leibniz's tradition of theodicy by other

means.[17] This continuation is, of course, also a closing of that tradition, as Kant is no

longer interested in discussing the problem of God and the existence of evil.[18] That is,

Kant is no longer interested in a *theological* solution to the problem of evil, because it is

essentially a human problem that is to be given only a *moral-anthropological* solution.[19]

Kant's discussion of evil, and subsequently, radical evil, in Part One of *Religion* is

careful to present the issue as a matter of human nature as "the subjective ground of the

exercise of the human being's freedom in general," where this subjective ground must

"itself be a deed of freedom (for otherwise the use or abuse of the human being's power

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[15] Joseph P. Lawrence, "Radical Evil and Kant's Turn to Religion," *The Journal of Value Inquiry* 36 (2002), 320. [319-335]

[16] J. W. Goethe, *Goethes Briefe und Briefe an Goethe*, *Band II: 1786-1805*, ed. Karl Robert Mandelkow (München: C. H. Beck, 1988), 166 [Letter 536]. My translation.

[17] Cf. Richard J. Bernstein, *Radical Evil: A Philosophical Interrogation* (Cambridge: Polity Press, 2002), 19-45.

[18] For Kant's direct engagement with the topic of theodicy, see his short essay from 1791 "On the miscarriage of all philosophical trials in theodicy," in Immanuel Kant, *Religion and Rational Theology*, trans. and eds. Allen W. Wood and George di Giovanni (Cambridge: Cambridge University Press, 1996), 24-37 (Ak.8:255-271).

[19] Cf. Kant's discussion of Job in "Theodicy" essay: Job's disposition "proved that he did not found his morality on faith, but his faith on morality: in such a case, however weak this faith might be, yet it alone is of a pure and true kind, i.e. the kind of faith that found not a religion of supplication [*Gunstbewerbung*], but a religion of good life conduct." (Ak. 8:267)

of choice [*Willkür*] with respect to the moral law could not be imputed to him, nor could the good or evil in him be called 'moral')."[20] In other words, Kant is not dealing with the issues of human nature in general, issues that, as he quickly points out, might immediately scandalize those who accept his opposition between "nature" and "freedom," but with *rules* of the power of choice.[21]

The matter of *Wille* and *Willkür* deserves a short note, although the general context of the issue is too complex and too well known to address here in great detail. Generally speaking, when Kant begins to distinguish between *Wille* and *Willkür*, the majority of English translations render these as "will" and "power of choice" – in this case, *Wille* is a term for the will as a whole, and *Willkür* is the spontaneous aspect of the will that generates maxims for the exercise of freedom. Henry E. Allison describes the two aspects of will in terms of Kant's use of *Wille* and *Willkür* in a following way: "Kant uses the terms *Wille* and *Willkür* to characterize the legislative and executive functions of a unified faculty of volition, which he likewise refers to as *Wille*."[22]

Thus if Kant's account of evil deals not with human nature as such – "the human being is evil by nature," for Kant, means nothing but that "he is conscious of the moral law and yet has incorporated into his maxim the (occasional) deviation from it"[23] – then what does it tell us about the general theme of the binding force of the (moral) law? If the binding force of law is strong enough because it is based on the idea of self-

[20] Ak. 6:21, *Religion*, 70.
[21] More on this distinction and its general significance for understanding Kant's moral theory see John R. Silber, "The Ethical Significance of Kant's *Religion*," in *Religion Within the Limits of Reason Alone*, trans. Theodore M. Green and Hoyt H. Hudson (New York: Harper and Brothers, 1960), xcivff; Henry E. Allison, *Kant's Theory of Freedom* (Cambridge: Cambridge University Press, 1990), 129-135; and Chris L. Firestone and Nathan Jacobs, *In Defense of Kant's* Religion (Bloomington: Indiana University Press, 2008), 125-27.
[22] Allison, *Kant's Theory of Freedom*, 129.
[23] Ak. 6:32, *Religion*, 80.

legislation, how does one account for such a propensity to break the self-established law, since "radical evil" is nothing but the condition of possibility of acting against one's own law?

It is precisely this dilemma – we need to maintain that we are both free to self-legislate (unconditioned) and have a "natural propensity to evil"[24] (conditioned) – that Kant is addressing with his notion of "radical evil" and it is not without controversy because it leads Kant to some rather startling conclusions that, as some have argued, Kant quietly withdrew in *Metaphysics of Morals*.[25] The main issue with "radical evil," it seems, is the issue of the relationship between nature and freedom, or to use the vocabulary that is closer to our discussion, between state of nature and state of law. The idea of "radical evil" refers, first and foremost, to the condition of the possibility of evil, not to some special kind of evil. "Radical evil" is an "innate evil in human nature."[26] In this sense it is surprising how quickly the discussion of Kant's notion of "radical evil" usually gets to topics like devastating wars, genocide, torture, and other despicable and shameful aspects of human history. Kant never suggests that "radical evil" is a *type* of evil, but always that it is a notion aimed at explaining the existence of evil as such, i.e. we are on the level of transcendental notions, not a historical analysis of the progress (or regress) of humankind.

How does the introduction of "radical evil" help Kant argue the importance of affirming human freedom in the discussion of the moral law? What is the relationship

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[24] Ak. 6:32, *Religion*, 80.
[25] Henry E. Allison discusses the views of Kant's earliest defenders, Carl Leonard Reinhold, who argues against Kantian view of evil primarily suggesting that it is implausible to think of a concept of freedom that allows us to act freely but against the moral law. Allison himself address the problem of the connection between freedom and the moral law in terms of what he labels the Reciprocity Thesis. For discussion of Reinhold, see Allison, *Kant's Theory of Freedom*, 133-34; for the Reciprocity Thesis, see, chapter 11.
[26] 6:32, *Religion*, 80.

between such freedom/autonomy and the human propensity to go against the self-legislated moral law? It is not accidental that the issue of "radical evil" comes up in a work dedicated to religion. As Yirmiyahu Yovel argued, Kant's presentation of will in *Groundwork* "equates the good will with the rational will and construes freedom as 'autonomy'," therefore one gets "the (false) impression that immoral acts are unfree, because they produce heteronomy rather than autonomy and, especially, because they seem to result from the natural inclinations overpowering reason."[27] To counterbalance the description of the will in *Groundwork*, Kant claims in *Religion* that evil too originates in freedom. If evil is generated when the will turns against itself, it is a sign of the genuine freedom of the will to be able to do so, which means that, even in acts of evil, one is free. Kant's idea of "radical evil," we claim, is nothing but this simple point: no rational being can completely reject the validity of (moral) reason, even if she has a capacity, in her freedom, to act against the duty and therefore against the law she gives herself. In this sense, the notion of moral duty is inseparable from the notion of moral *conflict*.

We must be able to contemplate various sources and courses of actions in order to be accountable and completely responsible for our choices as free moral agents. This seems to be quite clear in Kant's practical philosophy. However, as some commentators pointed out, Kant's position can also be characterized as "extremely strained and awkward," because it attempts to maintain both that human beings are free and that

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[27] Yirmiyahu Yovel, "Kant's Practical Reason as Will," *Review of Metaphysics* 52:2 (1998), 281. [267-94] Yovel adds, "Nature cannot generate evil; only the free human will can." (281)

human beings have an *innate* propensity to evil.[28] This particular tension is essential to Kant's position, because he argues in *Religion* that this tension is not accidental and comes from our inability to explain the "subjective ground of our maxims" or, as Kant also calls it, "the depth of one's own heart."[29] In other words, we cannot know our own true motivations, we cannot explain why we make the moral choices we do. Yet, as Kant argues, we *must* be moral to the best of our rational ability, even if we can never be sure that a decision to act in a specific way was ultimately guided by the categorical imperative or our inclinations. This very uncertainty characterizes any ethical decision; this particular point is often missed as Kant is described as formalist with his calculation-oriented moral theory.

Kant's discussion of evil then is an attempt to insist that even in acts that we designate as "evil" we remain rational and therefore cannot completely reject the authority of reason and law that it produces. "Radical evil," far from being an attempt to appease Christians, is actually introduced to eliminate any real possibility of existence of evil as irrational propensity for destruction. Evil as a rational malfunction is in; evil as an irrational demonic destruction is out. This is why whenever Kant discusses evil, he talks about the "evil *principle*":

> The battle that every morally well-disposed human being must withstand in this life, under the leadership of the good principle, against the attacks of the evil principle, can procure him, however hard he tries, no greater advantage than

[28] Bernstein, *Radical Evil*, 33. Cf. Daniel O'Connor, "Good and Evil Dispositions," *Kant-Studien* 76 (1985), 299: "There is something odd about Kant's whole discussion of evil, for even if we accepted Kant's contradictory notion of evil disposition which is freely chosen outside of time, we would by his own admission gain nothing in the way of understanding." See also Henry E. Allison, *Kant's Theory of Freedom*, 136-45 and Gordon E. Michalson, *Fallen Freedom* (Cambridge: Cambridge University Press, 1990), 40-51 and 62-70. For an excellent discussion of Kant's view of evil see also John R. Silber, "Kant in Auschwitz," in *Proceedings of the Sixth International Kant Congress*, ed. Gerhard Funke and Thomas Seebohm (Washington: University Press of America, 1991),177-211.
[29] Ak. 6:51, *Religion*, 95.

freedom from the *dominion* of evil. That he be free, that he "relinquish the bondage under the law of sins, to live for righteousness," [Romans 6:18] this is the highest price that he can win. He still remains not any the less exposed to the assaults of the evil principle; and, to assert his freedom, which is constantly under attack, he must henceforth remain forever armed for battle.[30]

What does it mean, in terms of our discussion, to suggest that at the heart of the most basic human activity of self-legislation – acting only according to the law that one gives oneself – there is a fundamental weakness of reason that does not allow us to come up with an explanation for the "determining ground" [*Bestimmungsgrund*] of our actions? As Yovel puts it,

> [It] does not mean that the choice between good and evil is arbitrary in the sense of picking the random alternative. There are surely overriding reasons in Kant for preferring the good. These reasons derive from the claim that the moral law inheres in the will as the will's own essential structure, and as end-in-itself. Yet moral reasons, however strong, do not in themselves suffice to produce a concrete action, they still *must be activated, made effective by a subjective act*, in which I adopt or endorse those reasons (meaning: decide to bow to their normative claim).[31]

In Kantian terms, one therefore cannot ever call oneself "moral," but only *hope* that one deduced the maxim correctly and acted upon it with no other motivation but respect for the law. Any person looking for a specific ethical code or a list of instructions on how to be moral would be very disappointed. Still, Kant writes, "he must be able to *hope* that, by the extension of *his own* power [*durch eigene Kraftanwendung*], he will attain to the road that leads in that direction, as indicated to him by a fundamentally improved disposition."[32] All we can hope for is that we become better human beings, and although we cannot *know* what the "determining ground" of our action is, we can *act* to the best of our ability and therefore *hope* to be moral, while never being able to say "I am moral" or

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[30] Ak. 6:93.
[31] Yovel, "Kant's Practical Reason as Will," 284. Emphasis added.
[32] Ak. 6:51, *Religion*, 95. Original emphasis.

"he is moral." As Richard J. Bernstein puts it, Kant's insistence that the subjective first ground of our maxims is inscrutable to us is an "indication of Kant's ultimate intellectual integrity and his profound understanding of our radical freedom… it *must* be inscrutable, because this is what it means to be a free and responsible person."[33] However, Kant's discussion of religion and radical evil has a different side to it: although we cannot know the determining ground of our action and there is an evil disposition to go against one's own law, there is also a unifying thread of "rational faith" [*Vernunftglaube*] that can be provisionally seen in various religious expressions, but which is also always already present in any act of discerning the correct action in moral deliberation. Religion, for Kant, gives us a privileged access to this "rational faith" by allowing us to have a different perspective on the workings of practical reason. What is essential about his "rational faith" is that it indicates a possibility of the common ground for all moral beings. There are many religions; there is only one rational faith, and it is by this rational faith that we are saved.

3. Kant's Rational Faith.

Kant's references to "rational faith" are found throughout his work, from the first Critique to the final essays of *The Conflict of the Faculties*.[34] This "rational faith" is characterized as something that "can be convincingly communicated to everyone," and is opposed to a "historical faith" or an "ecclesiastical faith" which is based on specific facts,

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[33] Bernstein, *Radical Evil*, 44, 45. Emphasis added.
[34] Cf. first *Critique*: A829/B857 (translated as "rational belief"); second *Critique*: Ak. 5:126, 144, 146; *Religion*: Ak, 6:102, 104, 129, 164; "Orient Oneself in Thinking": Ak. 8:141, 141, 143; *The Metaphysics of Morals*: Ak. 18:507, 509, 512, 550; *The Conflict of the Faculties*: Ak. 7:47, 51 (translated as "rational faith").

and often divides itself into sects and therefore cannot be efficiently universalized.[35] This

particular contrast between a "pure religious faith" and an institutionalized faith of a

particular church has various levels for Kant, but the one that is especially intriguing in

terms of the themes of this study is the contrast between the voluntary and *non-coercive*

manner of rational faith ("inside") and *coercive* manner of the ecclesiastical faith

("outside"):

> Ecclesiastical authority [*Autorität*] to pronounce salvation or damnation according
> to this sort of faith would be called priestcraft [*Pfaffenthum*]… As soon, then, as
> ecclesiastical faith begins to speak with authority on its own and forgets that it
> must be rectified by pure *religious faith* [*reine Religionsglaube*], sectarianism sets
> in. For, since pure religious faith (as practical rational faith) cannot lose its
> influence on the human soul – an influence that involves consciousness of our
> freedom – while ecclesiastical faith uses force [*Gewalt*] on our conscience,
> everyone tries to put into or get out of dogma something in keeping with his own
> views.[36]

Ecclesiastical authority then is a "power (of dogma)" and involves coercion, while pure

religious faith is connected to our consciousness of freedom, and, most importantly, is a

universal and necessary rational faith. Kant's critique of ecclesiastical faith and his

promotion of rational faith can be read as primarily a critique of power relations. [37] His

appeal to the state and his argument that ecclesiastical faith usurps the power of the state

to demand obedience from its subjects can be read as a direct endorsement of pure

rational faith that, having found its own "room," would delegate the matters of legitimate

enforcement to the state and its apparatus. In fact, because "there is only one (true)

religion,"[38] and several kinds of ecclesiastical faith, resulting in many religious

organizations, this true religion of reason does not itself produce the specific statutes and

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[35] Cf. Ak. 6:103 and Ak, 7:48.
[36] Ak. 7:51, *CF*, 274. Original emphasis.
[37] Ak. 7:61, *CF*, 282.
[38] Ak. 6:107, *Religion*, 140.

thus does not in itself require *any* organizational structure as such. According to Kant, only a correct combination of pure rational faith and corresponding ecclesiastical statutes that do not violate the spirit of this universal religion can produce *a* stable religious community, yet never *the* only true religious expression. If we compare this discussion to our themes of law and justice, there is a clear parallel between pure rational faith and justice as both, for Kant, do not in themselves have any institutional structure (statutes or laws) but require to be represented in specific arrangements, both function as principles and, as such, are then inseparable from particular ecclesiastical and legal institutions.

If this philosophy of religion does not technically constitute a part of ethics based on practical reason alone, or as Kant puts it, religion "is not derived *from* reason alone but is also based on the teachings of history and revelation,"[39] then religion as a subject matter becomes a very potent area of philosophical and historical analysis, an area that can potentially give us the solution to the general issues of society's most essential conflicts.[40] On the one hand, we have a typical Enlightenment type of discourse: the discussion of religion is essentially divided into a presentation of religion's internal truthful core and its external representation in the specific institutional shell. On the other hand, by refusing to *reduce* religion to its concrete moral content, Kant accepts the viability of ecclesiastical faith and its institutions, while providing a sort of critical analysis of its limitations.

The role of philosophy of religion is not to place "restrictions on the excesses of speculative reason… [but] to *extend* the use of practical reason beyond the moral

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[39] Ak. 6:488, *MM*, 599. Original emphasis.

[40] We are, of course, very much aware here of Marx's famous pronouncement that "the critique of religion is the prerequisite of every critique" in Karl Marx, *Critique of Hegel's Philosophy of Right*, ed. Joseph J. O'Malley (Cambridge: Cambridge University Press, 1977), 131.

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legislation of a strict ethics of duties to the presumptively rational postulates of God and immortality."[41] This supplementary role, it seems, is theorized not in terms of religion's contribution to ethics or politics, i.e. not as a specific religious content (as in ecclesiastical statutes or biblical revelations), but as a way of approaching certain aspects of human reality. Namely, Kant argues, "faith (as a *habitus*, not as *actus* [as a habit or disposition, not as an individual act]) is reason's moral *way of thinking* in the affirmation of that which is inaccessible for theoretical cognition… Faith (simply so called) is trust in the attainment of an aim the promotion of which it is not possible for us to have insight into."[42] This statement from Kant's third *Critique* could serve as an indication of rational faith's importance in Kant's philosophy of religion. If it is up to any rational being to embrace faith as a part of her overall existence, it can only be in this new form of rational faith.

However, the same tension we have discovered in Kant's moral theory seems to exist at the heart of the new rational faith. On the one hand, this faith is rational and therefore universal, yet on the other hand, it cannot be reduced to any set of practical postulates because then it would cease to be a disposition and become a particular set of prescribed actions. Like Kant's moral theory, his understanding of religion aims to be formal, yet it also requires that the form of faith be represented in specific religious forms ("ecclesiastical faiths"). This tension can be best presented in terms of a more traditional

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[41] Habermas, "Between Faith and Knowledge," 216.
[42] Ak. 5:471, 472, Immanuel Kant, *Critique of the Power of Judgment*, trans. Paul Guyer and Eric Matthews (Cambridge: Cambridge University Press, 2000), 336. Emphasis added.

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philosophical issue of "faith" versus "knowledge."[43] In this sense, Kant does not

distinguish between "faith" and "knowledge," but rather between "dogmatic faith" and

"reflecting faith." Kant argues that dogmatic faith claims *knowledge* of supernatural

things, and reflecting faith does not "contest the possibility or actuality of the

[supernatural] objects," but simply refuses to "incorporate them into its maxims of

thought and action."[44] In other words, the distinction is not between knowing and

believing, but between *claiming to know* what is outside of the limits of possible

experience ("transcendental illusion") and *willing to hope* that, despite reason's

limitations, it is still possible to act morally and therefore work for the improvement of

the general human condition. To put it yet differently, Kant proposes to distinguish

between those who claim to *know* the difference between faith and knowledge and those

who *posit* such difference and are acting upon this posited distinction, thus distinguishing

between faith as a matter of *knowledge* or lack of knowledge and faith as a matter of *will*

and action.

The difference between "claiming to know" and "willing to hope" is certainly

crucial if we think of it in terms of the difference between law and justice that we have

been considering in this essay. In this sense, claiming to know the difference between

law and justice, between legal actions that are also just and legal actions that are unjust, is

the defining characteristic of an attitude we have learned to designate as

"fundamentalist." Although most often associated with religious organizations and faith

traditions, fundamentalism is a position of absolute certainty rather than faith. As Roger

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[43] For the general overview of the issue, see John Hick, *Faith and Knowledge* (Ithaca: Cornell University Press, 1957); Emil Brunner, *Revelation and Reason: The Christian Doctrine of Faith and Knowledge*, trans. Olive Wyon (Louisville: The Westminster Press, 1946)
[44] Ak. 6:52, *Religion*, 96.

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Stump writes in his study of fundamentalism, "the absolute certainty of fundamentalism has important consequences because it precludes the possibility of compromise with others with whom they disagree."[45] Certainty is that which gives a particular motivation and not just a description of one's knowledge: *because* a fundamentalist is certain that what is being done is unjust, he or she acts against the injustice. It is in this sense of challenging the arrogance of such ultimately rationalist certainty that Kant (and Derrida) formulate their accounts of faith and knowledge.

Faith considered as an attitude toward the task of moving humanity along toward a better future, and not as a type of knowledge, is found, for example, in Terry Eagleton's recent critique of the "new atheism" of figures like Christopher Hitchens and Richard Dawkins.[46] With characteristic bluntness and plenty of sarcasm, Eagleton ridicules the "new atheists" who "claims with grandiloquent folly that religious faith dispenses with reason altogether, which wasn't true even of the dimwitted authoritarian clerics who knocked [Eagleton] around at grammar school."[47] Eagleton's formulation of the Kantian insight is that "faith is for the most part *performative* rather than *propositional*."[48] Slavoj Žižek, another contemporary cultural critic, echoes Eagleton's assertion that faith does not belong to "the same modality of positive knowledge" as science.[49] We must remember, Žižek continues, that "the opposition of knowledge and faith echoes the one between the *constative* and the *performative*: faith (or, rather, trust) is the basic ingredient of speech as the medium of social bond, of the subject's engaged participation in this

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[45] Roger W. Stump, *Boundaries of Faith: Geographical Perspective on Religious Fundamentalism* (Lanham: Rowman & Littlefield, 2000), 216.
[46] Terry Eagleton, *Reason, Faith and Revolution: Reflections on the God Debate* (New Haven: Yale University Press, 2009), esp. chapter 3 "Faith and Reason."
[47] Eagleton, *Reason, Faith and Revolution*, 109.
[48] Eagleton, *Reason, Faith and Revolution*, 111.
[49] Slavoj Žižek, *In Defense of Lost Causes* (London: Verso, 2008), 31.

bond, while science – exemplarily in its formalization – reduces language to neutral registration."[50] This idea of faith as *trust* has been given a great amount of attention in the works of late Derrida, specifically in his essay "Faith and Knowledge."

4. Derrida's "Faith and Knowledge."

Derrida's address "Faith and Knowledge," delivered as a part of an interdisciplinary conference in 1994, can be considered his first comprehensive and public discussion of the issues related to the problem of "religion" in general (as opposed to Derrida's early interest in the issues of onto-*theo*logy and the name of God). Derrida's framing of this discussion of "religion" in terms similar to Kantian "reflecting faith" is indicative of his peculiarly Kantian interpretation of the role of faith. This framing is Kantian, we argue, not because Derrida basically agrees with Kant's declaration about "making room for faith," but because both Derrida and Kant are in search of a kind of "rational theology" that would allow for religion to play a larger *legitimate* public role and that is conspicuously lacking in the contemporary public debate today. This public role for religion is a midpoint between an extreme secularist rejection of religion as "superstitious" knowledge and an extreme religionist calls for reversal of secularization and a return to the "golden age" of piety and decency ("golden age" that, however, never existed and is, paradoxically, to be achieved in the coming *eschaton* of the end of times).

Derrida's talk opens with a question of the singularity of the noun "religion": there is no "religion," but always "religions." We know that this is the case yet we do not change our conversational pattern and stubbornly continue with "religion," abstracting

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[50] Žižek, *In Defense of Lost Causes*, 32.

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from all the different religions and their peculiarities and insisting on forcing a number of unrelated (or barely related) phenomena under the roof of one singular noun. For Derrida, this is achieved through a work of abstraction that is the cause of the purported dichotomy between "faith" and "knowledge."[51] Connecting the problem of religion and the problem of violence in the name of religion, Derrida proposes to find the solution in the very paradoxical interplay of conceptual apparatuses of "faith" (sacred/holy, salvation, immunity/purity, particularity, and justice) and "knowledge" (machine, science, tele-technology, regularity, lawfulness).[52] When it comes to the "sites of abstraction" such as technology or science or knowledge, Derrida argues, religion is "at the same time involved in reacting antagonistically and reaffirmatively outbidding itself."[53] Derrida's hypothesis is then a rather simple one: religion, if one were to use this term in an attempt to designate something, refers to a peculiar *co-implication* of what we traditionally label "faith" and "knowledge." In their various incarnations, "faith" and "knowledge" are "bound to one another by the band of their opposition."[54] However, and Derrida will continue to argue this point throughout his presentation, the very co-implication of "faith" and "knowledge," the very non-oppositional nature of their

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[51] *FK*, 43.
[52] Although Derrida does not claim to have originally discovered this peculiar co-implication of religion and modern technology, he is often treated as having done so by interpreters. In fact, the relationship between various forms of contemporary fundamentalisms and modernity has been described as that of "symbiosis" by various scholars of religion. Martin Marty, discussing the history of contemporary Evangelicalism, asserted, "Evangelicalism is the characteristic Protestant way of relating to modernity." Cited in Joel A. Carpenter, *Revive Us Again: A Reawakening of American Fundamentalism* (Oxford: Oxford University Press, 1999), 235. For an intriguing discussion of modern evangelical fascination with technology and simultaneous rejection of modernity, see Glenn W. Shuck's analysis of *Left Behind* novels in *Marks of the Beast: The Left Behind Novels and the Struggle for Evangelical Identity* (New York: New York University Press, 2005), 2: "Contemporary evangelicalism is… a highly adaptive religious impulse that feeds upon modernity, even while railing against it, using, ironically, its own tools to transmit the evangelical message."
[53] *FK*, 43.
[54] *FK*, 43.

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opposition, so to speak, forbids one from clearly identifying which contemporary struggles would neatly fit into which part of the juxtaposition.[55] All initial assignments will only be provisional and pragmatic. The themes of "faith" and "knowledge" are bound by their opposition in the similar manner as the themes of law and justice: one is not possible without the other, yet the movement between the two constitutes the space of difference that is continuously renegotiated in and through this very movement. Religion, therefore, allows us to take a closer look at this oppositional bind and approach its complexity from a new perspective, especially once we attempt to apply our newly acquired insights to the notion of religious violence.

If the distinction between "faith" and "knowledge" were to be approached with a number of contemporary test cases, Derrida writes, then the very first and the most urgent would be that of *language* and of *nation*. What is at stake in any talk of "unprecedented resurgence" of religion, if such resurgence in fact is taking place at all, is "language, certainly – and more precisely the idiom, literality, writing, that forms the element of all revelation of all belief… but an idiom that above all is inseparable from the social nexus, from the political, familial, ethnic, communitarian nexus, from the nation and from the people… In these times, language and nation form the historical body of all religious passion."[56] Nation and language are closely related in popular imagination and populist discourse. Both, as Derrida argues elsewhere, are linked to the "question of

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[55] Two temptations vis-à-vis this juxtaposition will receive the names of their philosophical proponents, according to Derrida, as a "Hegelian" temptation to remove the opposition through sublation and a "Heideggerian" temptation to move beyond this ontotheological setup. Cf. *FK*, 53-54.
[56] *FK*, 44. Emphasis added.

interpretation, reading and teaching as well as to the political problems of discrimination, of frontiers, of belonging to a nation or a language group…"[57]

Language, argues Derrida, indicates uncertainty in the midst of communication that disrupts the very fabric of sociability. Nation, accordingly, attempts to reaffirm the possibility of gathering together of the various types of human connections. Language, as Derrida states throughout his vast corpus, articulates itself as a system of sense-making that contains at its very heart a nonsensical chaotic moment of arbitrariness. Nation, on the other hand, is judged to be the most appropriate (if not perfect in its ideality) incarnation of the human co-existence, yet it is based on a decision, an act of will, not a supposedly rational deliberation or some version of "social contract."

When Derrida claims that language and nation form the historical body of all religious passion, he aims to point out, it seems, that both "language" and "nation" only acquire their significant roles in the vocabulary of present political debates when their abstract and timeless conceptual status is threatened by the specific historical circumstances of the everyday reality of human coexistence. As language is potentially unstable and destructive, although this potential negativity is not as threatening as some opponents of deconstruction are eager to argue, the idea that a nation could be purged of all the otherness and thus allegedly all the conflicts is equally aimed at a politics of neutralization and pacification. Derrida's discussion of language, nation and "religious passion" gives us a glimpse of the rhetoric of religious violence that, while insisting on the necessary change for the better, more than just political arrangement, implicitly seeks

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[57] Jacques Derrida, *Paper Machine*, trans. Rachel Bowlby (Stanford: Stanford University Press, 2005), 156. Cf. Derrida's 1986 short essay on Paul Celan "Shibboleth – for Paul Celan," trans. Joshua Wilner in *Word Traces*, ed. Aris Fioretis (Baltimore: Johns Hopkins University Press, 1994), 3-72.

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to stop all change and all polysemy in order to fulfill a dream of otherworldly reign based on a number of religious doctrines. In other words, what distinguishes genuine religious passion, as Derrida labels it, from reactionary religious passion is the assumption of fundamental instability of human institutions, including institutions of language and nation.

Language does not describe "religion" but gives us a set of historical marks, observations, and conceptualizations that aim at capturing the development of the *idea* of religion, yet claim no final authoritative ability to define what it is. The history of a concept produces not knowledge, but only a contingent constellation of always approximating descriptions united into a definite concept only by the founding decision of the (nation-building) human association. Such founding act, of course, is never innocent and presuppositionless, yet it is precisely this act of will, argues Derrida, that establishes that which is able to sustain itself regardless of instability that grounds its possibility. Simply put, Derrida is not irresponsibly arguing that any cultural or political institution that claims authority and power somehow lacks any legitimacy in its claims. He points out that a visible constancy and consistency of any societal arrangement has come into existence through a series of decisions that do not obey any historical logic or play out any teleological scenario.

How does the discussion of "faith " and "knowledge" help Derrida make his point not only about the auto-immune characteristics of the present-day religious fundamentalisms but also about today's societal arrangement? For Derrida, there are two *sources* of religion, sources that give it all the necessary power to continue its influence in the contemporary society: the experience of belief [*croyance*] ("believing or credit, the

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fiduciary or the trustworthy in the act of faith, fidelity, the appeal to blind confidence, the testimonial that is always beyond proof, demonstrative reason, intuition") and the experience of the unscathed, of sacredness, or of holiness [*indemne, sacralité, saintete*].[58] In this distinction Derrida attempts to theorize two moments of religion that should not be confused, even if they cannot be strictly separated. The strata of belief correspond to Derrida's discussion of "fiduciary" as a necessary element in any ethical and political decision that, based on a calculable nature of rules, regulations and laws, always contains an element of incalculable and indeterminable. The strata of sacredness correspond to Derrida's critique of the "metaphysics of presence," of that utterly human desire to reach the ultimate source of everything, the ultimate explanation and origin of reality. Thus we see that we can roughly describe these two sources of religion as "faith" and "knowledge," yet only in their combination do they produce any sort of religious effects, positive and negative.

The interaction between "faith" and "knowledge" is far from smooth, of course, precisely because their co-implication is hidden. In fact, one might see some of the examples of radical secularization (from early modern atheism to Soviet era "militant atheism" to contemporary figures of "new atheism") as a continual effort to cleanse the secular, the scientific, and the ultimately explanatory and progressive "knowledge" from all the so-called superstitious and primitive elements of "faith." At the same time, major religious movements often labeled "fundamentalist" are attempting to resist what they perceive to be a radical emptying of contemporary societies of all things religious

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[58] *FK*, 70.

through a discourse of what can only be labeled *alternative modernity* where religious ideas are as accepted and respected as secular ideas.

Religion in the singular, Derrida claims, comes to designate "always a response and responsibility" that is prescribed, not freely chosen, because "the other makes the law."[59] We can recall here our discussion of Derrida's analysis of the need to speak the language of the other, of being forced to speak the language of the majority. This understanding of religion seems to be opposed to Kantian position that law necessarily comes from oneself, that law is produced by the subject and therefore it acquires its force from this act of self-legislation. However, as we pointed out, it is not entirely clear, based on our reading of Kant, whether law is produced absolutely autonomously, i.e. without any reliance on nature.[60] What does unite Kant and Derrida at this point of our study is that both affirm the necessity to differentiate between the dogmatic position of claiming to *know* that we are free and autonomous and the critical position of *positing* that we are free and autonomous. If Kant denies us the knowledge of our freedom, he provides us with a philosophical justification for positing such freedom and hoping that our efforts are not in vain. If Derrida undermines any attempt to ground knowledge in a crypto-metaphysical assurance of scientific certainty, he insists that such impossibility of pure presence, pure origin and epistemic closure is in fact good news because it allows us to think and to change the present in the name of a better future.

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[59] *FK*, 71.

[60] See, for example, a recent study by Patrick Kain, "Self-Legislation in Kant's Moral Philosophy," *Archiv für Geschichte der Philosophie* 86:3 (September 2004), 257-306. Kain argues, based on his study of Kant's lectures, that there is indeed no author of moral law in Kant as we have to distinguish between the "author of moral law" and the "legislator of moral law." Allen W. Wood agrees with Kain's reading and is willing to correct his earlier "half-correct" view of the same issue: see Allen W. Wood, *Kantian Ethics* (Cambridge: Cambridge University Press, 2008), 294note7.

As Derrida continues his discussion of "faith" and "knowledge" it appears in yet another version as that between "believing one knows and knowing one believes."[61] Formulated this way, "faith" and "knowledge, do not serve as two poles alongside which we can comfortably align various religious and secular phenomena. In fact, this particular formulation contains a rather startling thesis that Derrida attempts to flesh out in the remainder of "Faith and Knowledge": the co-implication of "faith" and "knowledge" that constitutes religion allows us to claims that, in principle, "there is no incompatibility… between the 'fundamentalisms', the 'integrisms' or their 'politics' and, on the other hand, rationality, which is to say, the tele-techno-capitalistico-scientific fiduciarity, in all of its mediatic and globalizing dimensions."[62] In other words, to put it bluntly, there is a strange correlation between so-called fundamentalisms and the most progressive discourses of techno-science and liberal capitalist ideologies. Derrida labels this peculiar correlation, playing on the familiar term "globalization," *globalatinization*.[63] This term, which is no longer surprising, enters Derrida's vocabulary first in his engagement with Kant's notion of "reflecting faith," faith that "favors good will beyond all knowledge."[64] However, we quickly learn that "globalatinization (this strange alliance of Christianity, as the experience of the death of God, and tele-technoscientific capitalism) is at the same time hegemonic and finite, ultra-powerful and in the process of exhausting itself."[65]

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[61] *FK*, 76.
[62] *FK*, 81.
[63] Cf. *FK*, 50. Translator's note indicates that, like English term "globalatinization," French term "mondialatinisation" is a neologism created by Derrida.
[64] *FK*, 49.
[65] *FK*, 51-52.

5. Religion and Violence.

This strange alliance between the most archaic forms of religion (cult, sacrifice, revelation, texts and so on) and the new media (capitalism, mechanical reproduction, information technology and so on) is a direct result of "globalatinization," of religion becoming more and more *worldly*.[66] The task of "thinking religion" then for Derrida is the task of thinking it in terms of both Kant's discussion of "radical evil" in *Religion* and Bergson's discussion of the "machine for making gods" in *The Two Sources of Morality and Religion*.[67] Kant's idea of "radical evil," as we saw earlier, is not concerned with horrific acts of immorality but with the question of the possibility of evil, as such. Kant's radical evil, however, proposes to *rationalize* evil, to make it into an "evil principle" as opposed to some demonic "evil madness." Derrida's peculiar twist here consists in asking a series of questions concerning the "return of the religious" as raising a question of possibility of evil committed in the name of religion, evil that is more potent and destructive due to religion's revealed structure of auto-immunity:

> Religion today allies itself with tele-technoscience, to which it reacts with all its forces. It is*, on the one hand*, globalization; it produces, weds, exploits the capital and knowledge of tele-mediatization; neither the trips and global spectacularizing of the Pope, not the interstate dimensions of the 'Rushdie affair', nor planetary terrorism would otherwise be possible… But, *on the other hand*, it reacts immediately, *simultaneously*, declaring war against that which gives it this new power only at the cost of dislodging it from all its proper places, in truth from place itself, from the taking-place of truth. It conducts a terrible war against that which protects it only by threatening it, according to this double and contradictory structure: immunity and auto-immunity.[68]

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[66] Cf. Hent de Vries, *Philosophy and the Turn to Religion* (Baltimore: Johns Hopkins University Press, 1999), 15.

[67] *FK*, 77. Cf. Herni Bergson, *The Two Sources of Morality and Religion*, trans. R. Ashley Audra and Cloudesley Brereton (Norte Dame: Notre Dame University Press, 1977).

[68] *FK*, 82. Original emphasis.

Derrida's analysis of auto-immunity seems to proceed along the lines of comparing the idea of "radical evil" that he finds in Kant with what he labels "evil of abstraction." The peculiarity of such formulation is not found in Derrida's critique of abstraction, but in his willingness to describe it in such moralistic terms, even if borrowed from Kant, as "good" and "evil." Early in his philosophical career, in an essay called "White Mythology," Derrida first touched on the subject that turned out to be predicated on the general philosophical trust in the power of abstraction.[69] Although on the first reading, the essay can be understood as dealing primarily with the question of metaphoricity and its relation to the nature of philosophical language, one quickly discovers that there is much more to it. If we follow Derrida's discussion of the metaphor, we notice that there is a privileged philosophical move with which a philosophical usage claims to have manufactured a metaphorical connection based on some "original figures" of natural language, a move of abstraction.

> The primitive meaning, the original, and always sensory and material, figure is not exactly a metaphor. It is a kind of transparent figure, equivalent to a literal meaning [*sens propre*]. It becomes a metaphor when philosophical discourse puts it into circulation. Simultaneously the first meaning and the first displacement are then forgotten. The metaphor is no longer noticed, and it is taken for the proper meaning. A double effacement. Philosophy would be this process of metaphorization which gets carried away in and of itself. Constitutionally, philosophical culture will always have been an obliterating one [*fruste*].[70]

The history of a metaphor thus appears as a history of abstraction: the very constitution of philosophical language demands that all the particular and defining characteristics of a

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[69] Jacques Derrida, "White Mythology: Metaphor in the Text of Philosophy," in *Margins of Philosophy*, trans. Alan Bass, (Chicago: University of Chicago Press, 1982), 207-71.

[70] "White Mythology," 211. It is precisely this obliteration of the scene that produces philosophy that Derrida terms "white mythology": "White mythology – metaphysics has erased within itself the fabulous scene that has produced it, the scene that nevertheless remains active and stirring, inscribed in white ink, an invisible design covered over in the palimpsest." (213).

thing or a relation be stripped away in order to produce a concept, a usable coin capable of being exchanged and therefore circulated. The reference to the "evil of abstraction," therefore, is not at all accidental, as the stripping away of the particular in any act of abstraction is the very essence of the salvific function of religion for Derrida. The discourse on religion cannot be separated from a discourse on the holy and sacred which is, for Derrida, a discourse on salvation as indemnification. In other words, on the one hand, because the privileged sites of abstraction are "the machine, technics, technoscience and above all the transcendence of tele-technology,"[71] religion as a discourse of salvation and transcendence finds itself in agreement with tele-technology and law. On the other hand, because religion also contains an experience of the most elementary act of faith, its universalizing movement of aligning itself with "new media" is countered by its very own movement toward particularity that is violated in the original gesture of any abstraction.

This auto-immune reaction of religion against itself, this "auto-immune indemnification," shows itself, for Derrida, in a form of what in "Violence and Metaphysics" he called "the worst violence" [*la pire violence*]. In a rather interesting passage in that essay, interesting precisely in light of his later discussion of religion and violence, Derrida describes "the worst violence" as a type of violence in which "the horizon of peace would disappear into the night (worst violence as previolence)."[72] This worst violence is such because it is "the violence of primitive and prelogical silence, of an unimaginable night which would not even be the opposite of day, an absolute violence

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[71] *FK*, 43.
[72] Jacques Derrida, *Writing and Difference*, trans. Alan Bass (Chicago: University of Chicago Press, 1978), 130.

which would not even be the opposite of nonviolence: nothingness and pure non-sense."[73] If this worst violence, as Hent de Vries argues, is "abstraction ad absurdum" and a "looking away from every singularity," then it is a violence that can be identified with *injustice*, i.e. with a disregard for what we called "the imperative of justice" to always attend to singular while also applying the laws that are to guarantee rights and freedoms of others.[74]

Derrida's discussion of the worst violence and his general critique of religion and its auto-immune violence is effective precisely because it is directed at both "knowledge" and "faith," i.e. both rationalist pretension of objectivity and fiduciary reliance on dogmatic assertions about supersensible reality. However, it is his insistence that we rethink, in light of his observations, that the major premises of the modern attitude toward religion and modernity is what makes the essay so potent. The fact that religion aligns itself with technology and capitalism is not just a critique of religion but also a critique of modernity, a vision of modernity that relies on technological advancement and capitalist economy to solve all the societal problems. "What in the world is suddenly emerging or re-emerging under this appellation [of religion]?" asks Derrida.[75] The answer of "Faith and Knowledge" is simple: what suddenly emerges in our discussion of "religion" today is not a need to rid the world of religion but a vision of the future in which we must find a way to renegotiate the relationship between the calculable machine-like predictability of "knowledge" and the incalculable to-come of "faith."

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[73] Derrida, *Writing and Difference*, 130.
[74] Hent de Vries, *Philosophy and the Turn to Religion*, 20.
[75] *FK*, 75.

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What Derrida labels the "Kantian gesture" of thinking religion "within the limits of reason alone" is a preference for "republican democracy as a universalizable model, bringing philosophy to the public 'cause', to the *res publica*, to 'public-ness'… to the enlightened virtue of public space, emancipating it from all external power (non-lay, non-secular), for example from religious dogmatism, orthodoxy or authority (that is, from a certain rule of *doxa* or of belief, which, however, does not mean all faith)."[76] This gesture of public critique of religion, of attempting to think it within the limits of reason is, however, problematic. Kant appears throughout "Faith and Knowledge" and exemplifies an attitude of reason/knowledge that purports to know the difference between "faith" and "knowledge" (or reason and religion), to think religion "within limits of reason," while Derrida suggests that we need to constantly try "to think the interconnectedness… of knowledge *and* faith, technoscience and religious belief, calculation and the sacrosanct."[77] However, the main problem is not with conceptualizations of the need for such reevaluation of the role of religion in the public sphere, but with a seeming lack of motivation to do so on the part of the secular modernity.

Both Kant and Derrida conceptualize religion not as a set of special obligations or as a set of special issues. For Kant, religion is always a combination for pure rational (formal) faith and some institutionalization; although it is not absolutely clear how a specific religion negotiates this relationship between universal rational faith and particular dogmatic content. For Derrida, religion is a peculiar combination of an attitude of faith and believing (messianicity as a structure of experience) and an opening of the

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[76] *FK*, 47.
[77] *FK*, 90.

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inaccessible and the holy (unscathed) space that articulates that ever-present incalculable in any calculation and undecideable in any decision, an ultimate blind spot that does not allow us to comprehend reality as a whole. Religion, for both Kant and Derrida, signifies the presence of some excess in the very midst of reason, excess that we need to come to grips with, not through additional theorization, but in an act of faith.

If genuine religious passion, despite both Kant's and Derrida's attempts to make it more or less reasonable and therefore manageable, still remains rooted in prelogical, unarticulated, illegitimate and silent violence that exposes any and all human institutions as ultimately finite, then we return to the problem of religious violence now from a slightly different perspective. If religion is about our attitude toward our duties and our motivation to strive for a better more just society, then its violent expressions are not to be conceptualized as simple challenges to this or that law, but as attempts to suspend all laws in order to ask questions about legitimacy of societal arrangements, as such. Kant's introduction of "radical evil" allows us to raise questions about human nature and its evil disposition to excuse itself from obeying its own laws in the name of something else (be it self-interest or justice, it still remains something other than law). Although Kant risks philosophical scandal by incorporating this "radical evil" into his discussion of human freedom and reason (rationalization of evil, as we called it), it is clear *why* he needs to do so. Without a reasonable discourse on human evil, there opens up, for Kant, a monstrous gap of hidden silent and irrational lawlessness of the state of nature. Although Derrida risks philosophical embarrassment by "returning to religion" in his insistence on placing both faith and knowledge on the same side of the scales of modernity, while leaving open the possibility for radical uncertainty in his notion of justice beyond law, it is not entirely

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clear exactly how this is suppose to help us better understand the relationship between

law and justice.

VI

Conclusion: Law, Justice and Religious Violence.

Among many characteristics of acts of violence in the name of religion, either explicitly stated by the perpetrators themselves or discerned by witnesses of such acts, there is a strong determination to violate the present law in the name of some future (but always necessary) change of human condition. This passion for change turns destructive not by accident or due to some misuse by those who pursue their own hidden agendas in these acts of religious violence. In this essay, we have attempted to think of the possibility that the tension created in the interaction between the discourses of law and justice, and the conflict that is inevitably produced whenever the ideas of what is lawful clash with the ideas of what is just, are to be explored by providing a possible new approach to the problem of religious violence. Our primary goal was to take the discussion of religious violence out of the familiar contexts of scriptural misinterpretation, psychological deficiency, sociological dysfunction, or geopolitical conflict, and put it in the context of the issues of law and justice. Our reference to what some have labeled apocalyptic violence as violence in the name of some future human condition of justice helped us to initially locate a possible fruitful angle of approach to the problem of religious violence.

We began our investigation with a look at Kant's practical philosophy and its attempts to present the matter in terms of the distinction between the moral law in its

internal and external expressions: morality and legality. Although both morality and legality, strictly speaking, deal with the moral laws of freedom, Kant's distinction between the "inside" of the moral disposition (the determining ground of action) and the "outside" of the lawful action (the external conformity of action to law) resulted in an eventual divorce between morality as a matter of private motivation and legality as a matter of public behavior. The possibility of conflict between one's internal disposition and one's external conformity, that is to say, the possibility of conflict between the moral duty and the legal duty, occasionally entered Kant's discussion of the subject matter, yet the probable solution was not sufficiently articulated. A simple hypothetical situation in which a group of individuals, in the rightful condition, objects to some laws and finds them unjust forced Kant to further separate the interiority of moral freedom and the exteriority of legal coercion: called upon to obey unjust laws, argued Kant, we are obligated to obey, while maintaining our freedom to disagree with the enforcing authority, even if never came to the point of violent resistance to the unjust regime.

Kant's practical philosophy, based on the tradition of social contract and complicated by its own critical distinction between noumena and phenomena, was not unique in its efforts to construct a rationalist theory of right and virtue. But it was, and still remains, one of the most consistent attempts to think through some of the thorny issues, the problem of law and justice being the most important. In the case of any conflict between the rationality of the categorical imperative and the irrationality of the unjust abuses of power by those in charge, Kant is on the side of rationality. Yet when this logic presses him against the wall and raises the question of the possibility of violence in the name of justice (revolution being one example), Kant refuses to allow for

any active resistance, relying completely on the idea of "top-to-bottom" reforms. In this sense, Kant pushes the contrarian discourse to its very limit where it ultimately breaks: emphasis on the externality of law, on its necessarily formal structures, threatens to minimize the importance of the interiority of the moral disposition that ultimately undermines the very idea of justice in the name of which the law is first established and later enforced.

The paradox of Kant's position then can be identified as the following: on the one hand, Kant attempts to protect the moral freedom and self-determination of the individual agents by distinguishing between the rational *ideal* of the rightful condition in which internal disposition and external conformity are perfectly aligned and the *imperfect* rightful condition that contains the possibility of unjust laws. Yet, on the other hand, Kant protects the individual agents perhaps too strongly, thus creating a clear discrepancy between one's moral dispositions and one's external behavior that threaten to strip legality of all interiority (and the accompanying motivating framework) and turn laws into commands. To put it differently, for Kant the legitimacy (and the validity) of the legal system is independent of its efficacy, therefore creating a larger gap between the formal and the material aspects of justice. It is in this sense that we have pointed out that Kant can be considered an intermediary between the earlier traditions of natural law and the later traditions of legal positivism.[1] The clear distinction between law and justice articulated in Kant, we argued, becomes more visible in the discourse on justification of the use of coercion. The problem of coercion, as the problem of the legitimacy of violence, makes the gap between the "inside" of the moral sense of justice and the

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[1] Cf. Sven Arntzen, "Kant on the Moral Condition of Law: Between Natural Law and Legal Positivism," in *Law and Peace in Kant's Philosophy / Recht und Frieden in der Philosophie Kants: Akten des X. Internationalen Kant-Kongresses*, eds. Valerio Rohden et al., (Berlin: Walter de Gruyter, 2008): 195–206.

"outside" of the legal arrangements wider and more problematic. We have concluded that the problem of violence, then, is calling our attention to the need for a better articulation of the problem of the relationship between law and justice before we can productively think about religious violence in terms of this relationship.

In order to better articulate the (conceptual) space of the difference between law and justice, we turned to Derrida. We chose Derrida not because he was explicitly engaging Kant's concepts or trying to solve Kant's problem, but because, in a sense, he was approaching the same issue of the difference between law and justice in a way that was illuminating vis-à-vis Kantian and contemporary traditions and our general attempt to find a more productive conceptual framework for dealing with the problem of religious violence. If we were again to reference Marx, who famously insisted that the critique of religion was to be transformed into the critique of law [*Recht*] and the critique of theology in the critique of politics, Derrida, having arrived at some initial results of such critique, aimed to turn the critique of law back into the critique of religion and the critique of politics into the critique of theology.[2] The issues of law and politics are not separable from the issues of religion and theology, argues Derrida; long rejected and suppressed by secular modernity, they are making a "comeback" by revealing themselves as never having left in the first place.

Derrida's articulation of the space of difference between law and justice in terms of a movement between the two leads him to identify the positive and the negative aspects of this distinction: no distinction between law and justice disavows any genuine exteriority to the order of law and disarms any attempt to evaluate laws as either just or

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[2] Cf. Karl Marx, *Critique of Hegel's Philosophy of Right*, ed. Joseph J. O'Malley (Cambridge: Cambridge University Press, 1977), 132.

unjust; yet too strong of an emphasis on the distinction between law and justice threatens to destabilize the order of law and destroy any attempt to establish some, even if imperfect, rightful condition. The balance between these two approaches is presented in Derrida in terms of the balance between the particularity of justice and the universality of law. Although we tend to think of particular laws and universal justice, Derrida argues, based on Kantian understanding of law as originating in the self-legislating activity of the universal reason, law is universal in its determination to include everyone and justice is particular in its attention to the individual case in question. Derrida's analysis reveals that the gap between law and justice is not accidental but appears, necessarily, precisely because it can be traced back to Kantian emphasis on the distinction between the interiority of the moral disposition and the exteriority of the conformity to law. If the gap between law and justice is not accidental but structurally necessary, then Derrida's insistence on *messianicity* as a structure of experience that is based on our awareness of the imperfections of the present age and our hope that these imperfections will be overcome in some future (even if always to-come) condition helps us resituate the problem of religion and violence in this new context in the following way: since the discrepancy between law and justice is necessary as a part of the initial conceptual articulation of the very notions of law and justice, the question of what holds them together (bound by their opposition) comes to the forefront as the question of force (violence, coercion, power) and the question of the fiduciary (faith, trust, religion).

Our look at Derrida's discussion of force, considered in the light of our engagement with Kant's analysis of the necessary coercion of law and the non-violent attitude toward unjust laws and regulations of the legitimate sovereign authority, lead us

to a closer analysis of the peculiar contamination of both law and justice by the idea of legitimate and illegitimate violence. Derrida's reading of Benjamin showed us the very real problem of violence present in any legal system that cannot properly legitimize its own origin and its own "force of law," despite Kant's previous attempts to ground legality in the universal structures of reason. Justice, Derrida told us, is never fully incarnated in any legal system precisely because it is to be thought as never really belonging to the legal discourse and Benjamin's insightful analysis of violence (*Gewalt*) illustrated this point more poignantly: if law is created out of nothing and from that very moment is haunted by radical destruction, then only by tying itself to the notion of justice (either explicitly as the justice of God in the pre-modern legal discourses or implicitly as the justice of the best legal arrangement in contemporary legal discourses) can it suppress its finitude and vulnerability by forbidding any serious challenge to its legitimacy as an institution. We are "allowed" to challenge this or that law in the name of justice, yet this justice is always perceived as intimately connected to the very idea of legality, and Kant is a great example of this very attitude. Any attempt to think of justice *beyond* the order of law is to be condemned and immediately suppressed unless we risk the destruction of the very fabric of human society. However, as Derrida's analysis revealed, it is very likely that the order of law intentionally articulates itself as connected, but not identical, with justice simply in order to ground itself in a religious idea, now stripped of its religiosity and its explicit references to the transcendent order of infinite truths. If law is indeed the necessary condition of justice and therefore there is no "justice beyond law," then, Derrida informed us, we are unable to explain why more laws do not result in more justice, but, in fact, in more soulless legalism and therefore injustice. The relationship

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between law and justice is therefore problematized by violence that establishes and maintains the order of law while also working against it (and itself) in positing the transcendent criterion of justice. The issue of religion, however, is never far away from this issue of auto-immune violence (although Derrida arrives at this conclusion in the reverse order), because it reveals the fiduciary structure of any trust in legality and its ultimate justice. The idea of justice, having replaced the more explicit references to God, cannot completely repress all mentions of religion, primarily because it is postulated as a truly exterior point of reference vis-à-vis any societal constitution. Derrida's discussion of violence shows us, perhaps against his own philosophical wishes, that the movement that constitutes the space of difference between law and justice is also the movement between the calculability of (human) reason and the incalculability of (divine) violence. This "divine violence," as Slavoj Žižek puts it in his peculiar reading of Benjamin's essay, "purifies the guilty not of guilt but of law, because law is limited to the living: it cannot reach beyond life to touch what is in excess of life, what is more than mere life."[3] If justice is to show itself as truly beyond law, Derrida seems to suggest, it can only do so in the acts of violence in the name of its higher (transcendent) order, although, as we pointed out, Derrida stops short of any specific prescriptions when it comes to this strange "divine violence" and does not explicitly suggest, as we do, that this is precisely where any analysis of "religious violence" should inevitably go. In fact, neither Kant nor Derrida explicitly show us *how* to talk about the problematic instances of religious violence and while formulating a theory of religious violence based on our insights is beyond the scope of this work, we would like to provide a number of preliminary

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[3] Slavoj Žižek, *Violence: Six Sideways Reflections* (New York: Picador, 2008), 198.

observations necessary, as we argue, for any future theoretical attempts to understand the issue of religious violence.

Our initial hypothesis was that the problem of religious violence is best approached and addressed in a new context of the difference between law and justice. Having considered Kant's and Derrida's contributions to the articulation of this difference, it seems appropriate at this point to describe religious violence in the following manner: the difference between law and justice, having been established and initially articulated, reveals itself as containing a fundamental tension that cannot be resolved either in unity or in strict distinction between the two concepts; this tension reveals itself in a *crisis* of religious violence. If the movement toward the unity (if not identity) of law and justice results in the condition of extreme formalization of law, religious violence shows itself in acts that are designed to highlight the difference through acts of violation of law in the name of justice (acts that do not have to involve loss of life or destruction of property, but that are indeed symbolic acts of defiance of legality as such that can include, for example, various forms of civil disobedience). If the movement toward the separation (or even complete divorce) of law and justice results in complete lack of any reference to universality of lawfulness, religious violence shows itself in acts of establishing new law or new legality based on the renewed sense of transcendent justice.[4] Both tendencies, paradoxically, produce what we might label the *deficit* of justice: in the first scenario, the unity between law and justice eventually eliminates the need for any external criterion for evaluating legality (if it is legal, it is

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[4] Although most cases of religious violence are, in fact, thought to be of the first *destructive* kind, one may very well consider such significant Western developments as Gregorian Revolution (papal reform and codification of church canon law in eleventh century) or Lutheran Reformation as instances of religiously motivated *creative* acts of intentional realignments of the contemporary legal systems resulting in a new societal situation.

just) and produces a kind of tyranny of law; in the second scenario, the sharp distinction between law and justice raises the question of the very utility of the notion of "justice" in our attempts at designing a better society. If Kant can be read as emphasizing the need for the unity of law and justice, and therefore as promoting universal legalization of all the social relationships (in some future cosmopolitan condition), then Derrida, especially in his endorsement of Benjamin's call for "justice beyond law" can be read as potentially threatening the universality of reason and its grounding of morality and legality.

If religious violence is to be thought as indicating a crisis in the relationship between law and justice, let us attempt to *preliminarily* describe the conditions of emergence of such a crisis and show how all of the issues raised in this study – law, justice, violence, and religion – help us in our efforts to do so. The notion of crisis, we hope, captures the complexity of the problem of religious violence. What follows, however, is not a theory of religious violence as such, but only a series of propositions that are to serve as a preparatory work for any future attempt to provide such a theory. These preliminary remarks are based on our discussions in this study and therefore could not have been deduced without a careful study of the issues. However, it is important to reemphasize that both Kant and Derrida, considered together and often forced to interact (philosophically), are but entry points into the general theme of placing the problem of religious violence alongside the problem of law and justice.

In order to assess the general problem of this essay and, at the same time, to present our hypothesis vis-à-vis religious violence in a new (even if provocative) light, let us ask ourselves a difficult question that undoubtedly often haunted the major movements of our argument: Is there a redemptive dimension to religious violence? Is it possible to

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imagine a scenario in which one may not only approve of certain violent acts, but also endorse them as necessary? It is precisely here that the issue of proper contextualization affectively draws our attention. If, by acts of religious violence, we understand acts similar to the attacks of 9/11 or the suicide bombings in Palestine or Iraq, it is almost impossible to fully understand the motivation behind such acts, let alone to approve of them. The problem, however, is that we somehow *already* know what is "religious violence" when we identify these examples as examples of this type of violence. Our theoretical task here was to step outside of the popular contextualization of religious violence as violence committed by religious people in the name of their perverse versions of generally peaceful and harmless religious beliefs. Violence as a deviation from the norm, as a violation of the rules of the "proper" conflict resolution, and religion as a set of irrational and therefore uncontestable beliefs, combined in a volatile mixture with equal portions of anti-modern conservative backwardness, non-Western cultural, social and political otherness, and threatening insubordination, usually dominate all more or less sophisticated discussions of religious violence. However, if we take the notion of religious violence out of this common context and attempt to resituate it among the "respected" concepts of socio-political analysis (law and justice), our theory of religious violence, we contend, will serve a proper philosophical function aimed at understanding, rather than a simple hysterical denunciation.

If there is any redemptive dimension to religious violence, we argue, then it is found in its very raising of the question of justice: justice is a volatile and active force that gathers our thought around the notions of law and order (Kant) and yet that also disperses our thought by preventing any closure, any finality in the interaction between

itself and our moral and legal ideals (Derrida). Although we causally measure our own obedience to the law (our "law-abiding-ness") over against the criminality of those who choose to break the law (while still remaining within the law as criminals), we find the intrusion from the "outside," the possibility of the destruction of the law itself to be most frightening because, regardless of our awareness of the finitude and constructability of the law, we identify, following Kant and other theorists of right, our very humanity with the emergence of the rightful condition.[5] The fear of lawlessness, of the relapse into the state of nature that is, as Kant insisted, devoid of justice, also indicates that we have, in fact, learned to closely identify the condition of law with the condition of justice. In this flat ("immanent") relationship between law and justice, there is no possibility of a legitimate challenge to the order of law that is not already contained within the law itself: law improves itself, it corrects itself, and it develops itself according to a set of values that somehow also come from within itself.[6] The tension between law and justice therefore is not a tension between reality and ideality, but a tension between the *false* exteriority of the intra-legal criterion of justice and the *true* exteriority of justice itself that, if we are to follow Derrida, always arrives with a bang (revolution, general strike, war, terrorism, coup d'etat and so on) and always challenges the condition of legality as

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[5] In his "Critique of Violence," Benjamin talks about the strange "secret admiration of the public" for the figure of the "great criminal" that does not result from the crime itself but from the "violence to which it bears witness." Cf. Benjamin, "Critique of Violence," 281. It would be an interesting undertaking to compare the still existing admiration for "great crime" in the West (daily crime reporting, crime TV shows, etc) and the complete lack of any (even perverse) interest in the figure of the "great terrorist" when even a slight suggestion that, for example, 9/11 terrorists were to be commended for their determination (consider, for example, Bill Maher's remark along these lines and the reaction it solicited) is dismissed as itself terrorist and dangerous: any attempt to understand why 9/11 took place are also condemned as heretical and inherently sympathetic to the terrorist agenda.

[6] Harold J. Berman, however, points out in his analysis of the contemporary attitude toward law that the "belief in the growth of law, its ongoing character over generations and centuries, has been substantially weakened. The notion is widely held that the apparent development of law – its apparent growth through reinterpretation of the past, whether the past is represented by precedent or by codification – is only ideological." Cf. Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge: Harvard University Press, 1983), 38.

such. If law is the moment of stability (Kant) and justice is the moment of change (Derrida), then violence in the name of justice both does and does not belong to this relationship between law and justice ("contaminates" it, as Derrida puts it). Both religion and law-destroying violence are points of entry into this problematic relationship, as we tried to show in this essay. However, if we take a clue from Derrida, we are to distinguish between a genuine religious passion ("messianicity") that arises from our awareness of the fundamental instability of human institutions (and therefore brings the problem of law and justice out into the open) and a false manipulative violence against certain laws and regulations that presents itself as a violence driven by religious principles (unarticulated, hidden, pre-logical, "worst violence" of Derrida's analysis).

If human existence is primarily determined by its lack of determinacy and certainty, if religion is not a set of special duties, but a set of attitudes toward our duties, then both Kant and Derrida conceptualize violence of such religion as a disruptive and disconcerting reminder of this human condition of finitude. All of this, of course, would sound very sophisticated and philosophical, if, in fact, we were not dealing with such an impactful issue as violence against our fellow human beings, even if in the name of justice and some *future* peace and harmony. The very fact that it is extremely difficult to stay on the level of high abstraction indicates to us that any theorization of religious violence will have to deal with this very tension between, on the one hand, attempting to formulate a *theory* and therefore bracket all the premature evaluations of certain events, despite their horrific and shocking nature, and, on the other hand, dealing with what is already prejudged as the *examples* of religious violence. To put it differently, the paradox of any theorization – how do we recognize an example of that which we are

undertaking to study and therefore the definitive description of which we are yet to produce? – is complicated here by the very visceral reaction we have to the subject matter under investigation. Therefore, before we end this essay, we insert this disclaimer: there is a risk that in our investigation of the proper contextualization of religious violence we may come across as endorsing or insufficiently condemning certain aspects of it, despite the obvious fallacy of expecting one to evaluate something before it is properly conceptualized; however, we are willing to run such a risk, not to justify religious violence but to show how it can be understood as revealing a possible way of looking at *any* action toward justice, because only then can we really attempt to provide a way of reaching the same just condition non-violently.

If any discussion of law is immediately complicated by the idea of justice, and any discussion of law *and* justice is immediately complicated by the problem of violence, then any discussion of religion today is to be conceived as necessary for any serious discussion of justice. As some contemporary theorists are pointing out, the "institutions of secular liberal democracy simply do not sufficiently motivate their citizenry."[7] If secular liberal politics fail to motivate us in our pursuit of a more just and peaceful society, then religion as an affective symbolic system with a powerful motivational tradition can be seen as stepping right in and compensating for the lack of properly political imagination and motivation. If the norms of contemporary legal and political discourses are externally binding but not internally compelling, then the secular liberal democratic citizenry will either fall back into dogmatic slumber of mindless capitalist consumption or be rudely awakened to the realities of powerful and pervasive religious

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[7] Simon Critchley, *Infinitely Demanding: Ethics of Commitment, Politics of Resistance* (New York: Verso, 2007), 7.

motivations aiming at changing the world (for better or for worse). If, as Michal J. Sandel insightfully observes, "fundamentalists rush in where liberals fear to tread," then reassessing the role of religion is not really a matter of choice, but a matter of necessity.[8] The subject matter of religious violence, then, is a better entry point into the discussion of the public role of religion because, unlike other aspects of the ever-present conflict between religious motivations and secular commitments, it cannot be easily ignored or theorized away as non-representative of the general peaceful nature of religious beliefs.

This is the paradoxical nature of any act of violence directed at a larger societal arrangement: it aims to attract attention to something that is beyond itself and, despite our general attempts to deal with such acts in a way that does not promote their future use, it is by and large successful in that it does draw attention to the issues in question. In this sense, acts of religious violence present themselves as means to an end and a primary task for any future theory of religious violence then should be to investigate the complex set of issues related to this end. In this essay we have tried to show that this end is justice and that any serious approach to religious violence must take into consideration the complex relationship between law and justice.

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[8] Michael J. Sanders, "Political Liberalism," in *Public Philosophy: Essays on Morality in Politics* (Cambridge: Harvard University Press, 2005), 246.

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Appendix: Abbreviations.

All citations from Kant's writings are from the so-called Akademie edition, abbreviated as "Ak." (*Kants Gesammelte Schriften*, ed. Königlich preussischen [later, Deutschen] Akademie der Wissenschaften [Berlin and Leipzig: Walter de Gruyter, 1900 –). The following abbreviations refer to the English translations that will be used in this essay more than once:

CF   "The Conflict of Faculties." In *Religion and Rational Theology*. Translated and Edited by Allen W. Wood and George di Giovanni. Cambridge: Cambridge University Press, 1996, 239-309.

CPR   *Critique of Pure Reason*. Translated and Edited by Paul Guyer and Allen W. Wood. Cambridge: Cambridge University Press, 1998.

CPrR   *Critique of Practical Reason*. In *Practical Philosophy*. Translated and Edited by Mary J. Gregor. Cambridge: Cambridge University Press, 1996, 137-276.

Groundwork *Groundwork of the Metaphysics of Morals*. In *Practical Philosophy*. Translated and Edited by Mary J. Gregor. Cambridge: Cambridge University Press, 1996, 41-108.

MM   *Metaphysics of Morals* in *Practical Philosophy*. Translated and Edited by Mary J. Gregor. Cambridge: Cambridge University Press, 1996, 361-603.

PP   *Perpetual Peace and Other Essays.* Translated by Ted Humphrey. Indianapolis: Hackett Publishing Company, 1983.

Religion   *Religion Within the Boundaries of Mere Reason*. In *Religion and Rational Theology*. Translated and Edited by Allen W. Wood and George di Giovanni. Cambridge: Cambridge University Press, 1996, 55-215.

Derrida's writing will be cited from the following English translations, using the following abbreviations:

FK   "Faith and Knowledge." In *Acts of Religion*. Translated and Edited by Gil Anijar. New York: Routledge, 2002, 42-101.

FL   "Force of Law: The 'Mystical Foundation of Authority'." In *Acts of Religion*. Translated and Edited by Gil Anijar. New York: Routledge, 2002, 230-298.

Limited   *Limited Inc*. Translated by Samuel Weber. Evanston: Northwestern University Press, 1988.