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Derrida's Law:

The socio-historical and the meta-ethical; *la* and *le politique*.

 Abstract

This article critically engages with a particular reading of Jacques Derrida's deconstructive legal theory which argues that his methodology marginalises engagements with the 'socio-historical' of law at best, or is incapable of such engagements at worst. After explaining this meta-ethical reading the piece offers a retort via a broader and more in-depth reading of Derrida's legal theory. Here the article problematises the distinction at the core of the meta-ethical reading; this being that Derrida's work established a mutually exclusive separation between a 'socio-legal' critique of law and one considered of 'critical legal theory'. This separation will be shown to be misleading by firstly referring to Derrida's essay 'Force of Law' and arguing that therein the 'socio-legal' and 'critical legal' theories are in fact mutually dependant and that Derrida's concept of *surenchère* illustrates this. Secondly, a wider reading of Derrida's work will then illustrate that such a conceptual binary is incompatible with his deconstructive metaphysical critique. This will be evidenced with reference to what is argued to be the central point of the meta-ethical reading, something which is itself born from Derrida's work; this being the distinction between *la* and *le politique*, 'politics' and 'the political'. With due regard for the history of this important and complicated deconstructive distinction it will be argued that the reductive reading in the meta-ethical critique does not do justice to the inherent paradox in maintaining a separation between 'socio-legal' theory, *la politique*, and 'critical legal theory,' *le politique*.

Keywords Derrida, law, deconstruction, socio-historical, *la/le politique*, metaphysics

Introduction

The meta-ethical reading of deconstructive legal theory

Jacques Derrida's theory of deconstruction has had a profound impact on legal studies since it entered the jurisprudential fray in the 1980s. [1] The varying interpretations of deconstruction within legal studies have produced readings ranging from 'methodological' to 'postmodern,' and from 'ethical-liberal' to 'cosmopolitan', amongst many others (De Ville, 2011: 3–13). Within these readings deconstruction has been cited by a plethora of legal scholars, leading to 'references [which] have varied from the sympathetic to the downright hostile' (2). This article investigates yet another interpretation of Derrida's deconstructive legal theory and the corresponding reading of his juridical thought. [2] The investigation of this reading is acute and slow, for '[t]he slower the reading, the greater the receptiveness to the work' (Fitzpatrick, 2012: 198).

The reading in question argues that Derrida's deconstructive legal theory at best marginalises, and at worst prohibits, engagements with the 'socio-historical' (Norrie, 2000). That is, his theory does not, or cannot, '[expose] the ideological, superstructural nature of law by showing that it operates in the service of social, economic, and political forces that are posited as external and prior to the law' (Fraser, 1991: 1325). In short, because Derrida's work lacks 'credence and validity in the kind of socio-historical approach [seen] as central to critique' (Norrie, 2005a: 14) it consequently holds no utility for those concerned with social justice. This reading has been proposed by several scholars, beginning most vocally with the American critical theorist Nancy Fraser (Fraser 1984, 1989, 1991) and then continuing strongly thereafter with the well-known British socio-legal scholar Alan Norrie (Norrie, 1996, 2000, 2003a, 2003b, 2005a, 2005b, 2010). [3] This reading of deconstruction is a 'meta-ethical' one, for as Norrie states:

Although Derrida says that deconstruction operates in part by looking historically at the genealogies of concepts, he does not relate deconstruction as an ethical project to the 'possible or useful' socio-historical project he also identifies. Thus, the socio-historical critique is marginalised by the deconstructive (metaphysical-ethical) approach which comes after it (Norrie, 2005a: 6). [4]

This reading highlights Derrida's methodological preference for 'metaphysics as ethical abstraction' over and above a 'socio-historical critique' within legal theory (Norrie, 2003a: 130), which consequently 'short-circuits' legal analysis so that it 'bypass[es] its sociohistorical character' (129). Similarly, Fraser opines that 'so long as Deconstruction remains committed to privileging even negative transcendental reflection … it will never get to ethics or politics' (Fraser, 1991: 1326). Thus deconstruction is *itself* 'a metaphysical barrier to a serious critique of law' (Norrie, 2000: 96) and to an understanding that '[h]uman beings live in society and history, by and through norms, forms and relations that are historically structured and shaped, including those of the law' (Norrie, 2005a: 79–80). The meta-ethical reading posits that deconstruction shuns law's relation to the socio-historical and is left bereft, as an abstract methodology bearing no relation to the everyday.

Article aims

This article engages with, and offers a retort to, this reductive meta-ethical reading by illustrating why Derrida's deconstructive engagement with law cannot *but* engage with the socio-historical of law. The importance of this retort is two-fold. Firstly, it impedes the consignment of deconstructive legal theory to an apolitical realm, or worse to political nihilism. Secondly, it attests to the 'Derridean *politics*' (Cusset, 2008: 126) which emanated *from* Derrida's work, not least of all for legal studies but also for 'feminists and thinkers of postcolonialism' amongst others (126). [5] For Derrida was, lest it be forgotten, 'an active and outspoken critic and commentator on issues such as South Africa's apartheid, the Israel/Palestine conflict, the bloody

3

civil war in his native Algeria, human rights abuses, French immigration laws, the death penalty, and on what Richard Falk has termed "the great terror war"' (Weber, 2013a: 1); it is submitted that his juridcio-political works on these issues constitute 'socio-historical' engagements.

The retort will be comprised of two interconnected parts. The first relates to readings of Derrida's most influential text on law: 'Force of Law: The "Mystical Foundation of Authority"' (Derrida, 1990, 2002c). Here the retort is not that scholars have misread Derrida's deconstructive legal theory per se but rather that a surface-level reading has led them to incorrectly establish two mutually exclusive critical routes for legal theory via a 'bifurcation' which creates a 'socio-historical' and a 'metaphysical-ethical' route (Norrie, 2000: 86; Fraser, 1991: 1325). Against this an alternative reading will be proposed based upon a close reading of Derrida's essay and his concept of *surenchère*.

The second part is grounded on an attentive reading of Derrida's work on the relationship between politics and philosophy. Here it will be argued that the aforementioned bifurcation between the two critical routes of legal theory is incompatible with Derrida's metaphysical critique. Here the scholars' concerns with the neglect of 'real-world geo-historical effects' in favour of the 'abstract, mysterious [and] ungrounded' (Norrie, 2010: 227, 228) will be transposed onto the division in deconstructive theory between *la* and *le politique*, that is between 'politics' and 'the political' (Lacoue-Labarthe and Nancy, 1997a, 1997b). This transposition will illuminate the seminal division which, it is argued, motivates their critique that Derrida's legal theory 'disable[s] or impede[s] the possibility of *political* thought about the relation between violence and law' (Fraser, 1991: 1327). However, in referring to prior attempts to cleanly separate *la* and *le politique* using Derrida's deconstructive theory, it will be shown that such a thing is a near impossible task.

For there is a profound deconstructive connection between 'politics' and 'the political' rather than 'the tendency in Derrida to neglect material and cultural structures' (Norrie, 2010: 87).

This article begins by explaining the meta-ethical reading through two brief sections: the first accounts for the origins of this reading from the 1980s and 1990s and the second then elucidates the theoretical grounds for this reading.

A reductive reading of Derrida

Origins of the meta-ethical reading

The meta-ethical reading of deconstructive legal theory begins with early critiques of Derrida's work. In 1984 Fraser noted that 'there is one sort of difference which deconstruction cannot tolerate: namely, difference as dispute, as good, old-fashioned, political fight' (Fraser, 1984: 142). Then, from one of Norrie's earliest accounts with regards to deconstructive legal theory in 1996 we recall that:

> In seeking a critical standpoint in what lies 'beyond' poststructuralism ultimately has a problem in coming to terms with the forms of the social world as they are. Either it insists on the deconstruction of existing forms of subjectivity and reason (including those of the law), and therefore that the criteria for progressive political and moral change exist beyond 'what is,' in a *necessarily* inchoate 'other;' or it illicitly returns to what exists, for example, legal rights, seeing this as strategically necessary for moral and political practice in the meantime. The latter approach is illegitimate in terms of the method of deconstruction, but cries out to be implemented in the face of real, pressing injustice (Norrie, 1996: 544).

Accordingly deconstruction is portrayed as distanced from 'the forms of the social world as they are' and removed from 'political fight[s]', as well as concerns of justice with regards to law. This diagnosis unearths the reoccurring transcendental element within the meta-ethical critique of

deconstructive legal theory: 'Deconstruction that privilege[s] the transcendental, even in this qualified form, incur[s] a disability when it comes to thinking politically' (Fraser, 1991: 1326).

Law's violence and transcendence

For Fraser, Derrida's work illustrates a 'so-called "violence" in law that is constitutive and inescapable' (Fraser, 1991: 1328). It plagues all juridical systems and legal structures; 'the level at which violence is implicated in law is very deep; the suggestion is that violence constitutes the enabling ground or condition for the possibility of justice' (1325). This pushes Derrida to engage in a deconstructive approach which 'penetrates deeper than the [socio-historical] approach to the heart of the relation between violence and law' (1325). But for Fraser this approach becomes a 'quasi-transcendental reflection on violence as a necessary condition for justice' *at the expense of* 'a normative orientation' (1325, 1326) [6] because Derrida's account law's violence 'is independent of any specific institutional or social arrangements and … is not subject, even in principle, to change' (1328). Accordingly, Fraser believes Derrida pursues his legal theory through a critique which represents one fork in a 'bifurcation' (Norrie, 2000: 86); a 'more "intrinsic," "internal", and "complex"' legal critique as opposed to a critique which 'exposes the ideological, superstructural nature of law' (Fraser, 1991: 1325). This meta-ethical route taken from the bifurcation leads to Fraser labelling Derrida's work as objectively 'metaphysical' (1328). [7]

Dialectics and socio-legal theory

Norrie's reading of Derrida is slightly different due to his theoretical grounding in dialectical thought, which leads him – perhaps 'controversially' – to read deconstruction dialectically (Norrie, 2005a: 134). Norrie identifies that both Derrida and Hegel deploy an initial 'moment of dialectical negation' which exposes the contradictions of legal concepts (Norrie, 2005a: 144; 2010: 110). This accords with Derrida's metaphysical critique whereby '[t]he presence that it thus

6

delivered to us in the present is a chimera' (Derrida, 1976: 154) and consequently the illustration of law's 'logico-formal paradoxes' thereafter (Derrida, 1990: 959). But Norrie believes Derrida's deconstructive critique then 'refuses the second dialectical move of reconciliative Reason … declining to repair the dialectical contradiction that deconstruction has brought out' (Norrie, 2005a: 144). Hence after Derrida's deconstructive critique via his 'nonsynonymous substitute[s]' (Derrida, 1982a: 12) such as *différance*, *pharmakon*, and supplement, we are left with unresolved contradictions and deconstruction simply 'ends up marching us back into the arms of the law and its existing antinomies' (Norrie, 2005a: 145).

Norrie also critiques Derrida's ontology because its lack of presence (Norrie, 2005b: 96–100) means that it cannot grasp law's socio-historicity in the present 'Now' (Derrida, 1976: 67) of 'reality' (Norrie, 2010: 110). [8] Despite his agreement with Derrida's ontological complexity (Norrie, 2005b: 98) Norrie still believes that Derrida cannot comment on the real, every-day 'Now' of the socio-historical: '[d]econstruction posits in "every here-now" an "irreducibly heterogeneous otherness" that is present but unrealised, and of necessity unrealisable' (99). Thus deconstruction fails as a socio-historical critique of law, or as 'socio-legal theory': 'The two fit ill' (Norrie, 2003b: 106).

In both Fraser's and Norrie's view Derrida's deconstructive legal theory bifurcates towards an 'intrinsic' critique instead of a critique which would expose the 'superstructures of law that both hide and reflect the economic and political interests of the dominant forces of society' (Derrida, 1990: 941). This distinction is clear throughout their accounts of the meta-ethical critique (Fraser, 1984, 1989, 1991; Norrie 2000, 2003a, 2003b, 2005a, 2010). In Norrie's language deconstruction is therefore a 'critical legal theory' and not a theory of 'socio-legal studies' (Norrie, 2000: 86).

Consequently, deconstruction is 'insufficiently attuned' to the problems of an 'ontologically real, geo-historical world with its changing forms' (Norrie, 2010: 110).

Given the importance of the aforementioned bifurcation within the meta-ethical reading it requires further analysis, particularly regarding its establishment and justification. Thus we now turn to Derrida's 'Force of Law' (Derrida, 1990), for this essay is seen as fundamental in establishing the bifurcation between the meta-ethical and the socio-historical.

Bifurcation: socio-legal and critical legal theory

The bifurcation

The meta-ethical reading posits that Derrida's 1990 essay 'Force of Law' is responsible for 'the bifurcation of critical routes' affecting deconstruction (Norrie, 2000: 86). Fraser is curt regarding what she believes occurred in Derrida's essay:

> In … *Force of Law: The "Mystical Foundation of Authority",* Jacques Derrida distinguishes two different ways of thinking about the relations between force and law, and justice and violence. The approach, styled "critique", exposes the ideological, superstructural nature of law by showing that it operates in the service of social, economic, and political forces that are posited as external and prior to law. The second approach, in contrast, styled "deconstruction", address a relation between violence and law that is held to be more "intrinsic", "internal", and "complex", since it uncovers "the origin of authority, the foundation or ground, the position of the law" in a "violence without ground". In Derrida's view, the second, deconstructive approach is the preferred one: it penetrates deeper than the critical approach to the heart of the relation between violence and law (Fraser, 1991: 1325). [9]

In a very similar account from Norrie, given nine years later in this journal (Norrie, 2000), he too highlights the aforementioned bifurcation:

Nicola Lacey (1996: 143) has suggested that there is a 'seemingly unbridgeable gap' between critical legal theory and socio-legal studies … The question is starkly raised in Jacques Derrida's influential essay 'Force of Law' (Derrida, 1990), where he describes a 'critique of law' that is 'possible and always useful', involving 'a critique of juridical ideology, a desedimentation of the superstructures of law that both hide and reflect the economic and political interests of the dominant forms of society' (Derrida, 1990: 941). Useful it may be, but Derrida leaves this 'sociological' critique well alone in favour of his pursuit of a 'more intrinsic structure' which involves the 'very emergence of justice and law' in a 'performative and therefore interpretive violence' (1990: 941).

… The distinction represents a clear and, given the importance of its author, emblematic break for critical legal studies. … [C]onsequen[tly] the ethical critique operates not *with* the 'desedimentation of the superstructures of law' but, whatever the underlying intention, *against* it: the sociological critique is marginalised in 'Force of Law' (Norrie, 2000: 86).

These readings both imprint and affirm the 'bifurcation of critical routes in "Force of Law"' (Norrie, 2000: 86) (even if Norrie is influenced from a source other than Fraser). [10] From this the meta-ethical reading of deconstructive legal theory posits that there is a 'metaphysical barrier to a serious critique of law' in Derrida's work (Norrie, 2000: 96). Given the significance of this bifurcation it is important to assess the validity of this specific reading of Derrida. The following section examines Derrida's essay and gauges the justification behind the meta-ethical reading.

Force of Law

Derrida's essay elucidates what a deconstructive engagement with law may look like. He refers to Blaise Pascal and Michel de Montaigne, and particularly to the latter's statement that law is maintained by a 'mystical foundation of authority' (Derrida, 1990: 939). This critique illustrates modern law's maintenance via the 'credit' of authority: 'Laws are not just *as* laws. One obeys them not because they are just but because they have authority' (939). Yet Derrida sees in both Pascal and Montaigne a critique of law which 'goes beyond … the law [as] a "masked power,"

beyond the cynical moral of La Fontaine's "The Wolf and the Sheep," according to which "*La raison du plus fort est toujours la meilleure*" ("Might makes right") (941). This critique perhaps even goes 'beyond a conventionalist or utilitarian relativism, beyond a nihilism, old or new' (941). It examines law via a two-fold account which Derrida then describes as 'the basis for a modern critical philosophy' (941). At this point the meta-ethical reading seizes on Derrida's work because it views the two-fold account as positing two-halves which are antagonistic and incompatible with one another; one half is positioned '*against*' the other, not '*with*' it, 'whatever the underlying intention' (Norrie, 2000: 86). To gauge this reading, we here refer to Derrida's text in full:

> But if we set aside the functional mechanism of the Pascalian critique, if we dissociate it from Christian pessimism, which is not impossible, then we can find in it, as in Montaigne, the basis for a modern critical philosophy, indeed for a critique of juridical ideology, a desedimentation of the superstructures of law that both hide and reflect the economic and political interests of the dominant forces of society. This would be both possible and always useful.
>
> But beyond its principle and its mechanism, this Pascalian *pensée* perhaps concerns a more intrinsic structure, one that a critique of juridical ideology should never overlook. The very emergence of justice and law, the founding and justifying moment that institutes law implies a performative force, which is always an interpretative force: this time not in the sense of law in the service of force, its docile instrument, servile and thus exterior to the dominant power but rather in the sense of law that would maintain a more internal, more complex relation with what one calls force, power or violence. Justice – in the sense of *droit* (right or law) would not simply be 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 which it would have to accommodate or bend to when useful (Derrida, 1990: 941).

The above readings from Fraser and Norrie illustrate Derrida's prioritisation of the latter-half of the two-fold account: '…Derrida proceeds to put aside this socio-historical critique in favour of his deconstructive pursuit of a 'more intrinsic structure'' (Norrie, 2010: 188); 'In Derrida's view, the second, deconstructive approach is the preferred one' (Fraser, 1991: 1325). Accordingly, the

crucial point is whether Derrida did enact a bifurcation of the critical routes in question? The following argument submits that Derrida posited a mutual dependence between the critiques and that this is visible by a deeper reading of his thought via the concept of *surenchère*.

A retort to the bifurcations: Derrida's surenchère

Derrida states that beyond La Fontaine's 'cynical moral', and aside from Montaigne's 'Christian pessimism', and beyond the 'Pascalian *pensée*', we can find the 'basis for a modern critical philosophy'. This modern critical philosophy is then in turn intensified into 'a critique of juridical ideology' and 'a desedimentation of the superstructures of law that both hide and reflect the economic and political interests of the dominant forces of society'. This act of intensifying and heightening concepts is common across Derrida's *oeuvre* and this instance regarding Montaigne's and Pascal's critiques is no exception: Derrida is enacting the concept of *surenchère*:

> This heightening of tension can be described through recourse to another word that recurs frequently in Derrida's writings, "*surenchère*" – a raising of the stakes, outbidding, or upping the ante. When he inherits, Derrida raises what is at stake in the concept in question, upping the ante on the tensions it contains. It is in this way that he aggressively transforms the concepts of others through pushing them to exceed their supposed limits (Haddad, 2013: 35).

Another account of *surenchère* comes from Derrida's translator Michael Naas; the action means 'not simply appropriating [concepts] in a minimal way but actually upping the ante of them through what Derrida calls a *surenchère réaffirmatrice*' (Naas, 2012: 53). [11] Derrida's deconstructive thought accepts and then relaunches the critiques inherited from Montaigne and Pascal, in order to push their limits. [12] This *surenchère* aligns acutely with Derrida's repeated references to pushing 'beyond' the nihilism, 'beyond' the cynical moral, 'aside' of the functional mechanism, and then 'beyond [the] principle and [the] mechanism' of the Pascalian pensée (Derrida, 1990: 941). Fraser

and Norrie would no doubt endorse these intensifications because they critique the external economic and political (as well as no doubt historical) conditions attached to the social phenomenon of law. Yet they believe these external critiques cannot co-exist with the intrinsic critiques thereafter; recall the evaluation that the two positions work '*against*' and not '*with*' one another, 'whatever the underlying intention' (Norrie, 2000: 86). Yet it is submitted that their reading overlooks a crucial element within Derrida's thought, for the act of *surenchère* – which *does* result in a socio-historical critique of law – can only be achieved in tandem *with*, and supported *by*, a deeper critique of the metaphysics of presence. In effect the two critiques are not mutually exclusive, rather they are mutually dependant, and Derrida makes this clear in his continuing explanation of the connection between the two critiques.

Derrida's inclusion of the intrinsic critique creates a new critique which is 'not in the sense of law in the service of force, its docile instrument, servile and thus exterior to the dominant power', as conveyed by the crude nihilism, pessimism and cynicism accompanying La Fontaine's quip that 'Might makes right' (Derrida, 1990: 941). (Fraser refers to this crude critique as a '(mere) critique' (Fraser, 1991: 1328)). Rather, as expressed in Derrida's continuing account (which neither Fraser nor Norrie refer to), the new critique is 'in the sense of law that would maintain a more internal, more complex relation with what one calls force, power or violence' (Derrida, 1990: 941). However, despite this clarification the meta-ethical reading nevertheless lambasts Derrida for failing to include a socio-historical critique (Fraser, 1991: 1327; Norrie, 2005a: 6, 144).

But here Derrida's critics have failed to see the act of *surenchère* and its subsequent result; this being that the 'modern critical philosophy' is not comprised of *only* a socio-historical critique. For this on its own, as valiant as it may appear, would nevertheless be far too crude and basic. Instead the 'modern critical philosophy' states so much more than simply just 'Might makes

12

right' and thus 'justice … would not simply be put in the service of a social force or power, for example an economic, political, [or] ideological power' (Derrida, 1990: 941). Rather, in the name of justice, the critique also acknowledges the prescient metaphysical complications affecting the social phenomenon of law, as exemplified by deconstruction *qua* metaphysical critique. Derrida explains this a few pages later in response to those who would describe deconstruction as 'a quasi-nihilistic abdication before the ethico-politico-juridical question of justice' (953). He states that deconstruction and the intrinsic critique pays heed, in the name of '[the] infinite demand of justice', to 'constantly [maintaining] an interrogation of the origin, grounds and limits of our conceptual, theoretical or normative apparatus surrounding justice' (955). And that this is achieved via an act of *surenchère* which 'hyperbolically raises the stakes of exacting justice' (Derrida, 1990: 955; Haddad, 2013: 42–43) and questions (amongst other things) 'European idioms' associated with justice: '*Dikē, Jus, justitia, justice, Gerechtigkeit*' (Derrida, 1990: 955). Consequently a deconstructive modern critical philosophy 'should never overlook' a deeper metaphysical account of law because this guards against mere critiques which posit law in the service of an 'economic, political, [or] ideological power' (941), à la 'Might makes right', or indeed Euro-centric notions of justice. Such an attentive reading, posited within an intricate 'Derridean groove', has been previously offered by Peter Fitzpatrick: '[the] law in its very vacuity … would challenge and deny the plenitude, the completeness of the social, the historical, and the political' (Fitzpatrick, 2003: 551). [13] In summary Derrida's deconstructive legal theory avoids the pitfall of presumed plenitude and the crudity of a mere socio-historical critique by executing an act of *surenchère* which incorporates, in a mutual dependence, both a socio-historical and a meta-ethical critique. [14] Indeed, Derrida alludes to this later in the essay:

> Deconstruction is generally practiced in two ways or two styles, although it most often grafts one on to the other. One takes on the demonstrative and apparently ahistorical allure of logico-formal paradoxes. The

other, more historical or more anamnesic, seems to proceed through readings of texts, meticulous interpretations and genealogies (Derrida, 1990: 957–958).

The act of *surenchère*, alongside deconstruction's 'grafting' of its two styles onto one another, illustrates that the meta-ethical reading misses Derrida's subtle, mutual *combination* of the two critiques. Thus it does not seem there is a 'problem with Derrida' whereby 'there is an enormous price to be paid in terms of the marginalisation of the social and the political in the first critique he sets aside' (Norrie, 2000: 98). Because as is evident from Derrida's juridcio-political engagements he consistently does anything *but* refute socio-historical accounts or a style 'more historical or more anamnesic'. Examples would include his account of Nelson Mandela's legal resistance against apartheid (Derrida, 1987); his critique of the '*sans papier*' situation in France (Derrida, 2001a); his work on the law and politics of South Africa's 'Truth and Reconciliation Commission' (Derrida, 2001b); his historical investigation of the legal formation of the U.S. Declaration of Independence (Derrida, 2002a); his open letter to President Clinton regarding the political imprisonment of Mumia Abu-Jamal (Derrida, 2002b); and his critical analysis of international law and U.S. foreign policy following '9/11' (Derrida, 2003).

Surenchère and beyond

At this point the article moves to its second retort. The second retort focuses on what is argued to be the core thesis underpinning the meta-ethical reading; that Derrida's deconstructive legal theory is *not* concerned with 'politics', that is the socio-historical, but rather that it is concerned with 'the political', that is the meta-ethical. In Fraser's work this distinction is explicitly based upon the aforementioned bifurcation whereby deconstruction 'will never get to ethics or politics' (Fraser, 1991: 1326). But for Norrie the distinction is more implicit but it is nevertheless consistent throughout his work: 'the concern is that it [Derrida's legal theory] is presented in a way that marginalises the social and historical dimension in any account of justice, and thereby

desituates it' (Norrie, 2010: 189). In the deconstructive theory this distinction between 'politics' and 'the political' is thoroughly documented and well known; this is the distinction, respectively, between *la* and *le politique*:

> "the political" (*le politique*: the site where what it means to *be* in common is open to definition) and "politics" (*la politique*: the play of forces and interests engaged in a conflict over the representation and governance of social existence) (Fynsk, 1991: x).

It is argued that the meta-ethical reading is premised upon this important distinction and that the bifurcation rehearses this separation in forfeiting *la politique's* engagement with 'material and spatio-temporal specificity' (Norrie, 2010: 110) in favour of *le politique's* 'abstract, mysterious, ungrounded, antinomial connection to the messianic "other"' (228). This separation is in fact supported by, and directly aligns with, a surface-level reading of Derrida's work, for deconstruction *did* establish and prioritise engagements with *le politique*: this is not disputed. However, as will be argued, the meta-ethical reading is flawed because it ignores the complications *within* deconstructive theory which trouble this distinction.

Deconstruction: le/la politique.

Les Fins de l'homme: Derrida's influence

Here the recollection of Derrida's influence on the concepts of *la* and *le politique* in French philosophy will be curt, for the space afforded is limited. [15] Beginning in October 1968, in a paper entitled 'The Ends of Man' (Derrida, 1982b), Derrida raised a pressing issue via an account of political events from the same year; 'the Vietnam peace talks'; 'the assassination of Martin Luther King'; and the May occupations of Parisian universities (114). He stated:

> Every philosophical colloquium necessarily has a political significance. And not only due to that which has always linked the essence of the philosophical to the essence of the political. Essential and general, this political import nevertheless burdens the a priori link between philosophy and politics, aggravates it in a way, and also determines it when the philosophical colloquium is announced as an international colloquium. Such is the case here (111).

By turning to analogous events of discrimination, persecution, and ethno-centric 'philosophical anthropology' (113) within academia, Derrida raised the hugely important point of the politics of philosophy. This point would then become the subject of its own conference held years later, in July 1980, and named after Derrida's paper: "*Les Fins de l'homme: À partir du travail de Jacques Derrida*" ("*The Ends of Man: From the work of Jacques Derrida*"). The organisers, Philippe Lacoue-Labarthe and Jean-Luc Nancy, were concerned with questions such as:

> What is it that from the very beginning – but from the very beginning of what, precisely: of philosophy? politics? – has bound the essence of the political to the essence of the philosophical? (Sparks, 1997b: xix).

Inspired by Derrida, they, and the other participants, tackled the difficult question of the politics *of* deconstruction itself. Whereas Gayatri Chakravorty Spivak urged for revolution, [16] and Jacob Rogozinski called for restraint, [17] Derrida's own answer neither endorsed 'anti-Marxist' sentiments, nor aligned with a 'theoretically naïve' Marxist philosophy (Lacoue-Labarthe and Nancy, 1981a: 526). Instead he explained that his prior and continuing position was not to weaken, either theoretically or politically, Marxism's potential for the proletariat but rather be wary of 'the idea of revolution *qua metaphysical* concept' (Fraser, 1984: 33). [18] Then, with deliberate care, Derrida explained that within his writings there has always been a strategy regarding the politics *of* deconstruction:

> This complex strategy was evident in his texts, he said, by a kind of retreat, a silence with respect to Marxism – a blank which also signified that Marxism was not attacked like such and such theoretical comfort (in the fields of ethnology, psychoanalysis, linguistics, literary criticism). This blank was not neutral, according to him, it was a noticeable political gesture (Lacoue-Labarthe and Nancy, 1981a: 527). [19]

It was then Lacoue-Labarthe who enthusiastically seized upon Derrida's cautious political gesture: 'I believe profoundly in the necessity of the "retreat of the political"' (Lacoue-Labarthe, 1997a: 95).

Retreating the political.

In November 1980 Lacoue-Labarthe and Nancy opened the "*Centre for Philosophical Research on the Political*" at the Ecole Normale Supérieure in Paris. Against a '*totalitarian phenomenon*' where 'the political is completed to the point of excluding every other area of reference' (111), Lacoue-Labarthe and Nancy opposed the figure of totalitarian 'immanentist politics' (Hutchens, 2005: 127). They unequivocally followed Derrida's deconstructive gesture from the July of that year and instigated 'think[ing] in terms of *re-treating the political*' (Lacoue-Labarthe and Nancy, 1997a: 112). And they were clear that they were going to utilise deconstruction in order to 're-trace', 're-mark', and 'question in a new way' the essence of the political (112).

Firstly, the centre explicitly utilised the deconstructive concept of 'the *trace* … as it has been elaborated by Derrida' (120) to answer the following question: 'what non-dialectical negativity, what non-unity and non-totality withdraws or recedes or is divided or subtracted in the fabrication of the "social bond"' at the core of the political' (Fraser, 1984: 142). As commented by Oliver Marchart, their thought illustrated that '[w]e are therefore confronted, on the most "fundamental" level, with a receding ground, a ground that nevertheless remains present in its absence, thereby receding *and* returning in receding' (Marchart, 2012: 172).

Secondly, deconstruction was utilised to distinguish between two essential concepts within their project: 'politics', which they wished to 'retreat' from; and 'the political', which they wished to interrogate and rethink (Lacoue-Labarthe and Nancy, 1997a: 110). It is precisely this deconstructive impetus and concordant separation which underpins the meta-ethical reading. For this reading delineates the socio-historical from the meta-ethical in law just as deconstruction itself delineated 'politics' from 'the political'. Here we recall Fraser asking 'What is the nature of "the force of law"? Is that "force" metaphysical or political?' (Fraser, 1991: 1327): her answer is clear; '"the force of law" in Derrida's account is essentially metaphysical' (1328).

This distinction was vitally important to the centre's strategy of firstly avoiding a manifesto in the Leninist sense of 'What is to be Done?' (Nancy, 1997) and secondly actively interrogating the essence of the political. The meta-ethical reading sees this strategy echoed in Derrida's legal theory, epitomised by its concern for 'a metaphysical basis for a theory of law' (Norrie, 2003b: 106; Fraser, 1991: 1328), just as Lacoue-Labarthe and Nancy were concerned with 'the political': 'Such is, moreover, the reason for which, in speaking of *the political* we fully intend not to designate *politics*' (Lacoue-Labarthe and Nancy, 1997a: 110). Their original French clearly differentiates between 'the political', *du politique* (or *le politique*) and 'politics', *la politique*:

> Telle est d'ailleurs la raison pour laquelle, en parlant *du* politique, nous entendons bien ne pas désigner *la* politique (Lacoue-Labarthe and Nancy, 1981b: 15). [20]

Simon Critchley explains that this distinction resided at the core of the centre's deconstructive project: 'a withdrawal with respect to *la politique* (i.e. totalitarianism) in order to think the essence of *le politique* as such' (Critchley, 1999: 78). This distinction between *la* and *le politique* then continued to be applied in deconstructive theory, whether from Chantal Mouffe, [21] Costas

Douzinas, [22] or Elena Loizidou. [23] And when consulting Barbara Cassin's *Dictionary of Untranslatables: A Philosophical Lexicon*, we find that Philippe Raynaud's entry for 'Politics' precisely explains the distinction. Firstly, regarding *la politique*, Raynaud explains that in the sense being discussed here, 'which translates as the English word "politics," *la politique* designates everything that concerns public debate, competition for access to power, and thus the "domain on which various *politiques* [in the sense of "policy"] compete or oppose each other"' (Cassin, 2014: 803). Then Raynaud posits a clear differentiation regarding what is meant by *le politique*, 'the political':

> In itself, then, the idea of a distinction between the political and politics, which would enable us to conceive the political dimension of human life transhistorically … does suggest that the political is endowed with a dignity superior to that of politics, either because it is distinguished from everyday politics, or because it is the specific object of philosophy and grand theory, whereas most of the social sciences can hardly rise above the level of the empirical study of political life. In this sense, the concept of the political is no doubt part of the common fund of contemporary philosophy (804).

From the accounts above it is clear that Lacoue-Labarthe and Nancy's distinction between *la* and *le politique* has prescient resonances with the meta-ethical reading. For this reading laments deconstructive legal theory for its retreat from the socio-historical *hic et nunc* (Norrie, 2010: 110), or said differently, from 'politics', *la politique*: 'the play of forces and interests engaged in a conflict over the presentation and governance of social existence' (Fynsk, 1991: x). It chastises deconstruction for its inability to '[consider] those social, political and historical elements which constitute the essence of modernity' (Norrie, 2003a: 124), whereas these elements would be considered within 'the factical, the empirical, the contingent, the ontic, that is to say, *la politique*' (Critchley, 1999: 84). Conversely the meta-ethical reading readily acknowledges that deconstruction is able to comment on 'the political,' *le politique*: 'deconstructionist philosophers

19

… privileged the archaeologist of the conditions of the possibility of "the political" over the participant in political struggles' (Fraser, 1989: 4).

However it is submitted that the meta-ethical reading falters because it assumes an unproblematic separation of *la* and *le politique* and fails to account for the political paradox induced by the centre's wielding of deconstruction: 'Simply put, one cannot easily wrest the possible configurations of "the political" from politics' (Hutchens, 2005: 128). This deconstructive paradox will now be explained and deployed to critique the central claim that Derrida's legal theory unproblematically relates to *le politique* and not *la politique*.

La and le politique (Slight Return): Deconstruction's political paradox

Within the numerous commentaries on Lacoue-Labarthe and Nancy's deconstructive project many scholars have noted the political paradox which arose therein. However Fraser's in-depth account is noteworthy because despite the fact that her aforementioned work is exemplary of the meta-ethical reading of Derrida's legal theory (Fraser, 1991), her earlier work on the deconstructive significance of *la* and *le politique* is much harder to place (Fraser, 1984, 1989: 4–5, 69–92). For it is simultaneously both a solid prototype of her dismissal of Derrida's engagement with *la politique* (Fraser, 1984: 142, 149–150) and another commentary which recognises the paradox of the separation of *la* and *le politique* (133, 136, 139–140). Yet on reflection she is adamant that her work posits the thesis that Derrida's deconstructive theory *cannot* engage with *la politique* (Fraser, 1991: 1326). Her work will be referenced in the following section but first it is important to establish why the paradox occurred.

The paradox was caused by the combination of the centre's two opposing actions in its strategic retreat. Firstly it wholly endorsed Derrida's deconstructive retreat whilst seeing-off accusations

of apolitical nihilism: 'In no way would this constitute – and we hasten to say this in order to prevent any misunderstanding – or indicate a falling back into "apoliticism"' (Lacoue-Labarthe and Nancy, 1997a: 112). Secondly the centre enacted a withdrawal from *la politique* whilst quelling accusations that it simultaneously *was* promoting a manifesto of *la politique* in the name of anti-immanentist politics; it clarified its concern was 'not a new institution (or instruction) of politics by thought, but the political institution of so-called Western thought' (110).

Thus the paradox formed because the centre sought to engage in a political retreat whilst avoiding both apoliticism and anti-immanentist politics; it was caught between being neither apolitical nor of politics, and yet remaining committed to a critical engagement with *le politique*. Yet, as was explained by the centre's organisers, 'the gesture of the retreat is itself a political gesture – by which it is doubtless a matter of exceeding something of the political, but absolutely not in the manner of a "foray outside of the political"' (113). Thus the centre's actions were 'political': not because it advocated a stance regarding *la politique* but rather because its investigations could not *but be* 'political' (of *le politique*). Fraser recognised this: 'It follows, for Lacoue-Labarthe and Nancy, that the *re-trait du politique* must itself be a political gesture, albeit a somewhat unusual one' (Fraser, 1984: 140). This is an affect of the deconstructive trace which the centre utilised in its theoretical strategy. For the trace, which resided at the core of the social bond's constitution and retreat, [24] led to a contamination and mutual dependence between *la* and *le politique*, despite valiant efforts to cleanly separate them.

This effect of the deconstructive trace has been explicated by Spivak, Derrida, and indeed Norrie's own reading of deconstruction. [25] Spivak has asserted that due to the trace everything is 'always already inhabited by the track of something that is not itself' (Spivak, 1976: lxix). On the trace Derrida states:

> The trace must be thought before the entity. … The field of the entity, before being determined as the field
>
> of presence, is structured according to the diverse possibilities – genetic and structural – of the trace
>
> (Derrida, 1976: 47).

Even Norrie's reading of deconstruction opines that 'being nowhere exists in a completely

present form' and that Derrida's metaphysical critique 'is (rightly) committed to the denial of an

alternative, simplistic, ontology of pure presence' (Norrie, 2005b: 98). Consequently the

separation of *la* and *le politique* into pure, self-contained, and mutually exclusive categories is

problematic, indeed paradoxical, and has been noted by the centre's organisers and other

theorists. Yet this complication never materialises in the meta-ethical reading. Rather, there is a

'metaphysical barrier' between the two legal critiques in question (Norrie, 2000: 96).

Consequently, this paradox engulfing *la* and *le politique* – which has been noted by numerous

commentators – forms the second point of retort against the meta-ethical reading.

Christopher Fynsk, who was present at the centre's inception, made it clear in 1980 at the *Les

Fins de l'homme* conference that even within Derrida's thought there was a conflation between *la*

and *le politique:*

> Now, if Derrida thus hesitates to engage himself in immediately political questions (if he does not *politicise* his
>
> thinking), he nonetheless affirms that his practice *is* political, that philosophical activity is, in general a
>
> political practice (Fynsk, 1997: 88). [26]

Thereafter in 1991, when writing the Foreword to Nancy's *The Inoperative Community* (Nancy,

1991) (a continuation of the deconstructive engagement with *le politique*), Fynsk stated: 'Nancy's

engagement with the political [*le politique*] proceeds from an acute sense of the contemporary

socio-political context and is *indissociable* from a political position-taking' (Fynsk, 1991: x). Fynsk's two accounts offer introductory thoughts on the paradox in question.

Marie-Eve Morin's work has shown that a correct understanding of the centre's work, against Fraser's reading no less, reveals that it does not remain 'within the opposition between philosophy and politics, the transcendental and the empirical' but rather that it 'undermine[s] this opposition' (Morin, 2012: 163, note 7). [27] But note that Fraser's work on the centre also reached this conclusion, seemingly against her stance of an apolitical deconstruction: 'There is and can be no non-political "*outre-clôture*" to which one could safely emigrate; and it is unavoidable that the Center's work will produce political effects. So to interrogate the essence of the political cannot be to discard or sublimate political or class struggles' (Fraser, 1984: 140). In short, the centre's work cannot *but* engage with 'political or class struggles' because by its very nature *le politique* cannot be 'non-political'. And Critchley's analysis also makes the connection via the presence of Derrida's trace and then rhetorically asks how *la* and *le politique* could hope to remain separate?:

> Following Derrida's reading of Husserl's attempted reduction of meaning to expression and the exclusion of
> the indicative sign, might it not be asked whether there remains a trace of *grapheme* of empiricity and facticity
> in the reduction of *la politique* to *le politique* that disrupts or deconstructs the possibility of such a reduction? Is
> there not an inextricable contamination of *le politique* by *la politique* and vice versa? (Critchley, 1999: 85).

From Fynsk's, Morin's, Fraser's and Critchley's commentaries the contamination between *la* and *le politique* is evident. Further, Lacoue-Labarthe and Nancy were also clear that the centre could not cleanly delineate between its engagement with 'the political' and its retreat from 'politics':

> Now, the ruling out or sublimating of either class struggles or political struggles has never been what is at
> stake for us: these are the givens of the epoch of the domination of the political and technology or of the

domination of political economy. But the stake could be one of no longer subjugating these struggles, in their finality, to this domination (Lacoue-Labarthe and Nancy, 1997a: 117).

For a brief conclusion on this paradox one can turn to Robert Bernasconi's work. In commenting on Bill Readings' attempt to save the separation between *la* and *le politique* from the very contamination Fraser notes (Readings, 1989: 242–243, note 31) Bernasconi argues that within the workings of deconstruction Readings' attempt is futile:

> his attempt to defend [the separation] by modelling it on the ontological difference is ultimately doomed to fail because it is deconstruction above all that has shown how the ontic invariably "contaminates" ontological purity (Bernasconi, 1989: 19 note 3).

Bernasconi's point recalls deconstruction's critique against defined distinctions between the ontic, *la politique*, and the ontological, *le politique* (Douzinas, 2013: 110; Marchart, 2012: 173), as is similarly shown in Critchley's comment regarding the workings of the trace in between *la* and *le politique*. Consequently it is problematic for Readings and the meta-ethical reading to state that deconstruction, as an ontological critique, executes a distinction between 'politics' and 'the political'.

This point presents the second retort to the meta-ethical reading because it gives no credence to the significant historical instance in which deconstruction was deployed to separate the socio-historical from the meta-ethical, *and failed*, due to metaphysical contamination and the ensuing political paradox. Here we need only remind ourselves that Lacoue-Labarthe and Nancy's centre closed after four years due to deconstruction's inability to keep concerns of *la politique* from influencing the participants' work (Lacoue-Labarthe and Nancy, 1997c).

Conclusion: retorting to reduction.

Derrida, la politique, law

Having presented both parts of the retort against the meta-ethical reading this article will now conclude by synthesising these parts together with reference to another section of Derrida's 'Force of Law' which neither Fraser nor Norrie engage with. This section illustrates Derrida's concern for, and engagement with, socio-historical instances via the very medium of deconstruction itself.

The section in question closes the first half of Derrida's essay and serves as a bridge into his discussion of Walter Benjamin's work (Derrida, 1990: 973–1045). Here he states that even though he conceives of justice as unrestricted by the calculative methods of law this 'should not serve as an alibi for staying out of juridcio-political battles' (971). Rather, Derrida sees it as imperative that one engages with law; 'Politicization, for example, is interminable even if it cannot and should not ever be total' (971). He then comments that in order to keep politicization from 'triviality' what is required is that 'each advance in politicization obliges one to reconsider, and so to reinterpret the very foundations of law such as they had previously been calculated or delimited' (971). Derrida then lists prominent legal socio-historical examples which have engaged in such a reinterpretation, such as the Declaration of the Rights of Man and the abolition of slavery. [28]

Here both Derrida's concept of *surenchère* and the contamination of *la* and *le politique* are integral to this deconstructive legal theory. Regarding *surenchère* Derrida states that in order for 'juridico-political battles' in the name of justice to be accomplished beyond 'triviality' – ala the crudity of 'Might makes right' (941) – they must not merely execute their socio-historical analysis but they must also extend to a meta-ethical analysis which examines 'the very foundations of law' (971).

Consequently the concept of *surenchère* drives Derrida's critique beyond a 'trivial' legal critique because of the mutual dependency between the socio-historical and the meta-ethical.

Then, regarding the contamination between 'politics' and 'the political', Derrida also states that in order to pursue justice within 'juridico-political battles' one must, '*il faut*', calculate within law (Derrida, 2002c: 257). However this must be with the understanding that 'law, [is] the juridical field that one cannot isolate within sure frontiers', for there are other 'fields from which we cannot separate it, which intervene in it' (Derrida, 1990: 971). Derrida then proceeds to list these fields which cannot be separated from the juridical field of law: 'ethics, politics, economics, psycho-sociology, philosophy, literature, etc' (971). Here he clearly illustrates that deconstruction, as a legal practice, cannot isolate and separate law from politics, nor law from philosophy, nor indeed politics from philosophy, as was the fate of Lacoue-Labarthe and Nancy's deployment of deconstruction. Consequently it is once again the case that *la* and *le politique* are drawn together via deconstruction.

This article has offered a retort to the meta-ethical reading of Derrida's deconstructive legal featuring two interconnected points based upon a broader and more nuanced account of deconstruction. In doing so it is hoped that Derrida's legal theory has been shown to be not only receptive to the concerns of *la politique*, or the socio-historical, but rather integrally based upon such concerns and thus not apolitical.

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[1] For relatively recent volumes reflecting upon Derrida's influence see (Goodrich, Hoffmann, Rosenfeld and Vismann, 2008) and (Legrand, 2009).

[2] This alternate reading leans more towards 'sympathy' with, rather than 'hostility' against, deconstruction.

[3] See also (McCarthy, 1991: 97–119) and, possibly, (Laclau, 1996: 58). Here Laclau appears to draw on the distinction (addressed below) between 'the political', and 'politics', in which deconstruction offers utility with regards to the former only.

[4] This critique originally featured in Norrie's 2000 article in this journal (Norrie, 2000: 86–87, 94–99).

[5] See generally (Cusset, 2008: 138–154). For collections on 'Derridean *politics*' see (Cheah and Guerlac, 2009) and (Weber, 2013b).

[6] Note that Fraser actually frames deconstruction's position as a paradoxical: 'Thus, the argument about whether Deconstruction entails nihilism or an ethics of responsibility ends in a stalemate. So long as the discussion remains on this plane, it cannot be resolved' (Fraser, 1991: 1326).

[7] Note here that Norrie also classifies Derrida's legal theory as trying to posit a metaphysical account of law (Norrie, 2003b: 106).

[8] Norrie's full quote is: 'On the "reality principle", it is natural necessity in the world that yields those forms in their historical specificity which supplementarity or *différance* exposes, but deconstruction lacks a sufficient interest in material and spatio-temporal specificity' (Norrie, 2010: 110).

[9] Within Fraser's passage she takes all the quotes from (Derrida, 1990: 941).

[10] Norrie is influenced by the work of Nicola Lacey and her own account of the bifurcation: the 'seemingly unbridgeable gap … between critical legal theory and socio-legal studies' (Lacey, 1996: 143). But this influence appears to be fleeting, for two reasons. Firstly, Lacey's account of '*critical legal theory*' clearly contains a 'historical' element within its methodology (Lacey, 1996: 131). Norrie's account does not refer to this point, yet his thesis explicitly argues the opposite in excluding a 'historical' element from 'critical legal theory'. Secondly, although Lacey's article refers to Derrida's work (Lacey, 1996: 135, 139) it is never more than by way of categorising his work into one of the differing 'areas of scholarship relevant to [her] project', which include '*critical legal theory*' and '[*s*]*ocio-legal studies*' (Lacey, 1996: 131, 132).

[11] For another general account of Derrida's use of *surenchère* see (Weber, 1995).

[12] For Derrida's own account of how *surenchère* relates to inheritance see (Derrida and Roudinesco, 2004: 3): 'What does it mean to reaffirm? It means not simply accepting this heritage but relaunching it otherwise and keeping it alive. Not choosing it (since what characterizes a heritage is first of all that one does not choose it; it is what violently elects us), but choosing to keep it alive'.

[13] For further attentive readings within this 'Derridean groove', see also (Fitzpatrick, 2001: 73–84).

[14] See also the insightful work of Arkady Plotnitksy, who illustrates that this 'contamination' between the two critiques is neither unusual nor unexplained in Derrida's work. See (Plotnitksy, 1991: 1209): 'The economy of circulation between both strategies remains, however, a decisive and apparently ineluctable part of deconstruction from Derrida's earliest writing'. For the reference in Plotnitsky's essay to 'Derrida's earliest writing', see (Derrida, 1982b: 135).

[15] For perhaps the most in-depth account of Derrida's influence on this area of French theory, see the aforementioned (Fraser, 1984). Fraser's reading will be engaged with below.

[16] Spivak 'urged deconstruction to deconstruct its own exclusion of political-economy' and engage with Karl Marx's thinking because 'a subtle reading of Marx would reveal a deconstructor *avant la lettre*' (Fraser, 1984: 130; Lacoue-Labarthe and Nancy, 1981a: 505–516).

[17] Rogozinski argued that what was required was the 'deconstruct[ion of] Revolution as the metaphysical project of an impossible radical break' (Fraser, 1984: 131; Lacoue-Labarthe and Nancy, 1981a: 516–526).

[18] Note also Derrida's assertion that, for him, there is no '*one* Marxism and *one* revolutionary project' (527). Translation by the author.

[19] Translation by the author.

[20] See also Nancy's continuing analysis, over thirty years later, of *la* and *le politique* following from Derrida's deconstructive insights in *The Beast & the Sovereign: Volume I* (Derrida, 2009: 265). Nancy posits that Derrida illustrates '"[p]olitics" or the "political" (*la ou le "politique"*) is not the whole of what has just been designated as *polis* in the first sense'; here referring to the Aristotelian *polis*. (Nancy, 2014: 8).

[21] Mouffe adopts the following distinction in her work: 'by "the political" I mean the dimension of antagonism which I take to be constitutive of human societies, while by "politics" I mean the set of practices and institutions through which an order is created, organizing human coexistence in the context of conflictuality provided by the political' (Mouffe, 2005: 9). See also her more recent definition which repeats her conceptualisation of these ideas (Mouffe, 2013: 2).

[22] Douzinas, referring to Mouffe's account (Mouffe, 2005: 8–9), explains that 'politics' refers to the practices of conventional politics, such as 'parties and debating, lobbying and horse-trading that takes place around Westminster and Whitehall,' whereas 'the political' refers to 'the way in which the social bond is instituted and concerns the deep rifts in society' (Douzinas, 2013: 110). He also claims that: 'An important innovation of radical philosophy was the distinction between politics (*la politique*) and the political (*le politique*). Philippe Lacoue-Labarthe and Jean-Luc Nancy initially drew it along the lines of the Heideggerians' division between the "ontic" realm of beings and the "ontological" where Being unfolds' (Douzinas, 2013: 110).

[23] Loizidou explains that Lacoue-Labarthe and Nancy 'argue that "everything is political" or, what they coin *la politique*, needs to be retreated, so that the essence of the political, what they call *le politique*, can be retraced' (Loizidou, 2007: 133).

[24] On the trace Derrida states that: 'erasure belongs to its structure' (Derrida, 1982a: 24).

[25] See also (Hillis Miller, 2011) for further emphasis on this point.

[26] See also Stella Gaon's point (Gaon, 2005: 393) that the centre's deconstructive paradox occurred because it '[wa]s "essentially" philosophical because it [wa]s essentially political (the ethical question of our relation "founds" in an originary way the Being of community in the West), and it [wa]s "essentially" political because it [wa]s essentially philosophical (the ontological question of our being-as-one [*comme-un*] "founds" in an originary way the communal, ethico-political *polis*)'.

[27] Expanding on this Morin states: 'In fact, the "political" is not so much "the transcendental" as opposed to empirical politics. Rather, it is something, a "relation" or "being-in-common", that underlies both and undoes all foundational discourse' (Morin, 2012: 163, note 7).

[28] Derrida then lists instances of politics away from the 'grand geo-political scale' of his two prior examples; these include 'abortion', bio-engineering', 'the social treatment of AIDS', and 'the macro- or micro-politics of drugs' (Derrida, 1990: 973), all of which are still instances of major concern today.