

Masters of Hyperreality: Injustice in the Discourse of Deconstruction

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I. Introduction: The Dialectics of Justice

In an address at the Cardozo Law School in 1989, Jacques Derrida offered a normative evaluation of deconstruction, the term to which he is now inextricably associated. Speaking to philosophers, literary theorists, and legal scholars, Derrida explained the relationship between deconstruction and justice, saying, "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.*"¹ There is a considerable intellectual back-story to this conclusion, especially in the consideration of law. Derrida is acknowledging Blaise Pascal's claim that custom is "the mystic basis of authority."² Furthermore, he is responding to Walter Benjamin's claim that proletarian strikes are a suitable means to "modify legal conditions" as an appropriate or acceptable form of violence.³

The treatment of Pascal and Benjamin is not at question in the present essay because the emphasis here is not on law, but on justice. Specifically, this essay focuses on the conclusion Derrida reaches, and which is emphasized in the text of "Force of Law," that deconstruction is justice. This claim may have been a momentary aberration, an all-too human paroxysm of hyperbole. It is, nevertheless, an important claim, and one that warrants further examination. Some Derrideans seem unwilling to accept the possibility that it may have been rhetorical excess. Meanwhile, some opposed to Derridean thought use it as a means to unfairly dispense with Derrida altogether.

In his address, Derrida depicts an opposition between justice and law, arguing that law rested on nothing but "violence without ground."⁴ In effect, deconstruction and justice are identical. Both are antithetically opposed to law, which rests on ungrounded, or unjustified violence. Deconstruction, according to this view, remedies the violence of law. Furthermore, Derrida noted, "the fact that law is deconstructible is not bad news. One may even find in this the political chance for all historical progress."⁵ Justice is undeconstructible and part of its aim is to expose the arbitrary violence of law, which is deconstructible precisely because it is constructed in the first place. Law, for Derrida, is the sedimentation of authority accumulated through the effort to provide legitimacy when foundations are lacking. Law attempts to conceal its own artificiality and groundlessness.

To argue that Derrida was talking about the general category of law to the exclusion of concrete laws is to privilege the abstraction of form over its mundane particulars, thus extending the kind of metaphysical hierarchy Derrida sought to address. There are clearly numerous circumstances in which Derrida's account of deconstruction as justice is agreeable. History is laden with examples of the violent capriciousness of law. There have been laws classifying minority races and ethnicities as subhuman. Laws that deny equal rights to those given to 'aberrant' sexual practices persist. In such cases, deconstruction is a powerful tool in exposing and displacing the hierarchical structures embedded, sometimes furtively, within racism and homophobia. Even laws that generally seem to serve the common good, a prohibition against murder, for example, project the pretense of having ethical foundations, but remain violently imposed in an effort to conceal their own groundlessness.

However, the idea that deconstruction is identical to justice, or is ethically disposed to do nothing but address the ungrounded violence of law is misleading. Derrida presents an opposition between justice and law. The antithesis of justice, however, is not law; it is *injustice*. A dialectical reading of justice suggests that law is not necessarily opposed to justice. No less venerable of a source than Heraclitus teaches us that justice and law are often intertwined in a strange, harmonious conflict.⁶ Justice, he tells us, is pure strife, and in this sense, there is some commonality between the Heraclitian formulation, and Derrida's assertion that "justice is an experience of the impossible."⁷ At the same time, he suggests a city ought to preserve its laws with the same ferocity as it should defend its walls.⁸ For Heraclitus, justice as strife, and law as a source of conservation, may struggle against one another on occasion, perhaps even frequently, but they are not opposing forces. Rather, for Heraclitus, particular laws can emerge without meting justice, which can originate from sources other than law. But, as he explicitly asks, "Without injustice the name of justice would mean what?"⁹ In this sense, justice and injustice share the same dialectical relationship as Hegel's master and slave; they each represent the Other with whom identity is mutually constituted. As Hegel explains, "Self-consciousness exists in and for itself when, and by the fact that, it so exists for another; that is, it exists only in being acknowledged."¹⁰ The law does not necessarily need to acknowledge justice, nor vice versa – laws might exist without any pretense of promoting justice; justice can be practiced without stated laws. On the other hand, justice can only emerge by acknowledging injustice.

The effect of Derrida's claim is to overlook the rare but nonetheless deleterious effects deconstruction can have in political life. In this essay, I examine the possibility of deconstruction to lead toward injustice. In 2008 the United States Supreme Court upheld a law designed to stem the sexual exploitation of children. Known as the Protect Act, the law prohibits solicitation of child pornography "whether the material turns out to consist solely of computer-generated images, or digitally altered photographs of adults, or even if the offer is fraudulent and the material does not exist at all."¹¹ I argue that the Protect Act represents an effect of deconstruction, an assault against the hierarchies of Platonic metaphysics. The distinction in this hierarchy, between visible objects and images is best embodied in Jean Baudrillard's concept of simulacra, a copy of something that never originally existed. The deconstruction represented by the Protect

Act denies substantive difference between simulacra and actual examples of child pornography. Additionally, I argue that this gesture of deconstruction, precisely by displacing the metaphysical hierarchy between real and imaginary children, endangers the former. In this case, deconstruction, embodied in the Protect Act provides a rational incentive to abuse real children. In at least this exceptional instance, Derrida is wrong: deconstruction can be injustice.

Esoteric as it often seems, deconstruction is not exclusive to the arcane sanctuary of the academy. It has been popularized or, as Stanley Fish put it, by the beginning of the 1980's deconstruction "had been appropriated, domesticated and commodified."¹² Derrida alerts us to the importance, indeed, the inescapability of discourse when he tells us, "There is nothing outside of the text."¹³ Coupled with Simon Crichtley's assertion that "the text deconstructs itself", we find an important concept that has prolific applications.¹⁴ Deconstruction, and its various expressions in practice, is an important artifact of late modernism, and it becomes crucial, given the ubiquity of the text, that we understand the sometimes unseen power associated with this apparatus of discourse.

There are important political repercussions to the proliferation of deconstruction into arenas of power such as law. My analysis does not proceed by admonishing deconstruction as a uniformly harmful practice. Catherine Zuckert argues that "Derrida may free his readers from the spectre of 'totalization,' but by virtue of the same argument, he deprives them of the capacity to think, much less to act on their own behalf."¹⁵ In effect, Zuckert's argument is that deconstruction robs us of the necessary grammar to normatively assess political life. Russell Berman goes even further, suggesting, "deconstruction appears frighteningly naïve when it occasionally makes political claims, despite or rather because of its neo-Heideggerian extremism, which thrives on an unlimited irresponsibility."¹⁶ Finally, Mark Lilla accuses Derrida of secluding deconstruction "in the eternal, messianic beyond where it cannot be reached by argument, and assumes that his ideologically sympathetic readers won't ask too many questions."¹⁷ Unlike these accounts, I do not condemn deconstruction as wholly reckless. Yet, I also differentiate my argument from those analyses that seem to promote deconstruction as infallibly good. In an article entitled "Deconstruction is Justice", Elisabeth Weber writes that, "questions of answering to the other's call" would have been "unthinkable without the immense contribution of Jacques Derrida's writings."¹⁸ John McCormick, suggesting that Derrida had put himself in the position of Socrates on trial, concurs, "that the ceaseless questioning of force must be part of any agenda that aspires to justice."¹⁹ In McCormick's formulation on the questioning of force in the form of deconstruction is itself predicated on force, on the premise that it "must be." Similarly, William Sokoloff, while careful to recognize the subtle paradoxes that emerge from deconstruction, argues that exposing the ungrounded violence of institutions, "opens them to the possibility of new articulations grounded on less arbitrary modes of authority. Authority is less arbitrary when it supports its own radical critique and affirms the contingent character of its foundation."²⁰ That assertion, interestingly enough, attempts to prop itself up as self-evident and conceal its own arbitrary foundations. A critical and reflexive authority might be equally violent, if not more so, than one whose foundations have the appearance of stability. In other words, Sokoloff

does not consider the possibility that institutions whose false foundations are laid bare are revealed as having no legitimate claim to authority. All that remains for such neurotic regimes might be the most vulgar expressions of violence. At times, critics and supporters have tended toward exaggeration in either condemning deconstruction as unqualified evil, or praising it as the riddle of history solved.

My intervention in this debate proceeds from the premise that there may be circumstances in which some Platonic metaphysical categories ought to be preserved. Platonic hierarchies are heavily predicated on reason and the use of rationality in order to promote or preserve justice. For instance, in *The Laws*, the Athenian Stranger counsels that if the hierarchy in which judges are considered superior to the masses should collapse, the wrong kind of teaching will be promoted. Playwrights will have a disincentive to author edifying works, catering instead to the vulgar tastes of the masses.²¹ At the core of Platonic metaphysics is an understanding that the preservation, or dissolution, of hierarchies influences rational decision-making. Rather than become relegated as something to be refuted or overcome, I submit that its concern for justice ought to bring Platonism into dialogue with deconstruction.²² My aim is to offer an account of deconstruction that recognizes its potential for different kinds of normative consequences. Deconstruction *can be* justice, as it *can be* injustice. It follows that it can be a political chance for historical progress, provided such a thing is possible.

In the following section I will describe the aim of deconstruction and what it attempts to accomplish. Subsequently, I will provide relevant details of the Protect Act 2003 and, using Jean Baudrillard's theories, I will elaborate the several categories of simulation the law addresses. In the fourth section, I will argue that the Protect Act represents an example of deconstruction and more fully describe its potential for injustice. My argument is that by undermining the Platonic metaphysical hierarchy privileging real objects over imaginary objects, the deconstructive operation accomplished by the Protect Act defeats itself, and provides a rational incentive for sexual predators to harm actual children.

II. A Performative Account of Deconstruction

The term deconstruction is often synonymous with Jacques Derrida. This is understandable, given that Derrida essentially authored the term, but also somewhat paradoxical, since the author is generally refused imperial jurisdiction over his or her writings in postmodern thought. Although deconstruction is inseparable from Derrida's name, it would be a curious error to give him absolute authority over its meaning. My confrontation with deconstruction proceeds from the premise that deconstruction is a discursive object. As Ernesto Laclau and Chantal Mouffe tell us:

The fact that every object is constituted as an object of discourse has *nothing to do* with whether there is a world external to thought, or with the realism/idealism opposition. An earthquake or the falling of a brick is an event that certainly exists, in the sense that it occurs here and now, independently of my will. But whether their specificity as object is constructed in terms of 'natural phenomena' or 'expressions of the wrath of God', depends upon the structuring of a discursive field. What is denied is not that such

objects exist externally to thought, but the rather different assertion that they could constitute themselves as objects outside any discursive condition of emergence.²³

The same must apply for deconstruction. We do not have extra-discursive access to the truth of deconstruction found at some Archimedean point. There is deconstruction, which may be a certain set of operations that occur within a text, and then there is the *discourse of deconstruction*, the text in which our references to deconstruction are situated. We never access the essential truth of deconstruction. Instead, discourse always arises to mediate between us and the noumenal world.

For these reasons – because Derrida is not the exclusive author of the field of deconstruction; because prior to any ultimate reality of deconstruction there is the discourse of deconstruction; and because the aim of this essay is to address the effects of deconstruction – the aim here is to consider the ways in which deconstruction *performs*. For the purposes of this essay, I will avoid the futility of addressing what deconstruction *is*, focusing instead on what deconstruction *does*. I have chosen this approach for two reasons. Firstly, attempting to delineate what deconstruction is tends to have the trappings of applying an essence, and that, it seems, is precisely what deconstruction attempts to defy. Secondly, in order to attend to the political consequences, I would like to avoid wrangling over the multiform interpretations of Derridean prose, and will focus instead on what deconstruction has the potential to do. “There is no being behind doing,” Nietzsche tells us.²⁴ “The deed,” he says, “is everything.”²⁵

With that in mind, I understand deconstruction to be an array of activities aimed at undermining the hierarchies embedded within traditional Western metaphysics. These hierarchies are not naturally occurring formulations. Rather, they are produced in the course of philosophy and this production is concomitant with the attempt to conceal the artificiality of their origins. As Rodolphe Gasche explains, “Deconstruction thus begins by taking up broached but discontinued implications – discontinued because they would have contradicted the intentions of philosophy.”²⁶ Deconstruction exposes the artificial origins of metaphysical hierarchies, but not simply to leave them in place. Derrida argues that these hierarchies, represent a form of hostile subjection. As he explains:

To do justice to this necessity is to recognize that in a classical philosophical opposition we are not dealing with the peaceful coexistence of a vis-à-vis, but rather with a violent hierarchy. One of the two terms governs the other (axiologically, logically, etc.), or has the upper hand. To deconstruct the opposition, first of all, is to overturn the hierarchy at a given moment.²⁷

For example, Derrida assails the Platonic opposition between writing and speech, a hierarchy in which speech is clearly favored by Plato. In *Phaedrus*, Plato describes the written word as an orphan that “trundles about” aimlessly, which “always needs its father to help it.”²⁸ As Jonathan Culler notes, speech, in contrast with writing, is seen in Platonic philosophy as corresponding with the presence of the speaker and his or her thought, and supposedly maintains a greater hold on reality.²⁹ Writing, by

contradistinction, suffers from the absence of a speaker and the loss of proximity to the speaker's thought.

How does deconstruction attempt to accomplish this aim of undermining metaphysical hierarchies? There is no one approach to deconstruction, which is, instead, multiple strategies. Because they rely on the texts and discourses that are being deconstructed, it is probably fair to say that no two deconstructions are identical. However, the strategy most pertinent to this study centers on what Derrida referred to as "supplementarity." As Derrida explains, "the supplement is *exterior*, outside of the positivity to which it is super-added, alien to that which, in order to be replaced by it, must be other than it."³⁰ The supplement is an "inessential extra," portrayed as foreign, as in the case of evil to good.³¹ Evil is traditionally represented as superfluous, and existing outside of what is natural and good. But Derrida's point is that these supplements are crucial. Hardly inessential extras, supplements such as writing, or evil, or absence, are shown by deconstruction to be vital to their corresponding positive values – speech, good, and presence. Evil, for example, is not a super-added foreign entity; rather, it is vital to delineating the concept of good. Writing is not a poor substitute for speech; it is a necessary condition of speech. In effect, through re-reading the text, the deconstructionist is able to show that the subjugated term is necessary to the dominant term, rather than an extraneous supplement. The favored term *depends on* the supplement.

The aim of deconstruction, then, is to expose and undermine, or "overturn", metaphysical hierarchies because one term is always subjugated by the other. With this ethos in mind, Platonic metaphysics, replete with the signs of hierarchy, present an inviting target for the deconstructionist. Plato's metaphysics are rich and complicated. Any attempt to comprehensively encapsulate them here would fail. There is, however, a critical element germane to the discourse of deconstruction. In Plato's thought there are clearly higher and lower forms of reality, and, accordingly, he offers a theory of reality that privileges ideas over the material world and its corruptions. Reality is divided between the vulgar world of appearances, and the ethereality of the intelligible world. Ideas occupy the higher strata of the hierarchy, where they maintain "a greater certainty and truth" than the crudeness of the visible world.³² Situated at the penultimate stratum of reality are the Forms, which are "uncreated and indestructible", the intelligible essence of "things-in-themselves."³³ Beneath the Forms are their imperfect copies, or, as Plato says, "that which bears the same name as the form and resembles it but is sensible."³⁴ By contradistinction to the Forms, these copies, or visible objects, are both created and destructible.³⁵ They are the tangible objects ascertainable to sensory perception. At the nadir of reality, beneath even the crude visible objects, are images. These are reflections, phantasms, or the mere "likenesses" of actual things.³⁶

A relevant and subtle distinction has to be made here. Visible objects include "the living creatures about us and all the works of nature and human hands."³⁷ Corporeal creatures, including human beings, are visible objects. Artifacts, such as drawings and sculptures, are also visible objects. Images, on the other hand, are the reflections of visible objects. Therefore, while the painting of an artist, the material production

generated by human hands is within the realm of visible objects, the image the painting portrays is just that, an image. As Plato describes it, “Then what we call a likeness genuinely is in not *genuinely* being.”³⁸ A painting of a human being is a visible object – the canvas and paints reflect the effort of human hands. The image of the human being within the paint is a mere reflection of a more real, human person. But Plato goes further in variegating truth, even within the category of images. In the dialogue between Theaetetus and the Eleatic Stranger, it is said that those images that genuinely reflect visible objects, such as “images in water and in mirrors” bear greater truth than fictitious representations.³⁹ A sculpture or painting of an actual event or person is superior to a work of art conceived purely in the imagination. Only the reviled sophists deny this and restrict their focus to “only about what comes from words.”⁴⁰

It is against this metaphysical hierarchy that deconstruction intervenes. For Derrida in particular, Western metaphysics has privileged the concept of presence over absence despite the necessity of difference in order for language, spoken or otherwise, to function. Absence, or spacing, is crucial and yet denied its fundamental importance by philosophy. Platonic philosophy, with its veneration of Forms, most keenly defined this privileging of presence, in Derrida’s thought. He explains:

All the concepts by which *eidōs* or *morphe* could be translated and determined refer back to the theme of *presence in general*. Form is presence itself. Formality is what is presented, visible, and conceivable of the thing in general.⁴¹

Platonic metaphysics represents a hierarchy that assigns greater truth, and therefore reality to the higher strata. Plato considered the Forms to be more real, and thus more present than the other levels of reality. But even at the lower levels of reality, visible objects maintain a greater reality than the phantasms of imagination. It is against this kind of metaphysical hierarchy, and its privileging of presence, that deconstruction works to expose and undermine. As I will demonstrate, the supremacy of visible objects over images is precisely what is called into question by a recent example of legal deconstruction.

III. The Fugitive Apparition

In 2004, prosecution began for Michael Williams, a Florida man who had been arrested and charged with pandering child pornography over the Internet. Authorities claimed that Williams offered to distribute obscene images of children in a chat room exchange. Perhaps the most disturbing detail of the case is that the images the defendant expressed willingness to distribute were purportedly of his own four-year old daughter.⁴² Williams was convicted and sentenced to five years in prison under a new law, the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today, also known as the Protect Act 2003. After a protracted legal battle, the Supreme Court, in *United States v. Williams*, upheld the validity of the law used in the conviction of Williams.

There was, however, a complication to the case of *United States v. Williams*. The images of his daughter did not exist. They never did exist. There simply were no such images. Williams was arrested, prosecuted, and convicted for pandering a simulation.

He pretended to possess what he did not, in fact, possess. While the Protect Act covers a wide range of activities pertaining to the sexual exploitation of children, one particular provision was instrumental in the case. Section 504 of the Protect Act declares that child pornography includes:

A visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, that – depicts a minor engaging in sexually explicit conduct; and is obscene; or depicts an image that is, or appears to be, of a minor engaging in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital, or oral-anal, whether between persons of the same or opposite sex.⁴³

Furthermore, in Section 503, the definition of child pornography is expanded to include “computer generated” images or pictures “where such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct.”⁴⁴ Finally, an additional category of objects are rendered illegal in Section 503, which states, “any material or purported material in a manner that reflects belief, or that is intended to cause another to believe, that material or purported material is” child pornography.⁴⁵

Child pornography, which might generally be understood as images reflecting obscenity involving actual children, has long been illegal. The recently instituted Protect Act extends the law to include various *simulations* of child pornography. Cartoons, computer generated images, and – under the provisions of Section 503 – the belief in non-existent images of child pornography are all provided the same illegal status as depictions of actual children in pornographic acts. Furthermore, the Protect Act amends sentencing guidelines found in Title 18, United States Code so that actual and simulated child pornography are both punishable by the same sentencing guidelines.⁴⁶ The penalties for both actual and simulated child pornography are effectively identical.

The distinction between these simulations and what I will classify as actual child pornography is best embodied in how Baudrillard describes simulations of the late-modern epoch. He declares:

Simulation is no longer that of a territory, a referential being, or a substance. It is the generation by models of a real without origin or reality: a hyperreality. The territory no longer precedes the map, nor does it survive it. It is nevertheless the map that precedes the territory – *precession of simulacra* – that engenders the territory, and if one must return to the fable, today it is the territory whose shreds slowly rot across the extent of the map.⁴⁷

Put differently, a simulacrum is a copy of a thing that never existed in the first place. As Baudrillard says, “To simulate is to feign to have what one doesn’t have.”⁴⁸ For Baudrillard, signs had been constructed in the Medieval world “to imitate nature” and then, at the onset of industrialism, to engage in the mass production of “exact replicas, infinitely produced and reproduced by assembly-line processes and eventually automation.”⁴⁹ In late-modernism, the third “precession” of simulacra as Baudrillard refers to it, the mass production remains, but most of the original objects copied in the industrial revolution have long vanished. In the third precession, Baudrillard says, “We

are in simulation in the modern sense of the word, of which industrialization is but the final manifestation.”⁵⁰ The simulations prohibited by the Protect Act belong to this order of simulation; they are copies of things that never existed in the first place. A painting, cartoon, sculpture, or computer generated image of obscenities involving children are qualitatively different than a photograph or video of an actual child involved in sexual activity. A simulation, as the copy of a thing that never existed in the first place, is not a recording of an actual child.

The first of the simulations defined by the Protect Act, the use of computer generated images, is what is called ‘morphing.’ This practice involves, for example, taking the nude image of an adult and grafting onto it the visage of a minor. Presumably, the original image of the minor was not sexually explicit, and only assumes the character of pornography after it has been grafted. An argument that morphing involves sexualizing of an actual child is tenuous. Morphing takes two preexisting images to create an entirely new image. The actual minor was never involved, and only the entirely new image of the minor is sexualized. Admittedly, it could be argued that if someone ever discovered that they had been the object of ‘morphing’ they might be embarrassed, humiliated, and perhaps even traumatized. Yet a person could also be the object of morphing and never actually discover it. This is qualitatively different than the sort of injury that transpires in the production of actual child pornography, in which it is virtually impossible to be abused and not realize it. The second simulation, cartoon drawings or animations, might never involve an actual human being beyond the imagination of the cartoonist or animator. In a case where the cartoonist proceeds purely from inspiration, no actual child is endangered, and instead, the reasoning behind this provision of the Protect Act seems to be that the more diffuse category of ‘children’ is what is being potentially endangered. The last of these simulations might be described best as non-existent images, or, put differently, ‘nothing’. It is important to remember that the defendant in *United States v. Williams* did not actually have the material he offered to others on the Internet; he could not because they did not exist. His conviction was based on a simulation; the false claim that he did possess them and was intent on distributing them was illegal. The law effectively makes it illegal to pander the distribution of the non-existent, the most imaginary of simulacrum. Despite siding with the majority opinion in upholding the Protect Act, Chief Justice John Roberts voiced his concern over the provision against simulations, asking, “Let’s say a movie reviewer describes the film as just awful and containing child pornography? Under the terms of the law, couldn’t the reviewer be prosecuted?”⁵¹ In effect, the law makes it illegal to solicit or pander nothing so long as the nothing that was solicited or pandered was represented as child pornography. The common denominator between these newly prohibited materials is that they do not contain authentic minors. Insofar as they can be said to be examples of child pornography, they are representations of representations.

IV. The Rational Crisis of Simulacra

In Platonic metaphysics, and perhaps even in Baudrillard’s postmodern thought, there is a conspicuous grief over prospects for the loss of originality. Baudrillard laments, “It is all of metaphysics that is lost. No more mirror of being and its appearances, of the real and its concept.”⁵² Simulations and simulacra belong to a lower order of reality than

visible things. Simulacra are less authentic than the things they purport to copy, meaning that simulacra are less real than original objects. Hence, the cartoon drawing of a fictional child depicted in an obscene manner is *less real* than a photograph of an actual child. The drawing represents a likeness of a visible thing that may have never existed, while the photograph more directly represents a visible thing.

The Protect Act upsets this representation of reality, and is a consequence of deconstructive operations within the apparatus of law. As part of his attack on Western metaphysics, Derrida contended that the Forms were the zenith of presence in Platonic thought. By contrast, images are the nadir of presence, and are characterized instead by absence. Indeed, Derrida is correct in his assessment concerning this aspect of Platonic thought. In *Timaeus*, Plato writes that, “space, which is eternal and indestructible, which provides a position for everything that comes to be, and which is apprehended without the senses by a sort of spurious reasoning and so hard to believe in.”⁵³ Space, or that which is absent, and images, which are the least present kinds of reality occupy the lowest strata. They correspond to the least sophisticated knowledge, and they require the least amount of reason for comprehension. In fact, images are nothing more than illusion, the shadows projected onto the wall of Plato’s Allegory of the Cave. The shadows and likenesses appearing on the cave wall are referred to as “meaningless illusions” while the originals projecting the shadows are described as “more real objects.”⁵⁴ While they are not the most real, the objects which are the source of the shadows possess more reality than the meaningless images on the wall. Derrida is not wrong; Plato clearly privileges the Form over the image, and the present over the absent. Deconstruction attempts to dismantle this hierarchy and “brings low what was high.”⁵⁵

This is the effect of the Protect Act; it is the visible symptom of deconstruction. The hierarchy between visible things and inferior likenesses are undermined because both categories are made illegal in reference to obscenity depicting children. Simulation is given equal status to visible things. That which was lower, a cartoon, a computer-generated image, or nothing at all, is suddenly just as illegal as a photograph or video of an actual child. The effect of this deconstruction is made most clear with reference to the pandering of nothing. If an offender attempts to procure what he or she wrongly believes is child pornography, then this is just as illegal as actually having it. In effect, simulating, or feigning the possession of something when one really has nothing, is as illegal as having something. Presence and absence are given the same status.

Of course a photograph or video is also, as Walter Benjamin might teach us, a mechanical reproduction.⁵⁶ A photograph is not the immediacy of the real thing. Indeed, it should be acknowledged that photograph portraying the actual event of child abuse is equivalent to a cartoon sketching of actual child abuse. Both are connected to an actual reprehensible event. But this is not the extent of what the Protect Act covers. Instead, the Protect Act equates the photographic depiction of actual child abuse with a cartoon drawing of an event that never happened, a computer-generated image of a person that never existed, or a false claim concerning the possession of an image. Furthermore, it directly attacks the hierarchical distinction Plato draws between those superior images

that genuinely reflect reality, such as mirrors and water, and inferior, purely fictive images. The privilege previously afforded to the status of depicting real children is revoked.⁵⁷ That which was previously high, has been brought lower, or at least to the same level as simulacra.

Law, Derrida explains, “is the element of calculation.”⁵⁸ Accordingly, the confrontation with law, in those cases when the law is actually given consideration, is predicated on the logic of consequences. Laws such as the Protect Act proceed from the assumption that there is a link between the consumption of actual child pornography and the proliferation of simulations. If deconstruction undermines the greater metaphysical seriousness of actual child pornography over simulations, what are the possible consequences? My response is that real children are potentially endangered because the rational disincentive to produce and distribute actual child pornography is negated when simulations are just as illegal as the genuine article. The deconstructive operation at work in the Protect Act leaves no discernible legal differentiation between simulated and actual child pornography. The hierarchy that once distinguished between them is dismantled. Now, they are brought to an equivalent status. Both are illegal. Given that simulations such as cartoons, computer generated images, and ‘nothing’ are now illegal, an offender no longer has a legal option, outside of total suppression, for his or her erotic pursuits. Considering the inefficacy of harsh punishments in eliminating incidents of child exploitation and abuse, the success of total suppression as a strategy, which seems to be the aim of the Protect Act, is highly improbable.

Of course my argument presumes that the erotic focus of an offender is diffuse. It presumes that an offender is not specifically interested in cartoon depictions of child pornography. In the case of that kind of subject, my argument is not applicable. But in a case where an offender might have chosen simulations over actual child pornography because the first category was formerly legal, the Protect Act creates a disincentive to choose the simulation. If both categories are merged into one by virtue of criminalization, and the offender is faced with the possibility of prison for both, then the risk may as well be taken in the interest for the more authentic article, actual child pornography.⁵⁹ Presuming the category of simulations had been legally safe to a pedophile before the Protect Act, in the wake of the law, that category is now just as illegal as actual child pornography. While actual duration of incarceration may vary, the result, in the case of actual child pornography and simulations still results in imprisonment, which is often a precarious and dangerous environment for sex offenders.

The deconstruction that occurs at the site of the law does not necessarily correspond to deconstruction in the erotic drives of a pedophile. Just because the law elevates simulations to the same status of actual child pornography, does not mean that the offender has performed a similar discursive operation. Instead, given the formidable penalties now involved with both actual and simulated child pornography, the market for simulations may decrease and the market for actual child pornography could conceivably increase. Presuming that some percentage of the population suppressed the desire for actual child pornography, simulations, for this group, became a legal

outlet. Without that legal outlet, the incentive to suppress the desire for actual child pornography is threatened. This presumption is hardly foreign to the logic of the Protect Act. It explicitly complains that the production of simulations has been a strategy adopted by traffickers and consumers of child pornography to avoid prosecution.⁶⁰ The government response is understandable, but dangerous. Posing the same punitive risk for soliciting actual child pornography or simulations, the Protect Act reduces the legal disincentive to exploit real children.

This instance of deconstruction potentially endangers real children at the expense of safeguarding simulations. The question that ought to confront us is exactly what justice is brought about by the deconstructive operation represented by the Protect Act. Real children are exploited by actual child pornography. The primary object exploited by cartoons, computer generated images, and empty promises of pandering, is the rather abstract category of childhood or children. The displacement of traditional metaphysics found in Section 504 of the Protect Act only seems to protect a formal idea of children rather than any real child. Despite Derrida's efforts against the presence of Form, and the corresponding valorization of reason it earns in Platonic thought, this event of deconstruction provides a rational incentive for a pedophile to endanger real children. In this case, deconstruction hardly seems like justice.

V. Concluding Remarks: The Labors of Injustice

Derrida was right to point out the deconstructibility of law. Yet law, inasmuch as it can represent a rereading of metaphysical text, can also be an expression of deconstruction. This does not mean that the law is undeconstructible, but it does mean that something undeconstructible has expressed itself through the law that redresses metaphysical hierarchy. In terms of the Protect Act, the law is not a consequence of justice. Rather it is the consequence of injustice. It follows that if deconstruction can also be injustice, then injustice must also be undeconstructible. This premise should seem familiar. In *The Republic of Plato*, Thrasymachus violently asserts that "'just' or 'right' means nothing but what is to the interest of the stronger party."⁶¹ Socrates responds by pointing out that sometimes the stronger mistake what is in their own best interest. The stronger compel the weaker to carry out orders that do not serve the interest of the strong. In effect, the strong inflict injustice upon themselves.

It would be a mistake to presume that every deconstruction is an event of justice. It presumes that injustice is the dangerous supplement, alien and external to justice that could be eradicated with the purity of deconstruction. Furthermore, it portrays the possibility of control over written language that neither Plato nor Derrida would endorse. The deconstructionist is not a master of hyperreality. Just as Thrasymachus' stronger party errs in its effort to obliterate injustice, and actually succeeds in creating it inadvertently, deconstruction, insofar as it is a part of interhuman discourse, is prone to misunderstanding, miscommunication, and the numerous other species of human fallibility.

A dialectical reading suggests that what justice is compelled to acknowledge is injustice, and not necessarily law. Justice can only emerge as a viable concept by attending to its

negation. Justice and law can be in opposition, but this conflict is not necessary. Instead, it is justice and injustice that are necessarily in conflict. Derrida is right in saying that “law is not justice” but stops short in identifying the important corollary that law is not injustice.⁶² It becomes unclear as to why law as a category ought to be the object of unyielding deconstruction. That is to say, it is not clear why “violence without ground” deserves to be equated with injustice. A law prohibiting rape may be violence without ground, it may be a sedimented sign of authority, but it hardly seems to deserve to be deconstructed.

In this paper I have argued that deconstruction can be embodied in law as easily as it can represent justice. Not every law is an instance of deconstruction, but when the law works to undermine metaphysical hierarchies, then a deconstructive operation is in process. Furthermore, I have attempted to demonstrate that, as part of the apparatus of law, deconstruction also bears the potential to engender injustice. The Protect Act is an example of deconstruction insofar as it undermines the metaphysical hierarchy that favors visible objects over images, actual things over simulacra. The potential exists for this act of deconstruction to endanger actual children. Since the metaphysical hierarchy has been undermined, the privileged status of visible objects, meaning real children, is gone. The law does not distinguish between actual child pornography and simulations. Hence, a pedophile who may have selected simulation over actual child pornography because it was legal, no longer has the incentive to make that selection. Since both categories are now illegal, the individual who might have made that calculation may as well indulge in actual child pornography now. Hence, actual children are endangered by the Protect Act, an example of deconstruction imported into the legal apparatuses of late-modernity.

This episode of deconstruction as injustice does not seem to be an isolated incident. Similar laws and legal decisions have emerged in other jurisdictions. In 2008, an Australian judge ruled that a cartoon depiction of characters from the animated television series *The Simpsons* constituted child pornography. The defendant in the case had downloaded several pornographic parodies of *The Simpsons* from the Internet and was convicted for possessing child pornography. Despite the fact that the characters from the series are not real people, the judge in the case ruled that “a cartoon character could depict a real person.”⁶³ In fact the judge went so far as to suggest, “that the mere fact that they were not realistic representations of human beings did not mean that they could not be considered people.”⁶⁴ In the United Kingdom, an effort to expand the Coroners and Justice Bill, which prohibits child pornography, to include cartoon images was recently proposed.⁶⁵ In Alaska, officials have proposed state laws complementary to the Protect Act, which would make computer images “as illegal as photographs of actual abuse.”⁶⁶ The influence of deconstruction, and its attack on traditional metaphysical hierarchies, has moved well beyond the insulated world of academia.

What does it mean that deconstruction can be injustice? It means that, like any other tool of power, deconstruction must be deployed judiciously. It is a considerable and solemn responsibility to be able to undermine the law. Derrida may be right in

concluding that law is nothing but ungrounded violence, but he fails to tell us why it is that the repudiation of ungrounded violence is always a chance at historical progress, and not an occasional catastrophe. It is not clear why ungrounded violence always deserves our disdain. Laws can certainly be unjust. They can also defend minorities, the weak, and the persecuted. We ought to give pause in considering the political uses of deconstruction. The presumption that justice is identical to deconstruction is hasty and dangerous. Sometimes, hierarchies, such as those distinguishing between human beings and simulated human beings, ought to be preserved. When the possible effect of upsetting those hierarchies is to endanger or exploit actual human beings, we ought to tread carefully. On rare but nevertheless important occasions, hierarchies deserve to be defended. On those occasions, we ought to consider how it is deconstruction appears and whether or not it undermines the ungrounded violence of law in the interests of justice or injustice.

Perhaps we do not have a definitive path to demonstrating that the hierarchy between real children and simulations is deserved. Perhaps, that is, we cannot demonstrate conclusively that children are more real than simulations. But our epistemological crisis is heightened by the belief we generally maintain that simulations cannot be abused or traumatized. Real children can be. My aim here is not at all to condemn deconstruction. This is not a conservative attempt to decry threats to our fragile morals. I take strong umbrage with Lilla's assertion that deconstruction is relegated to "the alien environment of academic postmodernism, which is a loosely structured constellation of ephemeral disciplines like cultural studies, feminist studies, gay and lesbian studies, science studies, and postcolonial theory."⁶⁷ Instead, as Derrida, Gasche, Culler, Fish, and Critchley alert us, deconstruction is always going on. It is not purely an isolated, instrumental tool of academics crusading against metaphysically entrenched inequalities. Firstly, it may not always be instrumental. If, in fact, it is always going on, the idea that we can 'use' deconstruction may be inexact. The more pressing point, however, is that deconstruction appears where we might least expect it, perhaps even in the Congress of the United States, the Australian courts, or the British Parliament. It is a powerful tool with practical implications, and it is, frankly, naïve to suggest that it can do nothing but serve the interests of justice. If deconstruction can be an instrument, then we ought to remind ourselves that instruments, like any tool, can harm. It all depends on how the tool is used. Rodolphe Gasche tells us that deconstruction is not the same as receiving a license to engage in "wild and private lucubrations" with texts.⁶⁸ Indeed, he is correct in asserting that deconstruction is hardly an invitation to laziness. Nevertheless, lucubration can have varied results; injustice can sometimes appear as the result of conscientious and congenially hard work.

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- ² Pascal, Blaise. 1995. *Pensees*. Trans. A.J. Krailsheimer. London: Penguin Books. p. 17.
- ³ Benjamin, Walter. 1978. "Critique of Violence." In *Reflections*. Ed. Peter Demetz. New York: Schocken Books. p. 282-283.
- ⁴ Derrida 2002, p. 242,
- ⁵ Ibid, p. 242,
- ⁶ Heraclitus. 2003. *Fragments*. Trans. Brooks Haxton. London: Penguin Books. p. 41.
- ⁷ Derrida 2002, p. 244.
- ⁸ Heraclitus 2003, p. 67.
- ⁹ Ibid, p. 39.
- ¹⁰ Hegel, Georg Wilhelm Friedrich. 1977. *Phenomenology of Spirit*. Trans. A.V. Miller. Oxford: Oxford University Press. p. 111.
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- ¹³ Derrida, Jacques. 1974. *Of Grammatology*. Trans. Gayatri Chakravorty Spivak. Baltimore: The Johns Hopkins University Press. p. 158.
- ¹⁴ Critchley, Simon. 2005. "Jacques Derrida." In *Theory and Event*. Vol. 8:1. <http://muse.jhu.edu>
- ¹⁵ Zuckert, Catherine. 1991. "The Politics of Derridean Deconstruction." In *Polity*. Vol. 23:3. Pp. 335-356. p. 354.
- ¹⁶ Berman, Russell A. 1993. *Cultural Studies of Modern Germany*. Madison, Wisconsin: The University of Wisconsin Press. p. 104.
- ¹⁷ Lilla, Mark. 2001. *The Reckless Mind: Intellectuals in Politics*. New York: New York Review Books. p. 183.
- ¹⁸ Weber, Elisabeth. 2005. "Deconstruction is Justice." In *SubStance*. Vol. 106:34. Pp. 38-43. p. 38.
- ¹⁹ McCormick, John P. 2001. "Derrida on Law; Or, Poststructuralism Gets Serious." In *Political Theory*. Vol. 29:3. Pp. 395-423. p. 417.
- ²⁰ Sokoloff, William W. 2005. "Justice and Legality: Derrida on Decision." In *Political Research Quarterly*. Vol. 58:2. Pp. 341-352. p. 345.
- ²¹ Plato. 1975. *The Laws*. Trans. Trevor Saunders. London: Penguin Books. pp. 94-95.
- ²² There is a certain concurrence between the Platonist perspective I adopt, and one of utilitarianism. Insofar as a utilitarian, such as John Stuart Mill, might promote hierarchies between "higher" and "lower" pleasures, I find these positions compatible. However, I believe that Platonic metaphysical hierarchies are most directly called into question by deconstruction, which is why the explicit position I attempt to inhabit for this essay is Platonist. Mill, John Stuart. 1987. "Utilitarianism." In *Utilitarianism and Other Essays*. Ed. Alan Ryan. London: Penguin Books.
- ²³ Laclau, Ernesto and Chantal Mouffe. 1985. *Hegemony and Socialist Strategy*. New York: Verso. p. 108.
- ²⁴ Nietzsche, Friedrich. 1989. *On the Genealogy of Morals*. Trans. Walter Kaufmann. New York: Vintage Books. p. 45.
- ²⁵ Ibid, p. 45.
- ²⁶ Gasche, Rodolphe. 1986. *The Tain of the Mirror: Derrida and the Philosophy of Reflection*. Cambridge, Massachusetts: Harvard University Press. p. 136.
- ²⁷ Derrida, Jacques. 1981. *Positions*. Trans. Alan Bass. Chicago: University of Chicago Press. p. 41.
- ²⁸ Plato. 2004. *Phaedrus*. Trans. Christopher Rowe. London: Penguin Books. p. 63.
- ²⁹ Culler, Jonathan. 1982. *On Deconstruction: Theory and Criticism after Structuralism*. Ithaca, New York: Cornell University Press. p. 100.
- ³⁰ Derrida 1974, 145.
- ³¹ Culler 1982, 103.
- ³² Plato. 1945. *The Republic of Plato*. Trans. Francis MacDonald Cornford. Oxford: Oxford University Press. p. 226.
- ³³ Plato. 1977. *Timaeus and Critias*. Trans. Desmond Lee. London: Penguin Books. p. 71.
- ³⁴ Ibid, p. 71.

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- ³⁵ In the *Republic of Plato*, an intervening category of reality, mathematics, is situated between the Forms and visible objects. I omitted a discussion of mathematics for the sake of brevity.
- ³⁶ Plato 1945, p. 224.
- ³⁷ *Ibid*, p. 224.
- ³⁸ Plato. 1996. *Sophist or The Professor of Wisdom*. Trans. Eva Brann, Peter Kalkavage, and Eric Salem. Newburyport, Massachusetts: Focus Philosophical Library. p. 45.
- ³⁹ *Ibid*, p. 44.
- ⁴⁰ *Ibid*, p. 44.
- ⁴¹ Derrida, Jacques. 1973. *Speech and Phenomena*. Trans. David B. Allison. Evanston: Northwestern University Press. p. 108.
- ⁴² Greenhouse 2008.
- ⁴³ Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003. 2003. *LexisNexis Congressional*. Public Law 108-21 [S. 151]. Sec. 504.
- ⁴⁴ *Ibid*, Sec. 503.
- ⁴⁵ *Ibid*, Sec. 503.
- ⁴⁶ Title 18, United States Code, Section 1466 explicitly includes cartoon and other simulated forms of child pornography. Section 2252 provides specific sentencing guidelines of five to twenty years for possession, solicitation, or transfer of "any child pornography." Title 18 – Crimes and Criminal Procedure. *Cornell University Law School*. Title 18, United States Code.
http://www.law.cornell.edu/uscode/18/usc_sup_01_18.html
- ⁴⁷ Baudrillard, Jean. 1994. *Simulacra and Simulation*. Trans. Sheila Faria Glaser. Ann Arbor: The University of Michigan Press. p. 1.
- ⁴⁸ *Ibid*, p. 3.
- ⁴⁹ Kellner, Douglas. 1989. *Jean Baudrillard: From Marxism to Postmodernism and Beyond*. Stanford: Stanford University Press. pp. 78 and 79
- ⁵⁰ Baudrillard, Jean. 1983. *Simulations*. Trans. Paul Foss, Paul Patton, and Philip Beitchman. New York: Semiotext[e]. p. 101.
- ⁵¹ All Things Considered. 2007. "Court Examines Law to Curb Child Porn on Internet." *National Public Radio*. October 30, 2007.
- ⁵² Baudrillard 1994, p. 2.
- ⁵³ Plato 1977, p. 71.
- ⁵⁴ Plato 1945, p. 229.
- ⁵⁵ Derrida 1981, p. 42.
- ⁵⁶ Benjamin, Walter. 1968. "The Work of Art in the Age of Mechanical Reproduction." In *Illuminations*. Ed. Hannah Arendt. New York: Schocken Books. p. 219
- ⁵⁷ Although I accept the assertion by Laclau and Mouffe that reality outside discourse may be inaccessible, it does not mean that every discursive object is identical or ought to be treated identically. An actual human being ought to be afforded greater privilege than a cartoon. By extension, the image of an abused or exploited child ought to be afforded greater privilege than a purely fictional cartoon. A different, but analogous example might be in reference to murder. A cartoonist depicting a fictional murder would most likely receive no social sanction. However, a videotape or picture of an actual person being murdered ought to activate the prosecutorial powers of the state.
- ⁵⁸ Derrida 2002, p. 244.
- ⁵⁹ This also presumes the offender's erotic preferences outweigh any moral distinction he or she may discern between simulations and actual child pornography.
- ⁶⁰ Protect Act, Sec. 501.
- ⁶¹ Plato 1945, p. 18.
- ⁶² Derrida 2002, p. 244.
- ⁶³ Bryant, Nick. "Fake Simpsons Cartoon is 'Porn.'" In *British Broadcasting Corporation*. December 8, 2008.
- ⁶⁴ *Ibid*.
- ⁶⁵ Coroners and Justice Bill. 2008. *United Kingdom Parliament*.
<http://www.publications.parliament.uk/pa/cm200809/cmbills/009/09009.25-31.html>
- ⁶⁶ Holland, Mega. "Legislators Look to Expand Alaska's Child Pornography Law." In *Anchorage Daily News*. October 11, 2009.

⁶⁷ If Lilla is correct that deconstruction is merely a marginalized academic curiosity, then he gives us little reason to share his fear of its effects. Lilla 2001, p. 163.

⁶⁸ Gasche 1986, pp. 123-124.