

The Markers of Deconstructive Citizenship: A Corrective to the Constructionist Approach to Justice

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Miriam Bankovsky, *Perfecting Justice in Rawls, Habermas, and Honneth: A Deconstructive Perspective* (London: Continuum, 2012)

In a daredevilish kind of way, this book sets out to complete two very demanding tasks: to cruise across the Atlantic expanse, using both the Analytic and Continental trade winds, and to trace a new path over the Franco-German border, precisely in an area still sprinkled with unexploded landmines. Not only does Bankovsky succeed in both of her ambitious goals, but she does so with a depth of insight, a subtlety of lateral moves, and a clarity of expression that are truly rare to encounter, especially in the highly polarized field of political philosophy. What may cripple a project of this kind is to presume the possibility of a seamless translation, a one-to-one correspondence of meaning and horizon. To her credit, Bankovsky never falls into the trap of a narrative that is as complex and punctual as it is gripping, *Perfecting Justice* takes us through a series of associations and dissociations, triangulations and perspectival multiplications that keep sharpening our view of each of its three featured thinkers rather than sanctioning a definitive assessment of any of them.

The book opens with an epigraph by Max Weber that brings Bankovsky's central thesis into focus. Playing on Otto von Bismarck's pronouncement that "politics is the art of the possible, the attainable—the art of the next best," Weber remarks that "it is no less true, however, that the possible is very often achieved only by reaching out toward the impossible which lies beyond it."¹ In the same way that Weber uses the appeal to the impossible to rattle the agenda of political realism, which Bismarck personifies literally, Bankovsky uses what Jacques Der-

rida has called justice's "impossible demands" to critically challenge the agenda of constructivism, as embodied in the work of perhaps its three most influential theorists: John Rawls, Jürgen Habermas, and Axel Honneth. The "deconstructive perspective" featured in the subtitle thus references Bankovsky's allegiance to Derrida's position on justice, which, on her reading, is characterized by a double, contradictory injunction: on the one hand, the responsibility for the uniqueness and singularity of the individual, and on the other, the duty to impartiality, predicated on the equality of all individuals. Since no given determination of justice can fully reconcile these conflicting demands, Derrida claims that justice entails *both* a firm, and indeed urgent, commitment to possibility *and* an unwavering attention to impossibility.

Bankovsky very lucidly states why constructivism cannot admit to the inadequacy between justice and its determination. "A constructivist philosopher," she writes, "would say that if the determination does not satisfy its own criteria, then it should be revised, again assuming that a satisfactory solution can be constructed" (4). But this outcome turns out to be a structural deficiency of constructivism, since none of the three constructivist theories of justice examined in this volume succeeds in reconciling justice with its determination. As Bankovsky laconically admits, "it takes a lifetime of work for Rawls, Habermas, and Honneth to come to acknowledge, with some sense of disappointment, the significance of the difficulties they face" (4).

By contrast, the advantage of the deconstructive perspective is that it embraces the imperfection of justice as the condition of its own perfectibility. Bankovsky's appreciation of Derrida as a corrective to the constructionist approach lies precisely  is: the fact that failure is nothing less than the necessary condition of justice. Consequently, she praises an attitude of resilience to failure, of critical engagement with, rather than disappointment toward, our shortcomings in what would be required for justice to be fully served. "Attentiveness to failure" is thus the expression with which Bankovsky designates the need for an ever-higher threshold of tolerance for the inadequacy that a deep commitment to justice necessarily entails.

Cultivating an attitude of tolerance to the possibility that justice may never be served is crucial to this book's five distinct, interlocking objectives.

1. To dismantle the "anti-normative" misinterpretation of deconstruction, popular among a broad swath of liberal political philosophers. This misinterpretation, which was at least in part inspired by Habermas's own attack on Derrida from the early 1980s, charges deconstruction with being unable to rationally adjudicate validity claims.
2. To provide a critical assessment of Derrida's limited engagement with many of the more complex axioms of contemporary liberal-democratic justice.

3. To formulate a unified critique of three constructivist theories of justice, proposed by Rawls, Habermas, and Honneth, and focus on the failure of each in resolving justice's demands.
4. To situate Derrida's reflection on justice as "negotiation" as a corrective to Levinas's dismissal of justice as "betrayal."
5. To develop a set of "civic attitudes" that function as normative "markers of deconstructive citizenship." These include "openness or the willingness to challenge our inherited convictions; humility or the awareness of the finitude and frailty of reason; and resilience or the effort to keep striving in the face of failure" (21).

Bankovsky's first and second points would need a more extensive treatment than the space that this review affords. Suffice to say that Bankovsky does an excellent job in debunking a gross interpretive error in the agenda of deconstruction, which has caused destructive divisions and several casualties among Continental philosophers, especially at the Franco-German border. Also, in the face of what could be construed as the relative insularism of the debate on Derrida's political philosophy, especially vis-à-vis the Rawlsian approach, she provides a useful assessment of his engagement with the axioms of contemporary liberal-democratic justice.

The third contribution of the book is a probing assessment of three distinct systems of political philosophy, previously never concurrently examined. As Bankovsky carefully teases out each of her championed thinker's approach to justice, she also relentlessly plays them against one another. Her ubiquitous gesture of "reminding" each brand of constructivism to take responsibility for the concrete ways in which it fails to serve justice exemplifies an inclusive and nuanced understanding of the pluralism that has animated critical theory from the start. In this sense, *Perfecting Justice* is an important contribution to the legacy and the future of this tradition, as it opens new important avenues of communication *both* across the Atlantic, by adding Honneth's plea for recognition to the debate between Rawls and Habermas on the meaning of liberalism, *and* on the Franco-German edge, as it engineers an integration of deconstruction and the constructivist arguments endorsed by Habermas and Honneth. Bankovsky's vision of a pluralistic critical perspective is precisely what inspired my own brokering of the first rapprochement between Derrida and Habermas, in the immediate aftermath of the attacks of September 11, 2001.²

I now wish to concentrate my attention on the two last clusters of arguments: Derrida's theory of justice as negotiation, which Bankovsky elaborates upon in contrast to Levinas's theory of justice as betrayal, and her discussion of a set of civic attitudes detailing a conception of deconstructive citizenship. Rather than dealing with these two arguments separately, I will combine them in one unified narrative.

Bankovsky introduces Derrida's theory of justice as "negotiation" as a corrective to Levinas's definition of justice as "betrayal." Levinas's pessimism concerning the possibility of justice follows from his radical departure from Kant's formalization of individual responsibility in terms of reciprocal obligation. As Bankovsky crisply puts it, for Levinas responsibility "is not a law that the self gives freely to itself," but is rather "the Other's directive" (6), since it is driven by the fate that a particular person shares with the other as they both exist as beings in the world. This fact, which renders Levinas's ethics asymmetrical, non-egalitarian, and non-reciprocal, undermines the possibility of a public principle of justice. Derrida embraces Levinas's non-formal account of ethical obligation, but adds to it a concern for equality. In Bankovsky's reading of Derrida, this concern commits him to a concept of moral personhood: "if justice is possible, as Derrida believes it is, then we must conceptualize ourselves as bearers of those capacities that make justice both necessary and possible" (15). Just as Rawls, Habermas and Honneth all define moral personhood as the capacity to commit to an impartial standpoint, Derrida would thus defend "a concept of moral personhood that is not equivalent to the self's relation with the distinct, unique, Levinasian Other" (15).

While I believe that recognizing the possibility of an ideal of moral personhood in Derrida is an important result of this book, it remains to be seen what exactly Bankovsky takes Derrida's conception of moral personhood to be and the way in which she differentiates it from a non-formal account of ethical obligation. I am also puzzled at Bankovsky's claim that, on the basis of Derrida's double commitment to moral personhood and impartiality, it can be argued that Derrida defends the possibility of just norms, namely, norms "that aspire to both impartiality and to sensitivity towards others in their particularity, and that the content of those norms will largely depend on a shared practice of determining context in particular ways" (20).

In order to show how incongruent such a claim is with Derrida's stated intentions, we must turn to "Force of Law: The Mystical Foundation of Authority," Derrida's text that Bankovsky references the most. Originally delivered at the Cardozo Law School in New York City, this massive treatise on justice revolves around the question of the practical possibility of justice in law, indeed *as* law. Derrida's answer to this question could not be more explicit and definitive. Justice will be never present itself in law. Justice, that is, will never be fully and unequivocally present in any legal norm. Law, legal discourse, or any legal body is the expression of a structural violence that prevents it from doing justice to justice: in other words, to be just. How, then, are we to conceive of the possibility of justice? And concurrently: how are we going to save the possibility of the legitimacy of law so that right is not simply might?

Derrida starts by defining justice as infinite. This term is certainly a reference to Levinas, but, and this needs to be said loud and clear: "Force of Law" *is not* a

text in which Levinas looms large. This fact casts a serious doubt on Bankovsky's decision to give a prominent role to Levinas in both her reading of "Force of Law" and in her book as a whole, especially considering her silence on Walter Benjamin to whom Derrida dedicates the whole second part of his treatise and whose footprint pervades "Force of Law" from beginning to end. I want to suggest that the absence of Benjamin prevents Bankovsky from capturing some very important aspects of Derrida's theory of justice and the kind of possibility it represents.

If it is true that justice is infinite because it is an ethical requirement that can never be fully satisfied, Derrida also underlines that the call for justice is urgent and irrevocable, and thus firmly rooted in the spatio-temporal dimension of the here and now. In addition, justice is a practical determination: justice is bestowed or denied in very real decisions, which are made, if justice is really at stake, in the absence of guaranteed outcomes. Even though Derrida's work on law does not specify which institutional reality he has in mind—whether it is the Anglo-Saxon common law, based on a case by case model, or the Continental civil law, which relies more heavily on the codification of core principles—the moment in which justice is bestowed entails exposure to the risk of injustice. This is what Derrida calls undecidability. In decisions, and especially judicial deliberations in which justice is administered, decisiveness is required precisely because there is undecidability. More specifically, the moment of decision entails the suspension of the law, which he classifies as the *epoché* of the rule³ because legal acts are both the application of norms and, performatively, the setting of new and ever-so-slightly abridged norms.

In this sense, justice is not an ideal but the experience of aporia, the experience of what we are not able to experience: an experience of the impossible. The possibility of justice emerges thus as the possibility of an impossibility, an implosive movement which seems to be singularly at odds with Bankovsky's definition of deconstructive justice as negotiation. Derrida writes,

The undecidable is not merely the oscillation or the tension between two decisions, it is the experience of that which, though heterogeneous, foreign to the order of the calculable and the rule, is still obliged—it is of obligation that we must speak—to give itself up to the impossible decision while taking account of laws and rules. A decision that wouldn't go through the ordeal of the undecidable would not be a free decision, it would only be the programmable application or unfolding of a calculable process. It might be legal; it would not be just. But in the moment of suspense of the undecidable, it is not just either, for only a decision is just.⁴

If undecidability is a negotiation, it is certainly an excruciating one, a true and veritable "ordeal," as "Force of Law" explicitly warns us. Therefore, when Derrida speaks of the undecidable, he is not discussing a matter of uncertainty, an oscillation between two options. Rather, when justice is at stake, facing the

undecidable means to give ourselves up to the risk that, in making that specific decision, injustice will be served. For all of deconstruction's purported inability to make validity claims, in matters of justice Derrida admits no ambiguity: one and only one decision can be just.

If the boundary between justice and injustice is clear-cut, decisions taken in the name of justice are not only difficult, Derrida adds, but endowed with a special instability, for the undecidable "remains caught, lodged, at least as a ghost—in every decision."⁵ The decisions we make in the name of justice are therefore haunted decisions, deliberations rendered heavy by the responsibility that comes with responding to the call of justice. "Its ghostliness deconstructs from within any assurance of presence, any certitude or any supposed criteriology that would assure us of the justice of a decision."⁶ According to Derrida, justice is therefore both unsettling and unsettled: since a context is never fully saturated, known, or even stable, do we ever know whether justice has been served? Do we ever know whether we served it sufficiently and appropriately? And whether it was actually up to us to serve it?

These are tempestuous questions that haunt justice's relation to impossibility from a deconstructive perspective and that only very marginally touch on the issue of perfection, perfectibility, and the agenda of "perfecting justice." Derrida's famous and provocative statement, that "deconstruction is justice" is meant to expose the identification of both law *as* justice and of legal violence as justified: that is, waged in the name of justice. The influence of Benjamin's critique of violence on Derrida's conception of justice cannot be overestimated. Benjamin's insistence on the need to identify and curtail the highly rationalized violence exercised by the state (for example, through the institution of the police), echoes in the background of Derrida's opposition to institutions that embody the force of that radical violence: the death penalty, the war machine, the tele-technological and media apparatus, as well as later in his life the security apparatus, including the counter-terrorism policies implemented by the Bush Administration at the eve of the third millennium.

In addition to these elements, there is yet another aspect of Derrida's debt to Benjamin that pervades "Force of Law" and that is hard to assimilate to the perfectionist universe I see underlying Bankovsky's approach: in a nutshell, this is the interpretation of justice as promise. For Derrida as for Benjamin, justice is a promise, a spectral promise that has divine, mad, and passionate elements to it. When Derrida says that justice is always still to come, he is again speaking the language of Benjamin, for whom justice is haunted by the ghosts of the victims of a violent past still calling for justice. It is the ghosts of those who have suffered injustice that will interminably be calling for justice.

As seen in Benjamin's discussion of the Angelus Novus in his ninth thesis on the philosophy of history, justice is a ghostly and ghastly apparition, which comes back from the future facing the past.

Where we perceive a chain of events he sees a single catastrophe which keeps piling wreckage upon wreckage and hurls it in front of his feet. The angel would like stay, awaken the dead, and make whole what has been smashed. But a storm is blowing from Paradise; it has got caught in his wings with such violence that the angel can no longer close them.⁷

For Benjamin as well as for Derrida, justice is unsettling and unsettled because of the sense of expectation it emanates: an announcement brought by a messenger whose wings have been rendered unserviceable. If we let the Benjaminian ghost speak through Derrida, the sense of justice we encounter is one in which the question of violence plays a foundational role, because justice is imbricated with injustice. This is why Derrida writes that "the fact that law is deconstructible is not bad news. We may even see in this a stroke of luck for politics, for all historical progress."

I agree with Bankovsky's claim that there is an ideal of moral personhood in Derrida and I would substantiate it with Derrida's statement that one and only one decision can be just. Unlike Bankovsky, however, I don't see in deconstruction a political ideal of the good life, even one that, as R. W. Emerson and Stanley Cavell would say, is systematically unattained but in principle attainable.

The presence of what I dare call the perfectionist horizon in Bankovsky's book pervades her language. Her assessment of Honneth is a telling example. As a result of his "attentiveness to social pathology," Honneth, she writes, "is closest in orientation to the deconstructive account of justice that this book defends," because he requires "deconstructive responsibility' for justice's failures, seeking justice-to-come in an effort to leave the mark or 'trace' of perfect justice on the imperfect" (154). While Bankovsky clearly links the notion of deconstructive responsibility with justice's failures, she presents those failures as shortcomings, the result of insufficient gropings that can be measured against the standard of perfection. And when she turns to how the theory of recognition falls short in its critique of the *affaire du foulard* in France, the perfectionist horizon is confirmed in her emphasis on failure: "deconstructive attention to the inevitability of failure suggests that perfect solutions are simply not possible" (196).

The hope to turn failure against itself is indeed one of the fundamental inspirations of this book since it not only applies to the trio of constructivist thinkers, Rawls, Habermas, and Honneth, but extends to Derrida himself. Bankovsky writes,

Although the attempt to enlarge the domain of communication should be endorsed, it must be acknowledged that deliberative democracy *cannot* reconcile its own moral ideal of the person with Derrida's Levinasian concept of

the person as responsible before the unique other. However, I will also suggest that this failure is not to be regretted. The gap between the ideal and the actual allows a critical perspective upon the actual to be sustained. (33)

The sense of justice that I see animating *Perfecting Justice*, although systematically unattained in justice's concrete determinations, is in principle attained as a condition for assessing injustice. Yet, I ask, is this the same as stating what Derrida states, namely, that justice is the experience of what we are not able to experience, and thus that the possibility of justice is the possibility of an impossibility? In this Derridean definition justice is not an ideal, a regulative ideal against which the failures of actuality can be measured, but rather the possibility of something yet unimaginable.

Bankovsky comes indeed very close to articulating precisely this point when she refers to Derrida's justice-to-come as the possibility of the unimaginable. This expression is featured in the title of one of the subsections of the first chapter of the book. Surprisingly, even in that section she does not in fact pursue an elaboration of the unimaginable, focusing instead on what she considers Derrida's limited discussion of the axioms of liberal democratic justice.

Then again, Bankovsky takes up the question of the unimaginable in the context of her assessment of a number of voices that articulate the political relevance of deconstruction. After critically assessing the views of Iris Marion Young, Chantal Mouffe, Lasse Thomassen, Bonnie Honig, and Paul Patton, Bankovsky sides with Drucilla Cornell due to her formulation of the unimaginable in politics.

Balancing Young's commitment to possibility with Mouffe's affirmation of impossibility, Cornell's account of deconstructive justice finally gets the conceptual balance right. . . . Deconstructive justice, she claims, is "more utopian" because it "keeps open the 'beyond' of currently unimaginable transformative possibilities precisely in the name of Justice." (35)

I agree with Bankovsky that Cornell captures Derrida's wish to think of the transformative power of justice so deeply as to challenge our ability to imagine it. But Bankovsky's explicit endorsement of Cornell does not seem to be reflected in her own elaboration of deconstructive justice.

The book closes with chapter 8, which is entitled "Im/Possibility and the Cultivation of Deconstructive Civic Attitudes" and presents the project of what I would characterize—a bit provocatively—as a virtue ethics of deconstruction. This is where Bankovsky's project emerges in its full scope, ambition, and originality, but also, I claim, where her deconstructive perspective looks most away from Derrida and Cornell.

Bankovsky opens by declaring the core of her critique of Rawls, Habermas, and Honneth: "the constructive philosopher is too optimistic in ascribing to justice a therapeutic role" (203). By contrast,

The dual deconstructive orientation, toward both possibility and impossibility, allows us to present these evolving constructive theories as just one part of a history of imperfect conceptions, where perfection remains an impossible ideal. . . . Since deconstruction aims to achieve justice, it requires the pursuit of constructive strategies. However, with its additional attention to impossibility, deconstruction also prevents attitudes of overconfidence with respect to achieving our goal. (204)

The overconfidence Bankovsky references here is the inevitable distortion that arises from a belief that is common to all three constructivist thinkers, and that she formulates most pointedly in relation to the entire arch of Habermas's work: this is "a commitment to the view that there is no standpoint external to citizens' own perspectives when questions of justice arise between them" (145). This attitude of reasonable faith, optimism, and confidence gets easily twisted into overconfidence when the contingent foundations of what seems reasonable within a specific social, institutional, or theoretical setting are turned into the immodest claim to universality.

An unfortunate twisting of this sort happened with Habermas's early dismissal of Derrida, which Bankovsky uses as a paradigm case of the blind spots that constructivism tends to produce. Derrida was right, Bankovsky claims, in defining Habermas's critique of him as "unjust and overhasty," because there is "no 'ethics of discussion' without certain attitudes toward the history of exchange that one has inherited." Such an ethics inevitably "would draw on the rules, however imperfect, that socialized persons have inherited, since they are the only tools by means of which engagement can take place" (146). Habermas's disrespectful dismissal of Derrida shows the pitfalls of translating norms that are contingent to time and place into rationally necessary mandates.

What Bankovsky calls deconstructive civic attitudes stem from Derrida's variously formulated and recurrent calls "to closely study the object of evaluation, to listen to others before projecting a viewpoint, to attempt to understand the particularity of a thought, to discuss the position of others in their own terms as carefully as possible and to proceed with an open mind" (146). In her view, these recommendations amount to nothing less than the normative demands of deconstructive citizenship, which is centered on three civic virtues:

openness to others in their difference, such that one recognizes and indeed appreciates the ways in which comprehensive difference sustains a shared commitment to public values. . . . Humility with respect to the possibility of actually achieving justice, since citizens are asked to uphold imperfect institutions. . . . Resilience, since citizens are willing to put in the effort to prevent mutual trust and confidence from breaking down. (207)

Like a brilliant *roman à clef*, or maybe even a detective novel, *Perfecting Justice* gives us, its readers, the solution of a mystery that we did not even suspect was

there up until the end. It took me until late in the last chapter to realize that the contrast between constructive and deconstructive attitudes is ultimately tested in the complicated relation between Habermas and Derrida. While Bankovsky acknowledges that Habermas's early dismissal of Derrida is the paradigmatic example of constructivism gone awry, she also interprets their rapprochement—in the wake of the attacks of September 11, 2001, further developed in their joint response to the massive demonstrations of February 2003 against the war in Iraq—as a token of deconstructive citizenship.

The deconstructive attitudes are visible in the performative commitments that allow Derrida and Habermas to transform their initially polemic divide into a relation of amicability, outward interest and cooperation. I suggest that their attitudes are 'deconstructive' in their orientation to the other, because the types of encounters they allow cannot easily or immediately be framed within the language of a deliberative exchange, which seeks mutual understanding. (212)

This was a moment of absolute surprise, in effect a most authentically deconstructive moment, in which the project of *Perfecting Justice* seemed to succeed in the distortion of its own perfectionist undercurrent. If my reading of the mystery is right, the development of the philosophical and personal friendship between Habermas and Derrida did justice to what remains systematically out of reach in any theory of justice. I am utterly fascinated by what Bankovsky makes of the "performative commitments" she sees Derrida and Habermas as having exchanged with one another and that she calls an exemplary act of deconstructive citizenship. Maybe, then, *Perfecting Justice* does achieve perfect justice in the end, but perhaps only in a space beyond citizenship: one in which the bond between these two utterly singular figures was formed from the recognition that they had failed to recognize each other.

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NOTES

1. Max Weber, "Value Judgment in Social-Science," in Weber, *Selections in Translation*, ed. W. G. Runciman (Cambridge: Cambridge University Press, 1978), 89.
2. Giovanna Borradori, *Philosophy in a Time of Terror: Dialogues with Jürgen Habermas and Jacques Derrida* (Chicago: University of Chicago Press, 2003).
3. Jacques Derrida, "Force of Law. The Mystical Foundation of Authority," *Cardozo Law Review* 11(5–6) (July–August 1990), 960.
4. *Ibid.*, 963.
5. *Ibid.*, 965.
6. *Ibid.*
7. Walter Benjamin, *Illuminations: Essays and Reflections*, edited and with an introduction by Hannah Arendt (New York: Harcourt, Brace and Jovanovich, 1968), 257–58.