

# Forgiveness Is Not a Musical Instrument

Naomi Waltham-Smith

University of Oxford

E-mail: naomi.waltham-smith@music.ox.ac.uk

DOI: 10.51865/JLSL.2024.11

## Abstract

Derrida's *Le Parjure et le Pardon* is heard as an offstage voice to the global mediatization of proceedings concerning genocide in the International Court of Justice in late 2023 and early 2024. Focusing on the Sixth Session of the first year, which remained unpublished until 2019 (2022 in English), the article follows Derrida in questioning whether a shared hearing or attunement is required for forgiveness and reconciliation. Far from absolving states from responsibility, Derrida's insistence that any forgiveness and reconciliation worthy of the name exceed identificatory concord or reciprocity puts pressure on those with the most power to decide for peace before any accord to come.

**Keywords:** *Derrida, forgiveness, reconciliation, unforgivable, genocide, hearing, accord*

## Derrida Offstage

What does it mean to keep Jacques Derrida as a 'voice off'<sup>1</sup> 'today in the world'<sup>2</sup> to the current proceedings or generalized rehearsal on the international stage? What is it for his ghost to remain audible off-stage during this theatrical scene of globalized political culpability 'sometimes preceded or accompanied by what one believes rightly or wrongly, must condition them – namely confession, repentance, requests for forgiveness' (Av, 200/31)? In what sense, 20 years after his death, can Derrida be our con-temporary, still resonating in the wings of this 'general public show [*comparution*] of planetary human conscience in the face of wrongdoing' and above all of crimes against humanity?<sup>3</sup> Derrida's two-year seminar on 'Le parjure et le pardon', given in 1997-98 and 1998-99 at the École des hautes études en sciences sociales (EHESS), was published in its entirety for the first time in French in the autumns of 2019 and 2020 respectively and made available to Anglophone readers in September 2022 and May 2023. It resounds fresh in our ears as the world tunes in to the proceedings at the International Court of Justice (ICJ), and raft of legal commentary arising from South Africa's Application instituting proceedings against the State of Israel concerning alleged violations in the Gaza Strip of

<sup>1</sup> The expression 'voice off [*voix off*]' is taken from Jacques Derrida, *Perjury and Pardon, Volume II*, trans. David Wills (Chicago: Chicago: University Press, 2022), 3. Hereafter cited in the text as *PP2*.

<sup>2</sup> Jacques Derrida, 'Avowing – The Impossible: Returns, Repentance, and Reconciliation: A Lesson', trans. Gil Anidjar, in *Living Together: Jacques Derrida's Communities of Violence and Peace*, ed. Elisabeth Weber (New York: Fordham University Press, 2013), 31. I follow David Wills's modified translation in the Editor's Note to the two translated volumes of *Le Parjure et le Pardon*. Hereafter cited in the text as 'Av'.

<sup>3</sup> Jacques Derrida, *Perjury and Pardon, Volume I*, trans. David Wills (Chicago: Chicago: University Press, 2022), 321. Hereafter cited in the text as *PPI*.

obligations under the Convention on the Prevention and Punishment of the Crime of Genocide.

As legal scholars have observed in media interviews, South Africa's Application reflects an unprecedented propensity in recent years for nation-states to turn to the institutions of international humanitarian law – the ICJ, the International Criminal Court (ICC) in The Hague, and the European, Inter-American, and African human rights courts. This tendency to advance political positions through the courts is evidenced, as Dapa Akande notes in a recent episode on the *European Journal of International Law* podcast, by a significant uptick in cases before the ICJ and in the number of states involved in cases before these tribunals, whether as parties to a contentious case, intervening in proceedings, or participating in advisory opinions.<sup>4</sup> Moreover, as Philippa Web points out in response, there is increased participation in cases going beyond bilateral disputes over borders or treaty breaches to situations, rights and existential risks affecting the collective interests of states, civil society or the planet as a whole. The recourse to international tribunals, especially via advisory opinions, may also reflect, as Mike Becker adds, failures of diplomacy or, in Webb's view, more strategic efforts to hold states and their agents to account in domestic courts by then invoking the standards that the international tribunal has been asked to articulate. The accelerated proliferation of these scenes of accountability on the worldwide stage exemplifies what Derrida described in the late 1990s as a generalized theatricalization of nation-state avowals – with or without repentance, forgiveness, or reconciliation – of crimes against the human in general (genocide, ethnic cleansing, apartheid, enslavement, torture, rape, complicity therein).

In addition, there is the tremendous public engagement with the issues before the ICJ in *South Africa v Israel* with large numbers of people following the proceedings in real time, via the court's live feed or live-tweeting by legal academics and journalists, driven by the surge in popular support for the Palestinian cause seen on the streets and amplified by social media. Combined with the concept of crime against humanity which, for Derrida, is 'the juridical mechanism of this globalization of avowal' ('Av', 32), the mediatization of these scenes illustrates his description of the wider scenography. They multiply

in a public space transformed by tele-technologies and by media capital, by the speed and reach of communication, but also by the multiple effects of a technology, a techno-politics and a techno-genetics that unsettle at once all conditions: *both* the conditions of being together (the supposed proximity, in the same instant, in the same place and the same territory, as if the uniqueness of a place on earth, of a soil, were becoming more and more – as one says of a telephone and in the measure of the said telephone – *portable*) and the conditions of what lives in its technological relation to the nonliving, to hetero- or homografting, to prosthesis, artificial insemination, cloning, and so on. Largely exceeding the territory of the state or of the nation, all these scenes of confession and of reexamination of past crimes appeal to the testimony, even to the judgment of a community, and so of a modality of living-together, virtually universal but also virtually instituted as an infinite tribunal or worldwide confessional. ('Av', 31)

The *mondialisation* of the recent scenes at the ICJ (also in *Ukraine v Russia*) exemplifies precisely this transformation of spaces of public reason and deliberation by way of tele-technologies that bring the theatre – if not of avowal or repentance, then of litanies of injustice attested to and heard – to appear before a global tribunal. 'There is',

<sup>4</sup> *EJIL: The Podcast!*, 'Episode 23: Unhappy New Year! Genocide in the Courtroom', 15 January 2024; available at <https://www.ejiltalk.org/ejil-the-podcast-page> [accessed 28 January 2024].

as Derrida puts it at the end of the first year of the seminar, ‘a general public show [*comparution*] of planetary human conscience in the face of wrongdoing’ (*PPI*, 321). When the outgoing President of the ICJ, Judge Joan E. Donoghue, read out the court’s Order on provisional measures in *South Africa v Israel*, it was clearly not lost on the justices that their judgment would be heard by publics all around the world.<sup>5</sup> With perhaps one notable exception (on its rationale for declining to impose restrictions on military activity, as South Africa requested), the text laid out the procedural aspects (that this was not a decision on the merits – that is, whether there had in fact been acts of genocide) and the legal bases for the Court’s jurisdiction (the existence of a dispute between the two states parties, South Africa’s standing *erga omnes partes*, the plausibility of the acts and omissions complained of falling within the provisions of the Genocide Convention) with a clarity tailored to a global non-expert audience.

Derrida’s analysis of the *mondialisation* of the tribunal highlights the impacts on ‘*vivre ensemble* [living-together]’. Not only does technology enable a portability and collapse of distance that exposes a living-together beyond territory, place, soil, the nation-state, and thus a community no longer tethered to those presuppositions of belonging and exclusion. Moreover, it shows how these technologizations engage the living to reveal how life is always already prostheticized and hence never a natural, organic, self-identical totality. The central point of his ‘Leçon’ at the 37<sup>th</sup> Colloquium of French-Speaking Jews in Paris in December 1998, Derrida’s argument for distinguishing between a substantive, totalizing notion of ‘*ensemble*’ and hearing that word adverbially relates explicitly to his own evolving critical position on ‘the conditions in which the modern state of Israel established itself’ and hence to the matter before the ICJ in our own day (‘Av’, 29). Derrida prepares his discussion of the generalized theatricalization of forgiveness by recalling the classical question of the state’s constitutive violence. Specifically, could Israel’s foundation ‘be no more than an example among others’ of the inescapable non-legal violence without which no state has ever been founded (‘Av’, 30)? Or must it appeal to another justice and appear before a tribunal whose horizons are ‘no longer national or belonging to the state’? ‘This advent of a new juridical concept’ that globalizes avowal, he suggests, had its ‘inaugural emergence’ in the Nuremberg trials and ‘is the very memory of the Shoah’ without being reducible to it (‘Av’, 32).

The task of justice, peace and reconciliation demanded by this infinite memory calls for living well together in ways that resist both natural and conventional forms of the social bond, whether that be predicated, on the one hand, on the sovereignty of the state and national law, or on the other, on a biological, organic, symbiotic totality. The *how* of an adverbial *vivre ensemble*, preceding any norm or precept, conversely ‘appears to find its sense and dignity only there where it exceeds, dislocates, contests the authority of the noun “ensemble,” to wit, the closure of an ensemble, be it the whole of something “living” [*d’un “vivant”*], of a system, a totality, a cohesiveness without fault and identical with itself’ (‘Av’, 21). This *vivre ensemble* refers ‘neither to “life” according to nature or birth, blood or soil, nor to life according to convention, contract, or institution’. Much of this aligns with the critique of nationalist affirmation that Derrida developed during his four-year seminar on ‘Nationalité et nationalisme philosophiques’ in 1984–88, setting the stage

<sup>5</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)* (Request for the Indication of Provisional Measures: Order of 26 January 2024); available at <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf> [accessed 27 January 2024].

for the multi-year exploration of ‘questions of responsibility’. Ever alert to the dangers of cosmopolitanism and globalization, he sees several risks: that legalism would pervert any progress of humankind in holding nation-states to account; that a universal juridical power would be appropriated by bad state actors and subordinated to unjust strategies; and that a reinvigorated inquisitorial suspicion in the name of transparency would threaten the solitude and unknowability of the other – the pre-condition of hospitality and responsibility – required for living well together (‘Av’, 34).

Derrida’s scepticism towards the totalization of Heideggerian gathering and self-presence drives him to sketch out an adverbial living-together that interrupts legal-political contract as much as symbiotic communitarianism. It points towards a perpetual or messianic peace-to-come exceeding, without necessarily being opposed to, the horizon of a ceasefire, the peace process, and indeed all legal justice. To this ends he turns to the idea of an ‘accord’, of trust, of *con-fiance*, even of harmony and concord:

If ‘living together’ then means ‘living well together,’ this signifies understanding one another in trust, in good faith, in faith, comprehending one another, in a word, being in accord with one another. Why then speak of accord? Why this language of the heart [*cœur*], of accord and concord, even of ‘mercy [*miséricorde*],’ and of the compassion that must bring us closer and a bit more quickly to the question of ‘forgiveness,’ with or without *teshuvah*? (‘Av’, 25)

Citing the example of the unmarried couple who ‘live together’ (as the idiom in English and French has it), Derrida goes on to argue that this accord – without necessarily being in contradiction with the peaceable cohabitation guaranteed by law – exceeds it. This thought of accord as the path towards forgiveness and reconciliation is developed more rigorously in the first year of the seminar, especially in the Sixth Session, one of only three sessions not published and available to the world until 2019. Via the Greek notion of *syngnōme*, Derrida articulates and interrogates the idea that a just and equitable hearing or understanding lies at the heart of forgiveness and reconciliation. Before reading this session closely, I want to underscore how this question of accord surfaces in the ways that the mediatization of the ICJ proceedings open up possibilities for *hearing together*, which – without offering uniformity or easy consensus – bring about a certain accordance of audibilities in which ‘a stranger accords himself to a stranger, in hospitality’ (‘Av’, 28).

## Hearing Genocide as Such

The global audibility of the ICJ proceedings created space for atrocity and suffering to be heard in new modalities, amplifying an incipient international-juridical recognition. Precisely after some had lamented ‘why isn’t the world listening?’,<sup>6</sup> there was something powerful about hearing, in the calm, measured recitation of the judicial bench, detailed attestation to the death, destruction, suffering and trauma wrought upon Palestinians in Gaza, drawing on the statements of UN agencies and spokespeople, and immediately followed by quotations of dehumanizing statements made by Israeli officials. This scene of recognition – articulated in an unruffled authoritative tone of voice and amplified around the world via the ICJ’s live stream, as well as clips and commentary on broadcast and new media – made space for uptake of these performatives, for hearing claims of crimes against humanity as credible, or, depending on how exactly one defines uptake, as

<sup>6</sup> Raz Segal, ‘A Textbook Case of Genocide’, *Jewish Currents*, 13 October 2023; available at <https://jewishcurrents.org/a-textbook-case-of-genocide> [accessed 24 January 2024].

entertaining them, of taking them seriously, giving them fair consideration.<sup>7</sup> The pathway to justice and reconciliation seems impossible without this degree of concord in how claims of crimes against humanity are *heard*, in their being audible *as such* (and not, for example, as false claims or perjuries). Even without agreement on what is heard, it calls for a minimal concord or attunement on what we are disagreeing about. It entails listening with sufficiently equitable and truth-seeking discernment that the door to forgiveness and reconciliation is not irreparably closed by inflicting the redoubled harm of depriving the victim of the means to bring the harm to the knowledge and ears of others (what Jean-François Lyotard calls a *différend*).<sup>8</sup> Derrida gives the example of women activists stigmatized as unreliable witnesses by the very sexual abuse to which they were testifying, hence silenced in the act of speaking before the TRC (*PP2*, 76).

The possibility of reconciliation also seems to presuppose a shared understanding of the wrong done (*PPI*, 68). The pedagogic character of much of the global dissemination of the ICJ's proceedings has brought into focus how the word 'genocide' is heard among the tensions between its various intonations (sociological, legal, popular, activist and so on). Lay audiences, for example, have acquired greater understanding of the critiques made by scholars in genocide studies of the narrow legal construction developed in the ICJ's jurisprudence, which makes it very difficult to prove genocide at the merits stage of a case. Specifically, this is because, in addition to making out the *actus reus* or specific material facts for acts recognized under the Convention (killing or causing seriously mental or bodily harm to members of the group, deliberately inflicting conditions of life calculated to bring about the physical destruction of the group in whole or in part, preventing births or transferring children of one group to another), the applicant must further demonstrate the *dolus specialis* of genocidal intent 'to destroy, in whole or in part, a national, ethnical, racial or religious group'.<sup>9</sup> This special intent demands evidence of a higher-order purpose beyond the intention to commit a specific act, which is sometimes argued to overlap with the notion of (ulterior) motive.<sup>10</sup> Since genocidaires rarely openly declare that intent, the ICJ's jurisprudence has developed the principle that it may be inferred from a pattern conduct, *provided it is the only inference* that could reasonably be drawn from the acts. This has made determinations of genocide incredibly rare. Such determinations would presuppose a degree of concord in how facts that are plausibly genocidal for the purposes of deciding jurisdiction are then understood or heard when judging the merits.

It is striking that both states parties' pleadings and the court's Order placed significant emphasis on dehumanizing statements made by Israeli officials, which may be heard to refer indiscriminately to Palestinians in Gaza as a whole.<sup>11</sup> Israel put forward that such statements were nothing more than hyperbolic wartime rhetoric, 'not to be totally

<sup>7</sup> Derrida characterizes language or vocabulary as the common ground for 'minimal precomprehension' (*PPI*, 680).

<sup>8</sup> Jean-François Lyotard, *The Differend: Phrases in Dispute*, trans. Georges Van Den Abbeele (Minneapolis: University of Minnesota Press, 1988).

<sup>9</sup> Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered in force 12 January 1951) 78 UNTS 277 (Genocide Convention) art 2.

<sup>10</sup> Paul Behrens, 'Genocide and the Question of Motives', *Journal of International Criminal Justice* 10.3 (2012): 501-23.

<sup>11</sup> See §§51-54 of the Order cited in n5.

ignored', but whose legal importance ought not be overestimated.<sup>12</sup> The Order nonetheless quoted a number of these statements, though it did not include the ones potentially open to more diverse interpretation and, further, it did not need to decide at this stage whether these went to genocidal intent or to a violation under Article III of the Convention for failing to prevent 'direct and public incitement to commit genocide'. Furthermore, South Africa placed significant emphasis on how such statements would be heard by key actors, not only direct ministerial addresses to armed forces but also how IDF soldiers on the ground have echoed statements made in the media by political leaders, suggesting that they have carried out certain actions in response to how they heard those statements: 'The genocidal intent behind these statements is not ambiguous to the Israeli soldiers on the ground. Indeed, it is directing their actions and objectives.'<sup>13</sup>

Incitement to genocide is an inchoate offence under international criminal law: it is punishable in itself regardless of whether the anticipated outcome is achieved. It is therefore not necessary to prove causation between the incitement and the act. Given, however, that genocidal intent rarely announces itself explicitly, the International Criminal Tribunal for Rwanda (ICTR) – in a tendency seemingly at odds with its inchoate character and the policy objective of *preventing* genocide – increasingly emphasized the causal links where genocidal acts did take place in the wake of inciting speech not only in its factual findings but also in its legal analysis. In order to find sufficient 'directness' in euphemistic rhetoric or dog-whistles, the ICTR focused on how such statements would have been *heard* in their specific context. This entailed attending to the cultural and linguistic context, drawing on expert opinions on socio-linguistics, such as that of Mathias Ruzindana, in order to understand the nuances of languages unknown to the judges and most of the legal representatives.<sup>14</sup> That 'hate media' and the radio in particular were so instrumental in the Rwandan genocide – so much so that scholars referred to 'the soundtrack to genocide' and 'radio machete'<sup>15</sup> – brought the question of *audibility* to the forefront of the court's attention. The ICTR held that statements may be heard differently in different places and by different audiences. Besides the challenges of translating witness testimony into the Tribunal's official languages of English and French, the ICTR has grappled (somewhat imperfectly) with the polysemia of terms in Kinyarwanda, the impacts of predominantly oral cultures and the living nature of expressive norms. The Tribunal's focus was mainly on how the intended audience 'immediately grasped the implication' of the statement: in other words, how it was *heard*.<sup>16</sup> While it must be more than vague or indirect suggestion, the message may be implicit, yet heard by a given audience in a given context as encouragement to commit acts of genocide, regardless of how it may be heard by others in other contexts. The *travaux préparatoires* provide a

<sup>12</sup> Professor Malcolm Shaw for the Respondent *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)* (Verbatim Record 2024/2 [12 January 2024]); available at <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240112-ora-01-00-bi.pdf> [accessed 12 January 2024], §49.

<sup>13</sup> Mr Tembeka Ngcukaitobi for the Applicant, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)* (Verbatim Record 2024/1 [11 January 2024]); available at <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240111-ora-01-00-bi.pdf> [accessed 12 January 2024], §20.

<sup>14</sup> Mathias Ruzindana, 'The Challenges of Understanding Kinyarwanda Key Terms Used to Instigate the 1994 Genocide in Rwanda', in *Propaganda, War Crimes Trials and International Law: From Speakers' Corner to War Crimes*, ed. Predrag Dojčinović (London: Routledge, 2012), 146-69.

<sup>15</sup> Richard A. Wilson, 'Inciting Genocide with Words', *Michigan Journal of International Law* 36.2 (2015): 278 including n3.

<sup>16</sup> *Prosecutor v Akayesu* (Judgment) ICTR-96-4-T, T Ch I (2 September 1998), §557-8.

morsel that has been notably cited not only in the ICTR jurisprudence beginning with *Akayesu* but also echoed in a key judgment of the European Court of Human Rights on hate speech and denial of the Armenian genocide.<sup>17</sup>

In the Polish representative's opinion, the problem was simple. The most horrible crime ever known to the world had been brought about by preaching hatred of certain human groups. It was unnecessary directly to incite future perpetrators to commit acts of genocide. It was sufficient to play skilfully on mob psychology by casting suspicion on certain groups, by insinuating that they were responsible for economic or other difficulties in order to create an atmosphere favourable to the perpetration of the crime.<sup>18</sup>

The sometimes contradictory efforts to articulate a nexus between speech acts and genocidal acts appear to be a mechanism for the judges to mitigate the exceptionally high bar for *dolus specialis* by locating intent in a concord of hearing. Where genocidal intent is hard to discern in expression itself, it may nonetheless be inferred in uptake or hearing-as. Appeals to context-dependent hearing-as to shore up a quasi-causal nexus reflect, if anything, the absence of clear agreement in international law on what incitement to genocide or genocidal intent sounds like or under what conditions performatives are heard to have genocidal illocutionary force.<sup>19</sup> In a somewhat circular analysis of this nexus in the so-called 'Media Trial', the Tribunal held that the potential for given statements to be *heard as* genocidal in part turns on whether leaders had cultivated an environment such that a trigger could set off genocidal acts – in other words, whether they had created a common attunement of ears setting the parameters for the illocutionary and perlocutionary effects of this hearing-as:

A statement of ethnic generalisation provoking resentment against members of that ethnicity would have a heightened impact in the context of a genocidal environment. It would be more likely to lead to violence. At the same time the environment would be an indicator that incitement to violence was the intent of the statement. At the same time the environment would be an indicator that incitement to violence was the intent of the statement.<sup>20</sup>

The Rwandan cases and the subsequent discussions in legal scholarship raise important questions beyond the scope of this article about how, in practice, something like a concord of hearing is formed at the intersection of elite and popular discourses and how it is shaped in a propaganda-rich environments. And if, in Richard Wilson's estimation, determinations on incitement and genocidal intent should turn on illocutionary force as distinct from perlocutionary effects, then criminal – and, by extension, restorative – justice calls for a theory of hearing-as.

<sup>17</sup> *Akayesu*, §557; *Perinçek v Switzerland* App no 27510/08 (ECtHR, 15 October 2015) 63 EHRR 6, §57.

<sup>18</sup> Summary Records of the Sixth Committee of the General Assembly (21 September–10 December 1948), Official Records of the General Assembly, A/C.6/SR.87, 1576.

<sup>19</sup> See, for example, Susan Benesch's diagnosis in 'The Ghost of Causation in International Speech Crime Cases', in *Propaganda, War Crimes Trials and International Law*, ed. Predrag Dojčinović (London: Routledge, 2012), 257: 'Causation slips into judicial rulings on incitement to genocide for several reasons, all of which are signs of systemic difficulties in international criminal law. First, there is a void to fill. Causation stands in for a tool that courts are lacking: a systematic method for identifying incitement to genocide.' See also the critique of Benesch and the discussion of speech-act theory in Wilson, 300ff.

<sup>20</sup> *Prosecutor v Nahimana, Barayagwiza, Ngeze* (Judgment) ICTR-99-52-T, T CH I (3 December 2003), §1022.

Moving to the present day, listening to the pleadings in *South Africa v Israel* and the responses to the Order from various states, one might think that the dispute simply cannot be litigated since, in Lyotard's terms, there are two completely different phrase regimens by which the situation is heard and understood such that there is no scope for linkages or even minimal concord. The result of such *différends*, exemplified in colonial situations, is often that one party is unable to claim justice within the hegemonic narrative of reality because the injustice simply will not be *heard as such*. In any event, when two parties talk past one another in the way that the pleadings do, the common space of hearing required for disagreement, let alone reconciliation, is lacking.

Derrida's interest in *accord* is more concerned with the question of forgiveness and reconciliation than the legal analyses of intent. And yet, insofar as an agreement on the harm done, if not on issues of culpability or excusability, seems to be a necessary prelude to the possibility of reconciliation, there is an important connection between these two scenes of consonant hearing-as, bringing together the possibilities of holding to account and conversely, beyond all calculus, of forgiving the unforgivable. When the possibility of reconciliation – even a temporary agreement on a ceasefire – could not seem further away and the pursuit of truth is embattled in a fog of dogmatism, propaganda and disinformation, my aim is to return to this question of consonant understanding in the search for a just and lasting peace and to ask: If the alterity of the past interrupts the *ensemble* of the present as self-presence, what accord is there between Derrida speaking in 1998 and us listening today to his voice published and disseminated around the world?

Palestinian public-law scholar Nimer Sultany has argued on social media that the emergence within mainstream legal discourse of genocide (or in Martin Shaw's analysis, 'asymmetric counter-genocide') as a framework for thinking about what is happening in Gaza has transformed how the question of Palestine is heard within the legal community and resonates beyond.<sup>21</sup> Aside from increasing the credibility with which pro-Palestinian voices are heard, the invocation of genocide broke open the narrow prism of the laws of armed conflict and occupation, which neither prevent domination nor attend to the asymmetries or motivations of oppression. At a talk for the University of Oxford's Middle East Centre in February 2024, Noura Erakat, a well-known movement lawyer and scholar, made similar points about the displacement of international humanitarian law as the structuring frame and also about a shift in the understanding of the structural relation between Israel and Palestine, further noting how South Africa's move was propelled by the wind in the sails of global popular mobilization. How, then, might Derrida's framework of accord be allowed to resonate today such that it transforms and invents ways in which atrocities and the fragile possibilities for reconciliation are audible globally? When lasting peace seems remote, there is an intensity and urgency around these vectors of attunement that can enlarge the juridical and popular imagination. As Erakat underscored, oppressed peoples cannot rely on international law for liberation. So long as the ICJ infers genocidal intent only if there is a sufficient nexus between dehumanizing statements and genocidal acts, then by the time it could reach such a

<sup>21</sup> Nimer Sultany, Thread on the effect of the ICJ ruling on provisional measures, X, 4 February 2024; available at

<https://x.com/nimersultany/status/1754173494286340349?s=46&t=Iy9okoAh0k5XbU8CTt3yYQ> [accessed 4 February 2024]; Martin Shaw, 'The Uses and Abuses of the Term "Genocide" in Gaza', *New Lines Magazine*, 6 November 2023; available at <https://newlinesmag.com/spotlight/the-uses-and-abuses-of-the-term-genocide-in-gaza> [accessed 28 January 2024].



decision at the merits stage, the absolute worst – the absolutely unforgivable – will already have befallen Palestinians.

## Tuning the Instrument

‘Forgiveness isn’t a musical instrument or an animal either’ (*PPI*, 69), Derrida declares in the Third Session of the first year of ‘Le parjure et le pardon’. In the immediate context, he is clearly arguing that forgiveness is not ‘thinglike’, giving examples of various things that forgiveness is not. He is also keen to distinguish it from an act or a power. What is less clear is why he should alight on the example of the musical instrument (we shall come back to the animal) and specifically at a juncture in the seminar discussing the presupposition of ‘a common “sense”’ (*PPI*, 69) of *pardon* or at least a shared ‘precomprehension’ even as there is disagreement about such concepts (*PPI*, 68). Notwithstanding his disclaimer, the question of forgiveness is, on Derrida’s reading, in fact rather musical and begins to resemble a process of tuning.

To start with, the seminar is a vividly sonorous, even rather noisy, affair. In the second year Derrida explicitly rehearses the theatricalization he describes, with four key (male, Protestant) protagonists, putting Nelson Mandela, Desmond Tutu, Bill Clinton and Hegel on the stage with the ‘voice off’ of Hegel’s ghost, of *The Phenomenology of Spirit*, waiting in the wings and speaking (of) the word of reconciliation, of spirit as reconciliation. Early in the First Session he invites his audience to lend them an ear: ‘We’ll listen to their testimony. But the curtain hasn’t yet risen. Still in preview [*Hors d’œuvre*]. Prologue [*Exergue*] (a voice is heard, off [*voix off*], before recommencing; it speaks German, of course).’ (*PP2*, 3)<sup>22</sup> The spectre of this voice off punctuates the seminar’s *mise en scène* more times than I can recount here: ‘A voice off echoes once more, still in German’ (*PP2*, 35); ‘Hegel’s voice off continues to echo – we’ll hear it again’ (*PP2*, 64); ‘Hegel’s ghost is growing impatient. He would like to take the floor again as voice off’ (*PP2*, 150); ‘we never stopped hearing Hegel’s voice off’ (*PP2*, 161).

Then there is the fact that this word of reconciliation is perhaps already no longer a word. Reading a correspondence, later published in *Le Magazine littéraire*, between Vladimir Jankélévitch and a young German after the publication of *L’Imprescriptible*, Derrida underlines an ‘allusion to music [...] on the part of both correspondents, to a musical correspondence, to music played or listened to together, a sharing of music’ (*PPI*, 29). He does so not only because Jankélévitch was famously a music-lover but also because forgiveness points to that which exceeds the word and is to that extent in concord with music: ‘between a certain something beyond the word required, perhaps, by forgiveness, and music, and even singing without words, there is perhaps an essential affinity, a correspondence which is not only that of reconciliation’ (*PPI*, 29). In the Eighth Session, Derrida considers forgiveness as ‘the last word’, for example, as a testamentary pardon requested and granted on the death bed in the final moments of a life but also more generally insofar as forgiveness brings a discussion and process to an end. Beyond possible appeal and annulment, it entails ‘the at least implicit oath that commits one not to go back on forgiveness’ (*PPI*, 230). It seems to interrupt history and language ‘forever’, and yet Derrida confesses to having ‘played without playing’ in the previous

<sup>22</sup> The reference in square parentheses to the words ‘voix off’ in the original French is my addition. The other text in square parentheses is printed in that way in the English translation.

session with the idea that these last words might yet still respond to one another (*PPI*, 29).

This notion of the ‘last word’ as verdict or pardon here articulates a recurrent affinity between the musical and the animal that frequently in Derrida’s thought.<sup>23</sup> It is in this context that Derrida reads Maurice Blanchot’s *Le Dernier Mot* whose narrator avows his shame for being a judge, for exercising a ‘ferocious, bestial justice [that] is terrifying inasmuch as it echoes or has echo through it, as its verdict, its judgment, its sentence, the last word’ (*PPI*, 232). This violence is figured by analogy with a group of large dogs, their heads crowned with thorns, who observe the judge’s passage from the opposite bank of the river not by barking but in silence, as if to mark that the judge can be neither judged nor therefore pardoned. ‘It was only after I had walked some distance’, Blanchot’s narrator reflects, ‘that they began to howl again: trembling, muffled howls, which at that hour of the day resounded like the echo of the word *there is* [*il y a*]. “That is probably the last word,” I thought, listening to them.’<sup>24</sup> Reading the sonorous language in this passage, Derrida understands the last word – the *il y a* as singular, indivisible word – as an inarticulate cry shared between animal and man: ‘an echo reverberating the howls of the dogs, it retains something bestial’ (*PPI*, 232).

Blanchot’s *il y a* is heard to resonate with that of Emmanuel Levinas, who in *Autrement qu’être* speaks of the ground of being, articulated with justice and expiation, as an incessant ambient noise or ‘hubbub’. Animated by how the ‘last word’ echoes a ‘first word’, Derrida launches into a volley of remarks on this resonant ‘basso continuo’ (*PPI*, 235).

This *there is* also echoes, as in Blanchot, it is almost animal, it makes noise, it resounds, but without a word, beyond the word; it therefore has something inarticulate in it, a little like the cry that one attributes to beasts. But Levinas does not speak of howling mastiffs, like Blanchot, he instead evokes the sound of buzzing. Buzzing is the language, or sonorous, if not phonic, manifestation of another beast, the bumblebee [*bourdon*], which is at the same time: a furry hymenopteran, like a bee (what is called a ‘false bourdon’ is a male, drone bee); in music, a drone [*bourdon*] is a sort of continuous bass sound (produced by instruments such as the hurdy-gurdy or bagpipe; it is also the fourth violin string or a bell with a low-pitched sound). You know that *avoir le bourdon* or *avoir le cafard* means ‘to be down in the dumps.’ (*PPI*, 234)

These explicit references to sound, noise, and music amplify a core idea of the seminar – of pardon as a-tone-ment and at-tune-ment. As a footnote in the published version avers on one of his photocopies of the typescript for the Eighth Session, Derrida’s handwritten notes refer to an altered file on disk alongside a stage direction: ‘repeat in all different tones’ (cited in *PPI*, 228n1). The modified computer file expands on the significance of these multiple intonations for the theatricalization of forgiveness that he intends to stage in different ways in each year:

Mimic and repeat in all different tones: a whole seminar could have restricted itself to the theatricalization of the different tones with which those utterances could be pronounced, exhausting itself in the system of (almost infinite) combinations, the ‘gestures’ of those

<sup>23</sup> See, for example, Jacques Derrida, *The Animal That Therefore I Am*, trans. David Wills (New York: Fordham University Press, 2008), 63.

<sup>24</sup> Maurice Blanchot, ‘Vicious Circles: The Last Word’, trans. Paul Auster, in *The Station Hill Blanchot Reader*, ed. George Quasha, trans. Lydia Davis et al. (Barrytown, NY: Station Hill Press, 1999), 42; trans. modified following David Wills in *PPI*, 232. The reference to the original French is my addition.

utterances, the gestural intonations, that is to say the ‘pragmatics’ of that ‘ordinary language,’ etc.). (cited in *PPI*, 228n1)

Indeed, in the recording of the session, he can be heard in his performative dramaturgy of forgiveness to repeat in different tones and to ‘theatricalize [...] the intonations of these speech acts: *pardon, je m’excuse, y a pas de mal.*’ ‘I can imagine a seminar’, he quips, inducing laughter from his audience, ‘that would have consisted simply in varying for a year in a theatrical, dramatic way, a “drastic” way as we said, all the possible gestures, the combinatory system of all these possible gestures for pardon.’

This ‘drastic’ character (the word is Jankélévitch’s) will underpin what makes pardon or atonement a question of intonation or attunement and hence irreducibly sonorous. In the Sixth Session, Derrida observes that *drastic*, like *drama* and *dramaturgy*, comes from Greek *draō*, meaning to act or operate energetically, and hence indicates a speech act that continues to do work. Moreover, the drastic differs, for Jankélévitch, from a cognitive relation. It is a more affective, participative, sympathetic understanding than rational or theoretical intellection. Derrida describes the shift in terms that anticipate the concord of his address on living together ten months later: ‘From intellectual understanding to the understanding of thinking along the same lines as the other, from the understanding of rational analysis to the understanding of agreement, of an attunement of the heart, or even of mercy [*miséricorde*] and of *recordation*.’ (*PPI*, 177) Over the course of the seminar Derrida will return to this scene of concordant attunement in order to put considerable pressure on whether forgiveness requires such consonance or is in fact impossible without a minimal degree of disagreement or discord.

One difficulty with which Derrida contends in the seminar is that *pardon* is heard in multiple tones and untranslatable idioms. He is well aware that, in thinking about *pardon* and various related idioms, he participates in the violent drama of imposing a colonialist idiom, against which every practice of a nondominant idiom or intonation is an act of contestation or resistance (*PP2*, 105-6/66). In the second year of the seminar, he gives the example of how, in translating *ubuntu* as ‘forgiveness’ or ‘restorative justice’, Tutu subsumes the multiple ‘cultures of forgiveness’ in South Africa into a Christian or more broadly Abrahamic understanding of the term. In the Sixth Session of the first year, discussing the syntagm ‘*y a mal d’mal* [no harm done]’, he argues that ‘one could hear this very French expression extending along so many other frequencies’ (*PPI*, 166). In this context it is language that provides a horizon of concord. The phrase sounds ‘untranslatably, in untranslatable polysemy or dissemination, dissemination without self-gathering, without gathering with itself and without *syn*, without being with oneself, without analogy of sense, without synonymy, without synthesis, synergy, synagogue of these frequencies’ (*PPI*, 167). And yet, since it can be said – and heard! – ‘in the (French) language alone, the (French) language being the only gathering place for its disseminal event, then this quasi-phrase would remain, as text, merely a homage to idiom, a salutation made to the French language as possibility for the untranslatable idiom, a hymn, a praise, a tribute to the French language.’ (*PPI*, 167)

Throughout the seminar, in probing the idea of hearing at the intersection of justice and aurality, Derrida operates simultaneously on (at least) three structural levels: accord as reconciliation between people or peoples, as reconciliation between understandings of concepts, and as reconciliation between understandings of the concept of reconciliation itself. Pointing to the political ramifications of this tension between dissemination and gathering in the context of the South African Truth and Reconciliation Committee (TRC),

Derrida observes in the second year that ‘even before, and in the prospect of settling or discussing their disagreements – [these multiple cultures or frequencies of forgiveness] would be required to reconcile among themselves, or even to forgive one another for trying, inevitably, to impose their own idiom on others.’ (PP2, 66) It is the promise of a preliminary reconciliation of this kind on the question of Palestine that arises, as a faint hope, with the current *mondialisation* of the concept of genocide. And yet Derrida’s thought about accord in *Le Parjure et le Pardon* complicates this analysis. Echoing his consistently trenchant suspicion of the gathering of the *logos*, especially in its Heideggerian guise, Derrida develops the somewhat counterintuitive idea that harmony – especially when attained forcibly and insofar as it does violence to the otherness of the other – is, far from a precondition for, an *obstacle* to peace and reconciliation. The political stakes of this challenging thought could not be more resonant today.

## Excuse Me

This rather difficult thought, which haunts much of the seminar, is condensed with vertiginous precipitation in the address on living together. Derrida is speaking of the ‘vital necessity’ of living together well (*il faut bien* ‘*vivre ensemble*’) – whether that be a hope of living in peaceful accord or resignation to co-existence, without holding out for peace or even desiring it, because ‘it is better to live than to die’.

This ‘must [*il faut*],’ like the *well* [*bien*] of the one must well, can be modulated in any and all keys. Were we to do scales on an instrument in order to test the tuning of its strings, in order to adjust the ear toward the right note, or at least toward a not too discordant note (unless the false note, the right false note [*la juste fausse note*] were not rigorously [*de rigueur*] required when it is a matter of discording [*détonner*] or going out of tune a little in order to think how difficult the accord and agreement are, the harmony of the ‘living together [*vivre ensemble*],’ a rare and always improbable thing), we would hear the harmonics of this strange expression (‘living together’), which has some fairly strict equivalents, it is true, in other languages. (‘Av’, 23).

Derrida’s argument demands careful disentangling. The scene he conjures up is one of listening. Specifically, it is a matter of listening to this harmony that is *vivre ensemble*, which is heard in multiple ways, that is, on account of the different overtones or partials that sound as the expression is translated into different languages even where there is fairly strict equivalence. Is some harmony among the different ways in which the harmony of *vivre ensemble* is heard? Using the related metaphor of different musical keys and scales, Derrida’s starting point is that the *il faut* and the *bien* are similarly (though, we should assume, not necessarily equally) capable of being modulated and thus of being heard in multiple ways: ‘This “must [*il faut*],” like the *well* [*bien*] of the one must well, can be modulated in any and all keys.’ The keys in which the *il faut bien* ‘*vivre ensemble*’ are variously modulated are characterized as ways of testing out the relative harmoniousness not merely of *vivre ensemble* (to what extent it is consonant in itself) but also among the different ways in which that harmony is heard (to what extent those harmonies are consonant as a group): ‘Were we to do scales on an instrument in order to test the tuning of its strings [...] we would hear the harmonics of this strange expression’. Then, however, in a long, complex intervening remark, he suggests that this task of tuning (of hearing the beats among the harmonics and of bringing them into consonance) is not straightforwardly a matter of according with ‘the right note’. It is not even, he dares to suggest, a matter of ‘a not too discordant note’ whose discord is therefore ‘just’ or

‘equitable’, as if a just hearing of accord and of *vivre ensemble* might require a minimal dissonance, rather than complete identification. And yet he also expresses doubt whether that ‘right false note’ is necessary ‘when it is a matter of discording [*détonner*] or going out of tune a little in order to think how difficult the accord and agreement are’. The difficult thought is that, in order to have any accord or agreement on the difficulty of reaching accord and agreement, one might have to relinquish any attachment to the idea that it requires if not accord (the right note) then at least agreement on a no-more-than-minimal discord (the right false note, one that is out of tune but we can agree is a measure of what is in tune). It is difficult to know whether one agree or disagrees with this!<sup>25</sup>

The formulation here echoes a moment in the opening session of the seminar when Derrida wonders ‘whether a rupture in this reciprocity or this symmetry, whether even the dissociation between forgiveness requested and forgiveness granted, is not de rigueur for every forgiveness worthy of the name’ (*PPI*, 11). But the reference to just tuning or intonation begins to make sense only once one reads the Sixth Session, which would not be published until more than a decade later in 2019. In that interval, all that remained to be done was to try to attune oneself to a very difficult thought of accord and discord that hardly seems consonant to itself. Today, though, we can hear how this question of just tuning arises amid a discussion of the concept of *syngnomē* (indulgence, excuse, accord, forgiveness even) which Derrida takes from Jankélévitch and develops in the Fifth Session onwards. As far as the colloquium audience in December 1998 is concerned, tuning into these words without the benefit of having heard the seminar, Derrida in effect ‘solicits the indulgence, the *syngnōmē* precisely, of his listeners at the moment of broaching a difficult task’ (*PPI*, 187) – which is precisely what he says Critias does near the beginning of the Platonic fragment bearing his name. At the very start of the dialogue, Timeaus has just offered up a prayer:

Timeaus begs [God] to save, to assure the salvation (*sōtērian*) of, the words that have come to us and will have been harmonious, just in their melodic accord, in the *melos*. But he also asks him, in case of any false note [*fausse note*], to punish, to chastise, to apply *dikē*, the justice that can be a punishment. But what is justice, *dikē*, just punishment, for someone who sings a false note? Well, it consists in repairing. And what is repairing by punishing justly? Well, it consists in reestablishing the harmony (*emmēlē*), the correct measure. It is to tune [*accorder*], reconnect [*raccorder*]. Punishment or pardon, divine justice consists in repairing, reconnecting by bringing back the just measure [*la juste mesure*]. (*PPI*, 190)

What appeals to Derrida about this metaphor of justice as *accorder*, tuning, just intonation, is that this re-harmonizing (*ré-accorder*) not only resonates with the heart (*cor*), with *misericordia* and *recordatio*. It moreover combines the sense of granting a pardon (*accorder un pardon*), of the gift (*don*) of for-give-ness (*par-don*), with that of ‘calculable harmony, the science of the correct proportion’ (*PPI*, 190). As such, it situates justice at the intersection of faith and knowledge.

<sup>25</sup> Geoffrey Bennington has on several occasions noted how deconstruction works against shutting down discord, disagreement and argument (for example in ‘For the Sake of Argument (Up to a Point)’, *Ratio* 13 [2000]: 332-54). He comes closest to articulating the re-marking at stake here when he observes how *Spectres de Marx* credits Heidegger with recognizing that justice involves an irreducible discord but, insofar as he tends to resolve this into a harmony, there is still *discord about this discord* between them (‘Handshake’, *Derrida Today* 1.2 [2008]: 176).

At stake in the notion of accord is nothing less than one of the central questions pursued in the seminar: whether a distinction can be drawn and sustained ‘between pure or unconditional forgiveness and those neighboring and heterogeneous forms of remission’ (PPI, 35). In the Third Session Derrida gives a schematic outline of the orienting questions, the first of which concerns whether forgiveness is a capacity (*pouvoir*) of which one is capable or its impossibility is of another order. The other guiding question is no central to the task of deconstruction, asking after the nature and effects of *dissémination*:

The second question concerns the logic of the distinction or difference between forgiveness and everything that, while belonging to the same analogical family, in the same semantic vicinity as forgiveness, seems nevertheless heterogeneous to or irreducible to it (and, to begin, *syngnōmē*, excuse, indulgence, amnesty, prescription, acquittal). Does what separates forgiveness (forgiveness properly speaking, properly forgiving, if any such thing exists) from its neighboring experiences, from its questionable doubles, is that separation able to give rise to rigorous conceptual oppositions within a classical logic or a dialectic? (PPI, 79-80)

We know from discussions elsewhere of its autoimmune character that *différance* divides itself into dialectical oppositions precisely for survival since absolute *différance* would already have extinguished itself. *Pardon*, too, if it is, as Derrida observes, ‘a ruse of life to continue enjoying life’ (PPI, 160) will necessarily partake of this self-effacing logic, such that any *pardon digne de ce nom* will assume conditional and conditioned forms. Following a logic that Derrida carefully distinguishes from polysemia in *La Dissémination*, *pardon* ‘re-marks’ the relation between the group of marks of which it is but one, and yet without it being a concept that could pin down or master the generalizing play of marks. Derrida describes this re-marking as a kind of ‘monotony’, suggesting that it is what makes it possible and impossible to hear a multiplicity of forms as more or less harmonious, more or less out-of-tune intonations of remitting fault.

Derrida alights on the Greek word *syngnōmē*, signifying indulgence, leniency, even gentleness, in a bid to test whether a bright white line may be drawn between forgiveness and excuse, and relatedly between the Greek and Abrahamic cultures of forgiveness that supposedly embody each (PPI, 137). Both entail knowledge, he observes, or more precisely, are performatives implying an act of knowledge or comprehension. Both entail knowing the harm done and the fault that is to be forgiven or excused, but they have ‘a structurally different relation to knowledge’ (PPI, 170). Derrida cites the Aristotelian passage read by Jankélévitch in which *syngnōmē* is explained as a kind of discernment (*gnōmē*) which is at once sympathetically discerning (*syngnōmonikon*) and correct judgement (*krisis orthē*) of what is true, and hence equitable (*epieikes*).<sup>26</sup> On this basis, Derrida will characterize *syngnōmē* as ‘knowing correctly, equitably, inasmuch as it attunes [*accorde*] us to the other; it is the disposition to comprehend with what or who is other: what conjoins (*syn*) my judgment to the other, to that of the other’ (PPI, 173). Observing that ‘*syngnignōskō* is to share the same opinion, consent, agree’, Derrida suggests it is in effect saying: ‘I understand you I hear you’ (PPI, 174). On the one hand, it seems self-evident, as Jankélévitch sums it up: ‘To forgive is to understand!’ (PPI, 176). But Jankélévitch will revise this assumption by noting that forgiveness requires greater generosity than mere understanding as intellection, for which ‘there is nothing to

<sup>26</sup> Aristotle, *Nicomachean Ethics*, trans. and ed. Roger Crisp, rev. ed. (Cambridge: Cambridge University Press, 2014), 112. Vladimir Jankélévitch, *Forgiveness*, trans. Andrew Kelley (Chicago: University of Chicago Press, 2005), 92.

forgive'. It then seemingly follows that 'conversely, for forgiveness, there is everything to forgive, and there is almost nothing to understand'.<sup>27</sup> And yet Jankélévitch will quickly concede: 'To forgive, indeed, is to understand a little bit!' This, in Derrida's analysis, is because of a shift from hearing/understanding as matter of theoretical intellection (of the circumstances, extenuating factors etc. that explain what the person did and hence go some way towards excusing the fault) to something that is more affective, participatory ('intuitive', says Jankélévitch) – in short, to 'the understanding of agreement, of an attunement of the heart, or even of mercy [*miséricorde*] and of *recordatio*' (PPI, 177).

This attunement is no longer an act of knowledge but enters what Derrida analyses as a twilight at the limit between knowledge and faith or what in any event is nor or is no longer knowledge:

'I understand you' indeed signifies 'I know,' 'I explain,' 'I can explain to myself what you did and what you couldn't avoid doing,' but also, already, beyond that intellectual act although functioning through it, I do more than know: I attune myself to you, I attune you. It is in the twilight of this *knowing* that, in agreeing, the 'agreed,' the alliance does more than know, with a knowing that goes beyond knowing and, as beyond, arises as much in excuse as in forgiveness, it is in the twilight of this beyond of knowledge that there is housed, perhaps, this other difference between forgiveness and excuse that we are going to try to discern. (PPI, 174).

At stake, then, will be an accord or attunement that is 'both common and not common to forgiveness and excuse', such that there are indissociable two levels of identification or indissociability – interpersonally, the identificatory accord between the one forgiving/excusing and the one asking to be forgiven/excused, and then, more structurally, the overlap between forgiveness and excuse (PPI, 175).

### ***Y a, ja ja, hee-yaw***

At first blush, the conceptual distinction between forgiveness and excuse may be made cleanly on two grounds. The necessity of the distinction is especially palpable in the face of radical evil, of the absolutely unforgivable, as Derrida explicates in the Sixth Session in a reading of texts by Claude Lanzmann on the Shoah (PPI, 178ff.). First, as Derrida observes in the discussion session held in between the Fifth and Sixth Sessions, forgiveness does not exculpate, whereas excuse, insofar as it gives an account(ing) of the wrong's causality, erases (responsibility for) the fault; it tends towards saying – in a phrase that Derrida will subject to striking repetition in this Sixth Session – *y a pas d'mal* (PPI, 159). At once less generous than forgiveness, which requires no explanation, and more, even *too*, indulgent, excuse leaves nothing to forgive or reconcile for want of discord over the fault committed. In the face of radical evil, I might not want to understand, because, if I could understand by way of rational, causal explanation, I would no longer be understanding radical evil as such (which is necessarily incomprehensible and inexplicable) and, worse, I would thereby already be on the way to exculpating it by explaining away the harm (PPI, 179-80). I also deny myself the chance to judge or to forgive, since forgiving would require precisely acknowledging and remembering what makes it unforgivable.

---

<sup>27</sup> Jankélévitch, 88.

Second, forgiveness, if there is to be any such thing, must divest itself of *syngnōmē* where that accord threatens to introduce confusion as to *who* is at fault. As Derrida reflects, a refusal to understand can also stem from not wanting to identify with the perpetrator, lest, in over-sympathizing, I am left with having to forgive *myself*, which makes my forgiveness suspect. In the Fourth Session, Derrida had analysed the grammar of *se pardonner*, noting that the reciprocity of forgiving one another is secretly destined to become the narcissistic reflexivity of self-forgiveness (PP1, 105). Insofar as I identify with the other of whom I ask forgiveness, there is ‘a movement of retraction by which I affect, auto-affect or hetero-affect, myself’, hence forgiveness is always asked of oneself as other (PP1, 107).

From both angles, there is *too much accord*. (Recall the difficult thought in the ‘Leçon’ that reconciliation might in fact require a degree of discord and not merely the ‘right discord’.) However, throughout the seminar Derrida observes how a degree of conditionality and calculation enters into forgiveness, such as when I require the other to confess, repent, or redeem themselves before I will forgive or when, in asking for forgiveness, I already begin to excuse myself in avowing what I have done and that it demands forgiveness. Similarly, in the Seventh Session his reading of a scene of Plato’s *Lesser Hippias* demonstrates how, under the pressure of a vertiginous or hyperbolically delirious infinitization of its calculus, an increasingly disorganized syngnomic economy subsumes the inexcusable precisely there where there is no accord. Speaking of a related conceptual opposition between forgiving and forgetting, Derrida quips that ‘there are thousands of cunning ways to compromise the purity of this distinction’ (PP1, 168). This corruption, though, is not accidental but irreducible and originary. The problem of identification haunts forgiveness no less than excuse. If – contrary to the logic of the one who says ‘I do not want to hear’ – I cannot forgive without sanctioning the fault and without minimally identifying with the guilty, then I am always guilty of forgiving (PP1, 98). Whence the (prosthetic) infinity of both forgiveness and excuse, which only ever extend the fault and can never absolve themselves of forgiving and excusing themselves, and which thereby overflow into one another, as Derrida describes in the Seventh Session where he pursues the question of a hyperbolic *syngnōmē pampollēs* in the *Critias* left open at the end of the previous session (PP1, 192).

This may explain why Derrida describes *y a pas d’mal* as the refrain sung by a ‘voice that sings until it is hoarse, out of breath, or losing its voice’ (PP1, 162). If forgiveness presupposes ‘an address to the other’, this ‘vocation to the voice’ (PP1, 76) is aporetic because I cannot request or grant forgiveness ‘without speaking in the other’s stead and through the other’s voice’, without a prosthetic ventriloquizing, and yet this accord destroys the possibility of ‘forgiving the other *as such* for a wrong *as such*’ (PP1, 99). What would it mean, at the limit of this infinite voice exchange, for forgiveness to become breathless and lose its vocation? Towards the beginning of the Sixth Session, Derrida is interested in how this phrase ‘can slip out, almost whispered, a practically unvoiced intonation, like a throwaway everyday phrase’ (PP1, 164) and, in so doing, might point towards a sphere ‘foreign, anterior, or heterogeneous to the functioning of excuse and forgiveness’ (PP1, 165). So when in the second year of the seminar, Derrida is still far from done with the specular identification of Hegelian recognition (*Anerkennen*) (PP2, 17; cf. PP1, 30), one might think of ‘voix off’ not only as the acousmatic voice off – which is out-of-sight yet audible, as in the stereotyping voice of God – but moreover as singing or speaking off-the-voice, hence almost inaudibly.



Derrida begins the second year by asking: ‘Must forgiveness [*pardon*] [...] be named, and even heard; audible, visible, phenomenal? Or, on the contrary, secret, silent, mute, unuttered, unspeakable, inapparent, solitary?’ (PP2, 1) In a discussion session on 17 March 1999, Derrida links the ‘voiceless voice’ to the question of the im-possible, of *impouvoir*, and its importance in distinguishing between unconditionality and sovereignty. Instead of the sovereignty of having the last word on a wrong, there would be, he suggests in the first year’s Sixth Session, ‘murmur, whisper, barely audible declaration, still, small voice’ gently, yet endlessly interrupting the sovereign interruption of juridical economy and rendering it indeterminate lest it ‘become a position, a declaration, a statement full of sense’ (PPI, 165). Instead of the theatre of forgiveness, Derrida speculates about ‘something else, *perhaps* more and better, younger and infinitely older than forgiveness’ – ‘on the edge of life’ – by which we would already ‘have left the very sphere, the atmosphere, the respiration from which what we continue to call “gift” or “forgiveness” draws its breath’ (PPI, 164-5). Seeking to prise apart the *possibility* of the impossible (a capacity to do the impossible, forgive the unforgivable) from the possible *as impossible*, im-potent, and hence undecidable, Derrida contrasts two utterings of *y a pas d’mal*, between which there would be ‘a whole world, an infinite world, hence an abyssal limit’ (PPI, 166) – in short, a lack of accord. The first, ‘which would come back to breathe, perhaps, on the eve of every scene of forgiving [*pardonnance*]’, negates, sublates, and thus masters the fault. The second ‘supposes on the contrary that scene to have played, to have been effected, kept in memory’. As such it affirms the fault (PPI, 244), Derrida highlighting the ellipsis of the *ne* (PPI, 229).

There is significant accord between Derrida and Edward Said’s views on Israel and Palestine in this period, both calling for peaceful co-existence and invoking the TRC. Said holds to the idea that this requires both agreement on the harms and recognition of equality, even as he acknowledges the intractability of mutually exclusive claims and lack of common ground.<sup>28</sup> For Derrida, by contrast, forgiveness and reconciliation worthy of the name take place only one has already left, is yet to enter, or has no need for the scene of forgiveness. Accord is offstage. None of this absolves from responsibility those who have the most power to take the initiative for peace before any reciprocity, accord and attunement to come.

## Bibliography

*Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)* (Request for the Indication of Provisional Measures: Order of 26 January 2024). Available at <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf>. Accessed 27 January 2024.

*Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)* (Verbatim Record 2024/1 [11 January 2024]). Available at <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240111-ora-01-00-bi.pdf>. Accessed 12 January 2024.

<sup>28</sup> Edward Said, ‘Palestinians under Siege’, *London Review of Books* 22.24 (14 December 2000); available at <https://www.lrb.co.uk/the-paper/v22/n24/edward-said/palestinians-under-siege> [accessed 28 January 2024]. ‘Memory, Inequality, and Power: Palestine and the Universality of Human Rights’, *Alif: Journal of Comparative Poetics* 24 (2004): 15-33. ‘Truth and Reconciliation’, *Al-Ahram*, 14-20 January 1999.

- Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)* (Verbatim Record 2024/2 [12 January 2024]). Available at <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240112-ora-01-00-bi.pdf>. Accessed 12 January 2024.
- Aristotle. *Nicomachean Ethics*. Translated and edited by Roger Crisp. Revised edition. Cambridge: Cambridge University Press, 2014.
- Behrens, Paul. 'Genocide and the Question of Motives'. *Journal of International Criminal Justice* 10.3 (2012): 501-23.
- Benesch, Susan. 'The Ghost of Causation in International Speech Crime Cases'. In *Propaganda, War Crimes Trials and International Law: From Speakers' Corner to War Crimes*. Edited by Predrag Dojčinović. London: Routledge, 2012. 254-68.
- Bennington, Geoffrey. 'For the Sake of Argument (Up to a Point)' *Ratio* 13 (2000): 332-54.
- Bennington, Geoffrey. 'Handshake'. *Derrida Today* 1.2 (2008): 167-89.
- Blanchot, Maurice. 'Vicious Circles: The Last Word'. Translated by Paul Auster. In *The Station Hill Blanchot Reader*. Edited by George Quasha. Translated by Lydia Davis et al. Barrytown, NY: Station Hill Press, 1999.
- Derrida, Jacques. *The Animal That Therefore I Am*. Translated by David Wills. New York: Fordham University Press, 2008.
- Derrida, Jacques. 'Avowing – The Impossible: Returns, Repentance, and Reconciliation: A Lesson'. Translated by Gil Anidjar. In *Living Together: Jacques Derrida's Communities of Violence and Peace*. Edited by Elisabeth Weber. New York: Fordham University Press, 2013. 18-41.
- Derrida, Jacques. *Perjury and Pardon, Volume I*. Translated by David Wills. Chicago: Chicago: University Press, 2022.
- Derrida, Jacques. *Perjury and Pardon, Volume II*. Translated by David Wills. Chicago: Chicago: University Press, 2022.
- EJIL: The Podcast!* 'Episode 23: Unhappy New Year! Genocide in the Courtroom', 15 January 2024. Available at <https://www.ejiltalk.org/ejil-the-podcast-page/>. Accessed 28 January 2024.
- Jankélévitch, Vladimir. *Forgiveness*. Translated by Andrew Kelley. Chicago: University of Chicago Press, 2005.
- Lyotard, Jean-François. *The Differend: Phrases in Dispute*. Translated by Georges Van Den Abbeele. Minneapolis: University of Minnesota Press, 1988.
- Perinçek v Switzerland* App no 27510/08 (ECtHR, 15 October 2015) 63 EHRR 6.
- Prosecutor v Akayesu* (Judgment) ICTR-96-4-T, T Ch I, 2 September 1998.
- Prosecutor v Nahimana, Barayagwiza, Ngeze* (Judgment) ICTR-99-52-T, T Ch I, 3 December 2003.
- Ruzindana, Mathias. 'The Challenges of Understanding Kinyarwanda Key Terms Used to Instigate the 1994 Genocide in Rwanda'. In *Propaganda, War Crimes Trials and International Law: From Speakers' Corner to War Crimes*. Edited by Predrag Dojčinović. London: Routledge, 2012. 146-69.
- Said, Edward. 'Memory, Inequality, and Power: Palestine and the Universality of Human Rights'. *Alif: Journal of Comparative Poetics* 24 (2004): 15-33.
- Said, Edward. 'Palestinians under Siege'. *London Review of Books* 22.24 (14 December 2000). Available at <https://www.lrb.co.uk/the-paper/v22/n24/edward-said/palestinians-under-siege>. Accessed 28 January 2024.
- Said, Edward. 'Truth and Reconciliation'. *Al-Ahram*, 14-20 January 1999.
- Segal, Raz. 'A Textbook Case of Genocide'. *Jewish Currents*. 13 October 2023. Available at <https://jewishcurrents.org/a-textbook-case-of-genocide>. Accessed 28 January 2024.
- Shaw, Martin. 'The Uses and Abuses of the Term "Genocide" in Gaza'. *New Lines Magazine*, 6 November 2023. Available at <https://newlinesmag.com/spotlight/the-uses-and-abuses-of-the-term-genocide-in-gaza>. Accessed 28 January 2024.
- Sultany, Nimer. Thread on the effect of the ICJ ruling on provisional measures, X, 4 February 2024. Available at

<https://x.com/nimersultany/status/1754173494286340349?s=46&t=Iy9okoAh0k5XbU8CTt3yYQ>. Accessed 4 February 2024.

Summary Records of the Sixth Committee of the General Assembly, 21 September–10 December 1948, Official Records of the General Assembly, A/C.6/SR.87, 1576.

Wilson, Richard A. 'Inciting Genocide with Words'. *Michigan Journal of International Law* 36.2 (2015): 277-320.

### **Iertarea nu este un instrument muzical**

Textul lui Derrida *Sperjur și iertare* [Le Parjure et le Pardon] se aude în *sotto voce* la mediatizarea globală a procedurilor privind genocidul de la Curtea Internațională de Justiție la finalul anului 2023 și la începutul anului 2024. Centrându-se asupra celei de-a Șasea Sesiuni a primului an, care a rămas nepublicată până în 2019 (2022 în engleză), în urma lui Derrida articolul pune întrebarea dacă o audiere sau o acordare împărtășite sunt cerute pentru iertare și reconciliere. Departate de a absolvi statele de responsabilitate, insistența lui Derrida că orice iertare și reconciliere autentice exced o armonie sau reciprocitate identificatoare pune presiune asupra celor care au cea mai mare putere de a decide pacea înaintea stabilirii unui acord.