

DECONSTRUCTION: THE ROAD TO A
DERRIDIAN CUL-DE-SAC WHERE "THERE IS
NO THERE THERE"* AND "THERE IS NO
ABOUT ABOUT FOR ANYTHING
TO BE ABOUT"**

ARTHUR AUSTIN***

I. AN EMBARRASSMENT FOR CRITS
AND OTHER DECONSTRUCTIONISTS

With aggressive determination, a coalition of feminists, critical race theorists, and critical legal studies people is committed to identifying and exposing the various tactics that the legal system and legal education purportedly use to maintain control over minorities, women, and other outsiders.¹ The most effective technique, at least in arousing controversy and getting public attention, is the deconstruction of liberal institutions and scholarship.² Deconstruction is a system of destruction—scorch the earth—so as to lay the groundwork for a new paradigm.³ Once deconstruction showed that the system used language to oppress, stigmatize, and sexually harass women, and generally discourage participation by

* A comment about the City of Oakland by Gertrude Stein. DAVID LEHMAN, SIGNS OF THE TIMES 98 (1991).

** MALCOLM BRADBURY, MY STRANGE QUEST FOR MENSONGE 63 (1987) (fictional account of the ultimate in deconstruction: a deconstructionist deconstructs himself).

*** Edgar A. Hahn, Professor of Jurisprudence, Case Western Reserve University, Cleveland, Ohio.

¹ * 'Outsiders' is used throughout the remainder of this article to encompass various outgroups, including women, people of color, poor people, gays and lesbians, indigenous Americans, and other oppressed people who have suffered historical under-representation and silencing in the law schools. 'Outsiders' is an awkward term, used here experimentally to avoid the use of 'minority.' The outsiders collectively are a numerical majority in this country. The inclusive term is not intended to deny the need for separate consideration of the circumstances of each group. It is a semantic convenience used here to discuss the need for epistemological inclusion of the views of many dominated groups." Mari Matsuda, *Affirmative Action and Legal Knowledge: Planting Seeds in Plowed-up Ground*, 11 HARV. WOMEN'S L.J. 1, 1 n.2 (1988).

² For a critique of deconstruction in legal education, see Arthur Austin, *A Primer on Deconstruction's Rhapsody of Word Plays*, 71 N.C. L. REV. 301 (1992).

³ Paradigm is the boilerplate reference to Thomas Kuhn's THE STRUCTURE OF SCIENTIFIC REVOLUTIONS (1962). "Like a virus, the word spread far beyond science and came to mean basically any dominant idea." *The History of an Unlikely Buzzword*, FORTUNE, Sept. 23, 1991, at 140. A policy planner from the White House is dazzled: Kuhn's book is "in fact the single most cogent description ever written about the sociological nature of intellectual change." AMERICAN SPECTATOR, Dec. 1991, at 15.

minorities,⁴ the next issue was to determine the appropriate form of remedy. The standard remedy on campus is some form of hate speech code.⁵ Hate speech is anything, including conduct and body language,⁶ that marginalizes any minority or female.⁷ Likewise, it is a weapon the establishment uses to oppress new or threatening political groups.

Hate speech codes have run into serious constitutional problems. Overbroad and vague, codes at the Universities of Michigan⁸ and Wisconsin⁹ have been declared void. Since the Supreme Court's decision in *R.A.V. v. City of St. Paul*,¹⁰ schools are evaluating and revising their codes.¹¹

These reversals in the courts are deflecting attention from what must be considered an embarrassment to deconers—especially the radical crit deconers. It is an embarrassment that they have been sitting on for years. If they applied deconstruction techniques to hate speech codes as tenaciously as they do to other targets, the codes would be rendered meaningless by the unrelenting vibrations of “trace,” “aporia,”¹² and “indeterminacy.” Deconstruction—“the art of erosion”¹³—can uncover some bizarre interpretations of the codes.

II. “A DECONSTRUCTION . . . SHOWS THE TEXT RESOLUTELY REFUSING TO OFFER ANY PRIVILEGED MEANING”¹⁴

Deconstruction mischief starts quickly with the word “hate.” Deconstruction assumes that meaning is constantly changing and evolving. Meaning is, according to Derrida, deferred—postponed

⁴ See ANDREW ALTMAN, *CRITICAL LEGAL STUDIES* (1990); Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV. 1685 (1976); Alex Johnson, Jr., *The New Voice of Color*, 100 YALE L.J. 2007 (1991); Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1 (1988).

⁵ Kathryn M. Dessayer & Arthur J. Burke, *Leaving Them Speechless: A Critique of Speech Restrictions on Campus*, 14 HARV. J.L. & PUB. POL'Y 565 (1991).

⁶ “‘Hate speech’ is any word, gesture, graphic representation, or symbol which reflects hatred, contempt, or stigmatization by reason of race, ethnicity, national origin, gender, religion, handicap or sexual orientation.” Jack Battaglia, *Regulation of Hate Speech by Educational Institutions: A Proposed Policy*, 31 SANTA CLARA L. REV. 345, 382 (1991).

⁷ “Racist hate messages, threats, slurs, epithets, and disparagement all hit the gut of those in the target group.” Mari Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320, 2332 (1989).

⁸ *Doe v. University of Mich.*, 721 F. Supp. 852 (E.D. Mich. 1989).

⁹ *Doe v. Board of Regents of the Univ. of Wis.*, 774 F. Supp. 1163 (E.D. Wis. 1991).

¹⁰ 112 S. Ct. 2538 (1992).

¹¹ Scott Jaschik, *Campus 'Hate Speech' Codes in Doubt After High Court Rejects A City Ordinance*, CHRON. OF HIGHER EDUC., July 1, 1992, at A19.

¹² See *infra* note 26 and accompanying text.

¹³ Todd Gitlin, *Postmodernism: Roots and Politics*, DISSENT, Winter 1989, at 101, 108.

¹⁴ JOHN M. ELLIS, *AGAINST DECONSTRUCTION* 69 (1989).

indefinitely—hence it is never fixed or “final.”¹⁵ Deconers call this trace; each word has *trace* of meaning from previous words, while at the same time “holding itself open” to the traces of subsequent words.¹⁶

The meaning of “hate” can be compared to the flight of an arrow; it is in motion, but, at any instant it can be frozen, and “every instant is already marked with the traces of the past and the future.”¹⁷ Whatever meaning “hate” may have had when the code was drafted is now changed. As Stanley Fish says, meaning is experience “and that experience is immediately compromised the moment you say something about it.”¹⁸ Indeed, to a deconer, it would not be inconceivable that we could have a “doublethink” result in which, at some point, “hate is love.”¹⁹

III. THE ART OF DECONSTRUCTION: TRASHING THE PRIVILEGED

In going after a provision like a hate speech code, the deconer looks for a privileged interpretation.²⁰ To a crit, this would be the established meaning or the meaning associated with the dominant political force in the system “and achieved by repression.”²¹ For example, the Critical Legal Studies (“CLS”) conventional wisdom identifies neutrality, individualism, and rationality, as the values of the patriarchal, privileged legal system.²² The next step is to trash

¹⁵ In Derrida's brand of differential linguistics, the meaning of words is never present but is constantly *deferred*, some words *differ* not only from one another but from themselves. How do words differ from themselves? Part of the explanation is that there is an element of temporality in language, and therefore a word means something different each time it is used . . .

DAVID LEHMAN, SIGNS OF THE TIMES 95 (1991). “The sense we have of a presence now deferred and waiting to be reappropriated is but an illusion created by the very process of linguistic deferral, an illusion continuously undercut by the cunning movement of signification as the structure of differance.” FRANK LENTRICCHIA, AFTER THE NEW CRITICISM 171 (1980).

¹⁶ TERRY EAGLETON, LITERARY THEORY: AN INTRODUCTION 128 (1982).

¹⁷ JONATHAN CULLER, ON DECONSTRUCTION: THEORY AND CRITICISM AFTER STRUCTURALISM 94 (1982).

It joins the word or meaning which is “present” in the text to words, meanings and associations which are ‘absent’ in the text but implied by the word's chain of associations or differential relations. Of course, the precondition for this operation is to erase such concepts as authorial intention, linguistic intentionality and the difference between conscious and unconscious intentions. Cleverly used, a word in one literary or philosophical text can lead not only to any number of other literary or philosophical texts, but almost anywhere, in a system of “infinite reference of one to another.”

EVE T. BANNET, STRUCTURALISM AND THE LOGIC OF DISSENT 212 (1989).

¹⁸ STANLEY FISH, IS THERE A TEXT IN THIS CLASS? 65 (1980).

¹⁹ See GEORGE ORWELL, 1984 (1949) (in which under doublethink, war is peace, freedom is slavery and ignorance is strength).

²⁰ Austin, *supra* note 2, at 307.

²¹ ELLIS, *supra* note 14, at 73.

²² Kennedy, *supra* note 4.

this meaning. Trashing is "undermining, subverting, exposing, undoing, transgressing, or demystifying"²³ the privileged meaning.

To achieve this objective, the deconer goes to the "margin" to get a competing or polar interpretation. This is a meaning that has been "repressed"²⁴ or "marginalized" by the privileged view; a marginal view can come from a minor and generally ignored passage in the text, from historical references outside the text, footnotes, or from the deconer's own reading of the text.²⁵

It is the marginalized meaning that creates indeterminacy or what the literary people like to call *aporia*.²⁶ In an *aporia* situation, "full of doubts and objection,"²⁷ the marginalized interpretation is just as credible as the privileged view. The choice is up to the reader critic. Not surprisingly, the typical critic or crit opts for the anti-establishment marginalized view and offers it as a new paradigm.²⁸

At this point the crit deconer stops, the process is over, and the new paradigm should be accepted as the dominant view. "[F]or though postmodernist Marxists babble about indeterminacy of meaning, they do not wish to leave the meaning of what *they* consider central in an indeterminate state."²⁹ Thus, Duncan Kennedy's ideal of altruism, as the new paradigm, would dictate legal policy, case interpretation, and serve as the theme for legal education.³⁰ But as every serious deconer knows, this is not a true deconstructionist performance. Deconstruction never stops; as Derrida says, not to continue deconstruction is to "confirm the established equilibrium."³¹

²³ ELLIS, *supra* note 14, at 69. The crit definition of trashing: "Take specific arguments very *seriously* in their own terms; discover they are actually *foolish* ([tragi]-*comic*); and then look for some (external observer's) *order* (not the germ of truth) in the internally contradictory, incoherent chaos we've exposed." Mark Kelman, *Trashing*, 36 STAN. L. REV. 293 (1984). See Alan Freeman, *Truth and Mystification in Legal Scholarship*, 90 YALE L.J. 1229 (1981).

²⁴ "A repressed writing . . . is the 'tension between gesture and statement' in such critical texts which 'liberates the future of a general grammatology.'" CHRISTOPHER NORRIS, *DECONSTRUCTION: THEORY AND PRACTICE* 31 (1987).

²⁵ "Another common operation is that which takes a minor, unknown text and grafts it onto the main body of the tradition, or else takes an apparently marginal element of a text, such as a footnote, and transplants it to a vital spot." CULLER, *supra* note 17, at 94.

²⁶ From the Greek meaning "unpassable path." NORRIS, *supra* note 24, at 49.

²⁷ *Id.*

²⁸ Critical terrorists would like to blow up—metaphorically, of course—the legitimacy of institutions and traditions, canons of taste and judgment, and received values of any kind. And like terrorists, deconstructionists steel themselves to toss their bombs without regard to the comfort of bystander—in this case, the authors and readers of literature. LEHMAN, *supra* note 15, at 77.

²⁹ DAVID HIRSCH, *THE DECONSTRUCTION OF LITERATURE: CRITICISM AFTER AUSCHWITZ* 171 (1991).

³⁰ Kennedy, *supra* note 4.

³¹ JACQUES DERRIDA, *DISSEMINATION* 6 (1981).

"Deconstructive readings may thus refuse to make aesthetic richness an end. Whenever one comes to what might seem a stopping point—a nice paradox or symmetrical formulation—one feeds this position back into the text, asking what the work has to say about the conclusion reached."³²

A serious deconer "believes; but he does not believe in his belief."³³ If Duncan Kennedy *really* wanted to practice deconstruction, he would have thrown altruism back in as the privileged meaning and then looked for a new repressed-marginal view, and continued to repeat the process. He would still be at it, thereby sparing us from one of his pompous articles.³⁴ Of course, in the process, CLS would have been rendered "illegitimate."³⁵

IV. A "CORRECT" DECONSTRUCTION OF A HATE SPEECH CODE

To the deconer, the author's intention is irrelevant, whereas a particular reader's interpretation is always "correct." "[I]t is the language which speaks, not the author."³⁶ This means that it is possible to have as many "correct interpretations as readers."³⁷ In his usual "shockspeak," Stanley Fish allegedly said that deconstruction "relieves me of the obligation to be right . . . and demands only that I be interesting."³⁸ With Fish's counsel in mind, I offer my "correct" deconstruction of a speech code imposed by the University of Connecticut: students are prohibited from using "*derogatory names, inappropriately directed laughter, inconsiderate jokes and conspicuous exclusion [of other students] from conversation.*"³⁹

A. Deconstruction One

Crit deconstruction posits the liberal legal establishment as privileged. It uses objectivity, neutrality, and rationality as a facade

³² CULLER, *supra* note 17, at 240.

³³ WILLIAM RAY, *LITERARY MEANING: FROM PHENOMENOLOGY TO DECONSTRUCTION* 188 (1984).

³⁴ Peter Gabel and Duncan Kennedy, *Roll Over Beethoven*, 36 STAN. L. REV. 1 (1984).

³⁵ Any attempt to offer its own vision of reconstituted society would merely result in the replacement of one form of consciousness with another; "liberal consciousness" would simply be exchanged for "critical consciousness." The CLS vision would be equally illegitimate and would amount to just another form of domination. The implication of this insight for the Critical scholars seems to be that each individual must be left to act alone, free from the constraints of any inhibiting consciousness.

Allan Hutchinson & Patrick Monahan, *Law, Politics, and the Critical Legal Scholars: The Unfolding Drama of American Legal Thought*, 36 STAN. L. REV. 199, 229 (1984).

³⁶ Raymond Tallis, *A Cure for Theorrhea*, 3 CRITICAL REV. 7, 19 (1989).

³⁷ "There are not truths, only rival interpretations." LEHMAN, *supra* note 15, at 67.

³⁸ LEHMAN, *supra* note 15, at 75 (quoting Stanley Fish).

³⁹ Dessayer & Burke, *supra* note 5, at 573.

to oppress outsiders. In reality, the crits say, there is no neutrality in a privileged system that maintains power at the expense of an underclass.⁴⁰ The same deconstruction scheme used by crits can be applied to speech codes.

I start with the safe interpretation that the privileged meaning of the Speech Code manifests an intention to impose political correctness on students.⁴¹ The Code's language is conventional P.C. composition used to protect the oppressed, the outsiders, and other victims from non-verbal and verbal signs of contempt from the white male hegemony. Words like "inappropriately," "inconsiderate," and "conspicuous exclusion" can be used to eradicate the "erroneous thoughts"⁴² circulated by people who do not listen to other "voices."⁴³

P.C. people live a "privileged" life, exercising various forms of oppression under the seemingly objective and well intentioned hate speech codes.⁴⁴ It starts during orientation when students are taught about the evils of eurocentrism.⁴⁵ Sensitivity training continues during their college career and students are "urged to step forward and confess their bigoted impulses. . . ."⁴⁶ Professors use deconstruction in classes to show the oppression of patriarchy and phallogocentrism.⁴⁷ "Pcspeak" is a form of deconstructed language in which the privileged reference is expunged and replaced by the "correct" term. For example, the word "prostitute" is oppressive,

⁴⁰ See articles in *supra* note 4.

⁴¹ See DINESH D'SOUZA, *ILLIBERAL EDUCATION* (1991); ROGER KIMBALL, *TENURED RADICALS: HOW POLITICS HAS CORRUPTED OUR HIGHER EDUCATION* (1990); CHARLES SYKES, *THE HOLLOW MEN* (1990); CHARLES SYKES, *PROFSCAM* (1988).

⁴² GEORGE ORWELL, 1984 (1949).

⁴³ This refers to the feminine voice. See CAROL GILLIGAN, *IN A DIFFERENT VOICE* (1982).

⁴⁴ See *supra* note 41.

⁴⁵ Suzanne Alexander, *College: Reorient Freshman Orientation To Focus Attention on Society's Problems*, WALL ST. J., Sept. 17, 1992, at B-1.

⁴⁶ D'SOUZA, *supra* note 41, at 215.

⁴⁷ Nothing stays the same, and the search for a unified field theory of oppression has led to a new deconstructive catchall for the metaphysical conspiracy at the bottom of our woe. The trendy coinage of *phallogocentrism*, a merger of logocentrism and phallogocentrism. The right-minded critic sets out to undo 'patriarchal' assumptions. In particular, you want—as one enthusiast puts it—to deconstruct "singularity, embodied in the phallus, assisted in logos, inscribed in an egotistical I."

LEHMAN, *supra* note 15, at 103.

Modern society, as the post-structuralists would say, is "phallogocentric," it is also, as we have seen, "logocentric," believing that its discourses can yield us immediate access to the full truth and presence of things. Jacques Derrida has conflated these two terms to the compound "phallogocentric," which we might roughly translate as "cocksure." It is this cocksureness, by which those who wield sexual and social power maintain their grip. . . .

EAGLETON, *supra* note 16, at 189.

the correct term is "sex care providers."⁴⁸

Law schools, once insulated from the politics of the university loop, now constitute the chic battleground for p.c.: "PC Worms Gnawing in Law Schools."⁴⁹ P.C. intimidation in the laws schools at Harvard, New York University, and Virginia indicate that the worms are doing more than gnawing.⁵⁰ P.C. crits engage in chic trashing activities during the day, then drive home in a BMW.⁵¹

There is a new class of oppressed, living on the margins of the politically correct speech code. White males, including liberals, conservatives, and their sympathizers are under constant surveillance for "erroneous thoughts." They are silenced and intimidated in class.⁵² It is not uncommon for them to be excluded from feminist courses.⁵³ And, without question, they are considered to be the safest bashing target. "If one had to teach on a desert island and could bring just one thing to be bashed, nine out of ten professors would choose white males."⁵⁴

The existence of an interpretation from the margin, contesting the privileged view, means that we have an *aporia*! "The text unveils itself before us, but never allows itself to be possessed; and instead of striving to possess it we should take pleasure in its teasing."⁵⁵

After advocating a new paradigm to replace the privileged system, the crit deconer is, as noted above, finished.⁵⁶ Not the serious deconstructionist, who knows that only phase one is over. There are still more *aporias* to flush out. "If deconstructive criticism is a pursuit of differences—differences whose suppression is the condition of any particular entity or position—then it can never reach

⁴⁸ "See also sex workers; persons presenting themselves as commodity allotments within a business doctrine." HENRY BEARD & CHRISTOPHER CERF, *THE OFFICIAL POLITICALLY CORRECT DICTIONARY AND HANDBOOK* 55 (1992).

⁴⁹ Arthur Austin, *PC Worms Gnawing in Law Schools*, CLEV. PLAIN DEALER, July 3, 1992, at 7C.

⁵⁰ For a description of PC incidents at these schools, see Arthur Austin, *The Greening of the Law—Anarchy and Elegance: More Anarchy Than Elegance*, 28 IDAHO L. REV. 213 (1991-92).

⁵¹ See James Gordon, *Law Reviews and the Modern Mind*, 33 ARIZ. L. REV. 267, 269 (1991).

⁵² The reason: "Men never know when to shut up." Charles J. Sykes & Brad Miner, *Sense and Sensitivity*, NAT'L REV., March 18, 1991, at 30.

⁵³ Michael Weiss, *Feminist Pedagogy in the Law Schools*, ACADEMIC QUESTIONS, Summer 1991, vol. 5, no. 3, at 75, 83.

⁵⁴ Robert Weissberg, "Safe-Bashing," ACADEMIC QUESTIONS, Winter 1989-90, vol. 3, no. 1, at 75, 76.

⁵⁵ DAVID LODGE, *SMALL WORLD* 31 (Warner ed. 1984). Comment by Professor Morris Zapp, fictional character said to be patterned after Stanley Fish. See Adam Begley, *Souped-up Scholar*, N.Y. TIMES MAG., May 3, 1992, at 88.

⁵⁶ "At the moment the choice is made, the critical theorist is, strictly speaking, no longer a deconstructionist." J.M. Balkin, *Deconstruction Practice and Legal Theory*, 96 YALE L.J. 743, 766 (1987).

final conclusions but stops when it can no longer identify and dismantle the differences that work to dismantle other differences."⁵⁷ Inspired by Derrida, the true deconer thrives on the "dogged pursuit of the undecidable. . . ."⁵⁸

B. *The Next Aporia*

Marginalized in Phase One, the liberal white male is now put in the privileged position. My decon of this group differs from that of CLS people who see them as reveling in phallogocentrism, patriarchy, and the Tyranny of Objectivity.⁵⁹ My "correct" view is that their privilege resides in the culture of the Brahmin⁶⁰ combined with the strict moral code of the Puritan.⁶¹ They disdain the crudeness of the masses and consider them ill-mannered and uncouth. As dictators of the speech code, they are concerned with proletarian speech habits—especially vulgar jokes and crude behavior. Hence the reference in the Connecticut Speech Code to "inconsiderate jokes" and "inappropriately directed laughter."

What's lurking in the margins—oppressed, repressed, and depressed?

To protect their culture, Brahmin-Puritans oppress two groups. The *avant garde*, unconventional artist is seen as a threat to high art. Pop culturalists like Andy Warhol, who once had his friends urinate on canvases coated with wet copper paint that oxidized to produce an "Oxidation" series of paintings, typify the artist from the margin.⁶² Their art is chaos and

⁵⁷ CULLER, *supra* note 17, at 242.

⁵⁸ Stephen Cox, *Devices of Deconstruction*, 3 CRITICAL REV. 56, 64 (1989).

⁵⁹ Ann Scales, *The Emergence of Feminist Jurisprudence: An Essay*, 95 YALE L.J. 1373, 1376 (1986).

⁶⁰ "Brahmins (BRAH-minz) The highest of the four major castes of Hinduism. Brahmins are followers of Brahma, and were originally all Priest. The name is often given to socially or culturally privileged classes, such as the 'Boston Brahmins.'" E. D. HIRSH, JR. ET AL., THE DICTIONARY OF CULTURAL LITERACY 85 (1988).

⁶¹ It was Cotton Mather, the keeper of Puritan mind, who identified the "devils' library," whose "muses . . . are no better than harlots." RICHARD RULAND & MALCOLM BRADBURY, FROM PURITANISM TO POSTMODERNISM 19 (1991). Mather distrusted the "sickly appetite for the reading of poems which now the rickety nation swarms withal. . . ." *Id.* at 20.

⁶² Simultaneously, he had completed the "piss paintings—or "Oxidation series," as it would be called in the art market. This was a revival of an idea dating back to 1961: Victor, Ronnie, Walter, and Andy took turns urinating on canvases coated with wet copper paint that oxidized and turned green and orange where the spatters hit. ("Andy was taking a lot of B vitamins," recalled Vincent Fremont. "During that period the back room stank of piss.") This series was surprisingly well received when it was displayed in Europe the following year, one critic hailing the paintings as "Warhol at his purest." Another critic commented that "anyone who thinks Andy Warhol's society portraits of the seventies verge on piss-elegance will find something more literal in the so-called piss paintings."

sin.⁶³ As crude as Warhol was, he cannot match the new group of art subverters who engage in slam dunk poetry,⁶⁴ feces rock,⁶⁵ and "body art."⁶⁶ In the humanities, the fad is comic book research that produces essays on Batman as homosexual camp.⁶⁷ In legal education, the Brahmin-Puritans marginalize popular legal culture, which is a mishmash of *L.A. Law*, bad fiction, and "real life" experiences. Watching sports on television is "research."⁶⁸ Performance Scholarship is legal scholarship.⁶⁹

The other group—the yuppie—may be a surprise marginalized group to critics, but not to Brahmin-Puritans. They have been marginalizing the yuppie class for years, dating back to the nouveau riche days of people like Jim Fiske and the other crude robber barons. The more ostentatious ones like Ivan Boesky give wealth a bad name by saying things like "Greed is healthy. You can be greedy and still feel good about yourself."⁷⁰ To a Brahmin-Puritan one does not have to bore people by repeating the obvious.⁷¹

VICTOR BOCKRIS, *THE LIFE AND DEATH OF ANDY WARHOL* 307 (1990).

⁶³ The puritans "felt themselves to be living in an age of chaos and crime and sought to train conscience to be permanently on guard against sin." Michael Walzer, *Puritanism as a Revolutionary Ideology*, in *PURITAN NEW ENGLAND: ESSAYS ON RELIGION, SOCIETY, AND CULTURE* 21 (Alden Vaughan, Francis Bremer, eds., 1977).

⁶⁴ This is performance poetry, with screaming and amplification. The rules: "It has to be an original poem, three minutes or less in length, scored up to five points for content, five for performance. It's cool in Chicago. It's a curiosity in Cleveland. But in Boston, it's cutthroat." Ann Sparks, *The Boston Slam Party*, *CLEV. FREE TIMES*, Oct. 21, 1992, at 16.

⁶⁵ Kevin Allen, of the G.B. Allin and the Toilet Rockers, is appealing a conviction for throwing feces at the audience during a rock concert on the basis that the statute interferes with his right to free expression in the pursuit of his art. The district attorney said: "There's other performance art where people use feces—but they never throw it You can't say you're performing your art, then crap all over the stage and throw it at [the audience]." Nicholas Varchauer, *The Founding Fathers Would Have Ducked*, *AM. LAWYER*, Sept. 1992, at 91.

⁶⁶ "A neat row of 12 big glass jars, each bearing in Gothic letters the name of a body fluid, like pus, mucus, and vomit, is an example." Michael Kimmelman, *Kiki Smith: The Body as Political Battleground*, *N.Y. TIMES*, Aug. 16, 1992, at 23.

⁶⁷ Ellen K. Coughlin, *Looking for Messages in Batman and Donald Duck: Researchers Turn to the Comics*, *CHRON. OF HIGHER EDUC.*, Sept. 5, 1990, at A5.

⁶⁸ Stewart Macaulay, *Popular Legal Culture: An Introduction*, 98 *YALE L.J.* 1545, 1558 (1989).

⁶⁹ Erik Jensen, *Performance Scholarship and the Tax Code* (forthcoming *HOUSTON L. REV.*).

⁷⁰ A quote attributed to Ivan Boesky, a Wall Street takeover expert caught and sentenced for using inside information. "His greedy deals hurt thousands of other investors and rocked the public's confidence in the stock market." *An Insider Goes Inside*, *WASH. POST NAT'L WEEKLY*, Jan. 3, 1988, at 27.

⁷¹ On the other hand, I am sure that the Brahmin-Puritans were amused at the audacity of the ultimate yuppie—David Bloom, a 23 year old Duke graduate who scammed \$10 million out of investors to use to maintain a yuppie lifestyle.

He decorated his apartment in New York with \$4.7 million worth of American paintings and bought a summer house in East Hampton, L.I. He hired a chauffeur to drive his two fancy cars and promised to provide his alma mater \$1 million to endow an acquisition fund for American art.

Albert Scardine, *Young Name Dropper Wins Riches and a Date in Court*, *N.Y. TIMES*, Jan. 18, 1988, at 19.

Worst of all, the yuppies, as nouveau riche, subsidize pop art.⁷²

V. SHOULD I CONTINUE?

It should now be evident why the crit deconer stops "deconstruction" after the first *aporia*. They do not want to risk putting their version of a marginalized perspective into the privileged status where it would be the target of analysis⁷³ and have to "face the trouble already there."⁷⁴

Why did I stop? For one thing, I do not want to be in the position of calling the pop artist and yuppie privileged. Let them sit in the margins of society where they cannot do any harm. Moreover, they need marginalization and repression, especially the pop artists. They need an "outsider" image for motivation.

More importantly, I decon only to poke holes in it. It is a foolish affectation—especially when applied to law.⁷⁵ Derrida let the cat out of the bag by acknowledging that "his intent was to baffle and provoke, rather than to reach any common ground of discussion."⁷⁶ We are in serious trouble if there "are as many plausible readings of the United States Constitution as there are versions of Hamlet. . . ."⁷⁷

⁷² "Popular culture is undesirable because, unlike high culture, it is mass-produced by profit-minded entrepreneurs solely for the gratification of a paying audience." HERBERT J. GANS, *POPULAR CULTURE AND HIGH CULTURE* 19 (1974).

⁷³ See Hutchinson & Monahan, *supra* note 35.

⁷⁴ DENIS DONOGHUE, *FEROCIOUS ALPHABETS* 185 (1984).

⁷⁵ See Austin, *supra* note 2.

⁷⁶ NORRIS, *supra* note 24, at 108. He also said: "[T]he enterprise of deconstruction always in a certain way falls prey to its own work." Christopher Norris, *Of Grammatology*, in *A DERRIDA READER* 31, 41 (Peggy Kamuf ed., 1991).

⁷⁷ Sanford Levinson, *Law as Literature*, 60 *TEX. L. REV.* 373, 391 (1982).