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4 Between Forgiveness and Forgetting **AQ1**
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14 *Let them swear to a solemn covenant, while we cause the others*
15 *to forgive and forget the massacre of their sons and brothers. Let*
16 *them then all become friends as heretofore, and let peace and*
17 *plenty reign.*

18 (Homer, *Odyssey*)
19

20 *There can be no doubt that many prohibitions exist only to*
21 *enhance the power of those who can punish or pardon their*
22 *transgression. An act of mercy is a very high and concentrated*
23 *expression of power, for it presupposes condemnation.*

24 (Elias Canetti, *Crowds and Power*)
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26 Given the remarkable consistency in Jacques Derrida's work over several
27 decades, it is not hard to draw a line from "Force of Law: The 'Mystical
28 Foundation of Authority'" to his last seminars, on pardon and forgiveness.¹
29 The aporias of forgiveness are analogous to those of the gift and of justice he
30 had analyzed in detail in previous decades, as Derrida states in "To Forgive:
31 The Unforgivable and the Imprescriptible"—to that extent his last seminars
32 and lectures were part of the same deconstructive project on the possibility
33 of justice.² At the same time, Derrida postulates that forgiveness is an expe-
34 rience outside or heterogeneous to the rule of law.³ In considering this junc-
35 ture in Derrida's work, this paper will juxtapose the logic and history of
36 amnesty with Derrida's analysis of pardon: the latter pivots on a monothe-
37 istic heritage, a Biblical-Koranic sense that is demarcated from the former
38 concept, that of amnesty between an ethics of forgiveness and the politics
39 of forgetting.

40 In its ceaseless questioning of origins, foundations, and borders, decon-
41 struction finds one of its "preferred asymmetries" in the rubbing of law
42 against justice, and in the aporia confronting those who would assert a posi-
43 tive grounding of power. Authority, Derrida sought to demonstrate, might
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1 be legitimated in various ways, but returning to a founding principle will
 2 destroy it; hence, he called Benjamin's procedure a practice of "performative
 3 tautology," or a "synthesis a priori." The mystical foundation of force is a
 4 "legitimizing fiction"—but this is not to say that justice could be decon-
 5 structed. Indeed it was Derrida's claim that while the law can be deconstructed,
 6 justice is ultimately undeconstructible. The law has history, precedents and
 7 cases, trials and texts, while justice is beyond process, irreducible to legal
 8 experience: justice is heterogeneous to the law. Therefore, responses to
 9 Derrida's reading of Benjamin in "Force of Law" focused mostly on decon-
 10 struction as a theory of justice in relation to contemporary legal philoso-
 11 phy.⁴ This theory, if it is one, would seem to present itself in the aporetic
 12 shape of encoding infinite justice into a finite decision: justice requires an
 13 impossible mediation of the urgency of judgment and the infinite demands
 14 on exhaustive knowledge, a suspension, yet enforcement, of the rules, and
 15 an awareness, yet also an overriding, of undecidability. Justice is therefore,
 16 in Derrida's formula, an experience of the impossible—and much the same
 17 goes for the gift, and for forgiveness. Derrida wonders whether "the non-
 18 juridical dimension of forgiveness, and of the unforgivable—there where it
 19 suspends and interrupts the usual order of law—has not in fact come to
 20 inscribe itself, inscribe its interruption in the law itself."⁵ Inversely and by
 21 extension I would argue that the question is not only whether this meta-
 22 physics is inscribed in the code of law, to the extent that justice remains
 23 inscribed in religious ethics, but also whether law or justice might make an
 24 experience of reconciliation possible that goes beyond institutional (academic
 25 or religious) sanctimony.

27 **A history of amnesty**

29 A provisional history of the concept of amnesty might usefully be told in its
 30 particular relation to ending civil war. The archaic wish for forgetting
 31 accompanies the inscription of cultural continuity from the *Odyssey* to the
 32 present day. One finds poetic (and not merely tragic) cultural production tak-
 33 ing hold in this intersection, and the literary canon reflects this also in Schiller
 34 and Kleist, for instance, on the topic of amnesty. Between an ethics of virtual
 35 forgetting and the politics of memory, the shared horizon of culture and his-
 36 tory constitutes the possibility of analyzing amnesty, as distinct from grace,
 37 pardon, or forgiveness.⁶ The recent global proliferation of requests for for-
 38 giveness and reconciliation has created a sophisticated forum of political,
 39 philosophical, and psychoanalytical debates. However, perhaps owing to its
 40 own conceptual logic of a break with the past, there is no cultural history of
 41 amnesty. History offers dates—Cromwell's English revolution ended in 1660
 42 with the "Act of free and general pardon, indemnity and oblivion;" on May
 43 29, 1865, President Andrew Johnson issued a "Proclamation of Pardon and
 44 Amnesty"—but what is the trajectory such examples trace? From the perhaps

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1 earliest historically recorded amnesty in Ancient Athens (403 BC) into our
2 post-World War II and post-Cold War present, amnesty consists in joining a **AQ2**
3 political decree (a ban on recalling a certain misfortune) to an individual
4 oath (I shall not recall).⁷ The complex logic of this rejected memory deserves
5 our most critical attention. To throw the conceptual logic of amnesty into
6 relief, one could focus on two occasions when there was a call for amnesty
7 in Germany, after 1945 and again after 1989; neither resulted in an actual dec-
8 laration of amnesty, of course. In the interest of establishing a pacified national
9 identity, certain legal circles called for an end to de-Nazification in the early
10 1950s, by means of an amnesty for all but the worst offenders. It is worth
11 noting that after World War II, the United States rejected a general amnesty
12 for war criminals, but selectively paroled German war criminals in its custody
13 in exchange for their help in the Cold War. As historians have demonstrated,
14 the US State Department gave this political scheme a legal frame, but the
15 Army Judge Advocate branch opposed and attempted to delay it.⁸ After the
16 fall of the Berlin Wall, there was again a call for reconciliation of those on
17 both sides who worked as spies, soldiers, guards, politicians, activists, etc. to
18 keep the two German states apart. And given the monotheistic structure of
19 the scene of forgiveness, it is surely no accident that access to the archive of
20 Stasi-files was first administered by an ordained minister, who could not pre-
21 vent the office from becoming his eponymous institution (*Gauck Behörde*).⁹
22 The general assumption appears to be that all ethical positions require a
23 metaphysical commitment; but perhaps this is not true to the same extent
24 of amnesty.

25 One lawyer calling for amnesty after WWII was Carl Schmitt. First anony-
26 mously and then in his own name, he argued that a war of everyone against
27 everyone was a civil war, and “even the cold war turns into a cold civil
28 war.”¹⁰ In what he described as a vicious circle of self-righteousness, revenge
29 was being taken in the name of the law, and the origins of peace in mutual
30 forgetting were no longer being remembered. Of course, strict mnemonics
31 would have us suffer the curse of total recall—and we would forget how
32 forgetting, as Ernest Renan put it at the end of the 19th century, can play a
33 significant role in creating a nation.¹¹ Other institutions also play a crucial
34 role in the *mise-en-scène* of forgiveness: a community, a Church or Temple or
35 Mosque, a profession, a group of representatives, of survivors or victims.
36 One obvious problem with the institutionalization of memory and forgetting,
37 and with the institutionalization of forgiveness in particular, is that it seems
38 to undermine and undo what Derrida calls the “solitude of two, in the sense
39 of forgiveness,” which “would seem to deprive any forgiveness of sense or
40 authenticity that was asked for collectively.”¹² Put differently, the scene of
41 forgiveness hinges on confiding in the other, then asking, and being granted,
42 forgiveness in a singular gesture. Making a public spectacle of it would seem
43 to pre-empt the possibility of this scene being sincere—it becomes a display,
44 it appears as a mere immodesty, it is taken for a distraction. Certainly this

1 becomes the more untenable the larger the transgression—and since, as
2 Derrida emphasizes, the need for forgiveness is the greater the greater the
3 injury is, it becomes most necessary and most pure in the case of the unfor-
4 givable. However, what remains of the logic of forgiveness when one is faced
5 with the immense guilt of war crimes, of crimes against humanity, of insti-
6 tutionalized persecution and genocide? “As I will not cease to repeat,” Derrida
7 stresses, “it is only against the unforgivable, and thus on the scale without
8 scale of a certain inhumanity of the inexpiable, against the monstrosity of rad-
9 ical evil that forgiveness, if there is such a thing, measures itself.”¹³ It is thus
10 also measured against collective guilt, total guilt, despite the logic of singu-
11 larity inherent in forgiveness. The world wars illustrate how violence can
12 become a systemic, total situation. Schmitt appeals to the ancient category
13 of amnesty because it seems to offer a solution to a situation where nobody
14 can occupy the sovereign position of deciding about impossible forgiveness,
15 and nobody is able to ask, privately or publicly, for collective forgiveness of
16 inexpiable crimes.

17 One of the motivations for the Cardozo conference on “Deconstruction
18 and the Possibility of Justice” was to address the question whether decon-
19 struction amounted to a coherent ethical program, particularly since some
20 critics had gone so far as to suggest that it basically lapsed into accommod-
21 ating conservatism.¹⁴ Drucilla Cornell argued that deconstruction, despite
22 being portrayed as the rejection of any metaphysics, was merely the exposure
23 of “the quasi-transcendental conditions that establish any system, including
24 a legal system.”¹⁵ This meant that Carl Schmitt’s radical distinctions were
25 also subject to deconstruction—in a way that Schmitt himself may have
26 been implicitly admitting when he observed that only amnesty can end the
27 cold civil war. But as Derrida writes, Schmitt failed to take into account, in
28 his attempted analysis of cold civil war, how “the police and spy network—
29 precisely, the police qua spy network (the ‘specter’ of the modern State of
30 which Benjamin speaks in ‘For a Critique of Violence’)—points to what, pre-
31 cisely in the service of the State, ruins in advance and from within the pos-
32 sibility of the political, the distinction between private and public.”¹⁶ This
33 catachresis of the traditional distinction between private and public has
34 been theorized by other observers of the 20th century; here, we are inter-
35 ested above all in the stumbling block it seems to represent for what Derrida
36 describes as the “singular, even quasi-secret solitude of forgiveness” which
37 “would turn forgiveness into an experience outside or heterogeneous to the
38 rule of law, of punishment or penalty, of the public institution, of judiciary
39 calculations, and so forth.”¹⁷ Without following this trajectory of asking
40 what Schmitt would have made of the control society, of data-mining and
41 cyber-crime, of the clipper chip and information warfare, suffice it to indi-
42 cate here that despite all technological innovation that surely exerts structural
43 effects, Derrida’s thought remains consistent even as it moves from Montaigne
44 and Pascal, to Benjamin and Schmitt, into the 21st century.

1 Amnesty versus forgiveness

2
3 It is crucial to distinguish between certain modified forms of recollection or
4 of forgetting that come into play in politics and in jurisprudence, before rais-
5 ing other questions regarding forgiveness and amnesty. The latter, which can
6 be understood as mutual forgetting, stands almost diametrically opposed to
7 the former, insofar as forgiveness in its long monotheistic tradition conjures
8 up the past to the extent of making it present again, repeating the injury,
9 opening the wound, so that its full extent may indeed be forgiven. While am-
10 nesty has as its goal a kind of instrumentalized amnesia, forgiveness strives for
11 difference in repetition. However, Derrida brackets off the question of for-
12 getting, indicating only that “forgiving is not forgetting (another enormous
13 problem).”¹⁸ Against Hannah Arendt, who postulated that one may forgive
14 only what one can punish, Derrida dismisses this symmetry: “Of course we
15 may produce some amnesty or an acquittal, or remit someone for his guilt, on
16 the same level of punishment by not punishing him or her, but that’s totally
17 foreign to forgiveness. Forgiveness is transcendent to the order of the law, to
18 the legal order, so transcendent to punishment.”¹⁹ Recourse to the discourse
19 of human rights allows us to distinguish inextinguishable crimes from those that
20 lie within the realm of law and redemption: in defining such a limit, that
21 discourse is a defensive formation. Human rights are, as Lyotard states, “one
22 of the ways to forget—and you can’t avoid this aporia by adding memory to
23 the list of human rights.”²⁰ The price of forgiving or forgetting is debated
24 not only in the context of recent national and international politics; the
25 representation of a certain split consciousness about the collective and indi-
26 vidual past is intricately connected with issues of accountability and respon-
27 sibility, above all in matters of a politics of memory. Certainly, repudiation
28 of the past hinders us from learning to distinguish between false values and
29 ideals and those worth remembering, and from being able to recognize
30 clearly their relevance for the present.²¹ On the other hand, forgiveness nei-
31 ther presupposes nor ends in forgetting: on the contrary, it presupposes a
32 lively recollection of the injustice. Just as forgetting is a blockage of reception—
33 one no longer gets it—forgiveness could be described as a stoppage in circu-
34 lation. Beyond the apparent immediacy and reciprocity of give and get, we
35 reach the limits of such an economy; we encounter aberrations of mourning
36 which have to do with inhibitions, anxieties, and melancholy. With the
37 consideration of altruism and forgiveness, we go to the limits of memory
38 and forgetting. Repetition can push itself to the front as a resistance against
39 remembering; and undoubtedly, such compromising repetition without rep-
40 etition structures the scene of forgiveness, where an injury is called up again,
41 to its full extent, without being literally repeated.

42 A general amnesty would allow one to go on “as if nothing had happened,”
43 imposing silence about the memory of the unforgettable.²² Pardon, by con-
44 trast, is a modification of forgetting that does not affect the irrevocable, nor

1 repress its memory.²³ In fact, forgiveness requires the exact recall of the injury
2 to be forgiven, and reinscribed as modified memory. By the same token, it is
3 important to distinguish clearly between kitsch as a pathetic aestheticiza-
4 tion of a mortified and artificially revived past, and recall of certain events in
5 history that are incommensurable, unforgivable, inexpiable. In either case, his-
6 tory is irreversible—that means the past cannot return as past, nor we to it,
7 and any regret felt about this realization is still a mortification of the past, in
8 the mode of kitsch. The remorse code that communicates a revisiting of the
9 unforgivable or irreparable, however obliquely, is the inverse impossibility.
10 Here, Derrida insists that a pardon either forgives the impardonable or it is
11 not truly a pardon; it must be unconditional, without exception or restriction.
12 By extension, I would argue, amnesty, understood as a politics of forgetting, is
13 a product of negotiation; unlike forgiveness, amnesty does not invoke the reli-
14 gious, monotheistic perspective Derrida recognizes in forgiveness throughout
15 its history. Although both forgiveness and amnesty may denote an ethics of
16 forgetting, forgiveness is neither “prescription” nor amnesty proper. Amnesty
17 seeks to efface psycho-social traces “as if nothing had happened,” while *pre-*
18 *scription*, in the French legal sense, is only the suspension of any legal or penal
19 consequences of the act committed.²⁴ Arguably, the difference between am-
20 nesty and pardon is not simply one of private versus social spheres. It was
21 Lyotard’s “universal proposition” that “all politics is a politics of forgetting,
22 and that nonforgetting (which is not memory) eludes politics.”²⁵ Both for-
23 giveness and amnesty are modifications of collective memory and forgetting.²⁶
24 Thus, if there could be, despite the severe limitations of time, what Derrida
25 hypothetically calls a successful archive of the South African Truth and Rec-
26 onciliation Commission’s work, then it would be an “archive against memory,”
27 as his discussion in South Africa of his text *Archive Fever* makes clear: “Because
28 of this very fullness, this hypothetical fullness of this archive, what will have
29 been granted is not memory, not a true memory. It will be forgetting. That is,
30 the archive—the good one—produces memory, but produces forgetting at the
31 same time.”²⁷ This effect is owed, in Derrida’s conceptual vocabulary, to the
32 Freudian death drive, which is by one and the same token the drive to destroy
33 memory, testimony, and trace—the drive not only to kill but to erase the mem-
34 ory of the deed—while also striving to oppose the destruction in order to accu-
35 mulate and safe-keep the archive as the production of forgetting. This “perverse
36 desire for forgetting in the archive itself” is not simply psychoanalytical repres-
37 sion: it is part and parcel of the archive itself. Derrida refers to the Truth and
38 Reconciliation Commission as “at the same time legal and non-legal: it’s not
39 a judiciary experience, but there is something judiciary in it, processes of
40 amnesty and so on and so forth” which may lead to some reconciliation.²⁸
41 Thus, if amnesty may be understood as mutual forgetting, it remains diamet-
42 rically opposed to the asymmetry of forgiveness, which throughout its long
43 monotheistic tradition is inseparable from investing someone with the power
44 to forgive.²⁹ Selective or collective amnesty, by contrast, whether invoked in

1 the context of South Africa's Truth and Reconciliation Commission, or in
2 Chile, or after the Vietnam War, invokes no higher power than the law.
3 Derrida insists that in the classical distinction between peace and amnesty,
4 peace is closer to justice, and amnesty is not an act of justice because it is owed
5 to an economy of negotiation, just as forgiveness depends on confession
6 and repentance. If forgiveness goes to the limits of memory, amnesty tests
7 the limits of forgetting. In either case, repetition can push itself to the front
8 as a resistance against remembering. Undoubtedly, such repetition-without-
9 repetition also structures the scene of forgiveness, where an injury is called
10 up again, to its full extent, without being literally repeated.³⁰ Forgiveness
11 conjures up the past to the extent of making it present again, repeating the
12 injury, opening the wound, so that its full extent may indeed be forgiven:
13 thus, in order to forgive you cannot forget. To the extent that you forgive,
14 you may not forget; or you are merely excusing or acquitting. To Derrida,
15 "pure forgiving implies pure memory," and he would conclude that "the dis-
16 tinction between forgiveness and forgetfulness is absolute in the purity of
17 the concept of forgiveness."³¹ Yet while forgiveness is most necessary in sit-
18 uations that are so exceptional, traumatic, or catastrophic as to fall out of his-
19 tory, amnesty remains firmly within the political necessities of normalization
20 and continuity.

21 22 **Politics and ethics**

23
24 Amnesty is neither suspension of a duty to punish, nor abolition—the lim-
25 its amnesty draws imply that past and present cases end with its declaration.
26 An act of grace can only be granted by a sovereign or head of state, usually
27 to individuals, rarely to a collective.³² The law, however, figures sovereignty
28 differently: a deed may be punishable, not punishable, or require mitigating
29 considerations. Legal systems serve to decide, case by case or in principle,
30 what distinguishes each situation. Jurisprudence provides formal limits on
31 punishment, such as a prohibition against retroactive pursuit consequences
32 after legislation (*nullum crimen sine lege*) and the prohibition against advance
33 parole or pre-emption. Two principal limits to amnesty are equality and secu-
34 rity. Until the French Revolution, amnesty in France was the right of the mon-
35 arch; an act of clemency only limited by a list of "*crimes irremissibles*" such
36 as murder, rape, or attack on the king.³³ What distinguishes such clemency
37 from amnesty is that the former constitutes forgiveness without forgetting,
38 while amnesty is a total effacement of the deed and its consequences. The
39 affordance of protection from prosecution for a crown witness makes the
40 inequality of selective effacement evident; to avoid any suspicions of impro-
41 priety of such a covert "amnesty," the prosecution usually has to demonstrate
42 substantial benefits to the system. Where a legal system provides the possibil-
43 ity of ceasing prosecution, reducing sentences, or suspending the remainder
44 of a sentence, one should not speak of amnesty; on the other hand, and by

1 the same token, amnesty is not to say that the deed was not wrong, it is not
2 a denial of punishable acts, nor is it an excuse or a way of removing legal
3 grounds. Amnesty proper only says that despite the specific act, no prosecution
4 and no expected consequences are to follow.

5 Just as it must remain impossible for criminals to count on amnesty, it
6 must not be stalled in parliamentary negotiations. Of course, it cannot be
7 sprung on the judiciary and the public without discussion—but if amnesty
8 is not swift and sudden, it is in danger of becoming a mere political tool. To
9 ensure that amnesty as an intrusion of politics into law remains an excep-
10 tion, an amnesty's goals must be made as clear as its distinction from pardon
11 and forgiveness. History provides plenty of examples resembling amnesties
12 based on obvious calculations: a tax measure that may fill state coffers, a
13 political measure that may protect partisans, an early release program to
14 ease the burden on the prison system, a declaration voiding certain laws to
15 foster reform, a post-revolutionary declaration of new law and order, or an
16 election promise bordering on an advance parole. In many or all of these
17 examples, one may detect a hint of self-dealing. Argentina, for instance, passed
18 an amnesty for the military and the secret service in the course of transition
19 from military junta to democracy in 1983, which the newly elected President
20 Alfonsín then had to declare null and void; the parliament confirmed this
21 by annulling the law on December 19, 1983. Examples like this raise the
22 question how amnesty, in its suspiciously generalized and generalizing com-
23 plicity with forgetting, could become one definition of politics, as that
24 which begins when vengeance stops.

26 **Virtual forgetting**

27
28 Of course, amnesty does not in all cases come at the end of war, nor
29 inevitably in the service of peace: participation in World War I, the French
30 promised, could extinguish (a certain amount of) guilt; and to this day, a
31 similar pact is part of the recruitment efforts of the French Foreign Legion.
32 But for the most part, amnesty is a historical companion to political unrest.
33 There were few amnesties in Germany between 1871 and 1914, some during
34 WWI, and quite a few right after. There were amnesties every year in the Wei-
35 mar Republic, commonly granted as a means to solidify political power. And
36 although the concept was being discussed in the late 1940s, there were no
37 amnesties in Germany after WWII until the violence of 1968-69 was addressed
38 politically in 1970. If it was not for the use of the term amnesty in tax law
39 and immigration law, we would have to look quite long and hard for recent
40 considerations of amnesty. The last sustained discussion of amnesty in the US
41 was in 1974, as a means of pacifying the country in the aftermath of the
42 Vietnam War, draft, and anti-war demonstrations.³⁴ The sharp distinctions
43 between these 20th century contexts are crucial to an appreciation of the
44 benefits of political transparency, especially since the discussion of amnesty

1 for draft evaders may have done more good than would an actual amnesty
2 decree.

3 Clearly if jurisprudence, if philosophy ignored the concept of amnesty,
4 the world might be less prepared for a resolution of current and future con-
5 flicts. At the same time, just as the use of selective presidential pardon has come
6 under considerable suspicion, amnesty as a political instrument must be care-
7 fully limited by legislation and jurisprudence to avoid abuse. To the extent
8 that punishment secures the conditions for a free society that protects indi-
9 vidual and collective rights, amnesty must remain an exception; inversely,
10 there must be cases that remain ineligible for amnesty, such as torture and
11 genocide, war crimes, and crimes against humanity. On the other hand, the
12 assumption that amnesty is a check on state power in the name of grace or
13 forgiveness has to be qualified carefully.³⁵ Clearly, judicial activism or other
14 forms of excessive political interference in the legal system will lead to abuse;
15 but the state monopoly on violence can also result in over-use or under-use
16 of its power, and thus leave citizens either unprotected or make them the
17 victims of unjust judicial persecution. Therefore, if there were no limits to
18 amnesty, the state would have abandoned law, but if there were no amnesty
19 as a limit to the force of law, the system would have abandoned the princi-
20 ples of justice it vows to uphold. And to the extent the legal system depends
21 on testimony, on recall, it continues to prize individual and cultural memory,
22 and the story of amnesty as virtual forgetting is not being told.

23 Notes

- 24 1. For their reactions to this essay, I am grateful to these hosts and audiences: the
25 International Human Rights Exchange at the University of the Witwatersrand,
26 Johannesburg, the *Junge Akademie* at the Berlin-Brandenburg Academy of the
27 Sciences, the Centre for Modern Thought at the University of Aberdeen, and the
28 Department of German at Georgetown University.
- 29 2. Jacques Derrida, "Force of Law: The 'Mystical Foundation of Authority,'" *Cardozo*
30 *Law Review* 920: 11 (1990); Jacques Derrida, "Declarations of Independence," *New*
31 *Political Science* 7: 15 (1986); Jacques Derrida, "Before the Law," in: Derek Attridge
32 (ed.), *Acts of Literature*, pp. 181–220, London: Routledge (1992); Jacques Derrida,
33 *Given Time, I: Counterfeit Money*, Chicago: University of Chicago Press (1991), espe-
34 cially the last chapter, "Excuse and Pardon;" Jacques Derrida, *On Cosmopolitanism*
35 *and Forgiveness*, pp. 27–60, London: Routledge (2001) ("Le siècle et le pardon,"
36 *Le Monde des débats*, pp. 10–17, décembre [1999]).
- 37 3. Jacques Derrida, "To Forgive: The Unforgivable and the Imprescriptible," in: John
38 Caputo, Mark Dooley, Michael Scanlon (eds), *Questioning God*, pp. 21–50,
39 Bloomington: Indiana University Press (2001). Compare also "For a Justice to
40 Come: An Interview with Jacques Derrida," *The Brussels Tribunal* (February 19,
41 2004) at www.brusseltribunal.org.
- 42 4. Compare R. Briggs, "Just Traditions? Deconstruction, Critical Legal Studies, and
43 Analytic Jurisprudence," *Social Semiotics* 11(3): 257 (December 2001); J.M. Balkin,
44 "Deconstructive Practice and Legal Theory," *Yale Law Journal* 96: 732 (1987);
and Chris Kaposy, "'Analytic' reading, 'continental' text: The case of Derrida's

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- 1 'On Forgiveness,'" *International Journal of Philosophical Studies* 13(2): 203–226
 2 (June 2005).
- 3 5. Derrida, "To Forgive" (note 3), 25–26. See E. Verdeja, "Derrida and the
 4 Impossibility of Forgiveness," *Contemporary Political Theory* 3(1): 23–47 (April
 5 2004).
- 6 6. For the history of pardoning, see Jörg Fisch, *Krieg und Frieden im Friedensvertrag. Eine
 7 universalgeschichtliche Studie über Grundlagen und Formelemente des Friedensschlusses*,
 8 Stuttgart: Klett-Cotta (1979); Nicole Loraux, *La Cité divisée. L'oubli dans la mémoire
 9 d'Athènes*, Paris: Payot (1997); and Natalie Zemon Davis, *Fiction in the Archives.
 10 Pardon Tales and Their Tellers in Sixteenth-Century France*, Stanford University Press
 11 (1987). More recently, see Edgar Morin, "Pardonnner, c'est résister à la cruauté du
 12 monde," *Le monde des débats*, pp. 24–26 (fevrier 2000); and Paul Ricoeur, *La
 13 mémoire, l'histoire, l'oubli*, Paris: Seuil (2000), which culminates in an "épilogue"
 14 on pardon. An English dossier on some of these debates is found in *PMLA*
 15 117:2 (2002).
- 16 7. Nicole Loraux, "De l'amnistie et son contraire," *Usages de l'oubli*, Paris: Seuil (1988),
 17 translated in two versions as "Of Amnesty and its Opposite," in: Nicole Loraux,
 18 *Mothers in Mourning*, pp. 83–109 Ithaca: Cornell University Press (1998), and in:
 19 Nicole Loraux, *The Divided City: on memory and forgetting in Ancient Athens*,
 20 pp. 145–169, New York: Zone Books (2002). See also Louis Joinet, "L'amnistie. Le
 21 droit à la mémoire entre pardon et oubli," *Communications* 49: 213–224 (1989).
 22 Others point out that the amnesty of 403BC was modeled on an amnesty after
 23 the Persian Wars, and thus it is not the first recorded amnesty in Athenian history.
 24 See Danielle S. Allen, *The World of Prometheus: The Politics of Punishing in Democratic
 25 Athens*, pp. 237–242, Princeton: Princeton University Press (2002), and Alfred P
 26 Dorjahn, *Political Forgiveness in Old Athens: The Amnesty of 403BC*, Evanston:
 27 Northwestern University Press (1946).
- 28 8. See Michael Caldwell McHugh, *With Malice Towards None: The Punishment and
 29 Pardon of German War Criminals, 1945–1958*. Doctoral Dissertation, Miami
 30 University, (1991) (DAI-A 52/07, p. 2676, Jan 1992).
- 31 9. See Christian Meier, "Erinnern—Verdrängen—Vergessen," *Merkur* 50: 937–952
 32 (1996).
- 33 10. Carl Schmitt, "Amnestie oder die Kraft des Vergessens," *Staat, Großraum, Nomos*,
 34 pp. 218–221 Berlin: Dunker & Humblot (1995). This article first appeared anony-
 35 mously on November 10, 1949 as "Amnestie—Urform des Rechts" in *Christ und
 36 Welt*. A modified version was printed on January 15, 1950 in *Sonntagsblatt*, Hamburg.
 37 Attributed to one Walter Masuch, it was plagiarized in *Die Zeit* on September 12,
 38 1950, and finally appeared in Carl Schmitt's name in *Der Fortschritt*, Essen, with
 39 the title "Das Ende des kalten Bürgerkrieges. Im Zirkel der tödlichen Rechthaberei—
 40 Amnestie oder die Kraft des Vergessens." Schmitt marshals as his crown witnesses
 41 Aristotle's *The Athenian Constitution*, Xenophon's *Hellenica*, J.P. Kenyon on *The
 42 Stuart Constitution*, and the *Dialogue between a Philosopher and a Student of the Common
 43 Law* by Thomas Hobbes. Contemporary with Schmitt's intervention were similar
 44 arguments by Ernst Achenbach, "Generalamnestie!" *Zeitschrift für Geopolitik* 6:
 321–324 (1952), and Friedrich Grimm, *Amnestie als völkerrechtliches Postulat*,
 Opladen: Wissenschaftlicher Verlag (1951).
11. However, in contrast to Schmitt, Renan warned that advances in historiography
 might pose dangers to politics. See Ernest Renan, "Das Plebiszit des Vergeßlichen,"
Frankfurter Allgemeine Zeitung, March 3, 1993. One of the rare serious inquiries
 into the conditions of amnesty in Germany (after 1945 versus after 1989) is the

- 1 collection *Amnestie oder Die Politik der Erinnerung*, Gary Smith and Avishai Margalit
- 2 (eds), Frankfurt: Suhrkamp (1997).
- 3 12. Derrida, "To Forgive" (supra note 2), 25.
- 4 13. Loc. cit., 34.
- 5 14. Jürgen Habermas, *The Philosophical Discourse of Modernity*, p. 161, Cambridge: MIT
- 6 (1987); Thomas McCarthy, "The Politics of the Ineffable: Derrida's Deconstructiv-
- 7 tivism," *Ideals and Illusions: On Reconstruction and Deconstruction in Contemporary*
- 8 *Critical Theory*, Cambridge: MIT (1991).
- 9 15. Drucilla Cornell, *The Philosophy of the Limit*, front matter & p. 167, New York:
- 10 Routledge (1992).
- 11 16. Jacques Derrida, *The Politics of Friendship*, p. 144, London: Verso (1997).
- 12 17. Ibid.
- 13 18. Derrida, "To Forgive" (supra note 2), 23.
- 14 19. Jacques Derrida, "Archive Fever in South Africa," *Refiguring the Archive*, Carolyn
- 15 Hamilton, Verne Harris, Jane Taylor, Michele Pickower, Graeme Reid and Razia
- 16 Saleh (eds), pp. 38–82, Dordrecht: Kluwer (2002). [Here, p. 82.]
- 17 20. Lyotard, "A l'insu (Unbeknownst)," in: *Community at Loose Ends*, Miami Theory Col-
- 18 lective (ed.), p. 46, Minneapolis: University of Minnesota Press (1991). Furthermore,
- 19 see Michael Janover, "The Limits of Forgiveness and the Ends of Politics," *Journal*
- 20 *of Intercultural Studies* 26 (3): 221–235 (August 2005).
- 21 21. Margarete Mitscherlich, *Erinnerungsarbeit. Zur Psychoanalyse der Unfähigkeit zu*
- 22 *trauern*, pp. 114–116, Frankfurt: Fischer (1987).
- 23 22. Nicole Loraux formulates this structure as "faire taire le non-oubli de la mémoire,"
- 24 *La Cité divisée*, p. 171.
- 25 23. Ricoeur, *La mémoire, l'histoire, l'oubli*, p. 586.
- 26 24. Ricoeur, *La mémoire, l'histoire, l'oubli*, pp. 593 & 610. See Olivier Abel (ed.), *Le pardon:*
- 27 *Briser la dette et l'oubli*, Paris: Autrement (1991).
- 28 25. Jean-François Lyotard, "A l'insu (Unbeknownst)," p. 42.
- 29 26. Helmut Lethen, "Damnatio Memoriae und die Rhetorik des Vergessens," in: Dietmar
- 30 Kamper and Christoph Wulf (eds), *Schweigen. Unterbrechung und Grenze der men-*
- 31 *schlichen Wirklichkeit*, pp. 159–168, Berlin: Reimer (1992); Martha Nell Minow,
- 32 *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*,
- 33 Boston: Beacon (1998); Desmond Tutu, *No Future Without Forgiveness*, New York:
- 34 Doubleday (1999).
- 35 27. Jacques Derrida, "Archive Fever in South Africa," p. 56.
- 36 28. Derrida, "Archive Fever in South Africa," p. 76.
- 37 29. Like Jankelevitch, Arendt folds biblical and classical Greek references into her dis-
- 38 cussion of the power to forgive. Hannah Arendt, "Irreversibility and the Power to
- 39 Forgive," *The Human Condition*, 236f, Chicago: University of Chicago Press (1958);
- 40 Vladimir Jankélévitch, *Le Pardon*, Paris: Aubier-Montaigne (1967), and Vladimir
- 41 Jankélévitch, *L'imprescriptible: Pardonner? Dans l'honneur et la dignité*, Paris: Seuil
- 42 (1986). Furthermore, see Andrew Schaap, "The Proto-politics of Reconciliation:
- 43 Lefort and the Aporia of Forgiveness in Arendt and Derrida," *Australian Journal of*
- 44 *Political Science* 41 (4): 615–630 (December 2006).
- 45 30. See Mieke Bal et al. (eds), *Acts of Memory: Cultural Recall in the Present*, Hanover:
- 46 University Press of New England (1999).
- 47 31. Derrida, "Archive Fever in South Africa," pp. 80–82.
- 48 32. "Une institution pénale reposant sur une fiction et qui a pour but d'enlever pour
- 49 l'avenir tout caractère délictueux à certains faits pénalement répréhensibles, et interdisant toute poursuite à leur égard ou en effaçant les condamnations qui les ont

176 *Between Forgiveness and Forgetting*

- 1 frappés," Roger Merle, André Vitu, *Traité de droit criminel et de procédure pénale*,
- 2 vol. 2, n. 1602, Paris: Cujas (1980). See also J.M. Balkin, "Tradition, Betrayal, and
- 3 the Politics of Deconstruction," *Cardozo Law Review* 11: 1613–1630 (1990).
- 4 33. Compare Book 2, Chapter 5 of Rousseau's *Contrat social* and Book six, Chapter
- 5 16 of *De l'esprit des lois* by Montesquieu. Kant likewise excluded amnesties in cir-
- 6 cumstances where they might give rise to danger; see *Metaphysik der Sitten*, p. 460,
- 7 Werke vol IV.
- 8 34. See William O'Rourke, "Remembering to Forget," *Signs of the Literary Times: Essays, Reviews, Profiles 1970–1992*, pp. 169–182, Albany: State University of New
- 9 York Press (1993).
- 10 35. See Alex Thomson, "Derrida's 'Indecent Objection,'" *Journal for Cultural Research*
- 11 10 (4): 295–308 (October 2006).
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QUERY FORM

BOOK TITLE:	DLP-Goodrich
CHAPTER NO:	Chapter 10

PROOF

Queries and / or remarks

Query No.	Query / remark	Response
AQ1	Title changed to match Contents.	
AQ2	World War?	