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When Legal Cultures Collide¹

RICHARD F. DEVLIN

Every society has the tendency to reduce its opponents to caricatures – at least in imagination – and as it were to starve them. Such a caricature is ... our 'criminal.'²

Friedrich Nietzsche

The one duty we owe history is to rewrite it.³

Oscar Wilde

Introduction

In this essay, I attempt to consider the juridical significance of the Irish hunger strike of 1981. I focus on this almost unreal, but tragically too real, 'event' for two reasons. First, on the basis of the rereading or representation that I offer in this essay, the hunger strike provides an opportunity to reflect upon what is perhaps the most enduring and intractable question of social theory: the relationship between structure and agency. Specifically, it enables us to critically interrogate the aspirations and assumptions of a colonial legal structure and the agentic resistance of the juridically colonized. The second reason for my interest is more personal. As I was a law student in Belfast at the time, the strike has been a key aspect of my formative context and thus a constitutive part of my identity. In particular, by bringing into sharp relief the relationship between law, domination, violence, and death, the hunger strike has turned out to be a (not always conscious but pervasive) back-

drop against which I have constructed both my political philosophy and my jurisprudence.⁴

But I want to tell this story with a different voice from that which usually predominates in the dominant discourses of the North Atlantic societies. More precisely, I will filter my interpretation through the insights of both postmodernism and deconstruction. My purpose will be to consider the intersections between postmodernism/deconstruction and nationalism in order to inquire into the utility of such perspectives in helping to de-centre the hegemony of a dominant – read British – legal discourse and thereby to create space for the valorization of a marginalized and subordinated legal discourse. My claim is that legal knowledge is itself a terrain of political struggle, and that dominant legal interpretations are only so because of their superior force, not because of their superior truth.

However, although I will argue that postmodernism and deconstruction enable us to think critically about power, knowledge, truth, history, self, and language, at the same time, this case study will highlight what might be some of the weaknesses of postmodernism and deconstruction in their ability to ‘put the dissidents back into history.’⁵ In particular, I will argue that the postmodern focus on texts and epistemology, while absolutely necessary, is insufficient, and therefore that it needs to be supplemented by an emphasis on politics and ethics. My suggestion will be that those groups – and, in particular, those theorists – in North American society who espouse the embracement of postmodernism as providing a means for the achievement of difference and inclusion are excessively discursive in their conception of power, and therefore incapable of adequately supporting a sufficiently destabilizing practice. My aim will be to walk the tightrope between those who posit that postmodernism and deconstruction are profoundly liberationist⁶ and those who argue that they are dangerously conservative.⁷

My analysis in this essay draws on some key motifs of both postmodernism and deconstruction: alterity, otherness, pluralism, simulation, difference, and incommensurability. The essay is divided into three further sections. In part 2, I apply some of these insights to the events around the 1981 hunger strike by Irish prisoners in British jails in the British-occupied north of Ireland to advance the juridically impertinent proposition that what was at stake was not merely a politically strategic, last ditch act of desperation, but ‘(an)other’ indigenously Irish legal claim based upon a subordinated legal culture, the Brehon Laws. Restated jurisprudentially, I will argue that the hunger strike can be conceived of as a ‘jurisgenerative act.’⁸ In part 3, on the basis of this story, I develop some reflections as to

the utility of postmodernism and deconstruction for others who aspire to the legal recognition of difference. My aim here is to resist the tendency towards disengagement and political quietism which may be engendered by some aspects of postmodernism and deconstruction. Finally, part 4 provides some (in)conclusive thoughts.

The Hunger Strike

A History

In this section, I develop a historical reconstruction and juridical revision of events leading up to and during the hunger strike of 1981. History, as every good postmodernist knows, is contingent upon a choice of starting points and perspectives: it is partial (in both senses of the word) rather than total. Therefore, it seems to me that we can only fully appreciate the interpretation offered in this essay if we begin with the early years of what, colloquially, is called 'this round of the troubles' in Northern Ireland.

In the late 1960s, inspired by the protest movements in both the United States and Europe, a coalition of relatively progressive groups came together in the form of the Northern Ireland Civil Rights Association (NICRA) to protest the discrimination against Catholics in Northern Ireland. Although a few members of NICRA were republicans, the vast majority of those involved were socialists and liberal democrats.⁹ In spite of the fact that the demands of NICRA were essentially reformist, the local state response was one of unmediated police repression.¹⁰ Worse still was the collusion between the repressive state apparatuses and segments of the loyalist community whereby the former enabled the latter to embark upon vigilantism and pogroms, which were so widespread that (prior to the current civil war in 'Yugoslavia') they caused the greatest relocation of the civilian population anywhere in Europe since the Second World War.¹¹

Thus, I would argue it was the atavistic and repressive activities of the state – both active and passive – which generated the resurgence of the legitimacy of the IRA, because when the pogroms began the only people even partially able to defend the Catholic communities were very small numbers of IRA volunteers who had a few old rifles.¹² With no sign of the pogroms abating, with the Catholics very much under siege, the British government acknowledged that the local security forces were so partisan that they were causing a legitimization crisis for the British state. As a result, the British government decided to dispatch soldiers to carry out what was,

in essence, a policing function. For a couple of months, there was a honeymoon period between the British troops and the nationalist community – perhaps bred of dependency – but this began to deteriorate because of the partisan activities of some soldiers in favour of the loyalist communities, a very tentative emergence of military hostility by the IRA against a reintensified British presence on Irish soil, and, eventually, the imposition of a curfew and house-to-house searches in the (predominantly Catholic) Lower Falls area of Belfast in July 1970.

As to the legal system in this period, if people were arrested they were processed under the extremely Draconian *Civil Authorities (Special Powers) Act*. Yet, in spite of this, those processed and incarcerated under the act were treated as 'ordinary decent criminals' or 'odc's.'

Though tension began to rise in 1970 between the IRA and the British Army, mostly in the form of rioting, it was not until February 1971 that the first British soldier was killed in Northern Ireland since the 1920s, and from April forth the IRA began to develop a campaign of bombing.

The response of the British state, at the bidding of unionist politicians,¹³ was to introduce internment without trial. Three hundred and forty-two people, all Catholics, many of them without any connection to the IRA, were arrested in the first raid on 9 August 1971. Within six months, a total of 2,357 people had been interned, again the vast majority of them being Catholics.¹⁴ However, rather than being treated as 'odc's,' the majority were sent to a deserted Second World War air base – Long Kesh – placed in Nissen huts, and were able to operate as if they were in a prisoner-of-war camp. In effect, they had 'political status.'

A much smaller number of 'suspects,' who were arrested and actually processed through the courts, were not placed in these hastily established prisoner-of-war camps. Rather, they were sent to the ordinary prisons and located in cells with no recognition of the political motivations for their 'crimes' – nor of the fact that they were arrested and processed under the *Special Powers Act*. As a result, in mid-June 1972, about thirty republican prisoners who had been tried and convicted went on a hunger strike and, by the fourth week, had gained recognition of their 'special category status.'¹⁵

Internment and political / special category status created a fundamental contradiction for the British state. On the one hand, Britain prided itself on being the great fountainhead of habeas corpus. And yet, the existence of several thousand untried prisoners was an acute embarrassment. Thus in 1972, Lord Diplock issued his *Report of the Commission to Consider Legal Procedures to Deal with Terrorist Activities in Northern Ireland*,¹⁶

which was an attempt to depoliticize the republican prisoners by encoding them as 'criminals.' A key aspect of this report were proposals to eliminate the system of internment without trial by creating special juryless, single-judge courts that would, with the benefit of a 'modified' common law of confessions coupled with a shift in the burden of proof, be able to process 'suspected terrorists.' The agenda was to reassert the supremacy of the rule of law over the politicization of law. Diplock's recommendations were put into effect in the *Northern Ireland (Emergency Provisions) Act, 1973*, in effect creating a conveyor-belt criminal process.¹⁷

But it was soon realized that the Diplock process of criminalization did not go far enough in delegitimizing the political integrity of the republican prisoners because once convicted they were entitled to 'special category status,' which had been gained by the hunger strike of 1972. As a result, Lord Gardiner (a former lord chancellor) was called upon by the British government to prepare a report that would further 'rationalize' the program of criminalization. He duly obliged and, in a report published in January 1975, proposed that 'special category status' would not be available to those who were convicted of crimes committed after 1 March 1976.¹⁸

Central to the project of the removal of 'special category status' and its replacement with a program of 'criminalization' and 'normalization' were the elements of cellular rather than group confinement, and the wearing of prison uniforms. When the first post-March 1st prisoner was given his uniform in September 1976, he refused it and therefore, being without clothes, took refuge in his prison blankets. So began the 'blanket protest.' The response of the British state was to treat this as a breach of prison rules, and, therefore, the prison governor imposed harsh penalties: 'a complete removal of remission; twenty-four-hour lock-up; deprivation of mental stimulation of any sort – reading material, newspapers, books, television, radio, games, hobbies or writing material. This was combined with very intimate body searches'¹⁹ and the reduction of visits to one half hour per month. By September 1977 there were about 160 republican prisoners 'on the blanket.'

This situation continued with a hardening of positions through to April 1978. At this point, in response to further 'disciplining' in relation to washing, as well as 'internal searches of the body, deprivation of letters, removal to punishment cells and beatings of young prisoners,'²⁰ the prisoners refused to wash or cooperate in any way with the prison staff. But the spiral did not stop with this 'no wash protest.' As part of their policy of non-participation, the prisoners refused to slop out their chamber pots.

These pots, in turn, became part of the contested process in that they were frequently kicked over by prison guards in the course of the ongoing searches. To prevent this from happening, and specifically to avoid the soaking and soiling of their floor-based mattresses, the prisoners threw the contents of the pots out the windows and under the doors of their cells, but these were slopped back in by the prison guards. In turn, by the end of 1978, this led to the 'dirty protest,' in which the prisoners spread their own maggot-infested excrement on the walls of their cells. By 1979 there were approximately 370 prisoners on the 'dirty protest.'

As all the accounts of the hunger strike and the events prior to it indicate, it was clear that it was the prisoners themselves who were setting the agenda.²¹ And while there was a significant mobilization on the outside to publicize the conditions, this was not generating sufficient pressure to force the British government to change its agenda of total criminalization. In the face of such ox-like indifference of the British government, as 1980 wore on, the prisoners decided that in pursuit of political status they would resort to a hunger strike to force the government to recognize their claims. However, the Army Council of the IRA objected to this intensification of the protest, and Gerry Adams, as vice-president of Sinn Féin,²² communicated that the leadership of that organization was 'tactically, strategically, physically and morally opposed to a hunger strike.'²³ But in spite of these objections, on 10 October 1980, the protesters announced a strike demanding 'as of right, political recognition and that we be accorded the status of political prisoners.'²⁴ On 27 October, seven prisoners went on hunger strike. Bobby Sands was not one of them as he was given the position of OC in the camp. As the weeks progressed, despite the facade of intransigence on both sides, a series of secret negotiations proceeded through intermediaries.²⁵ The result was that, as one of the strikers seemed about to die prematurely on the fifty-third day, the British government appeared to acquiesce to the prisoners' demands by issuing a thirty-four-page document which seemed to suggest a step-by-step de-escalation process that would in effect reinstate 'special category status.' The strike was called off. However, as became apparent over the next month, the demands were not met and the prisoners felt outmanoeuvred and totally betrayed.

Thus, in January of 1981, Sands took the initiative and announced that a new strike would commence. But on this occasion there was a shift away from the focus on 'political status' to what became known as 'The Five Demands': the right to wear their own clothing at all times; exemption from all forms of penal labour; free association with each other at all

hours; the right to organize their own recreational and educational programs; and full restoration of remission. It was thought that this change in the rhetoric would provide the British government with greater space to compromise.²⁶ The second hunger strike began on 1 March 1981, and the rest is history. Ten prisoners died before a solution was reached. But in the course of the fast, Sands – ‘the criminal’ – was elected to the British Parliament; Sinn Féin garnered remarkable local political support; and world attention was focused, not just on the strike, but on the intransigence of the British attitude generally to Ireland.

An Interpretation: Fasting as (An)other Jural Claim

The last several pages have attempted to provide a historical narrative of events leading up to, during, and after the hunger strike. This section provides an interpretation of these events, drawing on some of the insights of postmodernism and deconstruction.

Deconstruction argues that the hierarchical construction of relationships is central to logocentric thought. Derrida posits that all oppositions invoke ‘a violent hierarchy. One of the two terms controls the other (axiologically, logically, etc.), or has the upper hand.’²⁷ This is particularly pertinent for an understanding of the politics (and pretensions) of law. The point of logocentrism is to attempt to render that which is contingent, incontrovertible. Thus, within the dominant jurisprudential conception, law is conceptualized as both different from and hierarchically superior to politics in that the latter is acknowledged to be contaminated by vulgar interests, but law is said to be beyond the contingencies of politics.

Thus, in relation to the hunger strike, one reason why the British government was so keen on the program of ‘criminalization’ of the prisoners was to draw on the logocentric legitimacy of law, so as to put the issue of nationalist claims for self-determination beyond debate, to enforce closure by juridical fiat. Thatcher made much of this on a visit to Belfast after the deaths of several of the prisoners: ‘Now what I am saying is we will uphold the law ... I cannot pull solutions out of a hat. I will not depart from upholding the law ...’²⁸

As Michael Ryan reminds us, ‘the authority of the sovereign’s law depends upon the establishing of unambiguous proper meaning for words.’²⁹ In Northern Ireland during the hunger strike era, the contested terms were ‘law’ and ‘criminal.’ The republican prisoners, however, refused to acquiesce in this totalizing trope of criminalization and attempted to destabilize and invert this hierarchical move by demonstrat-

ing the inherently political and partisan nature of the legal machinery. They called into question the rationalistic and progressive self-image of law, to tell a different story.

One example illustrates these strategies of resistance that sought to undermine the British state's logocentric ambitions, and law's 'elective self-image.'³⁰ It was the prisoners themselves (and contrary to the IRA leadership's traditional policy of political abstentionism) who came up with the idea of proposing Sands as a candidate for the British Parliament.³¹ His election by over thirty thousand voters not only legitimized the demands for political status but also gave notice to the Thatcher regime that a political consciousness cannot simply be re-encoded by politico-juridical relabelling. Moreover, and seemingly learning nothing, when Sands died, the government hurriedly passed the mendaciously entitled *Representation of the People Act*, so as to prohibit any further prisoners from fulfilling their democratic mandate in 'the mother of all parliaments.' But this also failed because in Sands place his election agent increased the margin of victory by 786 votes. In sum, the British government attempted to use the law to privilege one ideological perspective; the prisoners resisted such a move by asserting a contradictory claim, thereby shearing law of its metaphysical privileges. As Derrida posits, 'to deconstruct the opposition ... is first to overthrow the hierarchy.'³² Viewed in this light, deconstruction helps us to destabilize hierarchical conceptions of the relationship between law and politics, confirming that law is always and already constituted by politics.

This is not to say, however, that law is just politics. Rather, law is a particular kind of politics, one that commingles express exercises of power with implied normative visions. To elaborate. Most of the conventional reviews of hunger striking in Ireland trace back only as far as the practice had been adopted by the republican movement.³³ Such a historical account identifies the hunger strike with the political ideology of republicanism. However, this is only a partial account. Hunger striking is not a recent phenomenon in Ireland. It is not reducible to republicanism. On the contrary, its roots can be traced back to an ancient, pre-Christian, Celtic legal code, the Brehon Laws,³⁴ and the practice of *cealachan* or *troscéad*, that is, fasting. *Céalachan/troscéad* is a component of the ancient Irish Law of *Athgabhail/Athgabail*, which, in common law terms, one could consider to be analogous to distraint.³⁵ *Athgabhail* 'is a general name for every coercion (lit. binding) through which each person enforces his [legal] interest'³⁶ invoked, as Ginnell points out, so that 'advantage is obtained after disadvantage ... truth after untruth, legality after illegal-

ity, justice after injustice ... right after wrong.'³⁷ *Troscead* (fasting) is the performative act that triggers the action in distraint. Stated simply, if a person had been wronged by another who was more powerful – for example, a chieftain, brehon, bard, king, or bishop³⁸ – having given appropriate notice, the wronged party was entitled to claim distress by fasting at the door of the wrongdoer. Responsibility for ending the fast vested in the perceived wrongdoer. If the latter allowed the plaintiff to starve to death, then the wrongdoer was held responsible for the death and had to compensate the victim's family.

A central proposition advanced by this essay is that, building upon not only the political tradition of previous republican hunger strikes, but also upon the *legal* tradition of the Brehon Laws, at the margin of the British state in the H-Blocks, the prisoners rediscovered and reconstituted an almost silenced countervailing legal regime. The hunger strike, then, was not simply a last ditch desperate propaganda stunt, which has been the dominant interpretation. Rather, it was an irruption of an alterior juridical regime, the espousal of a cultural difference, the exposition of a jural other, the assertion of a legal right.

It is important to note how this came about. The agenda of the British state was to eliminate the foundations of Irish identity, to totally erase locations of resistance. It realized that internment and the Diplock courts served to strengthen the integrity and legitimacy of the republican cause. It recognized that by taking activists from their communities, by imprisoning them through the ideological trope of criminalization, they could perhaps silence the nationalist 'other.' But, at the same time, it was understood by the government that by continuing with 'special category status,' they were allowing the persistence of two contradictions within their policies. First, 'special category status' was simply a euphemism for 'political status' and therefore a discordant acknowledgment that there may be a certain legitimacy to the republican liberation struggle. Second, and just as important, 'special category status' acknowledged the military structure of the IRA and allowed free association and control over the recreational and educational processes within Long Kesh to accrue to the military command of the IRA. In other words, the British government realized that internment and 'special category status,' though they temporarily divorced the IRA from the nationalist community, would have the effect of facilitating the emergence of what Sands would later describe as the 'politically educated armed guerilla fighter who will not only use his [*sic*] political mind to guide his weapon, but to guide and teach his politically undernourished countrymen to steer their own destiny ...'³⁹

Consequently, it was determined by the British that the repression would have to be intensified. First, in order to undermine the process of political radicalization fostered in Long Kesh, the 'Republican University,' it was necessary to rethink the architecture of coercion so as to undercut the groupist solidarity that the traditional military-type cage structure engendered. As a result, there emerged the idea of H-Block compounds. These were blocks of prison cells constructed in the shape of an *H*, with the four wings connected by an administrative cross-bar. Each block was capable of containing approximately eighty prisoners, each prisoner to be held in an eight-foot by ten-foot cell. Second, deradicalization required that both the nationalist community and the prisoners themselves cease accepting the code/signifier of 'prisoners of war' and instead adopt the penal bureaucratic argot of 'odc' (ordinary decent criminal) or 'hac' (honest average criminal).⁴⁰ It was this quest for the penal construction of 'the criminal' that generated the Gardiner Report's emphasis on uniforms, prison work, discipline, and the curtailment of opportunities for association and education.

But at the margins of the British state, almost absented from the dominant discourse, almost delegitimized within the nationalist communities, the prisoners continued their resistance. First, drawing on the significant increase in the educational aspects of republican tradition in the last years of 'special category status,' the H-Blocks became both a conduit for the dissemination of Irish history and a school for reflection on leftist-inspired revolutionary strategies.⁴¹ Second, and of crucial importance to this process of consciousness raising, was the switch to the use of Irish language. This was required because the new cellular structure required that if the prisoners sought to communicate with each other, they would have to shout. But shouting in English would, obviously, render their communications accessible to the prison guards. The solution was to encode the conversations in a modified version of the Irish language that the prisoners with an earnest humour called 'jailic'.⁴² Third, this translation, in turn, engendered a greater consciousness of Irish history. Of particular significance was the interrogation of the legal basis of British colonialism and the rediscovery of the ancient Irish Brehon Laws and, most notably for the purposes of this essay, the practice of *troscéad*. Thus, having disinterred what might be called 'a juridical unconscious,'⁴³ the prisoners could identify Brehon law as a different legal culture.

Consequently, when the announcement of 10 October 1980 claimed that the hunger strike was based on 'a right,' it was not simply rhetoric. Not only did the prisoners base their claim on the terrain of political

struggle, or the republican tradition of self-immolative martyrdom,⁴⁴ which are the two conventional interpretations. It was also a profound juridical claim premised upon a subordinated, and therefore ex-centric but not eliminated, legal culture. Indeed, a recently published interview with a former prisoner of the hunger strike period indicates this:

With the Gaelic you begin to get back in touch with political and ideological concepts. For instance *cealathan*, where in the Brehon laws to express a grievance against an injustice a guy sat outside the wrongdoer's house and starved himself to death. Now *cealachon* [sic] had a whole moral import to it that it wasn't a hunger strike as a protest weapon; it was the legal assertion of your rights. The hunger strike was a legitimate and moral means for asserting those rights, and it had legal precedents dating back to antiquity. You found that there was a literature that was untranslatable from the Gaelic that could never be expressed in the cold English.⁴⁵

The peculiarity is that rather than formulating their claim in some formalistic and bureaucratic cause of action – a form of encoding or translation that severs the plaintiffs from their claim – the fasting prisoners reconstituted their bodies as a jural template so that their claim was, literally, one of life or death.

To recap. The essentially rehabilitative claim that I have advanced is that not only is law politically manipulatable, but also that law is, in a strong sense, culturally contingent; that it is 'local knowledge, not placeless principle.'⁴⁶ The hunger strike of 1981 represents and signifies a collision of incommensurable legal cultures in which one – the Brehon tradition of the disempowered fasting against the empowered – because of its marginalized status was not encoded or intelligible ('untranslatable') as such because of the hegemonic ascendancy of the common law juridical psyche. Through the deconstructive supplementary logic of reversal and displacement, I wish to rehabilitate this almost erased ethico-juridical other, to reconceptualize fasting as a practice of juridical decolonization, and to posit that the response of the British state in refusing to recognize this other legal culture is but another form of violence.

The Political Ambivalences of Postmodernism

The purpose of this section is to further this interpretation of legal practices, legal institutions, and legal structures through the grid of postmodernism and deconstruction, and to consider the adequacies of these

modes of analysis, not just as interpretive techniques, but as potential juridico-social theories.⁴⁷ Moreover, I propose to consider Derrida's recent claim that deconstruction is 'revolutionary,' in the sense 'that it assumes the right to contest, and not only theoretically, constitutional protocols ... the right to contest established law in its strongest authority, the law of the State.'⁴⁸

Although postmodernism as political philosophy and deconstruction as critical method⁴⁹ do not share an identity, there are certain elements of homology, continuity, and overlap that are of interpretive value. Given its complex and portmanteau character, postmodernism is notoriously difficult to get a handle on. This is because it spans a variety of cultural and academic fields, has advocates who frequently adopt profoundly incompatible perspectives, revels in its ephemeral, splintered, and fractured dynamism, and – as a result of its predilection for being 'post' – is reluctant to construct any determinative or homogeneous self-image. Nevertheless, in spite of its slipperiness, I do think that it is possible to provide an account (though not a definition) of postmodernism in which a few common motifs⁵⁰ relate to my discussion.

Of particular importance to this essay, especially in connection with its relation to deconstruction, are the politico-epistemological propositions associated with postmodernism. First, and perhaps most importantly, postmodernism's embracement of alterity and 'otherness'⁵¹ has meant that 'reality' is deprived of its objective foundations, and is re-understood as flimsy, fragmentary, unstable, heterogeneous, and plural.⁵² In this light, 'authenticity' and 'reality' are re-encoded as 'fabrication' and 'simulation.'⁵³ Second, and closely related, because our relationships with reality are socially mediated and constructed, knowledge too is said to lack any objective non-contingent foundation. Such an interpretive approach to knowledge is sometimes called 'perspectivism'⁵⁴ or 'anti-foundationalism'⁵⁵ in that it posits that there can be a plurality of mutually incommensurable perspectives offering equally valid interpretations. Postmodernism dismantles 'Truth,' at least with a capital T.⁵⁶ Third, postmodernism is so radical in its disassembly and decomposition of conventional wisdom that it argues that the very idea of 'the individual' or 'the subject' is up for grabs. It posits that so pervasive are the social structures and narratives, that we can no longer be confident of the humanist faith in an essentialist, pre-social, coherent, unified, and autonomous self. Rather, even the self is constructed to the core. Derrida, for example, talks about the 'death' of the subject,⁵⁷ and Baudrillard calls for a 'renunciation of the position of the subject.'⁵⁸ If postmodernists are accurate in

this claim, then they obviously problematize our traditionally received ideas about autonomy, freedom, choice, and agency.⁵⁹ Finally, according to Baudrillard, several political consequences emerge from these sociological and epistemological propositions. Most importantly, he argues that power needs to be reconceptualized. 'No more subject, focal point, centre or periphery: but pure flexion or circular inflection. No more violence or surveillance: only "information," secret with virulence, chain reaction, slow implosion and simulacra of spaces where the real effect comes into play.'⁶⁰ Indeed, because 'power is no longer present except to conceal that there is none'⁶¹ then '*law and order themselves might be nothing more than a simulation.*'⁶² All of which is to say that 'the political sphere (and power in general) becomes empty,'⁶³ so that 'power pure and simple disappears.'⁶⁴ As a consequence of this dispersed conception of power, the idea – indeed the very possibility – of political praxis needs to be reconsidered.

Postmodernism and deconstruction share some political motifs. By highlighting the constructed and necessarily relational nature of that which would be incontrovertible, the deconstructive technique of *différance* endangers and deflates logocentrism. Deconstruction uncovers the plurality of possibilities and demonstrates that what is centralized is dependent upon the repression of alternative contenders by relegating them to the margins. This process of foregrounding contradiction, anomaly, and irrationality is considered to be empowering in that deconstruction creates the possibility for dismantling binary oppositions and revivifying that which has been submerged. Deconstruction creates conditions hospitable to the 'return of the repressed.'

Derrida's concepts of 'marginality, supplementarity, *différance* and deconstruction'⁶⁵ have helped me to better reconsider and explain my own understanding of the hunger strike. In its disinterring and valorization of 'alterity' – the existence and potential legitimacy of otherness – postmodernism also allows space for at least a hearing of alternative and deviant perspectives. There is, then, an intersection between my analysis of the hunger strike, and postmodernism and deconstruction.

However, it would be a mistake to confuse intersection with consensus. There is, of course, an obvious postmodern response to my analysis: that my argument may tend to privilege consciousness and therefore smack of a revivalist and revolutionary voluntarism that is dependent upon an idealistic and nostalgic humanism. Nationalism, after all, is but a by-product of modernity and modernist thinking.⁶⁶ More specifically, the postmodernist counter-argument would probably be that the fasting prisoners

were but the 'effect,' determination,⁶⁷ 'site,'⁶⁸ or symptom of the various discourses and structures of Irish republicanism. They were inscriptions of a deviationist subtext, not authors of their destiny. In this section, I want to cautiously and critically relate my analysis to those of deconstruction and postmodernism, especially as they are manifested in the work of Derrida and, more briefly, Baudrillard.

Derrida argues that '... the task [of deconstruction] is ... to dismantle the metaphysical and rhetorical structures which are at work [in the text], not in order to reject or discard them, but to reinscribe them in another way.'⁶⁹ A central step in this process is what he calls 'reversal':

I strongly and repeatedly insist on the necessity of the phase of reversal, which people have perhaps too swiftly attempted to discredit ... To neglect this phase of reversal is to forget that the structure of the opposition is one of conflict and subordination and thus to pass too swiftly, without gaining any purchase against the former opposition, to a *neutralization* which *in practice* leaves things in their former state and deprives one of any way of *intervening* effectively.⁷⁰

The reinscription that I have suggested is the reverse proposition that although the hunger strike demonstrated the politics of British law, it also was an indigenously Irish legal claim, the articulation of what Geertz has called an alterior 'legal sensibility,' another 'form of juristical life.'⁷¹ However, from a postmodernist perspective such an argument may be excessively voluntaristic in that it overinflates the 'creativity' of the prisoners.

Derrida has been particularly explicit in his disparagement of 'the subject.' For example, at one point, he argues that 'the subject' is but 'the play of linguistic or semiological *différance*'⁷² and, at another, posits that 'the authority of representation constrains us, imposing itself on our thought through a whole dense, enigmatic and heavily stratified history. It programs us and precedes us.'⁷³ More expansively:

... the subject (in its identity with itself, or eventually in its consciousness of its identity with itself, its self consciousness) is inscribed in language, is a 'function' of language, becomes a *speaking* subject only by making its speech conform – even in so-called 'creation,' or so-called 'transgression' – to the system of the rules of language as a system of *différences*, by conforming to the general law of *différance*.⁷⁴

And, with admirable anti-logocentric consistency, Derrida confesses his own lack of agency by denying that he chooses interpretations; rather, 'the interpretations select themselves.'⁷⁵

In relation to something like the hunger strike, this espousal of textual determinism is an attractive thesis in that it seems to explain that which is apparently so eccentric as to be inexplicable: the self-sacrifice of the self in full knowledge of the likelihood of death. However, the problems with an adoption of this deconstructive/postmodernist approach to the question of the subject are twofold. First, it is insufficiently oppositional in its politico-juridical orientation; and, second, it potentially reinforces continued oppression.

The first argument against an excessively thin theory of the subject posits that, in its best light, postmodernism provides little account of how the repressed actually determine their condition, make choices, and resist their oppression. The sort of propositions advanced by Derrida run the risk of oversimplifying the relationship between agency and structure, of merely inverting the humanist hierarchy of agency over structure and therefore simply mimicking it.⁷⁶ But perhaps this goes too far and what is required is an intermediary mediation between structure and agency, so that liberal humanism's ontological fetishization of the sovereign, coherent subject is not simply replaced by an excessive and reactive anti-humanism,⁷⁷ thereby slipping into an anti-theory of agency. There is a difference between: (a) a sovereign conception of the subject, in which the person is assumed to be unified, rational, and voluntaristic (the liberal humanist position); (b) a concatenated conception of the subject that, because of its deterministic arguments, denies the possibility of self-constitution in any strong sense, and thereby the possibility of oppositional strategies (the postmodernist position); and (c) a situated or embedded conception of the subject,⁷⁸ which allows for the possibility of consciousness and self-constitution in the context of the matrix of societal and cultural influences (my position). In other words, what is required is a relational and historicized theory of the subject, a relational and historicized conception of agency. Such an ontology envisions the subject as neither the centre of the universe nor a mere concatenation of social forces, but a subject who is both constituted and constitutive.

There is little doubt that republicanism as a discourse is an important factor in Irish life, but it is not so determinative or constraining as postmodernists might have us believe. Republicanism in the late 1970s and early 1980s underwent a significant transition from its classical political abstentionist and exclusively militaristic form, to a politically participatory and more social movement. Postmodern methodology enables us to track this transition by encouraging us to look at the micro-details of this development. In particular, we would have to analyse the changing subjectivi-

ties and emerging ideologies of actors such as Gerry Adams⁷⁹ and Bobby Sands⁸⁰ – Irish, Belfast-reared, male, working-class, (a)religious – and the differences of opinion within the Army Council of the IRA. Most particularly, we can learn from ‘the comms’ that were smuggled out of the H-Blocks prior to, and during, the fast. These are perhaps the classic post-modern deviationist micro-texts in that as much as four thousand words⁸¹ could be written with a biro refill tube on one cigarette paper or ‘stamped government property toilet roll.’⁸² They would then be smuggled to the outside command structures of the IRA through bodily orifices – themselves penetratingly surveilled⁸³ – but by means of which the prisoners themselves determined the change of direction and future agenda of republicanism.⁸⁴ By means of these ‘comms,’ the prisoners disseminated an alternative political vision for the IRA and even outlined the most appropriate strategies of mobilization, from massive postering campaigns to the standing of fasting prisoners as election candidates.⁸⁵

To elaborate. As the late 1970s wore on, it became increasingly apparent to the prisoners that, despite some outside support, their various protests were not going to change the British state’s determination to impose criminalization, nor generate further support for political status in the nationalist community. The terrain of struggle was significantly enlarged when the prisoners – against the wishes of the Army Council – decided that by means of a hunger strike there could be the galvanization of the nationalist community around republicanism. In other words, it was determined by the prisoners that the traditionally sanctified unidimensional military campaign on its own would not succeed. But although the first couple of weeks of the fast expanded the support network, still the majority of the nationalist community remained leery. The key breakthrough occurred when it was decided – once again by the fasting prisoners⁸⁶ – that the traditional republican position of abstentionism from political campaigns should be abandoned, and it was proposed to run Bobby Sands as the candidate for the British Parliament. This strategy forced the issue within the nationalist community as to whether it would split the vote between the republican Sands and the constitutionalist SDLP and thereby let the single unionist candidate win. The constitutionalists backed down, thereby giving the full political stage to Sands. The result was that on 9 April 1981, a self-confessed IRA volunteer was elected to the British Parliament with 30,492 votes, in effect inverting the criminalization agenda of the British state. Boomerang.

Furthermore, the election of two more fasting prisoners in a general election in the Republic of Ireland was crucial to the defeat of the govern-

ing party, Fianna Fail.⁸⁷ Finally, the strike and the events around it confirmed that the traditional republican stance of political abstentionism in deference to militarism was misconceived and served as a catalyst for Sinn Féin to participate in subsequent local, general and European elections, obtaining between 10.2 per cent and 13.4 per cent of the overall vote, or between 25 per cent to 40 per cent of the nationalist vote in Northern Ireland.⁸⁸ The prisoners negated the negation. Resistance though marginal, suitably engendered, can erupt in phenomenal ways.

My apprehensions about the progressive political utility of deconstruction and postmodernism are intensified when I review some of the more explicitly 'political work' of Derrida, for he is equivocal as to the political ramifications of his own project. Because of his anti-theory of the subject, Derrida seems to be insufficiently attuned to what I would describe the noisy agency of the subjugated, but not totally erased, subject.

At first blush, it would seem unfair to complain about Derrida's political progressivism, given that in 1983 he wrote a short essay which challenged not only apartheid but also the West's complicity in its perpetuation.⁸⁹ Moreover, apparently in reply to those who have voiced concerns about the political significance of deconstruction, he has argued (with uncharacteristic clarity) that

what is somewhat hastily called deconstruction is not, if it is of any consequence, a specialized set of discursive procedures, even less the rules of a new hermeneutic method, working on texts or utterances in the shelter of a given and stable institution. It is also, at the very least, a way of taking a position, in its work of analysis, concerning the political and institutional structures that make possible and govern our practice, our competencies, our performances. Precisely because it is never concerned only with signified content, deconstruction should not be separable from this politico-institutional problematic and should seek a new investigation of responsibility, an investigation which questions the codes inherited from ethics and politics. This means that too political for some, it will seem paralyzing to those who only recognize politics by the most familiar road signs.⁹⁰

While this seems to be an unequivocal articulation of the political ramifications of deconstruction, it is, in my opinion, vitiated in two ways. First, the comment lacks any specificity as to what might qualify as a desirable 'position' or constitute an appropriate act of 'responsibility.' The abstraction of the argument renders it indeterminate and therefore potentially as supportive of oppressive political practices as liberationist political practices. Second, on what basis are we to justify any 'position' that we

might 'choose' – or is it that such positions might 'choose' us? – if deconstruction has as its primary purpose displacement and the proliferation of multiplicity?

Indeed, despite these claims as to the political relevance of deconstruction, on other occasions Derrida has also expressed reservations: 'I must confess that I have never succeeded in directly relating deconstruction to existing political programmes.'⁹¹ But he then proceeds to argue that this does not require inaction or non-commitment:

But the difficulty is to gesture in opposite directions at the same time: on the one hand to preserve a distance and suspicion with regard to the official political codes governing reality; on the other, to intervene here and now in a practical and *engaged* manner whenever the necessity arises. This position of dual allegiance, in which I personally find myself, is one of perpetual uneasiness. I try where I can to act politically while recognizing that such action remains incommensurate with my intellectual project of deconstruction.⁹²

And to be fair to Derrida, it must be acknowledged that Derrida the interventionist has taken some progressive political positions. So, for example, in 1981 he visited Prague to meet with some dissident intellectuals. For his troubles he was arrested and jailed for three days. But what did Derrida the deconstructionist philosopher make of his experience? As one commentator reports, Derrida 'insisted on the difficulty there is in making an ethico-political gesture (supporting the resistance of the Prague philosophers, who demand respect for human rights ... and articulate that with a philosophy of the subject, the person, individual liberty etc) coincide with a philosophical labour governed by the necessity of deconstructing precisely such philosophemes.'⁹³ Viewed in this light, political prisoners in British-occupied Northern Ireland could expect little in the way of intellectual support from deconstruction.

Nor is Derrida alone in his quietism, in the retreat from the discussion of praxis. Baudrillard, too, has suggested that given the pervasiveness of hyper-reality and hyper-conformity,⁹⁴ then 'withdrawing into the private could well be *a direct defiance of the political*, a form of actively resisting political manipulation.'⁹⁵ For him 'indifference,' inertia, and non-participation are the only available 'counter-strategies':⁹⁶ 'This revolution by involution ... proceeds by inertia and not from a new and joyous negativity. It is silent and involutive – exactly the reverse of all speechmaking and consciousness raising. It has no meaning, it has nothing to say to us.'⁹⁷

Yet again, events in the H-Blocks problematize the validity of such assertions. It is not that the prisoners have 'nothing to say'; rather, it is that

they have had 'no say.'⁹⁸ As pointed out previously, one reason why the British government chose the cell system of incarceration was to undermine the collectivism and solidarity fostered in the dormitory-type cages of Long Kesh. The H-Blocks were originally designed to accommodate one prisoner per cell, and prisoners, on entering, for the first year or so, were subjected to a rigorous regime of silence: communication with their colleagues was prohibited.⁹⁹ Such a strategy of isolation and individualization was tailored to reinforce the project of criminalization. But the prisoners resisted, both instrumentally and structurally. Instrumentally, they began to communicate to each other by tapping on the heating pipes, exchanging 'comms' at the weekly mass (one of the few opportunities for interaction), and by gradually reviving the Irish language. Structurally, because of the nature of the 'dirty protest,' it meant that in order for the prison authorities to periodically clean the cells to prevent diseases, one of the arms of the *H* had to be kept vacant, so as to shift the prisoners to that section while the other was being cleaned.¹⁰⁰ This, in conjunction with the very high imprisonment rates generated by the Diplock court system, created an overpopulation problem for the prison administration, which was 'solved' by putting two prisoners in most cells and thereby undermining the original plan for a regime of silence. It was this re-consolidation of collectivism that engendered the group solidarity necessary to sustain the 'blanket,' 'no wash,' and 'dirty' protests and, eventually, to plan and pursue the hunger strike. It was only during the fast itself that the silence re-emerged, for, as one ex-prisoner has put it:

The slagging and practical joking stopped during the hunger strike. I minded Bobby [Sands] saying the joking shouldn't decrease. But it was dead artificial. There was no fucking singsongs. We tried but it wouldn't work. Bobby had asked us not to get into the silence. We were all in mourning for the duration.¹⁰¹

Thus to summarize my first criticism of postmodernism's thin theory of the subject, I would argue that at the level of theory its conception is so emaciated (and there is no pun intended) that it is incapable of bearing the explanatory weight that is imposed upon it. Therefore, it is proposed that we should see agency and discourse as mutually constitutive. However, we can only understand the degree and extent of that mutuality by actually studying specific situations in particular politico-historical conjunctures. This is what I have attempted to do by focusing on the fast.

The second problem with the postmodern process of the 'aestheticization of politics'¹⁰² – that it may be complicit in the continuation of oppression – relates to the potentially legitimizing function that the espousal of

'hyper-reality' and 'simulation' may accrue to the benefit of those who wield the predominant political power. Two aspects of Baudrillard's analysis are worth noting in this respect.

First, Baudrillard, in his celebration of the politics of silence, characterizes the masses as 'dumb like beasts,'¹⁰³ but, as I have pointed out, the imposition of the regime of silence was a central component of the criminalization project of the British state. It was through the articulation of their humanity, identity, and integrity that the prisoners resisted such silencing. Second, by portraying the hunger strike as merely a particular manifestation of hyper-reality, by interpreting it as yet another manifestation of 'ubiquitous simulacra, pseudo-events,'¹⁰⁴ Baudrillard may trivialize the commitment and political consciousness of the subject hunger strikers. Death through starvation for over sixty days is more than simulation; it is more than game playing; it is more than a spectacle in the politics of illusion. Death, I would argue, is a powerful act of resistance in which agency draws on its final resource to transgress against a pseudo-hegemonic politico-juridical regime.¹⁰⁵ In other words, postmodernism unmodified may suggest too much complicity and not enough critique, an inability to distinguish between domination and resistance.¹⁰⁶ It may be accurate to argue we cannot know what the fasting prisoners sought was true in any transcendental sense, but that means neither that 'truth ... [has] ceased to exist,'¹⁰⁷ nor that we should consider subjects as paralysed by 'the spell of indecision,'¹⁰⁸ nor that we have 'nowhere to go.'¹⁰⁹

In order to escape the relativizing drift and political quandary that postmodernism's embracement of a radical anti-humanism might impose, I would suggest that we can draw on, but adapt to the present context, the work of the sociologist Margrit Eichler. In relation to issues of gender, Eichler argues that in a world based upon (male) domination we cannot know what (gender) equality might look like, and consequently we should refocus our sights on what we do know, inequality, and make our task one of modifying and minimizing these inequalities.¹¹⁰ Similarly, it can be argued that although we cannot know what an authentic reality might look like, we can know those things that are manifestly untrue and so our task becomes one of minimizing the pervasiveness of these untruths. And, as I have argued, it is clearly untrue that the fasting prisoners were nothing but ordinary criminals. The motivations for their alleged crimes were political; the modes of their arrests and interrogations were the product of exceptional powers; their alleged confessions were obtained under precisely tailored conditions; their trials were specially constructed through the Diplock process; and their treatment in prison was politically motivated,

particularly the beatings.¹¹¹ How else is one to explain the fact that between 1969 and 1980 the prison population increased by almost 500 per cent,¹¹² except by acknowledging – as both a former Northern Ireland premier (Major Chichester Clark) and British secretary of state (Reginald Maudling) have done – that the Northern Irish and British states are at ‘at war’ with the IRA?¹¹³ In short, there is a radical discordancy between the juridical construction of the prisoners as ‘odc’s’ and the incontrovertible existence of a specifically tailored legal process that simply cannot fit within the frame of that legal construct. Thus, it seems to me that if we reorient our inquiry from the quest for truth to the minimization of untruths, then we can adopt the postmodern virtue of self-reflexivity and self-consciousness without necessarily being forced to embrace its vice of being self-undermining.¹¹⁴ As Bernstein, echoing Habermas, points out, ‘violence and distortion may be uneliminable, but they can be diminished.’¹¹⁵

For some of those who subscribe to postmodernism and deconstruction, my foregoing reflections on law, agency, truth, and death will be understood as being premised upon a vision – the identity politics of Irish nationalism – that is subject to the withering gaze of deconstruction.

To elaborate. It might well be argued that insofar as my conception of jurisprudence converts a ‘conception of identity into a ground of politics’¹¹⁶ it is necessarily subject to the deconstructive insight that such a strategy is dependent on a point of contradiction: in this case, the British law. Deconstruction, I am likely to be reminded, demands more than a mere reversal of hierarchy, for that merely reproduces binarism without subverting the very concept of hierarchy; displacement engenders a multiplicity that cannot be reduced to (nationalist) identity. Thus, the valorization of identity – an Irish jural other – reinforces and perpetuates the very system of domination that it seeks to transgress – British juridical colonialism – achieving what Schlag suggests is only a ‘suicidal reinscription of precisely the sort of hierarchal dualities ... that deconstruction seeks to subvert and displace.’¹¹⁷ Identities constrain, and therefore what is required is ‘a liberation from identity.’¹¹⁸ Moreover, given postmodernism’s commitment to anti-essentialism and its embracement of the social constructionist thesis, the very idea of an Irish identity is but a delusive artifact, a quaint ethnocentric sentimentality, and therefore incapable of bearing the juridical weight that I would wish to impose upon it.

In response to these charges, three points might be made. First, I would want to argue that although I recognize that identity politics are necessarily incapable of having an essentialist base, that does not mean that they are unhelpful, and certainly not irretrievably reactionary. Rather, we can

recognize the inevitably artifactual nature of a perspective – and can even countenance the dynamic nature of such identities – but still operate in a self-reflexive way on the basis of such identities. Irish republicanism of the 1970s and 1980s illustrates this. As I have indicated previously, in the 1970s and particularly within the ‘republican university,’ Long Kesh, republicanism underwent a significant transition from being exclusively militaristic and abstentionist in its orientation to being politically participatory and self-consciously socialist. This transformation of identity was confirmed at the Ard Fheis (Annual Conference) of Sinn Féin in 1985, when the political and ideological leadership of the organization was transferred from the conservative purists of the south of Ireland to the leftist pragmatists of the north of Ireland. To argue that identity has no natural, essential, or absolute significance, to accept the impossibility of ‘a rigorously pure self-identity,’¹¹⁹ does not necessarily commit one to the paralyzing and indifferent claim that identity politics is misconceived. It simply allows us to recognize that difference and identity are constitutively interlocking, to be conscious of the inevitability of political change, and to forewarn us not to expect or impose closure.

Second, and more important, to accept the relentless postmodern position that the subject is concocted to the core leads, potentially, to a radically individualized politico-ontology. If so, this might well have the effect of marginalizing the group aspects of our identity, thereby, though perhaps inadvertently, fostering singularity rather than solidarity. As a consequence, postmodernism may devalue that aspect of ourselves that many value highly: our group membership.¹²⁰ And for the subordinated, this experience of group identity may act as a form of empowerment and solidarity. Once again the H-Blocks provide an example of how solidarity is achieved through what one commentator has described as ‘the solidarity of collective vocality,’¹²¹ that is, Gaelic.

Third, and this is a more negative and clearly strategic argument, it is not as if identity politics is the ‘chosen’ terrain of struggle by the disempowered. In common with many forms of oppression – for example, sexism or racism – those who oppress on the basis of nationalism do so, in part, because of the ‘identity’ of the other. The ‘criminalization’ project of the British government was very much driven by the question of identity; its aim was to efface the nationalist liberation justifications for the prisoners’ alleged acts in order to ‘identify’ them as ‘criminals.’ The protests and the fasts were an attempt to reassert their identity and their legal rights as prisoners of war on the basis of that identity. In short, identity is a terrain of political struggle that the oppressed simply cannot afford to abdicate.

(In)Conclusion

I find myself in a curious situation in this essay. On the one hand, I find that postmodernism and deconstruction through their critiques of hierarchy, subordination, and oppression open up the space for the emergence and even possible valorization of different voices. Yet, on the other hand, at the very same moment, they may undermine such perspectives by arguing that they are but an interpretation with no necessary connection to reality, truth, or justice, or at least no connection that would make a difference. I only want to go halfway, to acknowledge that postmodernism can be a form of resistance¹²² but without having to purchase its unrequited guardedness. I want to employ its strategies as a mode of politico-juridical analysis in order to deconstruct Britain's juridical hegemony, in order to facilitate a reconfiguration of Anglo-Irish relations. As Linda Hutcheon says of feminist encounters with postmodernism, 'exposition may be the first step; but it cannot be the last.'¹²³

To maintain this position, to avoid this sense of one step forward, one step back, it will be necessary to draw a distinction between postmodernism as a political philosophy and deconstruction as a method of interpretation, to argue an embracement of the latter as a mode of empowerment does not require a commitment to the former with its eschewal of political practice and its predilection for relentless sceptical indifference.¹²⁴ However, deconstruction, too, will have to be revised, derelieved, and deflated. It must be shorn of its pretensions to be 'a general law,'¹²⁵ a generalization 'without present or perceptible limit,'¹²⁶ or a canonized cognate of 'justice.'¹²⁷ Regardless of what Derrida – the author – might say,¹²⁸ deconstruction itself is probably best understood as a rigorous¹²⁹ methodology that enables us to critically interrogate those propositions that aspire to be universal, authoritative, and logical; to demonstrate how they are, in fact, contingent, ambiguous, and arbitrary. Subject to this not insignificant revision, I therefore agree with Derrida when he quips, 'The fact that law is deconstructible is not bad news. We may even see in this a stroke of luck for politics, for all historical progress.'¹³⁰

NOTES

- 1 This paper has greatly benefited from conversations with Alexandra Z. Dobrowolsky.
- 2 F. Nietzsche, *The Will to Power*, trans. W. Kaufmann (New York: Random House, 1967), 202.

- 3 Quoted in L. Hutcheon, *The Poetics of Postmodernism* (New York: Routledge, 1988), 96.
- 4 The primary focus of much of my scholarship over the last several years has been a negative critique of the relationship between law, state, and violence in the self-satisfied Western liberal democratic societies. See, for example, 'Nomos and Thanatos [Part B]: Feminism as Jurisgenerative Transformation or Resistance through Partial Incorporation?' (1990) 13 *Dal. L. J.* 123; 'Nomos and Thanatos [Part A]: The Killing Fields: Modern Law and Legal Theory' (1989) 12 *Dal. L. J.* 298; and 'Law's Centaur: A Preliminary Theoretical Inquiry into the Nature and Relations of Law, State and Violence' (1989) 27 *Osgoode Hall L. J.* 219. In this essay, however, I seek to move beyond critique to reconstruction through the legitimization of anticolonial juridical claims.
- 5 C. Douzinas, R. Warrington, and S. McVeigh, *Postmodern Jurisprudence: The Law of Text in the Texts of Law* (New York: Routledge, 1991), 51.
- 6 See, for example, D. Cornell, *Beyond Accommodation: Ethical Feminism, Deconstruction, and the Law* (New York: Routledge, 1991); N. Wakefield, *Post-Modernism: The Twilight of the Real* (London: Pluto, 1990).
- 7 See, for example, J. Habermas, 'Modernity versus Postmodernity' (1981) 22 *New German Critique* 3; A. Callinicos, *Against Postmodernism* (New York: St Martin's Press, 1989).
- 8 R. Cover, 'The Supreme Court, 1982 Term: Forward, Nomos and Narrative' (1983) 97 *Harv. L. Rev.* 4 at 16.
- 9 P. Bishop and E. Mallie, *The Provisional IRA* (London: Corgi, 1987), 48-53.
- 10 *Ibid.* at 55-8.
- 11 F. Burton, *The Politics of Legitimacy: Struggles in a Belfast Community* (New York: Routledge and Kegan Paul, 1978), 69; C. Keena, *Gerry Adams: A Biography* (Dublin: Mercier Press, 1990), 38.
- 12 Bishop and Mallie, *supra* n. 9 at 81-8, 108; Keena, *supra* n. 11 at 26, 36.
- 13 Bishop and Mallie, *supra* n. 9 at 143.
- 14 A. Feldman, *Formations of Violence* (Chicago: University of Chicago Press, 1991), 86.
- 15 The government insisted on this term rather than 'political status.' In effect, however, it meant that prisoners did not have to wear prison uniforms or engage in prison labour and were entitled to free association and political education.
- 16 Cmnd 5185, Dec. 1972, HMSO.
- 17 K. Boyle, T. Hadden, and P. Hillyard, *Ten Years in Northern Ireland: The Legal Control of Political Violence* (London: Cobden Trust, 1980).
- 18 *Report of a Committee to Consider, in the Context of Civil Liberties and Human*

Rights, Measures to Deal with Terrorism in Northern Ireland (1975) Cmnd 5847, HMSO.

- 19 D. Faul and R. Murray, 'H Block and Its Background' (Nov. 1980) *Doctrine and Life* 482 at 483.
- 20 *Ibid.* at 484.
- 21 L. Clarke, *Broadening the Battlefield* (Dublin: Gill and Macmillan, 1987), 84-5, 105, 107, 119, 121, 137; T.P. Coogan, *On the Blanket* (Dublin: Ward River Press, 1980), 95, 118, 224; Keena, *supra* n. 10 at 86, 89, 100-2; Bishop and Mallie, *supra* n. 8 at 288, 295; Feldman, *supra* n. 13 at 161-4, 222, 230, 300; D. Beresford, *Ten Men Dead* (London: Grafton Books, 1987), xi, 20, 25, 37, 208, 251, 266-7; T.P. Coogan, *The IRA* (London: Fontana, 1987), 623-7.
- 22 Sinn Féin is the unprescribed political wing of the IRA.
- 23 Clarke, *supra* n. 21 at 121.
- 24 *Ibid.* at 123.
- 25 Beresford, *supra* n. 21 at 3-5.
- 26 K. Kelley, *The Longest War* (Dingle, Co. Kerry: Brandon, 1988), 332-3.
- 27 J. Derrida, *Positions*, trans. A. Bass (Chicago: University of Chicago Press, 1981), 41.
- 28 Beresford, *supra* n. 21 at 179-80.
- 29 M. Ryan, *Marxism and Deconstruction* (Baltimore: Johns Hopkins University Press, 1982), 3.
- 30 C. Norris, *Derrida* (Cambridge, Mass.: Harvard University Press, 1987), 80.
- 31 Clarke, *supra* n. 21 at 140.
- 32 Translator's Introduction to J. Derrida, *Of Grammatology*, trans. G. Spivak (Baltimore: Johns Hopkins University Press, 1976), lxxvii.
- 33 See, for example, G. Adams, *The Politics of Irish Freedom* (Dingle, Co. Kerry: Brandon, 1986), 70; Coogan, *Blanket*, *supra* n. 21 at 14-30; Clarke, *supra* n. 21 at 107-8; Feldman, *supra* n. 14 at 218.
- 34 For an overview of the Brehon Laws see, for example, R. Grimes and P. Horgan, *Introduction to the Laws of the Republic of Ireland* (Dublin: Wolfhound Press, 1987), 17-21.
- 35 See, generally, L. Ginnell, *The Brehon Laws* (Littleton, Co. Colo.: Fred B. Rothman, 1993), 161-4; Sophie Bryant, *Liberty, Order and Law under Native Irish Rule* (New York: Encyclopedia Press, 1923), 259-87; D.A. Binchey, 'Distraint in Irish Law' (1973) 10 *Celtica* 22; F. Kelly, *A Guide to Early Irish Law* (Dublin: Mount Salus Press, 1988), 177-88.
- 36 Binchey, 'Distraint,' *supra* n. 35 at 29.
- 37 Ginnell, *supra* n. 35 at 158.
- 38 D. Binchey, 'Irish History and Irish Law' 15 *Studia Hibernica* 7 at 24-7 and F. Robinson, 'Notes on the Irish Practice of Fasting as a Means of Distraint,' in

- S. Williams, ed., *Putnam Anniversary Volume* (New York: G.E. Stechert & Co., 1976), 557.
- 39 B. Sands, *Skylark Sing Your Lonely Song* (Dublin: Mercier, 1982), 149.
- 40 Coogan, *Blanket*, supra n. 21 at 6 and 13.
- 41 Beresford, supra n. 21 at 60; and Sands, *Skylark*, supra n. 39 at 149-50.
- 42 Clarke, supra n. 21 at 80.
- 43 This idea is culled from F. Jameson, *The Political Unconscious* (Ithaca, N.Y.: Cornell University Press, 1981).
- 44 S.F. Moran, 'Patrick Pearse and Patriotic Soteriology: The Irish Republican Tradition and the Sanctification of Political Self-Immolation,' in Y. Alexander and A. O'Day, eds., *The Irish Terrorism Experience* (Aldershot: Dartmouth Pub. Co., 1991), 9.
- 45 Feldman, supra n. 14 at 214.
- 46 C. Geertz, *Local Knowledge* (New York: Basic Books, 1983), 218.
- 47 Derrida seems to aspire to such a project for deconstruction when, replying to two of his critics, he argues:

But one thing at least I can tell you now: an hour's reading ... should suffice for you to realize that *text*, as I use the word, is not the book ... it is not limited to the *paper* which you cover with your graphism. It is precisely for strategic reasons ... that I found it necessary to recast the concept of text by generalizing it almost without limit, in any case without present or perceptible limit, without any limit that is. That's why there is nothing 'beyond the text.' That's why South Africa and apartheid are, like you and me, part of this general text, which is not to say that it can be read the way one reads a book. That's why the text is always a field of forces ... That's why deconstructive readings and writings are concerned not only with library books, with discourses, with conceptual and semantic contents. They are also effective ... interventions, in particular political and institutional interventions that transform contexts without limiting themselves to theoretical or constative utterances ... That's why I do not go 'beyond the text,' in this *new* sense of the word text, by fighting and calling for a fight against *apartheid* ... the strategic reevaluation of the concept of text allows me to bring together in a more consistent fashion ... theoretico-philosophical necessities with the 'practical,' political, and other necessities of what is called deconstruction. (J. Derrida, 'But Beyond' [1986] 13[1] *Critical Inquiry* 163 at 167-8)
- 48 J. Derrida, 'Force of Law: The "Mystical Foundations of Authority"' (1990) 11 *Cardozo L. Rev.* 919 at 995.
- 49 C. Norris, *Deconstruction: Theory and Practice* (New York: Methuen, 1982), 31.
- 50 Following A. Megill in *The Prophets of Extremity* (Berkeley: University of Califor-

nia Press, 1985), 273, it may be more appropriate to talk of 'motifs rather than themes' in that the former has stronger artistic and literary connotations and therefore is closer to the postmodern mindframe.

- 51 As Derrida posits, 'deconstruction is, in itself, a positive response to an alterity which necessarily calls, summons or motivates it. Deconstruction is therefore a vocation – a response to a call': (R. Kearney, ed., *Dialogues with Contemporary Continental Thinkers* [Manchester: Manchester University Press, 1984], 118).
- 52 S. Lash, *Sociology of Postmodernism* (New York: Routledge, 1990), 15.
- 53 Baudrillard argues in a famous passage that 'the very definition of the real has become *that which it is possible to give an equivalent reproduction* ... the real is not only that which is reproduced, but *that which is already reproduced* ... The hyperreal transcends representation only because it is entirely in simulation' (J. Baudrillard, *Simulations*, trans. P. Fossi, P. Patton, and P. Beitchman [New York: Semiotext[e], 1983], 146–7).
- 54 F. Nietzsche, *On the Genealogy of Morals*, trans. W. Kaufmann and R.J. Hollingdale (New York: Vintage Books, 1969), 119.
- 55 R. Rorty, *Philosophy and the Mirror of Nature* (Princeton: Princeton University Press, 1979); K. Baynes, J. Bohman, and T. McCarthy, eds., *After Philosophy: End or Transformation?* (Cambridge, Mass.: MIT Press, 1987).
- 56 H. Lawson and L. Appignanesi, *Dismantling Truth: Reality in the Postmodern World* (London: Weidenfeld and Nicolson, 1989).
- 57 J. Derrida, *Of Grammatology*, trans. G. Spivak (Baltimore: Johns Hopkins University Press, 1976), 69.
- 58 J. Baudrillard, *In the Shadow of Silent Majorities* (New York: Semiotext[e], 1983), 107.
- 59 See, for example, P. Schlag, 'Normative and Nowhere to Go' (1990) 43 *Stan. L. Rev.* 167 at 173–4.
- 60 *Simulations*, supra n. 53 at 53–4.
- 61 *Ibid.* at 40.
- 62 *Ibid.* at 38.
- 63 *Ibid.* at 128.
- 64 J. Baudrillard, *Forget Foucault* (New York: Semiotext[e], 1987), 43.
- 65 H.J. Silverman ed., *Derrida and Deconstruction* (New York: Routledge, 1989), 4.
- 66 See, for example, G. Bennington, *Liotard: Writing the Event* (New York: Columbia University Press, 1988), 52–3.
- 67 Derrida, for example, posits that consciousness is 'a determination' or an 'effect' in J. Derrida, *The Margins of Philosophy*, trans. A. Bass (Chicago: University of Chicago Press, 1982), 16.
- 68 L. Ferry and A. Renaut, *French Philosophy of the Sixties: An Essay on Antihuman-*

- ism*, trans. M.H.S. Cattani (Amherst: University of Massachusetts Press, 1990), 209.
- 69 Translator's Introduction, *supra* n. 32 at lxxv.
- 70 Derrida, *Positions*, *supra* n. 27 at 41.
- 71 Geertz, *supra* n. 46 at 175, 215, and 185.
- 72 J. Derrida, *Speech and Phenomena*, trans. D.B. Allison (Evanston, Ill.: Northwestern University Press, 1973), 146.
- 73 J. Derrida, 'Sendin: On Representation' (1982) 49 *Social Research* 294 at 304.
- 74 *Margins*, *supra* n. 67 at 15.
- 75 J. Derrida, 'Interview' (1980) 14 *Literary Review* 21.
- 76 It also suggests a return to a dualistic either/or, which is normally anathema to deconstructive thought.
- 77 Ferry and Renaut, *French Philosophy*, *supra* n. 68 at 113.
- 78 Seyla Benhabib posits that 'vis a vis our own stories we are in the position of author and character at once'; see 'Feminism and Postmodernism: An Uneasy Alliance' (1991) 11 *Praxis International* 137 at 140.
- 79 In recent years, Adams has become increasingly explicit about the socialist orientation of Sinn Féin: 'we believe that a system of socialism in Ireland should be tailored to meet Irish needs' (Interview, *Magill*, March 1989, Dublin). See more generally, Keena, *supra* n. 11.
- 80 Feldman, *supra* n. 14 at 162-3 and 213 makes some efforts in this direction.
- 81 *Ibid.* at 199.
- 82 'Things Remain the Same - Torturous' in Sands, *Skylark*, *supra* n. 39 at 131.
- 83 So creative were the prisoners that they also smuggled in tobacco, biro pen refills, flints, quartz crystal radios, cameras, and even a gun (suitably broken down) via their orifices. The parts of their bodies adapted to these practices of resistance included their ears, nose, mouth, navel, foreskin, pubic hair, and, most commonly, anus. See Bishop and Mallie, *supra* n. 9 at 276; and Beresford, *supra* n. 21 at 63.
- 84 Feldman, *supra* n. 14 at 161-3, 219-22.
- 85 See, for example, the 'comm' reproduced in Clarke, *supra* n. 21, Appendix I at 242.
- 86 Bishop and Mallie, *supra* n. 9 at 291.
- 87 Kelley, *supra* n. 26 at 341; Coogan, *IRA*, *supra* n. 21 at 631.
- 88 For discussions of Sinn Féin's subsequent electoral forays, see Keena, *supra* n. 11 at 106, 109, 120, 127, 132-4; Clarke, *supra* n. 21 at 211-19; and Coogan, *IRA*, *supra* n. 21 at 632-3.
- 89 J. Derrida, 'Racism's Last Word' (1985) 12 *Critical Inquiry* 290.
- 90 Quoted in R. Bernstein, *The New Constellation: The Ethical/Political Horizons of*

Modernity/Postmodernity (Cambridge, Mass.: MIT Press, 1991), 186–7.

- 91 Derrida, in *supra* n. 51 at 119.
- 92 *Ibid.* at 120.
- 93 T. Keenan, 'Reading Foucault on a Bias' (1987) 15 *Political Theory* 5 at 19.
- 94 *Shadow*, *supra* n. 58 at 41.
- 95 *Ibid.* at 39.
- 96 *Ibid.* at 105.
- 97 *Ibid.* at 49.
- 98 M. Henderson, 'Speaking in Tongues: Dialogics, Dialectics, and the Black Woman Writer's Tradition,' in J. Butler and J.W. Scott, eds., *Feminists Theorize the Political* (New York: Routledge, 1992), 151.
- 99 Feldman, *supra* n. 14 at 157.
- 100 *Ibid.* at 186.
- 101 *Ibid.* at 247. This is not to deny that there may be situations when silence may be the most appropriate and effective way of resisting, for example, during interrogation. See *ibid.* at 138. But to counsel, as some postmodernists do, the adoption of silence as a strategy would, I believe, be disastrous for progressive political practice.
- 102 C. Norris, *What's Wrong with Postmodernism* (Baltimore: Johns Hopkins University Press, 1990), 17.
- 103 Baudrillard, *supra* n. 58 at 28.
- 104 I. Hassan, *The Postmodern Turn* (Columbus: Ohio State University Press, 1987), xvi.
- 105 To be clear, my suggestion here is not a euphoric valorization of sacrifice and death, as Baudrillard occasionally verges on in both his 'Symbolic Exchange and Death,' in *Jean Baudrillard: Selected Writings*, ed. M. Poster (London: Polity Press, 1988), 119–48, and his discussion of the Tasaday peoples of the Philippines in *Simulations*, *supra* n. 53 at 13–17. Rather, my point is that agency counts.
- 106 L. Hutcheon, *The Politics of Postmodernism* (New York: Routledge, 1989).
- 107 Baudrillard, *Simulations*, *supra* n. 53 at 6.
- 108 On this latter point, see *ibid.* at 127; and F. Moretti, 'The Spell of Indecision,' in C. Nelson and L. Grossberg, eds., *Marxism and the Interpretation of Culture* (Urbana: University of Illinois Press, 1988), 339.
- 109 Schlag, 'Normative and Nowhere to Go,' *supra* n. 59.
- 110 M. Eichler, 'The Elusive Ideal – Defining Equality' (1988) 5 *Can. Hum. Rts. Y.B.* 167.
- 111 For an account of the beatings, see Bishop and Mallie, *supra* n. 9 at 279. For a close documentation, see Feldman, *supra* n. 14 at 147–217.
- 112 Coogan, *Blanket*, *supra* n. 21 at xi.

- 113 J. Feehan, *Bobby Sands and the Tragedy of Northern Ireland* (Dublin: Mercier Press, 1983), 68–9.
- 114 Indeed this shift of focus parallels, to some extent, Christopher Norris's recent attempts to argue that Derrida cannot be lodged in the same camp as the levelling and relativistic postmodernists, because in certain selected passages in his work Derrida does posit that there are certain standards of interpretive truth such as argumentative rigour and consistency. See C. Norris, 'Afterword' in *Deconstruction*, rev. ed. (New York: Routledge, 1991), 145–58.
- 115 Bernstein, *supra* n. 90 at 205.
- 116 J. Butler, 'Gender Trouble: Feminist Theory and Psychoanalytic Discourse,' in L. Nicholson and N. Fraser, eds., *Feminism/Postmodernism* (New York: Routledge, 1989), 327.
- 117 P. Schlag, '"Le Hors de texte, c'est moi": The Politics of Form and the Domestication of Deconstruction' (1990) 11 *Cardozo L. Rev.* 1631 at 1649.
- 118 N. Fraser, 'False Antithesis: A Reply to Seyla Benhabib and Judith Butler' (1991) 11 *Praxis International* 166 at 175.
- 119 Ryan, *supra* n. 29 at 10.
- 120 I.M. Young, 'Policy and Group Difference: A Critique of the Ideal of Universal Citizenship' (1989) 99 *Ethics* 250 at 251.
- 121 Feldman, *supra* n. 14 at 216–17. For accounts of the importance of group solidarity in maintaining the 'dirty protest,' see Clarke, *supra* n. 21 at 78–83, 122.
- 122 H. Foster, *Re-Codings: Art Spectacle, Cultural Politics* (Port Townsend, Wa.: Bay Press, 1985), xii, 121. See also Lash, *supra* n. 52 at 37 and 52, distinguishing between 'mainstream' or 'reactionary' postmodernism, and 'oppositional' or 'progressive' postmodernism.
- 123 Hutcheon, *supra* n. 106 at 152–3.
- 124 I can gain some support for this strategy in the work of C. Norris, See *Postmodernism*, *supra* n. 102 at 52; and *Deconstruction*, *supra* n. 114 at 148–56.
- 125 Derrida, *Margins*, *supra* n. 67 at 15.
- 126 Derrida, *supra* n. 47 at 167–8.
- 127 Derrida, *supra* n. 48 at 945.
- 128 Consider, for example, that Derrida, in faithful reified deference, argues that 'deconstruction ... has never presented itself as a method ...,' (*supra* n. 47 at 168).
- 129 C. Norris, *The Contest of the Faculties* (London: Methuen, 1988), 18.
- 130 Derrida, *supra* n. 48 at 943–5.