

7-21-2010

# Justifying Subversion: Why Nussbaum Got (the Better Interpretation of) Butler Wrong

Ori J. Herstein

Visiting Assistant Professor, Cornell Law School, [ori-herstein@lawschool.cornell.edu](mailto:ori-herstein@lawschool.cornell.edu)

Follow this and additional works at: <http://scholarship.law.cornell.edu/facpub>

 Part of the [Law and Society Commons](#), and the [Politics Commons](#)

---

## Recommended Citation

Herstein, Ori J., "Justifying Subversion: Why Nussbaum Got (the Better Interpretation of) Butler Wrong" (2010). *Cornell Law Faculty Publications*. Paper 75.

<http://scholarship.law.cornell.edu/facpub/75>

This Article is brought to you for free and open access by the Faculty Scholarship at Scholarship@Cornell Law: A Digital Repository. It has been accepted for inclusion in Cornell Law Faculty Publications by an authorized administrator of Scholarship@Cornell Law: A Digital Repository. For more information, please contact [jmp8@cornell.edu](mailto:jmp8@cornell.edu).

# JUSTIFYING SUBVERSION: WHY NUSSBAUM GOT (THE BETTER INTERPRETATION OF) BUTLER WRONG

BY ORI J. HERSTEIN\*

*“If you tried to doubt everything you would not get as far as doubting anything. The game of doubting itself presupposes certainty.”*

Ludwig Wittgenstein<sup>1</sup>

## INTRODUCTION

One of the most common critiques directed at deconstructive and poststructuralist theories is that they are amoral – rejecting the validity of the very idea of norms and moral principles as grounds for justifying or criticizing political action and social structures – and that in rejecting the validity of the distinction between what is just and what is unjust, they “collaborate with evil.”<sup>2</sup> By now, an almost canonical example of this common critique is found in Martha Nussbaum’s highly critical essay on the work of Judith Butler, titled *The Professor of Parody*.<sup>3</sup> Here, I focus on Nussbaum’s critique and on Butler’s work as examples of the “common critique” and of deconstruction and poststructuralism in political theory. I argue that the more modest and sounder understanding of Butler – taken as a deconstructive and poststructuralist theorist – is not susceptible to these accusations of amorality and collaboration with evil.

Even if Butler’s deconstructive poststructuralist theory does not, as a matter of fact, justify adopting any

---

\* Visiting Assistant Professor, Cornell University Law School.

For their comments on previous drafts of this article, I am grateful to Leora Bilsky and Noa Ben-Asher. I am especially grateful to Katherine Franke from whose seminar this article originated.

<sup>1</sup> LUDWIG WITTGENSTEIN, ON CERTAINTY § 115 (G.E.M. Anscombe & G.H. von Wright eds., Denis Paul & G.E.M. Anscombe trans., 1969).

<sup>2</sup> Martha Nussbaum, *The Professor of Parody*, THE NEW REPUBLIC, Nov. 28, 2000, at 37, 45.

<sup>3</sup> *Id.*

deconstructive agenda or subversive project of any *specific* political order, social practice, norm, or moral principle, it also does not necessarily undermine the ideas of moral and normative justification of specific acts of political deconstruction and subversion. According to (what I take as) the better reading of Butler's theory and of deconstructive theory in general, all subversion and deconstruction inherently take place in relation to a relatively stable set of background norms, structures of meaning, descriptive assumptions, practices, and values. Such a background is a *necessary enabling condition* for any act of deconstruction and for the performance of any subversion or parody; a background that may, and often does, comprise moral values, norms, and principles that guide and justify specific deconstructive and parodic actions. Therefore, while Butler's theory, as an example of deconstructive and poststructuralist approaches to politics, does not consist of any such norms, values, or reasons justifying or rejecting any particular political action, Butler's theory does not necessarily rule out grounding or justifying the undertaking of a particular parody or deconstructive agenda in value- or moral-driven practical reasoning. Moreover, Butler's theory of subversion is deconstructive at its core and as such, cannot be attributed with making generalized propositions, including metaethical propositions rejecting all principles of political morality. Hence, Nussbaum's position – that Butler's theory entails an amoral approach to political theory and action and therefore, “collaborate[s] with evil” – is erroneous.

This essay begins with introducing Nussbaum's critique of Butler's gender theory (Section I); it then sets out to explore the role moral justification plays in Butler's gender theory, which first requires delving into Butler's work at some length (Section II). Next, Butler's account of how the gender structure of identity and social structures can be resisted and subverted is introduced (Section III); in the end, the merits of Nussbaum's argument and of the “common critique” turn on choosing between two alternative interpretations of what poststructuralism is. The first interpretation is labeled “universal poststructuralism,” the interpretation assumed by the common critique and in Nussbaum's critique of Butler

and of poststructuralism and deconstruction in general. The second interpretation is labeled “contextual poststructuralism.” This second version is not susceptible to the common critique. This essay argues that the “contextual reading” of Butler is better in tune with poststructuralism and deconstruction in general, and that when understood in its terms Butler’s gender theory is not susceptible to the common critique (Section IV).

### I. NUSSBAUM’S CRITICISM OF BUTLER OR THE “COMMON CRITIQUE”

In her essay, Nussbaum poses the following challenge:

Suppose we grant Butler . . . that the social structure of gender is ubiquitous, but we can resist it by subversive and parodic acts. Two significant questions remain. What should be resisted, and on what basis? What would the acts of resistance be like, and what would we expect them to accomplish?<sup>4</sup>

It is the first pair of questions that interests me here. In the most general terms, when Nussbaum asks on what basis Butler’s theory allows to choose and justify acts of subversion against what she calls the “ubiquitous social structure,” Nussbaum is in fact doubting (and later denying) whether poststructuralist theory allows for morally justifying or rejecting *any* particular political action or agenda. According to Nussbaum, “Butler cannot explain in any purely structural or procedural way why the subversion of gender norms is a social good while the subversion of justice norms is a social bad.”<sup>5</sup>

Nussbaum makes two arguments in support of her criticism. First, she claims that as a matter of fact, Butler simply does not attempt to justify the rightness of her political projects, but simply assumes they are just. Examples of this absence of moral justification can be found in the chapter on

---

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

gay subversion in Butler's *Bodies That Matter*.<sup>6</sup> There, Butler seems not only sympathetic towards subversion of the heterosexual-centric social structure, but also positions herself as part of this subversive political project. She does so with no effort at justification. The same is true of Butler's discussion of the merits of gay marriage, which is conducted on the basis of the assumption that gay liberation should be promoted and persevered.<sup>7</sup> Once again, Butler does not explicitly mention these moral principles, although one cannot but feel that they are presupposed in the background as the obvious motivation for the project. Another example is found in Butler's discussion of hate speech in her book *Excitable Speech*, where she argues that censorship of hate speech closes options for subversion, which are opened to the victim group, taking this as a reason for opposing censorship.<sup>8</sup> Therefore, there seems to be some validity to Nussbaum's first critique. Nevertheless, such examples only demonstrate that as a matter of fact, Butler does not always justify her politics and subversive agendas. They do not, however, prove that Butler's theory inherently rejects the possibility of justifying or rejecting certain acts of subversion, parody, and deconstruction as virtuous or illegitimate.

Nussbaum's second argument in support of her critique is categorical, yet underdeveloped. According to Nussbaum, Butler's theory is adverse to the very idea of justifying political projects because such justifications are based on principles and ideals that are perceived to be good and serve as axioms for moral justification. Examples of such ideals are human dignity, always treating people also as ends and not only as means, basic human needs, autonomy, and Nussbaum's own favorite core political value, equality or respect. The reason Nussbaum attributes to Butler's rejection of any such moral values and principles is that, according to Nussbaum, Butler views them as "inherently dictatorial."<sup>9</sup>

---

<sup>6</sup> JUDITH BUTLER, *BODIES THAT MATTER* 121-42 (Routledge 1993) [hereinafter *BODIES*].

<sup>7</sup> Judith Butler, *Is Kinship Always Already Heterosexual?* 13.1 *DIFFERENCES: A J. OF FEMINIST CULTURAL STUD.* 14 (2002).

<sup>8</sup> See, e.g., JUDITH BUTLER, *EXCITABLE SPEECH: A POLITICS OF THE PERFORMATIVE* 160 (Routledge 1997) [hereinafter *EXCITABLE SPEECH*].

<sup>9</sup> Nussbaum, *supra* note 2, at 42.

The common critique is not Nussbaum's only critique of Butler. She also argues that the lack of ethical grounds in Butler's writing has steered many feminists onto an amoral, non-practical, aesthetic, and almost autistic path, away from addressing actual, practical questions of gender injustice. In addition, Nussbaum rails against Butler's style of writing, which she views as sophistic and intentionally opaque. Nussbaum is also highly critical of the mode of political action Butler's theory allows for – parodic and symbolic subversion rather than material change, which Nussbaum views as self-indulgent and of little utility. All three critiques have at least some truth to them. However, my concern here is only with that which I labeled the “common critique” – that Butler's theory (and poststructuralism and deconstructive theory in general) rules out any and all moral justification for political action.

## II. BUTLER'S THEORY OF GENDER CONSTRUCTION

In order to understand Nussbaum's position, it is imperative to understand what she takes Butler's gender theory to be. In *Bodies That Matter*, Butler lays out her theory of how human bodies are always-already constructed into categories of gender. In *Excitable Speech*, Butler makes a similar point by arguing, based on Althusser's concept of interpellation,<sup>10</sup> that we always-already exist as recognizable subjects according to some ideology. “[O]ne comes to ‘exist’ by virtue of this fundamental dependency on the address of the Other. One exists not only by the virtue of being recognized but, in a prior sense, by being recognizable.”<sup>11</sup>

---

<sup>10</sup> According to Althusser, people always exist as subjects of some ideology; we are always-already interpellated by or into some ideology. We enter ideologies through the process of interpellation, in which we accept the ideological framework as true, or in other words perceive ourselves as subjects of the ideology. See Louis Althusser, *Ideology and Ideological State Apparatuses (Notes Towards an Investigation)*, in *LENIN AND PHILOSOPHY AND OTHER ESSAYS* 87-126 (Ben Brewster trans., Monthly Review Press 2001) (1971).

<sup>11</sup> *EXCITABLE SPEECH*, *supra* note 8, at 160.

Since people are always-already constructed as such (as people), it follows that there is no such thing as a natural or pre-social human essence. This is because before being constructed as social/speaking (i.e. as symbolic beings, under Lacanian theory) or interpellated beings (under an Althusserian approach), we were not people. There is no natural (i.e. pre-social) state of personhood, and therefore, there is no such thing as a human body “belonging” to a person that is not already socially constructed.

Furthermore, for Butler, human bodies are not only always-already socialized, but are also similarly gendered (through ongoing processes of performance). We never encounter our body as ours (in the sense of being the body of a person) prior to its being categorized as the body of a female or a male. Moreover, we always encounter ourselves (as people) as already-categorized by gender.

While in *Excitable Speech* Butler draws more on Althusser's theory of ideology and interpellation to explain this idea of being already-constituted, in *Bodies That Matter*, she draws more on a Lacanian theory of child development.<sup>12</sup> Regardless of the psychological or sociological explanation, the basic idea is the same – we exist always as already-constructed beings. When a baby turns into a person, *it* does not transform into a generic person, but is always transformed into either a *he* or a *she*. In becoming a person, one is labeled as either male or

---

<sup>12</sup> According to Lacan, a person or subject is not “born” at birth. At birth, a baby is yet to be a person; it is only disjointed bodily and sensual sensations. A baby begins to form into a person only after it internalizes the image of the complete Other as its own (in the “mirror stage”) and later by entering the realm of the symbolic. Here, the baby becomes a subject by internalizing the point of view of the Other, understanding the relation between itself and its own reflection not as a sameness relation, but as a symbolic one, i.e., as that of a signified and signifier. In this stage, the baby also internalizes the structure of language: by searching for the approval that the image in the mirror is really its own image, the baby internalizes the logic of language, which requires the point of view of the Other to stabilize and ratify the signifying relations. Jacques Lacan, *The Mirror Stage*, in *ECRITS: A SELECTION 3-9* (Bruce Fink and Alan Sheridan trans., W. W. Norton Company Inc. 1977) (1966); SAMUEL WEBER, *RETURN TO FREUD: JACQUES LACAN'S DISLOCATION OF PSYCHOANALYSIS* 7-19 (Michael Levine trans., Cambridge University Press 1991).

female through the intersection of the psychological dynamic of child development and the heterosexual structure of kinship.<sup>13</sup>

Distinctions between bodies predicated on “sex” are initially drawn on the basis of identifying a baby’s reproductive organs. However, this physiological based categorization is not as neutral or natural as one may think. The category of “sex” does not function like categorizing people by blood type. Being ascribed a sex, i.e. being born “a boy” or “a girl,” means being ascribed a whole identity that is constructed by social norms and which determines the course of one’s life.

Furthermore, Butler points out that our gendered identity is closely interrelated with sexual orientation identity. Being ascribed a gender is interrelated with being ascribed one of the two heterosexual roles.<sup>14</sup> According to Butler, being a “woman” always means being a heterosexual woman. The idea of a lesbian woman is adverse to the social construct of “woman”<sup>15</sup> – it is, in a sense, unintelligible.

It is important to note that neither the identity categorization nor the social meanings these identities entail are up to us. We only exist, as the persons we are, after being constituted and molded according to these categories, categories that were molded prior to our birth by social norms we had no hand in establishing. According to Butler,

Once “sex” itself is understood in its normativity, the materiality of the body will not be thinkable apart from the materialization of that regulatory form. “Sex” is not simply what one has, or a static description of what one is: it will be one of the norms by which the “one” becomes viable at all, that which qualifies a

---

<sup>13</sup> Gayle Rubin, *The Traffic in Women: Notes on the “Political Economy” of Sex*, in TOWARD AN ANTHROPOLOGY OF WOMEN 157-210 (Rayna R. Reiter ed., Monthly Review Press 1975). Butler seems to accept Rubin’s kinship concept. See, e.g., Butler, *supra* note 7.

<sup>14</sup> Rubin, *supra* note 13.

<sup>15</sup> JUDITH BUTLER, GENDER TROUBLE xi-xiv (Routledge 1999) [hereinafter GENDER TROUBLE].

body for life within the domain of cultural intelligibility.<sup>16</sup>

Elsewhere Butler explains that “[t]he terms that facilitate recognition are themselves conventional, the effects and instruments of a social ritual that decide, often through exclusion and violence, the linguistic conditions of survivable objects.”<sup>17</sup>

This preexisting and controlling social structure is what Nussbaum is referring to when she says that according to Butler, “the social structure of gender is ubiquitous.”<sup>18</sup> Assessing the validity of Nussbaum’s critique requires figuring out whether the ubiquitous social structure of identity, as the idea emerges from Butler’s poststructuralist theory, allows for opposing, critiquing, and resisting it “from within,” and if so, does Butler’s theory allow for morally judging certain resistance and subversion as just and others as wrong. Nussbaum, as a proponent of the common critique, believes that such judgments and justifications are ruled out by Butler’s account of social construction. Nussbaum’s error derives from a mistaken understanding of Butler’s poststructuralist and deconstructive approach to the ubiquitous social structure of gender.

### **III. RESISTING THE UBIQUITOUS STRUCTURE “FROM WITHIN”**

#### **A. *Resistance and the Ubiquitous Structure – the Structuralist Account***

One problem with all-inclusive structuralist theories is that they lack both the ability to verify/criticize and justify/refute themselves. According to the structuralist account of gender construction, we all always-already exist within an all-embracing and stable gender-constituting structure. From this, it follows that any possibility of criticizing, or of even being aware of this structure, is impossible. If we are constituted by and trapped within this

---

<sup>16</sup> BODIES, *supra* note 6, at 2.

<sup>17</sup> EXCITABLE SPEECH, *supra* note 8, at 5.

<sup>18</sup> Nussbaum, *supra* note 2, at 42.

all-enveloping gender-constituting construct, which professes to be neutral, natural, true, just, and essential, it must follow that we (the would-be social critics) and our critical faculties are also similarly constructed. Thus, how can we critique such a system, let alone resist it?

Under such a closed all-inclusive structure, a constructed identity is not unlike a Kantian transcendental category. One cannot perceive beyond the structure for it constitutes not only who one is, but also one's categories of perception and one's very ability to perceive and categorize. Since we are always-already constructed, we have no non-constructed point of view from which we are free from our already constructed conceptual schema. In gender terms, this entails that all we know and all we *can* know are gender and the existing gender relations. Hence, a critical theory claiming that gender is anything less than a transcendental category (if not also natural, essential, and real) is nonsense within such a ubiquitous schema. In addition, a *critical* structuralist theory is epistemically impossible for the social structure leaves no room for resisting or subverting it – neither from the “outside” for the structure is ubiquitous, nor from the “inside” for there is no space between our conceptual and critical faculties and the ubiquitous gender structure allowing, enabling, and setting the parameters for any critical reflection.

An example of a structuralist account in the field of gender theory is found in the writing of Catharine MacKinnon,<sup>19</sup> who argues that gender relations and gender itself are constructed within a closed, self-justifying system in which men hold the position of power and women are their objects of subordination. This is a closed system of social construction in which all are assigned a stable identity and none can escape it.

However, Butler is not a structuralist, but a *post*-structuralist. This entails that although Butler accepts that

---

<sup>19</sup> For example, “men create the world from their own point of view, which then becomes the truth to be described. This is a closed system, not anyone's confusion.” Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda for Theory*, 7.3 SIGNS: J. OF WOMEN IN CULTURE AND SOC'Y 537 (1982).

identity is always-already constructed (i.e., there is no personhood outside or prior to structure since identity is only intelligible in relation to and within a structure) and that identity is subject to the Saussurean concept of meaning as difference rather than to principles of inherent essence or self-definition,<sup>20</sup> Butler does not accept the idea of an all-inclusive structure of meaning that is complete and entirely stable. According to Butler, resistance of the ubiquitous social structure is possible through identity subversion and parody.

### ***B. Resistance and the Ubiquitous Structure – Butler’s Poststructuralist Account of Identity***

#### **1. Performance and Reiteration**

For Butler, the construction of identity does not end with a person’s symbolic baptism (Lacan) or naming (Althusser), which initiates our “birth” as people. According to Butler, “the rules that constrain the intelligibility of the

---

<sup>20</sup> Ferdinand de Saussure claimed that the relation of the linguistic signifier to its signified, i.e. the relation which constitutes meaning in language, is not determined by some special inherent relation of reference between the sign and its signified. There is nothing essential or natural in the meanings ascribed to different linguistic signs. Meaning in language is rather a function of the relations between the various signifiers within the language. Language is an array of signifiers and the relations of difference between them. These differences between the signs are what determine their meaning, i.e. each signifier is ascribed a signified according to the former’s place within the “web of signifiers.” A linguistic sign outside the web of difference relations is an oxymoron – in order for a sound or scribble to become a signifier, it must be part of a structure of difference.

Under Saussure’s account of language, there is a place within the stable structure of meaning for supreme or privileged concepts upon which other meanings are grounded. This is because in a web of differences, while signifiers are assigned meaning on the basis of difference relations and not due to any factors inherent to the signifier, meanings are still firmly assigned. Thus, while Saussure’s theory of meaning as difference seemingly does away with the idea of a transcendent self-defining concept, it allows for a stable structure with clear nexuses of “power,” gravity, and centrality. FERDINAND DE SAUSSURE, COURSE IN GENERAL LINGUISTICS (Charles Bally et al. eds., Wade Bas trans., McGraw-Hill Book Co. 1959).

subject continue to structure the subject throughout his or her life.”<sup>21</sup>

However, the mere fact that the construction of our identity is an ongoing project does not mean a person can autonomously redefine his/her identity – that is a liberty we do not have. Because the subject is always-already embedded, an autonomous and self-defining subject is impossible since there is no meaning or viable self outside or autonomous of the social structure of meaning. Moreover, such an exercise in autonomy would be self-destructive for it would undermine the schema that constitutes and gives meaning to one’s own identity.<sup>22</sup> Therefore, attempts to subvert or reject the ongoing construction of one’s identity come with great personal danger.

If the subject speaks impossibly, speaks in ways that cannot be regarded as speech or as the speech of a subject, then that speech is discounted and the viability of the subject called into question. The consequences of such an irruption of the unspeakable may range from a sense that one is “falling apart” to the intervention of the State to secure criminal or psychiatric incarceration.<sup>23</sup>

Throughout our lives, we constantly reaffirm our identity by living according to our ascribed roles. Butler explains this constant reconstitution as a product of a compulsive need to reaffirm and stabilize our identity as natural or essential.<sup>24</sup> For example, gender identity is maintained and reinforced when we speak in a gendered way and participate and follow gendered institutions, practices, styles, norms of behavior, social activities, ontological

---

<sup>21</sup> EXCITABLE SPEECH, *supra* note 8, at 136.

<sup>22</sup> I am using figurative speech here in assuming a self that is prior to the constituted subject. For Butler, there is no self who “owns” or “carries” its socially constructed self.

<sup>23</sup> EXCITABLE SPEECH, *supra* note 8, at 136.

<sup>24</sup> Judith Butler, *Imitation and Gender Insubordination*, in *INSIDE/OUT: LESBIAN THEORIES*, GAY THEORIES 13, 24 (Diana Fuss ed., Routledge 1991) [hereinafter *Imitation*].

categories, etc., all of which we constantly perform. This adherence to the gender matrix not only originates from the risk to one's own intelligibility and the compulsion to affirm one's own identity for fear of losing it, but also from the fact we are constructed to believe that the gender structure is natural, true, real, etc. In other words, "the *anticipation* of a gendered essence produces that which it posits outside itself."<sup>25</sup> Butler also explains that the construction of identity is a temporal process, made up of actual specific acts. Identity "construction is neither a single act nor a causal process initiated by a subject and culminating in a set of fixed effects. Construction not only takes place in time, but is itself a temporal process which operates through the reiteration of norms."<sup>26</sup>

The temporal, specific, and performative nature of identity construction is key to a poststructuralist approach to politics; it entails that, in a sense, the social structure itself is not frozen and stable as it is depicted under the structuralist account, but rather it "lives" in time and in the particular acts of its performance. Put differently, by acting according to our constructed identity roles, we not only reconstruct our own identity, but are also recreating the very social structure to which we are adhering. Moreover, we adhere to the social structure because we believe (wrongly) it is already "there" irrespective of our acceptance and performance of it. Thus, according to Butler, by applying the language of gender and thinking through the conceptual schema of gender, we are in fact creating gender. Following John Austin's concept of performative speech acts, Butler claims that by using the language of the gender structure, we actually create not only our own identity, but also the gender structure itself. Butler's claim – that the existence of the gender structure is constituted in its particular performances – derives from her understanding of gender structure as a form of language, which under deconstructive theory (as we shall soon see) exists only as reiteration. The creation of identity through reiteration is what Butler means by her theory of performance.

---

<sup>25</sup> EXCITABLE SPEECH, *supra* note 8, at xv (emphasis added).

<sup>26</sup> BODIES, *supra* note 6, at 10.

Building on her theory of performance, Butler suggests we can also subvert the seemingly unbreakable self-recreating circle of meaning and performance. According to her, “sex is both produced and destabilized in the course of this reiteration. . . . This instability is the *deconstituting* possibility in the very process of repetition . . . the possibility to put the consolidation of the norms of ‘sex’ into a potentially productive crisis.”<sup>27</sup>

## **2. Iterability and the Instability of Structure**

Butler explains how the subversion and destabilization of the ubiquitous gender structure is possible by coupling her idea of gender performance as speech act with a deconstructive notion of language as reiteration.

Jacques Derrida accounts for the role of iterability in language through the metaphor of the signature.<sup>28</sup> The concept of a signature demands it be iterable, in other words for a signature to “work” (i.e., to be a signature as opposed to merely a scribble of someone’s name), it must be a duplication of the original Signature. What makes a scribble into a signature is the fact that it is a reiteration of what we already know as The Signature. People cannot sign their names completely differently every time; if they did, they would just be writing out their names, not signing it. However, in practice we never encounter The Signature; all we encounter are specific occurrences of “it” (i.e., actual signatures).<sup>29</sup> Hence, while a scribble is only a signature if it is a reiteration of The Signature, in actuality, we can never point to or signify the original (i.e., The Signature), because the original categorically precedes even the first time we sign our names. Therefore, we are always left with a copy, which entails that

---

<sup>27</sup> *Id.*

<sup>28</sup> JACQUES DERRIDA, *LIMITED INC.* 31-34 (Samuel Weber trans., Northwestern Univ. Press 1988) (1977).

<sup>29</sup> Even when we sign our name for the first time, that signature can only be a signature if it too is a reiteration of some nonconcrete original. If we do not take it to be a first concretization of some original, it cannot be regarded as a signature.

the original *only* exists in its concrete duplications. In other words, we are reiterating an original that is never “there.”<sup>30</sup>

According to Derrida, language follows a similar logic to that of a signature. When we use language, we do not invent it as we go along. The concept of language necessarily entails that the words we use already have meaning. Language does not erupt spontaneously from the speaking subject; it necessarily has a history and a structure of meaning that is independent of the speaking subject. However, while the concept of language demands it have a “source” component that can be reiterated, we never encounter (in language) the original source of meaning we are reiterating. Any attempt to express The Language or to capture The Meaning or The Signified of specific signs is doomed to fail. Any such attempt will always only be a particular reiteration, a signifier, and a token of the unattainable original signified or type. We search for The Source, but can only encounter “The Source”; we aspire to The Meaning, The Signified, or The Signature, but can only attain “The Meaning,” “The Signified,” or “The Signature.” As Butler explains, “One speaks a language that is never fully one’s own, but that language only persists through repeated occasions of that invocation. That language gains its temporal life only in and through the utterances that reinvok[e] and restructure the conditions of its own possibility.”<sup>31</sup> Hence, language is always in limbo – in one sense, it is a source of meaning that is drawn upon and reiterated in specific language use (“One speaks a language that is never fully one’s own . . .”), and in another sense, it exists only in particular uses (iterations). Thus, while language is reiterable, it is also nothing more than iteration.

Butler’s theory of performance draws on Derrida’s account of language. When we reconstruct our identity through performing and adhering to the language and the conceptual schema of the social structure, we are in fact reiterating the social structure. For example, when we act “like a woman,” we are acting like the model of The Woman embedded in the social gender structure. We are acting as a

---

<sup>30</sup> See GENDER TROUBLE, *supra* note 15, at xv (indicating that the metaphor of “The Ritual” does similar work as the signature metaphor).

<sup>31</sup> EXCITABLE SPEECH, *supra* note 8, at 140.

token of an archetype. However, similarly to how language only exists in its reiteration, the gender structure we are reiterating only exists in our particular performance of it. “[G]ender [as well as sexual orientation] is a kind of imitation for which there is no original; in fact, it is a kind of imitation that produces the very notion of the original as an effect and consequence of the imitation itself.”<sup>32</sup> This type of performance is subject to Derrida’s logic of the signature. Just as we never encounter The Signified or The Language as such, only “The Signified” and “The Language,” we never really encounter or fully reiterate the social structure or the type of identities it comprises, only imitations.

The reason the concept of iterability is applicable to gender performance is that, according to Butler, the process of gendering takes place in language, in symbolism, and through our gendered conceptual schema via which we attribute meanings to the world. Hence, in “acting like,” talking, and thinking in a gendered way, we are performing a reiteration of something that only exists in its iterations.

Furthermore, just as every actual signature is slightly different from its other particular counterparts, so our acts of performance are all slightly different from each other. In other words, there is room for incremental differences and variety in the reiterating activity. We are like a community of Santa Claus impersonators: while all Santa Claus impersonators are different individuals, they are still all Santa Claus impersonators, and it is this relation of similarity that constitutes what the original Santa Claus – who does not exist – “is.”<sup>33</sup> Thus, if a person acts or speaks in a manner that transgresses this relation of sameness and, therefore, is no longer identifiable as a reiteration (for example, one cannot impersonate Santa Claus by dressing up to look like a teapot), he/she in a sense falls “out of language” – his/her identity as a Santa Claus impersonator dissolves, and he/she will cease to “make sense” (as a Santa Claus). Losing one’s identity as a

---

<sup>32</sup> *Imitation*, *supra* note 24, at 21 (emphasis omitted).

<sup>33</sup> A similarity that is perhaps best characterized by the Wittgensteinian concept of a “family resemblance.” See LUDWIG WITTGENSTEIN, *PHILOSOPHICAL INVESTIGATIONS* § 65-67 (G.E.M. Anscombe trans., 3d ed. Macmillan 1972) (1953).

Santa Claus impersonator is not so tragic; in contrast, however, totally discarding gender may not only cause one to cease being a “he” or a “she,” but, because the conception of a human being is that of a gendered being, one also runs the risk of becoming some “it,” i.e., not fully human. Thus, the extent of the space allowed for changing The Structure of identity through performance is limited to the realm in which that performance is still recognized as related to or as a variation of that structure.

What remains to be proven is how the poststructuralist account succeeds where the structuralist account failed: how is subverting the “ubiquitous social structure” possible if we are always-already constructed by it and completely immersed in it?

### **3. Agency**

Butler claims that agency is a *necessary* component of structure and identity construction because both depend, for their existence or intelligibility, on being performed.<sup>34</sup> According to Butler, the human subject is produced as an effect of the performance/structure relation and therefore, there is no subject prior to performance.<sup>35</sup> Butler proposes that “agency begins where sovereignty wanes. [One is free to act] to the extent that he or she is constituted as an actor and, hence, operating within a linguistic field of enabling constraints from the outset.”<sup>36</sup> Our agency is therefore a product of construction – under the poststructuralist account of social structure, the human agent is an inherent effect as well as the cause of any structure.

From this, it seems to follow that we are free to subvert the social structure “from within” because the agent is the creator of structure and as such, has the power to recreate or deconstruct the social structure through its performance. However, according to Butler, the extent of autonomy involved in this agency is highly limited.

---

<sup>34</sup> *Imitation*, *supra* note 24, at 22-23.

<sup>35</sup> *Id.* at 24.

<sup>36</sup> EXCITABLE SPEECH, *supra* note 8, at 16.

[T]he agency denoted by the performativity of “sex” will be directly counter to any notion of a voluntarist subject who exists quite apart from the regulatory norms which she/he opposes. The paradox of subjectivation . . . is precisely that the subject who would resist such norms is itself enabled, if not produced, by such norms. Although this constitutive constraint does not foreclose the possibility of agency, it does locate agency as a reiterative or rearticulatory practice, immanent to power, and not a relation of external opposition to power.<sup>37</sup>

Thus, while the social structure enables our agency, it also sets its limits. In a sense, we are only free to perform the social structure and norms into which we are already-interpellated.

Still, Butler points out that being constituted by a discourse does not necessarily entail being fully determined by that discourse.<sup>38</sup> Our agency is produced within the space created between the structure and its performance. Within this space, we are free to perform and reiterate the discourse of the social structure in ways that may stray from their former ideal discursive type. Such transformation and subversion is possible so long as it is still identifiable as a reiteration of the discourse. By employing this tactic of subversion, the agent exposes the seemingly natural structure, concept, or identity type as no

---

<sup>37</sup> BODIES, *supra* note 6, at 15.

<sup>38</sup> “That cogito is never fully of the cultural world that it negotiates, no matter the narrowness of the ontological distance that separates that subject from its cultural predicates.” GENDER TROUBLE, *supra* note 15, at 182 (emphasis omitted). “[A]ll signification takes place within the orbit of the compulsion to repeat; ‘agency,’ then, is to be located within the possibility of a variation on that repetition. If the rules governing signification not only restrict but enable the assertion of alternative domains of cultural intelligibility, i.e. new possibilities for gender that contest the rigid codes of hierarchical binarisms, then it is only within the practices of repetitive signifying that a subversion of identity becomes possible.” *Id.* at 185 (emphasis omitted).

more than an effect of our constructed “anticipation.”<sup>39</sup> In this, subversion is an act of deconstruction, deconstructing the elements of the social structure and of one’s own identity – it is the poststructuralist mode of political resistance.

### ***C. The (Political) Effects of Subversion – Deconstructing Privileged Concepts***

#### **1. The Idea of a Privileged/Sovereign Concept**

Structure, such as the structure of gender, most often entails centers of power supporting and bolstering the structure. While no structure of meaning is completely frozen and entirely stable, structures always retain some degree of stability and inner logic, which are bolstered and expressed in their privileged concepts. The “privileged concepts” may take many forms, depending on the nature of the structure. They may be a principle, a constitution, a leader, a faith, God, the majority, etc. For example, in political/legal constructs, the ruling concept is the sovereign; in algebra, it is the axiom.

From within the structure, the privileged concept is perceived as self-justifying and natural. It is fact, real, true, transcendent, self-evident, self-defining, clear and distinct, and celestial. Because of their assumed “autonomy” and self-justifying nature, privileged concepts seem not to depend on the structure they are imbedded in for their meaning, legitimacy, or truth-value; rather, the opposite seems true – it is the structure that depends on its core foundational concepts. Just as the sovereign’s authority precedes and trumps legal authority, the privileged concepts precede the system of meaning. Hence, in different structures, the “seat of power,” “the throne,” or in Lacanian terms, the “place of the real”<sup>40</sup> may be inhabited by a different privileged self-justifying

---

<sup>39</sup> Similarly to how the anticipation of the one “standing before law” creates the power of the law which bars his/her entrance, we create gender through our belief in its being true and essential. *Id.* at xiv.

<sup>40</sup> According to Lacan, the place of “the real,” which is formed in our psyche as a resolution to the Oedipus complex, is essentially empty. We fill this empty “place” with signs, which substitute and stand in the place of The Real, tragically and hopelessly trying to be The Real. However,

“concept” or entity. In any case, they all embody a transcendence typical of a sovereign: both preceding and embedded within the structure they “rule over.”

## **2. Deconstructing the Privileged or Sovereign Concept and Exposing Its Violence**

In subversive performance, we make evident the privileged concepts through becoming aware of their particularity, temporality, contingency, replaceability, and the fact that their legitimacy is not self-justifying, but dependent on their privileged position within the structure in relation to other concepts – similarly to how the meaning of a word is not essential to it but is derived from the contingent web of relations of linguistic differences.<sup>41</sup>

A common method of deconstruction is to expose the constitutive dichotomy a particular structure is based on by implementing a Hegelian Master-Slave-like analysis. The deconstructionist demonstrates how the sovereign concept is not self-defining, natural, or self-justifying, but rather dependent on a Siamese-twin concept, which is set up as the negation or duplicate of the privileged concepts. For example, Butler demonstrates how the concept of heterosexuality derives its social status as natural, primary, and legitimate not from anything inherent in heterosexuality, but rather from its negation to homosexuality, which is deemed unnatural, derivative, and deviant. This theory of meaning, based on relations and difference rather than essence, rejects the very

---

since the place of The Real is empty and The Real unattainable, all that stands in “its” place can only try to signify “it.” Yet, because in effect nothing is signified or rather it is the signification of “nothing,” such substitutions always fail. JACQUES LACAN, *THE SEMINAR OF JACQUES LACAN* (Jacques-Alain Miller ed., Norton 1988) (1975).

<sup>41</sup> An example is found in Butler’s analysis of drag, which, according to her, indicates that gender identity does not necessarily correspond to only one sex and that all gendering is an act of “dressing up” according to some ideal. For example, Butler argues that “[d]rag constitutes the mundane way in which genders are appropriated, theatricalized, worn and done; it implies that all gendering is a kind of impersonation and approximation.” *Imitation, supra* note 24, at 21.

idea of self-definition and the notion that a transcendent, autonomous, self-justifying concept is possible.

By exposing such dichotomies through subversive performance, we diffuse our constructed and compulsive expectation that the structure and the identities it sets up have some inner authority we must adhere to and emulate. For example, Butler explains that because no sexual identity is natural, homosexuality is positioned as a derivative and a deviant copy of heterosexuality,<sup>42</sup> thereby producing heterosexuality as the natural sexual identity in relation to its marginalized dichotomous concept “homosexuality.” Through subversion, we expose constructed identity to be “drag” or performance rather than natural or essential; we learn that the production of some identities as natural and original always comes at the expense of others who are positioned/produced as deviant and derivative identities.

The next step in the deconstructive method is exposing the *power* and *violence* that artificially elevate one of the dichotomous concepts to the status of a sovereign or privileged concept. This is usually achieved through bringing the “slave concept” to the fore and showing how the “sovereign concept” came to be thought of as such through the marginalization, oppression, and delegitimation of its dichotomous concept. It is shown that only through the “erasing,” “silencing,” and delegitimizing of its dichotomous concept can a concept be transformed into a sovereign concept, regarded as natural, self-defining, original, and nonrelational.<sup>43</sup>

If we accept this account of how “natural,” “original,” “self-justifying,” and “essential” concepts are produced, it follows that the introduction of such privileged concepts into political theory – often in the form of moral principles – will always also incorporate violence and subordination. Accordingly, violence is always prior and constitutive to any justificatory schema based on privileged principles. Thus, principles of political morality, a type of privileged principles,

---

<sup>42</sup> *Id.* at 17-21.

<sup>43</sup> The deconstructive analysis is conceptual, not necessarily entailing an actual historical process of subjugating one concept to the other.

do not derive their force from any innate essential morality, but from a pre-moral history of violence.

After understanding how resistance of the “ubiquitous social structure” is possible via deconstructive subversion, it remains to be seen whether Butler’s schema of political action through subversion allows for distinguishing and discriminating between justifiable and non-justifiable subversive acts. Nussbaum believes it cannot.

#### IV. JUSTIFYING SUBVERSION

##### A. “*Universal Poststructuralism*” and *Nussbaum’s Criticism*

Nussbaum claims that Butler and Foucault reject moral imperatives and principles because according to them, such concepts are “inherently dictatorial.”<sup>44</sup> I take this to mean that, in Nussbaum’s opinion, poststructuralist theory such as Butler’s or Foucault’s entails that all claims-based schemas of justification are *always* derived from some hidden arbitrary power structure, which acclaims one principle as innately true by marginalizing another (without justification, for the very structure of justification is predicate on the same type of violence – assuming a privileged metric as the standard of justification). This is a “universal” version of poststructuralism because it makes a universal claim against *all* privileged concepts.

Nussbaum points out that while Butler may target her deconstructive powers of subversion against truly unjust power structures, “[o]thers . . . might engage in the subversive performances of making fun of feminist remarks in class, or ripping down the posters of the lesbian and gay law students’ association. These things happen. They are parodic and subversive. Why, then, aren’t they daring and good?”<sup>45</sup> Therefore, Nussbaum claims that

[t]here is a void, then, at the heart of Butler’s notion of politics. This void can look

---

<sup>44</sup> Nussbaum, *supra* note 2, at 42.

<sup>45</sup> *Id.*

liberating, because the reader fills it implicitly with a normative theory of human equality or dignity. But let there be no mistake: for Butler, as for Foucault, subversion is subversion, and it can in principle go in any direction.<sup>46</sup>

When Nussbaum claims that poststructuralist theory allows and even promotes subversion in favor of *any* ideology, practice, or group (be it good or evil) that is marginalized by (social) power, she assumes a universal understanding of what poststructuralism is.

Nussbaum argues that Butler can afford not to tackle the fact that her philosophical program rejects moral justification because she writes to an audience of like-minded people who agree on what the social evils are, such as the mistreatment of women and gays. In other words, the correlation that seems to exist between poststructuralist practice and morally justified political causes (e.g., the connection between Butler's theory and feminism, which I hold to be motivated by some conception of right) does not derive from her gender or deconstructive theory itself. Moreover, Nussbaum seems to believe that an adherence to political agendas contradicts deconstructive and poststructuralist theory. Put differently, according to Nussbaum, Butler is in fact a "confused moralist" who perceives herself as a postmodern poststructuralist of the "Nussbaumian" version (rejecting all truth and condemning all power), while in fact she is motivated by certain moral principles and a political agenda of gender and gay justice.<sup>47</sup> And, therefore, Butler's practice is not compatible with her own theory because "universal poststructuralism" rejects any attempt at justification grounded in principle or norm. It does not allow for morally justifying or condemning *any* power structure or subversive act. For example, the tactic of

---

<sup>46</sup> *Id.*

<sup>47</sup> Butler herself offers another motivation, which seems to derive from a moral principle, when she writes: "If there is a positive normative task in *Gender Trouble*, it is to insist upon the extension of this legitimacy to bodies that have been regarded as false, unreal and unintelligible." GENDER TROUBLE, *supra* note 15, at xxiii.

subversion is open to the oppressed racial minority, as well as to the outlawed and socially ostracized neo-Nazi.

### **1. Aversion to Power**

One possible answer in defense of poststructuralism from the common critique is to argue that poststructuralism does in fact contain a positive normative guiding principle after all – to be adverse to power. Indeed, there is a seemingly implicit assumption in poststructuralist rhetoric and certainly in its deconstructive manifestations, that power should be challenged.

The “aversion to power” answer derives from a universal understanding of poststructuralism, arguing that all (social, political) power, i.e., any relegation of certain concepts, principles, identities, etc. to other concepts, principles, and identities in the name of the latter’s value, self-justifying nature, autonomy, or justness, is somehow bad.

However, the aversion to power answer suffers from the same inner contradiction as does the confused moralist – if all power is bad, should not this universal judgment also be rejected or at least problematized? Is the aversion to all power not also an assertion that purports to be innately true or just and hence, must also be a product of some pre-ethical violence?

Thus, while there seems to be an underlying assumption in deconstructive thought that power structures must be exposed and the marginalized elements within such structures should be freed from their relegation, there is no room in the universal version of poststructuralism for evaluating or differentiating just power structures from unjust ones or even for justifying the general principle of aversion to all power. Hence, those who argue from morality or justice while using the poststructuralist schema in its universal version are simply confused, for they are not true (“universal”) poststructuralists. I believe this is how Nussbaum would explain the relation between Butler’s theory and Butler’s

political convictions. An account Butler herself has later come to reject.<sup>48</sup>

## **2. The Silent Answer – an Argument from Incommensurability**

Another possible answer to Nussbaum is to point out that she is playing a game of “intellectual solitaire.” The poststructuralist and deconstructivist need not answer the moral question – on what principle or value does poststructuralism and deconstruction justify the rejection of moral principles and values? The reason being that the question demands an answer in terms of (moral) justification, the very criterion and activity that is in contention. The only proper answer a poststructuralist can offer Nussbaum is silence. Any attempt to answer Nussbaum would necessarily require using absolutist categories and logic – the framework set up by Nussbaum’s criticism. Richard Rorty, in a different context, expresses this point aptly:

If truths are really convenient fictions, what about the truth of the claim that that is what they are? Is that too a convenient fiction? . . . I think it is important that we who are accused of relativism stop using the distinctions between finding and making, discovery and invention, objective and subjective. . . . We must repudiate the vocabulary our opponents use, and not let them impose it upon us.<sup>49</sup>

---

<sup>48</sup> JUDITH BUTLER, *UNDOING GENDER* 207-27 (Routledge 2004) [hereinafter *UNDOING GENDER*].

<sup>49</sup> RICHARD RORTY, *PHILOSOPHY AND SOCIAL HOPE* xviii (Penguin Books 1999). Jane Flax seems to be making a similar point in her work, *The End of Innocence*: “Postmodernism is not a form of relativism because relativism only takes on meaning as the partner of its binary opposite – universalism. Relativists assume the lack of an absolute standard is significant: ‘everything is relative’ because there is no one thing to measure all claims by. If the hankering for an absolute universal standard were absent, ‘relativism’ would lose its meaning and force.”

This insistence on incommensurability may be what Butler is alluding to when she explains that while the aversion from the constraining and violent effect of normativity may lead many to “say that the opposition to violence must take place *in the name of the norm*, a norm of nonviolence, a norm of respect,”<sup>50</sup> that is in fact not her position. The notion that there must be some norm justifying her position imposes on Butler a distinction she rejects – that between norm and fact.<sup>51</sup> It is the very language or logic of justification Butler seems to be rejecting.

I find the “silent answer” to the attempt to hold Butler’s theory to the requirement for justification only partially satisfactory. In many ways, at least for me, this answer is just as much a reason for rejecting Butler’s theory as it is for accepting it. A better answer, in my eyes, would focus on rejecting the formulation of Butler’s theory of political action (as a poststructuralist and deconstructivist theory) in universal terms, actively demonstrating why the common critique does not land any real punches.

### **B. “Contextual Poststructuralism”**

Poststructuralism does not necessarily entail a rejection of all or any moral principles – a statement not contradicted by the fact that poststructuralism allows for the deconstruction of privileged principles. I will offer two arguments for why this is the case. The first derives from the particularistic and contextual nature of the

---

Jane Flax, *The End of Innocence*, in FEMINISTS THEORIZE THE POLITICAL 445, 452-53 (Judith Butler & Joan W. Scott eds., Routledge 1992).

<sup>50</sup> UNDOING GENDER, *supra* note 48, at 206.

<sup>51</sup> *Id.* See also GENDER TROUBLE, *supra* note 15, at xxi (“We may be tempted to make the following distinction: a *descriptive* account of gender includes considerations of what makes gender intelligible, an inquiry into its conditions of possibility, whereas a *normative* account seeks to answer the question of which expressions of gender are acceptable . . . . The question, however, of what qualifies as ‘gender’ is itself already a question that attests to a pervasively normative operation of power, a fugitive operation of ‘what will be the case’ under the rubric of ‘what is the case.’”).

deconstructive method/act. The second maintains that under a deconstructive or poststructuralist approach, privileged concepts have a necessary enabling function for any deconstructive act or subversive performance.

### **1. The Particularistic Nature of the Deconstructive and Subversive Act**

Conceptualizing poststructuralism in universal terms ignores the temporal, local, and contextual nature of the poststructuralist's arguments. When Butler deconstructs gender, she is better understood as deconstructing "gender" – as it is understood now, by a particular society, in a specific context, at a certain time and place. Any act of subversion is, as we saw, always a particular act performed in a context by some specific individual within and in relation to some specific structure. The same is true of Butler's critique of "normative judgments" as indistinguishable from power-saturated descriptive accounts.<sup>52</sup>

In relating to Butler a universal rejection of *all* normative principles, *all* descriptive accounts, and *all* privileged concepts, one is making the error of universalizing and decontextualizing her deconstructive arguments. Butler's method of subversion as political resistance does not entail problematizing moral and normative principles, but rather "moral" and "normative principles" – not gender, but rather "gender"<sup>53</sup>; not normativity,<sup>54</sup> but rather "normativity"; not human nature, but rather "human nature."<sup>55</sup> The "universal" version of poststructuralism is wrong. Poststructuralist theory does not make universal claims, and poststructuralist theory does not reject all moral principles; at best, it can only reject the idea of "all moral principles" as it is understood in a specific context. While Butler is not always sufficiently careful in clarifying the temporality and particularity of her deconstructive assertions, the better reading of her theory would insist on it.

---

<sup>52</sup> GENDER TROUBLE, *supra* note 15.

<sup>53</sup> *Id.* at xxi.

<sup>54</sup> UNDOING GENDER, *supra* note 48, at 206.

<sup>55</sup> *Id.* at 222.

One may also be tempted to erroneously deduce from the fact that deconstruction theory entails that all privileged concepts are *potentially* deconstructible that deconstruction theory also entails that all such concepts are contingent (and therefore, not really privileged). This is a false move. No particular act of deconstruction makes universal assertions and therefore, cannot be used as a basis for inducing a general claim. This would be a move by a mind prone to universal reasoning and unattuned to the contextual nature of the deconstructive act. And, even if we assume a pervasive *potential* for deconstruction, all we would be claiming is that all is *potentially* deconstructible.

Furthermore, as we learned from Butler's theory of identity subversion, for a subversion to take place or exist, it must take place in a particular subversive act. There is no ruling, transcendent, pervasive, deconstructive logic outside concrete deconstructing and subversive acts or performances. Therefore, to conclude a general assertion, such as "all moral principles are a product of amoral violence," from a theoretical potential for deconstruction is a muddle. The subversion of a "privileged concept" only takes place if it is indeed *actually* successfully subverted. Mere potential for deconstruction will not do to reject, destabilize, or subvert a privileged concept. Often one hears proponents of deconstructive and poststructuralist approaches dismiss outright any attempt at truth-talk, value-talk, etc. as theological, naïve, and violent. Often this is done out of an instinctive suspicion towards privileged concepts as such, and is not based on any careful, persuasive deconstructive or genealogical argument. Those who demonstrate such tendencies are guilty of falsely deducing, through generalizing logic, actuality from potentiality; are often dogmatic; and by no means count as performing deconstructive or subversive acts (at best, they are unknowingly performing a parody of deconstructive acts). Even if Nussbaum is correct and Butler, in certain places at least, views *all* moral principles as "inherently dictatorial,"<sup>56</sup> the best version of Butler's theory and of poststructuralism and deconstruction in general does not.

---

<sup>56</sup> Nussbaum, *supra* note 2, at 42.

To clarify, pointing out the contextual nature of Butler's theory of subversion does not entail that Butler's arguments are always compelling, only that when they are not, they are so not because of the common critique. In deconstructing broad foundational concepts such as "the political discourse of modernity," the basic terms of which, according to Butler, "are all tainted and that to use such terms is to reinvok[e] the contexts of oppression,"<sup>57</sup> Butler is not always convincing, but this is not due to some metaethical defect in her reasoning.

## **2. Privileged Concepts and the Background of Intelligibility**

Subversive deconstructive acts are made possible by some privileged principles and, therefore, such acts *always* allow for principle-based judgments. Every subversive act and every deconstructive move are necessarily diversions from an otherwise relatively stable structure of meaning. We do not live within deconstruction; no one can live according to Derrida's "differance,"<sup>58</sup> just as no one can *be* a subversion or a parody – we can only perform subversive and parodic acts. If we were to become the parody, "we" would become unintelligible. In other words, the parodic dance on the margins, the subversive act, and the deconstructive argument are only intelligible because they are performed in relation to an otherwise stable background network of meaning. Indeed, as we saw, in the case of identity subversion one retains his/her relation of sameness to the identity-type that is being subverted. Moreover, one never subverts one's entire identity or conceptual schema, but only aspects of it. It is only under such circumstances that subversion becomes intelligible. Butler's whole theory of subversion turns on the idea of subversion "from within," wherein rejecting (intentionally or not) one's *entire* identity or conceptual schema is meaningless. This is due to the ubiquitous nature of the social structure and the fact that we are always-already

---

<sup>57</sup> EXCITABLE SPEECH, *supra* note 8, at 160.

<sup>58</sup> JACQUES DERRIDA, MARGINS OF PHILOSOPHY 1-28 (Alan Bass trans., Univ. of Chicago Press 1982) (1972).

constructed by it. Hence, for their very intelligibility and possibility, subversive acts are enabled by a rich background that is relatively stable; a background that is not only not problematized by the subversive act, but is enabled and assumed by it.

The background of any deconstructive act or parody is made up of what is held (assumed) to be true. One may be tempted to argue that this background is also always potentially prone to deconstruction and that it too must originate from a social construction, etc. However, as I argued earlier (a) such general or universal claims have no weight in deconstruction; (b) such claims point only to a *potential* deconstructive move and do not establish or constitute such a move; and most importantly, (c) the deconstruction of any specific background or even of the idea of “background” or “context” will always in itself presume a (relatively stable) background of its own. This is inescapable.

Therefore, the poststructuralist (of the “contextual” persuasion) *can* continue to wonder about and pass judgment on the morality and immorality of specific subversions, power, and violence, even in a world that has stopped believing in the transcendent. Moral- and principle-based reflection and judgment are not necessarily ruled out by poststructuralism and deconstruction. Similarly to the rest of us, the moral principles the poststructuralist would employ in her practical reasoning and judgments would derive from the enabling background structure, only a small part of which would and could be the object of the deconstructive and subversive act that background itself enables.

The necessity of some stable background of meaning does not entail that any *specific* privileged concept is essential to subversion and deconstruction, only that the intelligibility of deconstructive moves require some such concepts. Therefore, moral and normative concepts do not have to be assumed in such a background. But, when such moves are practical, as is political subversion, the background concepts that enable such actions must include some reasons for actions, and among the most prominent of such reasons derive from moral principles and norms. In fact, when “pushed to the wall,” Butler herself has evoked certain moral

norms for assessing and judging subversive actions; norms that are very much in vein with liberal-democratic-leftist ideology.<sup>59</sup> Hence, while Butler's theory does not necessarily require that the background enabling political subversion comprise moral principles, her theory clearly allows for it.

While Butler's theory necessarily allows for moral principles or other privileged practical principles to direct our political actions, it also entails that we must always be wary of dogmatism. Constant self-scrutiny and critical reflection is required. We must always be aware that our certainties – enabling specific acts of parody, subversion, and deconstruction – may be subject to flux and that what we once held to be true and just may not be so today. While this does not mean that what we hold to be just is necessarily arbitrary or coercive, it does mean that the possibility exists.

### CONCLUSION

I tried to defend Butler and, more generally, poststructuralism and deconstruction from what I called the “common critique,” which claims that these theories are amoral and collaborate with evil. I focused on Nussbaum's critique of Butler as an example of the common critique and of a deconstructive poststructuralist theory because, beyond being a good example, Nussbaum's essay has gained a substantial presence within a broad intellectual circle, often referred to as a classic, effective, and accessible repudiation of what is sometimes labeled “postmodern” thought.

I argued that the common critique is based on an erroneous understanding of Butler's work (or of its better interpretation) as well as of poststructuralism and deconstruction theories in general. The better and more careful version of these theories does not rule out *all* principles, including principles of political morality.

---

<sup>59</sup> For example, in assessing the demand of the marginalized fascist for rights, Butler points out that “[i]t cannot be a good thing to invoke rights or entitlements to what one considers a ‘livable life’ if that very life is based on racism or misogyny or violence or exclusion.” UNDOING GENDER, *supra* note 48, at 224.