

# BOOKS

THE PHILOSOPHY OF THE LIMIT, by Drucilla Cornell,  
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## 1. Introduction

Over the past few years Drucilla Cornell has established herself as one of the leading feminist legal thinkers in the United States. She is also one of the most philosophically well-versed and unabashedly theoretically-oriented American feminists in the most recent wave of feminist theory.<sup>1</sup> To date, her primary contribution to feminist legal philosophy has been her brilliant and passionate appropriation of the work of one of the late Twentieth Century's most influential thinkers — Jacques Derrida. For the clarity of her exposition of Derrida persons interested in philosophy and legal theory should not be ungrateful. Derrida is a thinker of enormous complexity as well as rhetorical power and, as such, perhaps more than any other contemporary philosopher has been prone to being misunderstood, distorted and poorly mimicked by his followers.<sup>2</sup>

None of these criticisms can be levelled against Cornell's work. Her understanding and interpretation of Derrida is scrupulous and fair, albeit a bit too uncritical. Her treatment of the other philosophers and theoreticians with whom she engages has, with some notable exceptions, the same virtues. What is more, far from just offering us an illuminating exposition and interpretation of Derrida's ethical and legal project, Cornell actually takes this project even further. In short, *The Philosophy of the Limit* provides a leading contribution to the still nascent task of formulating a theory of justice within the rubric of deconstruction.

Nevertheless, in virtue of the sheer difficulty of the writers that Cornell tackles — along with Derrida, the equally abstruse Hegel, Adorno, Levinas, Lacan and Luhmann — *The Philosophy of the Limit* is an unavoidably dense and complex book. For this reason, this review essay will first attempt to synthesise the many arguments and philosophical positions that Cornell deploys so as to bring into focus her central themes. In particular, I will try to set out the basic steps in her elaboration of a distinctly novel conception of justice. Having done this it will be necessary, however, to point out a number of weaknesses and blind spots in the argument and demonstrate how these deficits affect the viability of Cornell's project. In other words, in the spirit of the book itself I wish to point out, not only the strengths, but also the limits of the philosophy of the limit.

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1 In this group I would also include Seyla Benhabib, Nancy Fraser, Judith Butler and Iris Young.

2 See eg Norris, C, *The Contest of the Faculties* (1985) which is scathingly critical of the early reception of Derrida in the USA.

## 2. *From Deconstruction to the Philosophy of the Limit*

So, what is the philosophy of the limit? Essentially, it is Cornell's relabelling of Derrida's philosophical theory that has come to be known as "deconstruction" (pp1, 81, 142, 156, 181). For all intents and purposes the philosophy of the limit simply utilises the theoretical edifice provided and continually being developed by Derrida, but with a view to bringing out its ethical aspect (pp84, 155, 170). Deconstruction has long laboured under the criticism that, in spite of its usefulness as a devastating tool of critique, its moral and ethical message is at best ambivalent.<sup>3</sup> The reason for this, according to some of the social-theoretical critics of Derrida, resides in the nature of the deconstructive enterprise itself. Its very capacity to unmask, rapture and destabilise all "texts" and practices, precludes it from proffering any positive ethico-political prescriptions itself. For why do so, if these too are as normatively precarious as any other? Not being able to justify or warrant any particular political position, Derrideans, argue these critics, are condemned to the politics of the ineffable.<sup>4</sup>

The central aim of the philosophy of the limit is to meet this criticism by articulating more clearly the normative content of deconstruction, thereby moving towards a politics of the "effable". This is achieved by a two-pronged argument that interweaves the claims that deconstruction can offer pointers towards something like a theory of justice, and that the very activity of deconstruction itself has strong ethical connotations. These claims are unashamedly conflated by Cornell in her assertion that "the entire project of the philosophy of the limit is driven by the ethical desire to enact the ethical relation" (pp62, 118). It is precisely the desire to enact the ethical, that constitutes, for Cornell, the contribution of the philosophy of the limit to deconstruction, which has traditionally been more hesitant in spelling out its normative aspirations in such bold terms (p84).<sup>5</sup>

What does then Cornell mean by "ethical relation"? And from where does she draw this principle? The ethical relation is the "aspiration to a non-violent relationship to the Other, and to otherness more generally, that assumes responsibility to guard the Other against the appropriation that would deny her difference and singularity" (p62). The notion is borrowed from Emmanuel Levinas's "philosophy of alterity" (p62ff) and places a central normative significance on the notions of difference and otherness.<sup>6</sup> Cornell's derivation of this principle takes place by way of an analysis of those post-Nietzschean thinkers who systematically attack the "metaphysical impulse" towards unity,

- 3 Peter Dews goes even further and argues that deconstruction and post-structuralism actually play into the hands of the powers that be. Citing Fredrick Jameson, he feels that post-structuralism is "the logic of late-capitalism": or, in Adorno's terms, it exhibits the "logic of disintegration". See Dews, P, *The Logic of Disintegration* (1987) at 233ff.
- 4 See McCarthy, T, *Ideals and Illusions* (1991) at 97-123, and Bernstein, R, *The New Constellation* (1992) at 191.
- 5 Although it should be noted that in Derrida's recent work this reluctance seems to have subsided. See eg Derrida's paper entitled "Force of Law: The 'Mystical Foundation of Authority'" in Cornell, D, Rosenfeld, M and Carlson, D (eds), *Deconstruction and the Possibility of Justice* (1992) at 15, where he states emphatically (or is it ironically?) "deconstruction is justice".
- 6 These philosophers "follow the injunction always to start with difference and not identity, with distinction and not with unity" — Niklas Luhmann cited by Cornell (p122).

identity, universality and synthesis. This impulse, which propels itself by way of positing and then overcoming the innumerable dichotomies thrown up by a mastery and control-oriented, subject-centred Reason,<sup>7</sup> finds its apogee according to these thinkers in Hegel's philosophical system (p170). Although, I will argue below that it is a cardinal error of the philosophers of difference ultimately to lump Hegel in with the philosophers of identity, the point to be noted here is the ethical implications of the valorisation of otherness. For what Adorno, Levinas, Lacan, Derrida (and many other thinkers referred to by Cornell) all bring home in various ways is the violence inherent in identity thinking. The meaning of "violence" here can be grasped both epistemologically and ethically.

Violence manifests itself epistemically in the subject's subsumption of the infinite variety of the sensuous manifold into its "own" categories. Hegel's noblest meta-category, the Concept, becomes in Adorno, the symbol of a way of "identity thinking" that sucks external reality into its vortex, masticates it into forms amenable for its own instrumental use and then discards what it is unable to ingest.<sup>8</sup> This identity thinking can only be countered cognitively, according to Cornell, by paying symbolic deference to the attitude of the *Chiffonnier* — the rag and bone woman who salvages that which is rejected by the collectivity and cares for, cherishes and fosters a "non-violative approach to the remains" (p79). The *Chiffonnier* provides a metaphor for a "mimetic" engagement with the object: an identification "with" rather than "as"; "an attitude towards things that lets things address us rather than the other way around" (p80).

The value of Derrida's "parodic strategy" of mimesis (p80), vis-a-vis Benjamin, Adorno and Horkheimer's respective understandings of mimesis, is that the former is aware that there is no direct and unmediated access to the object. Rather, for Derrida, fidelity to otherness can only be approached by charting "the constant displacement of representational systems that attempt the capture of the Other" (p80). Deconstruction thus calls attention to the fissures in reality that due to the inescapable operation of *différance* recur regardless of how we apprehend it.<sup>9</sup> It highlights the normative surplus of meanings that survive all attempts at semantic boundary fixing. Essentially, it is in the recouping of the tainted residues of subject-centred thinking that, for Cornell, the epistemological method of deconstruction gives impetus to the ethical imperative of the philosophy of the limit.<sup>10</sup>

Already, the kernel of this ethical impulse can be detected in Adorno's criticism of all the forms of Rousseauian communitarianism that are still to this day so prevalent. Cornell points out how "Adorno's negative dialectics

7 In numerous writings Derrida sets out the classic metaphysical dichotomies. See eg in Graff, G (ed), *Limited Inc* (1988) at 93, where he says metaphysics posits distinctions such as "normal/abnormal, standard/parasite, fulfilled/void, serious/unserious, literal/non-literal, ... positive/negative and ideal/non-ideal ... Conceiving good to be before evil, the positive before the negative, the pure before the impure, the simple before the complex, the essential before the accidental, the imitated before the imitation ...".

8 Even the etymology of the term "concept" (*Begriff*) in German from the root verb *greifen* (to seize, grasp, grab) carries the seeds of its instrumental origins.

9 For Cornell's treatment of this fundamental Derridean notion see p128ff.

10 See Bernstein, above n4 at 184.

reminds us again and again of the relations of domination and exclusion which are implicated in the abstract appeal to the 'we' who share" (p35). Derrida, with his deconstructive techniques, is then able to deepen this critique by demonstrating how these relations of exclusion and domination are the product of the inevitable repression of *différance* that reside in all dreams of unified, consensus-generated, non-oppositional social relations (p50). But even more importantly, Derrida's critical appropriation of Jacques Lacan's work enables the deconstruction of logocentrism to be really an attack on phallogocentrism (p180). For the chief difference that is repressed by identity logic is sexual difference (p170).

In virtue of the patriarchal structures built into gender-identity formation, all chances of realising the ethical relation are excluded unless these structures are subverted. The philosophy of the limit, which continually highlights the gender-based categories of individual and social cohesion and exposes the violent forces that suppress and violate female identity in the name of Reason, is geared from the very outset to the overthrow of patriarchy. It is, in other words ab initio radical feminist philosophy.

### 3. *Justice as Ethical Transcendence*

Radical philosophy here should not be taken in the etymological sense of the word "radical", qua "going to the root of", since deconstruction is always at pains to show that there never is any central root, origin or cause to seek out.<sup>11</sup> Structures of patriarchal domination and exclusion are not uprooted and destroyed, they are transcended. It is in the notion of justice as "ethical self-transcendence" (p111) that the philosophy of the limit has something both original and significant to offer legal theory.

In the second half of the book Cornell provides an array of arguments to establish this point. But I think it is in chapter 5, in her deconstruction of the modalities of time relied on by legal positivism, that this notion of justice is most clearly exemplified. A central feature of legal positivism from John Austin to Niklas Luhmann is the way it takes law to be a self-maintaining system.<sup>12</sup> This is achieved by the legal system's dependence on "the logic of recursivity" whereby the normativity of law is established by reference to the legal norms already in place (pp120ff, 131). In other words, "the legal system ... grounds the validity of its own propositions by turning back on itself" (p121). In its non-recourse to norms of justice that are external to the system, positivism, in Cornell's view, contains an important truth (pp119, 128, 142).<sup>13</sup> Legal positivism's principle fault lies, however, in the way it bounds the system to the temporal horizon of the present. For Cornell, not only is it conservative to

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11 This contrasts markedly with, say, the humanist-marxist feminism of Agnes Heller, which sees itself as radical precisely in the etymological sense: namely, as a defetishization and uprooting of all relations of domination. See her *Radical Philosophy* (1985).

12 Though, for the difference between Luhmann's theory of legal autopoiesis and traditional legal positivism, see p124.

13 Though Cornell is simply wrong in continuously attributing such a position to Kant and *a fortiori* Habermas, see pp119, 127ff, 142, 157. This misrepresentation seems due, as we shall see below, to her mistaken apprehension of the nature of "immanent critique".

ground the validity of law by reference to legal norms already in place, but it is incorrect, in that it is oblivious to the play of *différance*.

We have already noted how *différance* operates continuously to displace all semantic boundaries. Now Cornell demonstrates how it operates to undermine all attempts to see present possibilities (here, the norms of a legal system) as limited by the prevailing structures of the system (pp128-131, 143). The postulate that law has its origin in itself meets the same fate as all metaphysical claims grounded in the spurious notion of full presence; it can be deconstructed. And it is squarely in the normative fissures engendered by the destabilising force of *différance* — qua “the constitutive power of the not yet” (p129) — that the possibility of justice resides.<sup>14</sup>

This point is brought home in Cornell’s analysis of legal interpretation. It is axiomatic that judges are required to judge according to the law. Yet the deconstruction of the “metaphysics of presence” means that the full meaning of the law — viz. the principles of justice<sup>15</sup> — can never be determined either by reference to the norms embodied in past decisions or the “integrity” of the present system (p147ff). By the very act of closure, the legal system, qua system, necessarily excludes possibilities and imposes a “silence on the Other who cannot ... speak in that system” (p132, see also p137). For this reason, it is in the immanent possibilities of the system — understood rather counter-intuitively by Cornell to mean those possibilities that are not contained in the system but are necessarily excluded by the boundary-maintaining mechanisms of the system — that justice must be sought.<sup>16</sup> Put another way, justice is “the limit of the legal system” (pp113, 143, 146, 150).

As the limit of what can be articulated in the here and now, justice, for Derrida, is necessarily “an aporia” (pp133ff, 165ff). Yet it is precisely the fact that justice resides in that which is beyond the legal system — that it is irreducible to positive law — which gives to judicial interpretation a radical-transformative potential.<sup>17</sup> For now judges, faced with the task of deciding according to the law, cannot simply resort to precedent, or to the intention of the legislature, or to the plain meaning of the words, since these cannot yield a determinate solution. And since “the meaning of the ethical is necessarily displaced into the future” (p115) — that is, displaced to the semantic limits of the system — then every interpretation which is just involves a transformation of the system (pp110, 115).<sup>18</sup> But more importantly, this transformation does

14 Hence the title of the conference at Cardozo Law School in 1989, “Deconstruction and the Possibility of Justice”, from which some of the papers were published in Cornell et al above n5.

15 Cornell describes “justice in the more prosaic sense of legal principles as involving an appeal to the good embodied in the *nomos*” (p117.) As for the nature of these principles, they seem to exhibit a structure similar to that elaborated by Ronald Dworkin especially in *Law’s Empire* (1985). See Cornell p106 and n37 p200.

16 For the problems with Cornell’s understanding of immanence and transcendence see below.

17 For this reason Merold Westphal calls Derrida a natural law theorist, albeit a *sui generis* one. See his review of Cornell et al above n5 in *International Philosophical Quarterly* Vol xxxiv No 2 Issue 134 (June 1994) at 247–52.

18 In relation to the possibilities of legal transformation Cornell does provide a strong challenge to Stanley Fish for whom “transformative challenges to the system are rendered impotent because they can only challenge the system from within the constraints [of the system]” (p164). Fish is wrong because there is “no system that can catch up with itself

not occur spontaneously, nor does it depend on the evolution of the system (pp137, 144–6), it must be undertaken by the judge. Interpretation is thus always an act, “moreover, an act for which we cannot escape responsibility” (p147). In a sense it is a double responsibility since the judge is responsible for doing justice in the particular case, and for the direction of the system as a whole (pp100, 115).

#### 4. *Towards a Dialectical Mediation Between Identity and Difference*

I do not wish to give the impression that the above all-too-elliptical exposition provides an adequate summary of the multifarious themes and arguments so skilfully pieced together by Cornell. I do hope, however, to have set out the basic theses of what is termed the “philosophy of the limit” sufficiently for one to see its potential strengths and innovativeness, particularly as the conceptual framework for a theory of justice.

No doubt, for those inveterately opposed to deconstruction or post-structuralism the central tenets of the philosophy of the limit will seem both wrong and misdirected. Not being one of these critics I would prefer to draw attention to a few not insignificant internal difficulties with Cornell’s project as well as the manner she carries it through. Most of these difficulties converge in Cornell’s (and, in fact, most of the “philosophers of difference”) one-sided interpretation of Hegel.<sup>19</sup> In short, they all fail to see that Hegel is not just the philosopher of “reconciliation”, but also equally that of “rapture”.<sup>20</sup>

Today one does not have to be a post-structuralist to see the error in Hegel’s subject-centred approach which culminates in everything being “reconciled” as moments in the Absolute’s consciousness of itself. Yet if one drops this subject-centred ontology one is still left with the power of the dialectical method itself: a method that is inherently geared to rapturing all notions of totality and closure. It is precisely this rapturing property of the dialectic<sup>21</sup> that has inspired so many of the most radical thinkers of the past 150 years, including, it would seem, Derrida himself. But where Derrida, Cornell and other anti-reconciliation thinkers appear to go wrong is that, despite their criticism of all binary oppositions, they themselves undialectically privilege one side of a dichotomy, namely, rapture or difference vis-a-vis reconciliation.<sup>22</sup> They seem unable to appreciate the way in which identity and difference each constitutes the condition of the possibility of the other. This, as I shall soon point out, has critical implications for Cornell’s idea of justice.

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and therefore establish itself as the only reality. To think that any social system, legal or otherwise can ‘fill’ social reality is just another myth, the myth of full presence” (p164).

19 They also make several serious and characteristically one-sided misinterpretations of Kant; in particular, his concept of “autonomy”. For the typical “critical” reading of Kant see, eg, Cornell, pp31, 179. I cannot pursue the problems with this reading of Kant here.

20 These terms are borrowed from Richard Bernstein’s essay “Reconciliation/Rapture” in above n4 at 299.

21 See the definition of dialectic in Hegel, G W F, *The Encyclopaedia of the Philosophical Sciences Part One (1830)* transl Wallace, W, (1975) at 41Z(i) and 81rem(ii).

22 See Bernstein, above n4 at 310.

Not unrelated to this failure of dialectical nerve is Cornell's persistent unwillingness to see the radical potentials of "immanent critique". That this shortcoming stems from an endemic misreading of Hegel's highly charged idea of the "rationality of the real", is an issue too complex to be considered in a review of this kind.<sup>23</sup> What can be said is that it leads to both a weakening of the social-transformative potential of her project and to a number of internal discrepancies.

In relation to the former, it is true that by placing justice at the limit of the legal system, the judge, if she accepts her ethical responsibility, can pay heed to the Other who has no voice in the current system. And it is also the case that if this mode of legal interpretation were to become prevalent, then adjudication could provide a dynamic forum in which the ever changing types of repressed interests could be vindicated. The problem is, however, that the very aporetic nature of this type of justice — something in which both Derrida and Cornell revel — makes it normatively unstable. Quite simply, how does the judge know whether those interests not recognised by the system are really worthy of recognition? The philosophy of the limit just does not and, indeed cannot, provide any criteria, because any candidate norms, though not transcendent (such as those of classical natural law) are not squarely immanent either. Admittedly they are "immanent" in the sense that these principles of justice derive from a deconstruction of the "present" legal system. Yet it is an immanence that smacks of all the defects of transcendence to which Cornell herself constantly alludes (see for example pp119,133,194 n25). It offers up choices for the judge that impose much responsibility but little guidance. And in the end we are left with normative criteria that are as "ineffable" as some of the aforementioned critics of deconstruction have contended. We are left with a theory that stands critical of the ethical skepticism of the "irrationalist" stream of critical legal studies (p100) — for whom "ethical responsibility is reduced to an existential choice" (p102) — but nevertheless saddles legislators, judges and lawyers with an "undecidability [that] is truly frightening" (p168).

To this Cornell might object that the sought after criteria are, for both her and Derrida, the "traditional emancipatory ideals" (pp108, 164, 166).<sup>24</sup> Apart from the fact, that neither author ever spells out the content of these ideals, on the basis of both my exposition and criticism above it is clear that recourse to such ideals is precluded by their respective theories. The mere fact that Cornell is forced so casually to admit the good-old Enlightenment ideals into her post-Enlightenment schema shows, despite the critical power of the philosophy of the limit, just how normatively vacuous it is. And anyway, what are we to make of a radical feminist notion of justice whose very conceptual scheme, as we have seen, seems to be geared to the transcendence of male domination, but still is unable to say in advance whether the "war against patriarchy ... [is] justified or unjustified" (p169)? Such normative ambivalence would surely

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23 See Hegel, G, *Philosophy of Right*, transl Knox, T, (1952) at 10 ("What is rational is actual and what is actual is rational"). To say that this maxim is one of the most controversial in the history of philosophy, is an understatement.

24 Citing Derrida above n5 at 28.

perturb the likes of, say, Kate Millett who struggled so hard to expose unequivocally the fundamental injustice of patriarchy.

By this I do not mean to denigrate the moral-practical status of Cornell's "ethical relation" structured around "phenomenological symmetry".<sup>25</sup> There is much to be gained in adopting a normative standard in which persons are governed by the "reciprocal obligation to seek to transcend their narcissistic egoism in understanding the alterity of the other".<sup>26</sup> And furthermore, I believe that if one adopts the radical reading of Hegel's notion of immanent critique purged, to be sure, of all vestiges of subject-centred reason, one can find more than the seeds of relations of phenomenological symmetry — of a reciprocity between the I and the Other compatible with radical alterity — in the here and now. As Seyla Benhabib has argued for some time, the ethical relation receives a foothold in reality in the procedures of a discourse ethics.<sup>27</sup> Yet, such procedures — which today are most closely associated with the name of Jürgen Habermas — are, in virtue of Cornell's limited perception of the normative potentials of modernity/post-modernity, excluded as being external and transcendent. For her, Habermas's notions of dialogical reciprocity, ideal communication community and communicative rationality are "mere ideals" and "external moral norms" which bear no constitutive relation to the present (see pp119, 127ff, 134, 142, 157). Nothing, of course, could be further from the truth.<sup>28</sup> And this misconception is further compounded by her view that, in any case, the ideal communication community does not adequately encompass the ethical relation. This is because, according to Cornell, "any conception of dialogue will itself be an illusion if it does not address itself to the way in which dialogue is blocked by the perpetuation of the gender hierarchy" (p176).<sup>29</sup>

Cornell's refutation of the possibility of dialogical reciprocity is not based on the tenuous argument that discourse ethics is incapable of addressing the imbalances of social power.<sup>30</sup> Rather it seems to depend on the Lacanian view of language as being so irredeemably permeated by the effects of unconscious desire as to subvert the distinction between rational and irrational argument upon which discourse ethics depends.<sup>31</sup> Though, were this the case (and this is not the place to become embroiled in polemics in the philosophy of language in order to ascertain the correctness of this view) Cornell's own normative standard

25 For "phenomenological symmetry" see pp54ff, 85, 171ff.

26 See Bernstein, above n4 at 74.

27 See Benhabib, S, *Critique, Norm, Utopia* (1986) and *Situating the Self* (1992).

28 See eg *The Theory of Communicative Action Vol 1* (1984) at xli where Habermas states that one would not be able to formulate normative criteria "if we did not already have before us — admittedly in fragmentary form — the existing forms of a reason that has to rely on being symbolically embodied and historically situated" (emphasis added).

29 Compare with Bernstein, above n4 at 51 and 220. This view does not sit well with Cornell's own espousal of an intersubjective understanding of dialogical reciprocity in "Institutionalization of Meaning, Recollective Imagination and the Potential for Transformative Legal Interpretation" (1988) 136 *U Pennsylvania LR* 1135–229.

30 This argument is tenuous because it is the *raison d'être* of notions such as the "ideal communication community", and the institutions in which it is embodied, to address imbalances of social power.

31 See Norris, above n2 at 31ff. And this suspicion of dialogue is further buttressed by Derrida's thesis regarding language as always being riddled by *différance*.



— the ethical relation — would also be subverted. For under the conditions of interaction oriented to the satisfaction of individual desire, how can the reciprocal obligation to seek to transcend the participant's narcissistic egoism in understanding the alterity of the Other be realised?

It simply cannot, and thus Cornell is faced with an internal contradiction that not even her theory, which thrives on aporias, double binds and the like,<sup>32</sup> can live with if it is to fulfil its self-proclaimed ethical aspirations. Yet I do not think that these aspirations, nor Cornell's way of pursuing them, are irreparably flawed. Rather, I suggest that the philosophy of the limit itself needs to be slightly delimited. It needs, in other words, to forego its one-sided valorisation of radical difference and understand that the ethical relation also depends upon a modicum of commonality between social actors.<sup>33</sup> For this it needs to soften its view that language is irredeemably shot through with desire and *différance*, and that all dialogue and argument are merely rhetoric. Once the philosophy of the limit does make these concessions (concessions that I feel do not undermine its theoretical integrity) then it will be able to discover in dialogue a mode of engendering a commonality between an irreducible plurality of perspectives that does not ipso facto suppress difference. For when two or more parties come to an understanding with one another there is a process of non-coercive synthesis at work that presupposes that the parties do not relinquish their differences.<sup>34</sup> In the first place, you do not have to come to an understanding with another unless there is a difference in perspective. And secondly, such differences remain unrelinquished because the unity engendered only exists at the ideal level of meaning.

Of course, I cannot here demonstrate the validity of the various premises and arguments upon which this alternative position rests. I offer it here merely as a suggestion for a way in which the ethical relation can be realised in a manner that does not lead us back into the vicious aporias of the philosophy of the limit. The obvious objection to this alternative is that it depends on dialogue under ideal conditions. But this objection points less to the problem than to the solution, in that it draws attention to the real issue for any theory of law and justice: namely, the need to search for the appropriate mode of institutionalising the conditions that can guarantee the realisation of this ideal and thereby the effective functioning of dialogical reciprocity. Oriented in this direction, it would seem that the law may be capable of providing the supporting framework in which the reciprocal recognition of otherness can flourish.

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32 See eg pp111ff, 133ff, 145, 165ff.

33 Her recognition that phenomenological symmetry depends on the positing of a "universal I" is a tacit recognition of this point (pp43, 54, 84).

34 Habermas, J, *Postmetaphysical Thinking* (1992) at 163ff.