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Ethics and Methodology in Legal Theory a (Personal) Research Anti-Manifesto

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Abstract

The attitude of the critical researcher, as opposed to the traditional researcher into 'objective' knowledge, lies in the conviction that the theorist-researcher is no mere observer or discoverer of knowledge, but is herself embedded in the social, historical, political context in which knowledge is formed (Horkheimer 1968). The critical researcher therefore aims to be self-reflective, and attentive to the conventional dimensions of scholarship. Some methodological questions for the critical researcher might be -- what are the norms of 'good' scholarship, where do these derive from in cultural or political terms, on what basis can they be defended, and how should they be challenged or re-formed? Another question of some significance is -- how do ethical and political beliefs influence the substance and methodology of research? This is the issue which I want to focus upon in this brief article, focusing particularly upon methodology.

Ethics and Methodology in Legal Theory a (Personal) Research Anti-Manifesto

Margaret Davies 1

'When you begin to think, you lose the point' 2

The attitude of the critical researcher, as opposed to the traditional researcher into 'objective' knowledge, lies in the conviction that the theorist-researcher is no mere observer or discoverer of knowledge, but is herself embedded in the social, historical, political context in which knowledge is formed (Horkheimer 1968). The critical researcher therefore aims to be self-reflective, and attentive to the conventional dimensions of scholarship. Some methodological questions for the critical researcher might be -- what are the norms of 'good' scholarship, where do these derive from in cultural or political terms, on what basis can they be defended, and how should they be challenged or re-formed? Another question of some significance is -- how do ethical and political beliefs influence the substance and methodology of research? This is the issue which I want to focus upon in this brief article, focusing particularly upon methodology.

This question has been considered by others: for instance, how does one conduct feminist research in a feminist way (MacKinnon 1987)? How does one conduct research relating to Indigenous people and racial minorities in a way which does not further colonise their knowledge or marginalise their culture (Matsuda 1988, 1989)? More broadly, is it possible to do research in a way which challenges established distributions of power? Even to ask such questions reveals a certain flexibility in the concept 'research', a flexibility which is not evident in disciplines where method is more fixed than it is in the humanities and law. Relying as it does on the critical stance, the question negates the separability of researching subject and objective knowledge, thus posing a challenge to methodologies which assume that such separation is possible.

It is my (perhaps optimistic) belief that to raise this question and to remain attentive to it in research is already a disruption of established patterns of oppression. Western knowledge has conventionally attributed 'objectivity' only to Western observers, who are typically also male -- to highlight these associations and to ask whether there are knowledge practices other than those put forward by traditional 'objective' scholarship which might be more cognisant of the non-Western, non-male other, poses a challenge to the myth that subject and object are separate. Of course, simply raising the question is not enough -- given that it is asked within the context of the Western university with all of its hierarchical scholarly baggage, makes it difficult to eschew altogether the concepts of legitimacy, validity, and authority in scholarship.

My central objective here is to present a view of research in which the self is in production together with the object of research: in my opinion the question of research methods cannot be separated from the question of who you are as a researcher and as a human being. This view negates the concept of 'method' as a determinate schema or program of enquiry and replaces it with a view of method as something which unfolds in different directions. To quote Derrida (in a different context): 'We here note a point/lack of method [*point de methode*]: this does not rule out a certain marching order' (Derrida 1981: 271). The point of method is that method as a circumscribed program, 'mode of investigation' or path to truth 3 is lacking, but that does not mean that we have nowhere to go. Nor does it mean that we are unable to speak of 'method' except, perhaps, in the singular. Methods are plural: there is no single way, no single destination and, of course, no transcendent knowing subject to follow such an imagined method through to its illusory end.

To ask how one's ethical and political position affects research method is a question which can only be answered by reference to the positioning of the self in a socio-political context: my comments here are drawn from my experiences (including my experience of various knowledges) which are not reducible to a 'method' in its traditional, objectivist form. This does not mean that my reflections are purely subjective. They are concrete, and obviously tap into the intellectual messages of a particular historical and cultural location. I will begin with an autobiographical story, which I hope will illustrate something of significance.

'Uncovering the infinite potentiality of phenomena'

Some decades ago the cultural critic Roland Barthes wrote a highly influential essay translated into English as 'The Death of the Author' (1984). The essay was an inspiration to many scholars and students of literature who had previously felt bound in their textual interpretations to investigate the intentions of an author. In traditional literary analysis, authors' intentions were often seen to be the spirit or motivating force of a work of literature, and it was therefore seen by some literary traditionalists to be impossible to truly comprehend a literary work without attempting to unlock the secret of the author's genius. The meaning of a text had been implanted in a text by the author, and recovery of the author's original intention was an important -- perhaps the most important -- step in deciphering the meaning of a work. If only the reader could understand what Eliot really *meant* in her novels, it would be possible to understand *Daniel Deronda.*

Roland Barthes liberated interpretation from these constraints of authorial authority, famously arguing that 'it is language which speaks, not the author' (1984: 143, cf Foucault 1979, Davies 2002: 117-20). For Barthes and his structuralist predecessors, language was not representative of a prior content. Rather, the 'content' was brought into being by the text, and its subsequent interpretations. As far as the interpreter was concerned, the author was dead: she or he was not to be regarded as 'the past of his [or her] own book' (Barthes 1984: 145). Interpretation could therefore be freed from anxieties and closures such as 'is that what the author really meant?' and performed in a spirit of openness, and of endless possibility.

Early in my research career the 'death of the author' was my personal manifesto which I adhered to doggedly. A 'manifesto', of course, is a political statement, an outline of beliefs and corresponding actions and is of course associated with 'manifest' -- 'Clearly revealed to the eye, mind, or judgement' (OED 1989). The 'manifesto' is traditionally to politics what 'method' is to knowledge. I can only speculate as to the reasons for the attractiveness of Barthes' (and others') ideas at this moment of my education -- others were not similarly fascinated. I can only reflect that such critical theory promised a realm of understanding which, unlike the version of interpretation offered by law, was inherently transgressive, even subversive.

It was within this climate of my enthusiasm for the new theory that I undertook an honours thesis in English in 1987. The pretext for the thesis was a fabulous novel by the British author Angela Carter, *The Infernal Desire Machines of Doctor Hoffman* (1972). However, my overriding passion in the thesis very quickly became not the work of fiction, but theory itself. It is hard to overestimate the effect which critics like Barthes and Foucault had had on me, and perhaps in a sign of future research themes, I took a quotation from the novel for a thesis title -- 'Uncovering the Infinite Potentiality of Phenomena' (Carter 1972: 34). It is a phrase which has stuck in my mind ever since.

Angela Carter visited Adelaide that year and gave a reading at Adelaide University. Devoted to the book (but even more to my newly-discovered critical methods) I asked her to sign my copy of *The Infernal Desire Machines of Doctor Hoffman.* On discovering that I was writing an honours thesis in English literature about her work, she offered me an interview. I suppose that many journalists and literary critics would have jumped at the chance of an exclusive interview with a well-known author: in my case, some intellectual interest at the prospect of gaining insight into the inspiration behind the mysterious and fantastic *Doctor Hoffman* might have been expected. Did she rely on Derrida, Foucault, or Barthes in constructing the intellectual basis for the novel? Was it all *really* about psychoanalysis and dreams? What did she think of the new French feminisms? Was the Doctor Hoffman in the novel supposed to be the same Dr Hofmann who synthesised LSD and is this why his mission is to disrupt reality and destroy certainty? I, however, accepting the death of the author as intellectual dogma, refused Carter's offer of an interview, saying something to the effect that the author was dead -- obviously not literally in her case, but theoretically -- and that I wished to study not her intentions but her output.

Being well informed about the new theories herself, Carter was extremely understanding of my youthful enthusiasm. (I remember the look on her face as a mix of surprise, amusement, and a genuine desire to take me very seriously.) After the passage of some 15 years (and the physical death of Angela Carter), however, things appear somewhat differently to me: I admit that it is a chance that I have regretted losing, not only for the light it may have cast upon my otherwise obscure thesis, but also for the opportunity of enriching my life experience.

I still cannot work out why, if I really thought the author was dead, I bothered to turn up to Carter's speech much less ask her to sign my book. For, as Derrida notes at length (1988: 20-1, 1985: 51-2), the signature is normally supposed to be the indelible mark of authenticity and, if I did not care for authenticity, why should I care for a signature? A legal document, a cheque, a letter -- all of these communications are signed to indicate an intention that can be read in the absence of the physical person (Derrida 1988: 20-1). The signature ties the document to an original and I presume this is why people like to have copies of books signed by authors: the signing marks the book not merely as one of a potentially infinite number of copies, but as distinct, singular, unique, and certified by its author.

However -- and this is the point of Derrida's analysis -- like other signs the signature is not singular but repeatable and imitable, predicated upon separation and death as much as life. The signature is actually divided from its inscriber since, once the event of signing has passed so has the presence of the author, and the signature is only the sign of her presence while she is absent. At the same time, like other signs, the signature is divided from itself -- it may represent the unique marker of one person (though it may be counterfeited manually, mechanically, or digitally) but it must also be reproducible infinitely by that person, otherwise it would not be a signature, and could not function (Derrida 1988: 20, Bennington & Derrida 1993: 148-66).

I take this anecdote as a point of departure for my comments, which I have sub-titled a research anti-manifesto: indicating that while there might be sound ethical, political, and intellectual principles in research methodologies, there might also be good reasons on occasions for transgressing them. I do not reject the concept of a manifesto, but simply wish to indicate that in my view a manifesto should not delimit all of the possibilities. Nor do I reject the value of conventional scholarly analysis, and much of what follows falls into that category. As I have indicated above, method is dynamic, and cannot be reduced to a single set of priorities or standards.

'Metaphysics are no concern of mine'

In *Inventions of Difference* Rodolphe Gasche argued that to challenge tradition is a very traditional thing, especially in philosophy: 'a break with tradition and traditionalism is in the best tradition of philosophical thought', and further 'philosophy requires that it always be reenacted as if for the first time' (Gasche 1994: 59). Philosophy is concerned with new beginnings, and many of the philosophical 'greats' are those who have claimed to break with tradition in the most spectacular fashion: to claim that a thinker represents a break with tradition in fact characterises a thinker as being part of the tradition of philosophy. In other words and paradoxically, the tradition (one might even say 'method') at the core of philosophy is the claim that philosophy in truth repeatedly challenges its own tradition.

In the context of legal philosophy, many of those who have made a name for themselves have done so by claiming to break with some significant part of existing jurisprudence or, in the case of Finnis, by strongly reasserting a significant element of an ancient tradition within a modern framework (Finnis 1980). 5 Thus, to take the male-oriented and white-liberal self-defined 'core' of Anglo-American jurisprudence, Austin and Bentham were clearly revolutionary in their time, rejecting the unscientific and ad hoc conjunction of natural law with common law; realism claimed a break with abstraction and formalism (Llewellyn 1931); HLA Hart (1994) made a new start for positivism in abandoning the Austinian system; and Ronald Dworkin (1977) made a name for himself initially by rejecting positivism. Beyond this self-appointed 'core' of natural law, positivism, and Dworkin's third way, modern critical thought has also undertaken to challenge the fundamentals of the legal theory tradition: feminist jurisprudence claimed a break with patriarchal understandings of law on the basis that they were, well, patriarchal (MacKinnon 1983b, 1983a); Critical Legal Studies claimed a break with positivism and formalism on the basis that they did not understand law within its social context and do not comprehend that interpretation and application of law are radically indeterminate (Kelman 1984); racial critiques of legal theory claimed a break with feminism and CLS on the basis that these 'critical' approaches failed to acknowledge the difference that racial power makes to white theories (Behrendt 1993, Harris 1990, Williams 1987, Delgado 1987).

Legal theory is now composed of a multitude of movements, some claiming a more significant break with the tradition or with newer critical movements than others. At the same time, nearly all of the modern jurisprudential movements, or at least those with an institutional voice, are situated squarely

within the context of Western philosophy: the extent to which any can claim to be 'outside' a mainstream depends entirely upon how and by whom that mainstream is construed.

One obvious illustration of the problems of claiming a break with tradition is to be found in the history of feminist thought. Liberal and radical feminism both departed from certain elements of traditional scholarship. Liberal feminism asserted that women were not inferior to men and were capable of full participation in public life. It thus challenged what had been seen as the natural incapacity of women -- our weakness of mind, our inability to contribute to affairs of the world. Liberal feminism held up the standard of the independent rational man as the ideal for all women.

Radical feminism critiqued liberal feminism on the basis that it did not in fact challenge male dominance fundamentally, only in respect of some of its symptoms. Liberal feminism was seen to be blind to the power relations which create the hierarchy of values characterised as masculine and feminine. Radical feminism argued that a far more fundamental, or radical, break with tradition was needed -- a break with all patriarchal scholarship and institutions. In the opinion of the most influential radical legal feminist, Catharine MacKinnon, radical or 'unmodified' feminism would start with the experiences and perspectives of women -- it would be unmodified by patriarchal philosophies and would challenge the image of the universal subject as male (MacKinnon 1983b). Unmodified feminism would disrupt male power by refusing to situate itself within the patriarchal intellectual tradition, by constructing an oppositional account of gender, and by acknowledging female subjectivity. Thus feminism unmodified claimed a new start for feminism, one which would minimise complicity with male-centred jurisprudence.

The well-known problem with the radical feminist picture was that it neglected to recognise other sources of power and privilege which divide women such as race, heteronormativity, and class (Harris 1990, Behrendt 1993, powell 1997: 1494). To divide the world into male and female neglects the fact that white women share the privilege of our race with white men. The notion of female subjectivity which replaced the universal male was exclusive, patterned as it was upon the white, middle class, heterosexual woman. In claiming such a fundamental break with the tradition, radical feminists were criticised for reinforcing another exclusionary concept of subjectivity. The criticism is not one directed only at MacKinnon, but at the academic institutionalisation of feminist thought, as Aileen Moreton-Robinson argues:

> white feminist academics ... have an engagement with 'Other' within the boundaries of academic institutions and practices. The cultural differences of 'Others' are subordinated to these white academic values. White feminists do not have to change their pedagogy to include the 'Other' (Moreton-Robinson 2000: 183).

I take part of Moreton-Robinson's point here to be that all the while the other can be comfortably included within mainstream academic practice, it is not really 'other', just an extension of ourselves. As I will indicate below, the challenge for those in social and institutional positions of power is to develop the flexibility of self needed to understand an other which is truly other to ourselves. None of this discredits the significant advances in thinking facilitated by radical and liberal feminism -- it simply illustrates the well-known point that the notion of a totally new beginning in any theoretical endeavour is always problematic.

Suffice it to say that the warning of critical theory in all of this is to try to reflect beyond the horizons of one's own point of departure from the 'tradition'. The self as well as the world and the other must be a site of the most intense questioning. In other words, Gasche's comments warn us that while we may ourselves think that we are challenging a tradition and a power base, we may at the same time be reinforcing it.6 We may be reinforcing our own social power even while trying to advance the cause of others. In fact, I take Gasche's point to be that this is unavoidable.

To personalise these comments about tradition: one point of my story about Angela Carter is that I was dogmatic in my rejection of the so-called 'traditional' method of literary interpretation -- and insisted upon taking the death of the author literally. It was evident to me that nothing Carter could tell me could contribute to my understanding of her work. But did the rejection have to be so unequivocal? Obviously not -- I could at least have regarded her commentary as an additional layer of textual information. It could have contributed further to the available meanings about the book. Her views did not have to be regarded as an 'authentic' voice of interpretation, but rather as one further narrative within the plural and dynamic narratives already available.

Therefore, in rejecting Carter's authority as author so completely, was I not merely reinscribing the unified authoritative subject position in myself? Carter's subjectivity and authority as repository of meaning were dead, according to the theory. But I went further, treating Carter as a complete outsider, even though standing before me was an other whose readings were surely equal to my own. The clear implication was that interpretive *supremacy* was to reside with me as the individual reader, in disregard of the fact that my own conventions, strategies, and insights regarding interpretation might be just as closed (or more so) and exclusive as any interpretation offered by another (who in this case just happened to be the author). Surely the point should have been to avoid interpretive closure, including the closure which results from excluding the author from commenting on her own work -- after all, she would quite likely herself have promoted a pluralistic reading of the book. My point -- following Gasche -- is that the dogmatic rejection of tradition may often only end up by reinscribing some central aspect of that tradition.

What possibilities then enable the critical scholar to avoid this trap? Gasche's underlying (Derridean) point is that the either/or -- stay with the idealised 'tradition' or reject it -- is a false dichotomy. The position of the critical scholar is more accurately defined as marginal -- neither inside nor outside (an outside which would in any event become a new inside). It is a position which focuses on frontiers and their uncertainties rather than opposition. Thus the imperative for research is not to make the simple choice between tradition and what we might view as its more radical other, but rather to remain reflective -- about our own position in relation to the structures and symbols of power which surround and construct us, about the difficulties (and thus the importance) of seeing beyond their frontiers, and about the nature and limitations of the theorising self.

'He had refined his subjectivity until he believed in absolutely nothing'

Gasche's comment on philosophical breaks with tradition, illustrates the fact that, in philosophy, the ego of the philosopher is often presumed to be paramount. The philosopher's self is the rational principle of *his* opus, *he* governs it in a way very similar to the novelist who is thought to have authority over the meaning of the novel. To break with the tradition is for the philosopher to make a mark for *himself* as philosopher, to give something distinct to posterity -- most importantly, *his name.* It is perhaps not overstating the case to say that academia generally is characterised by this egomania. (I do not exclude myself, as I think the story about Angela Carter indicates.) In contrast to the notion of a coherent and unified philosophical attitude, self, and direction, consider what Nietzsche had to say about the philosophical attitude:

We usually endeavour to acquire a *single* deportment of feeling, a *single* attitude of mind towards all the events and situations of life -- that above all is what is called being philosophically minded. But for the enrichment of knowledge it may be of more value not to reduce oneself to uniformity in this way, but to listen instead to the gentle voice of each of life's different situations; these will suggest the attitude of mind appropriate to them. Through thus ceasing to treat oneself as a single rigid and unchanging individuum one takes an intelligent interest in the life and being of many others (Nietzsche 1986: 195-6).

Philosophy as it is normally practised is all about who you are and what attitudes you hold -- to achieve the 'philosophically-minded' attitude your principles of subjectivity are supposed to be unified, logical, coherent. The philosophical mind drives a coherent and defensible method. Nietzsche's injunction in contrast is that we ought to develop a more passive attitude -- not redefining the world through our own conceptual uniformity, but rather to listen first, and form one's attitudes in response to a multitude of voices.

In a similar vein, TS Eliot remarked upon the 'self-sacrifice' required of the artist:

What happens is a continual surrender of himself as he is at the moment to something which is more valuable. The progress of an artist is a continual self-sacrifice, a continual extinction of personality (Eliot 1972: 73).

More recently, in *Rootprints: Memory and Life Writing,* Helene Cixous comments on passivity and letting go of ones' subjectivity involved in the writing process:

The initial position is a *leaving oneself* go, leaving oneself sink to the bottom of the now. This presupposes an unconscious belief in something, a force and a materiality that will come, manifest itself, an ocean, a current that is always there, that will rise and carry me. It is very physical. ... One needs a passivity that is, as always, active (Cixous 1997: 41).

The common feature remarked upon by these writers is that any creative effort is also an ongoing act of self-creation. They implicitly critique a model of creativity in which the self is regarded as a static and sovereign author in total control of the (separate) meanings and object of creation. In the alternative model proposed by Nietzsche, Eliot, and Cixous, the subject is seen to be itself in production together with the created object. To put this another way -- the author/subject/philosopher does not legislate, like a sovereign, the meanings of a text. However, nor is she quite absent from it in the way that Barthes envisaged. Rather, the author is herself produced, performed, reconstructed together with the text-in-process (cf Foucault 1979).

'I could not entirely suspend my disbelief, although I might lay it aside for a while'

How does this self-creating performance relate to the issue of ethics and methodology in research? I would like first to comment upon the work of some critical race theorists, who have specifically argued that the sense of self developed by the writer strongly relates to political and ethical motivation in research. Second, I will conclude with some thoughts about how this practice of openness in self-construction results in a dynamic and unpredictable theoretical practice.

Some years ago, Maria Lugones published an influential article entitled 'Playfulness, 'World'-Travelling, and Loving Perception' (1987). Lugones starts from the perception that women of colour are compelled to live different lives and thus adopt different selves as a result of their exclusion from mainstream cultures. Rather than understanding this 'world-travelling' as a limitation on the development of one's subjectivity, Lugones affirms the positive and progressive dimensions of being open to self-reconstruction. Like Nietzsche, Lugones sees unity of subjectivity as a constraint, as it prevents understanding of the other, and of the other's understanding of the self: 'By travelling to [another's] "world" we can understand *what it is to be them and what it is to be ourselves in their eyes'* (1987: 17). Although she acknowledges that there are 'worlds' (that is, environments, cultures, institutions) which are hostile in that they do not permit members of excluded or marginalised groups to flourish, we enter such worlds only cautiously, often out of necessity. The key to world travelling for Lugones, is that it is not done imperialistically to appropriate or assimilate the other's world. It must be done openly, with an attitude of playfulness, creativity and acceptance towards the other: this is an attitude which, however, cannot be practised in hostile worlds.

In this way, Lugones affirms an ethics of plurality in self-consciousness, and of remaining open to recreating the self in different contexts. This constitutes an ethical approach to research and scholarship, because Lugones specifically links plurality of self to the process of acquiring forms of knowledge which are resistant to dominant, stereotypical constructions of people:

> Without knowing the other's 'world' one does not know the other, and without knowing the other one is really alone in the other's presence because the other is only dimly present to one (1987: 18).

Thus the acknowledgement of plural subjectivity in oneself is central to disrupting established power relationships. For the theorist who adopts this as an ethical goal, plural consciousness constitutes a methodology advancing that ethical goal.

Although Lugones writes specifically from the point of view of a woman of colour in the US, I am of the view that this is an ethical standpoint which can be generalised. A researcher whose ethical objectives include dismantling the power associated with whiteness, Western values and culture, heteronormativity, and masculinity, must take seriously the injunction to try to understand the other's existence and knowledge from their point of view, and to avoid assimilating or appropriating knowledge so that it fits into their (occasionally modified) world-view. A rejection of universal theory will be entailed by such an attitude, for no theory can be made which accommodates such difference: nor can a universal theory be thought by a person whose subjectivity is plural. There are several dangers, of course. The first is that Western scholarship encourages and rewards the pursuit of universality and

'objective' thought. Failure to adopt this model can be characterised as a failure of scholarship, rather than as indicating the inadequacy and inflexibility in scholarly standards. There is a constant pressure to fit our scholarship into the established model or suffer the consequences in terms of reputation. We may regard what we are doing as subversive or unconventional, but all the while a political message is hidden beneath the required veneer of academic discourse, are we not still reinforcing its power? All the worse when the message becomes unintelligible. Second, those of us who occupy a socially powerful position in some respect, for instance because we are white, must be aware of the benefits conferred by that power, and willing to let go of our accumulated privilege. As Archana Parashar argues, merely promoting an ethic of inclusion does nothing to ensure that the voices of the excluded are actually heard, much less become influential (2000: 324-5).

The race theorist Reginald Robinson has also argued that the subjective attitude plays an important role in resistance to power (2000a, 2000b), but he takes the argument in a rather different direction from that pursued by Lugones. Rather than argue that we ought to form our selves through becoming *more* knowledgeable about different cultures and different worlds, Robinson claims that the ideal is to abandon what we 'know' culturally about race, and recover the freshness of an identity who knows nothing and (therefore) is nothing -- we need to reclaim our non-being.

Robinson's argument relies upon current critical thought about race, that is, that the concept of race has no biological basis, but is rather the consequence of social and cultural 'knowledge' and the ways in which that knowledge is perpetuated and acted upon. He therefore states that 'race does not have any meaning that survives its social and historical context' (2000b: 232). What people 'know' about race is the product of years of conditioning: part of that conditioning is our self-identification through the concept of race. In other words, our conditioning includes a process whereby we limit what Robinson calls our 'human potential' by adopting an 'expert knowledge' about ourselves -- that is, the knowledge and consciousness of our race. Robinson argues that in order for race to lose its hold on our identities, we need to recover our 'beginners mind':

> That mind knows emptiness. It fears nothing. It loves everything. It gleefully lives without habits. It readily accepts. It openly doubts. It embraces all possibilities (2000a: 147).

Robinson's 'mission', as he calls it is to 'destabilize race and its consciousness' (2000a: 149): the recovery of the beginner's mind is one method of achieving this goal.

I am not sure that it is possible entirely to discard the positively constructed self and still be a subject who interacts with others and the world. If it is not possible, we could still usefully see attainment of the beginner's mind as an aspiration or ideal, one which assists us in dismantling oppressive assumptions and norms. However, modifying Robinson's argument a little, the abandonment of knowledge gleaned from worldly interaction can be seen as something more than an ideal. The self as non-entity can philosophically be regarded as the dimension of negativity or self-denial which exists in tension with our more positive self, and which makes it possible to reconstruct the self in response to context.

Both Lugones and Robinson illustrate that the political and ethical objective of changing the world (as regards race, sex etc) cannot be undertaken without reflectiveness about the self: this reflectiveness is the responsibility of *all* people, whatever their position in the various hierarchies of power. This brings me back to the definition of *critical* theory offered at the beginning of this paper -- that it is above all theory which is reflective about the positioning of subjects in the construction of knowledge. Just as 'critical knowledge' or 'critical theory' relies on self-reflection, a critical politics is founded not merely upon a determinate program of action for change of the outside world, but a consciousness of how the self and others inter-relate within a given context. A critical method is not one way to a single truth, but is a multiplicity of paths to many truths.

'Go in fear of abstractions!'

I have made several observations about the 'critical' in critical theory but this is certainly not to assert that 'traditional' or 'mainstream' theory is not critical: as I have indicated, the delineation between the critical and the traditional may be very difficult to draw. I have said less about the 'theory' in critical theory, though I hope that it is evident by now that -- although I do not reject the term altogether -- I do not see 'theory' as a defined and closed activity taking a determinate form, but rather as a somewhat open and dynamic activity.

To close then, here is what Helene Cixous had to say about theory:

> Each object is in reality a small virtual volcano. There is a continuity in the living: whereas theory entails a discontinuity, a cut, which is altogether the opposite of life ... [Theory] is indispensable, at times, to make progress, but alone it is false. I resign myself to it as a dangerous aid. It is a prosthesis. All that advances is aerial, detached, uncatchable (1997: 4).

Cixous suggests that theory entails a death, or a separation, from the living and dynamic objects of the world. Like the conventional view of method, theory is abstraction, an exercise of scholarly power over its objects -- objects which are tamed in the process of becoming understood. In one sense this is undoubtedly true: theory does attempt to catch hold of the uncatchable, and to reduce it to a form which can be reproduced and conveyed in a philosophical format. In this sense, theory is, as Cixous says, a 'dangerous aid' -- it is dangerous because it risks the calcification of its objects, but it is an aid because without it we cannot understand these objects.

On the other hand, theory need not be regarded as a static and dead description or analysis, but rather an activity or process which participates in the life of its object. Suppose a legal theory was not regarded merely as an analysis or description of law, but rather as a player in the legal arena, even in legal practice. Suppose that a theory actually interacted with law and influenced its character. In fact, the history of legal theory suggests that this is precisely what it does do: rather than being a description of foundations or axioms, theory does influence legal culture and thus the 'law itself'. As I have indicated, theories and their methods are an ongoing performance/production of subjects and objects. It cannot be separated from either the theorist or the object and is just as 'aerial' and 'uncatchable' as any living entity.

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Footnotes:

1 I would like to thank the organisers of the Legal Intersections workshop, held in Wollongong in November 2001, for the opportunity to reflect on these matters. I would also like to thank the referees and Rick Mohr for their useful comments.

2 All headings are quotes from Angela Carter 1972 *The Infernal Desire Machines of Doctor Hoffman,* pages respectively: 26, 34, 35, 111, 114, 35.

3 *Oxford English Dictionary* 2nd edition 1989, 'method'. Gasche notes that 'Methods are generally understood as roads (from hodos: "way", "road") to knowledge' (Gasche 1986: 121).

4 I was asked this question by a friend, who -- getting no answer from me because it was so obviously irrelevant to my interpretation of the novel -- asked Angela Carter herself at a separate book reading. I recall that the reply was that there was no intentional connection.

5 *Natural Law and Natural Rights* (Finnis 1980) is a 20th-century recreation of the Catholic dominated natural law tradition. Although Finnis does not claim any significant breaks with that tradition (indeed prefers to emphasise the continuity of his work with it), at the time *Natural Law and Natural Rights* was published, he was advancing an alternative to the dominant positivist jurisprudence.

6 Another rather obvious example of this point is the way in which the supposed break from the history of *terra nullius* in Mabo (No 2) was very quickly seen to be a reinstatement of *terra nullius* by another name, native title. In the end, the High Court was unable and unwilling to look at law or its own identity beyond the frontiers of colonialism.