
**ON THE DECONSTRUCTIBILITY
OF THE LAW FROM A SOUTH AFRICAN
PERSPECTIVE***

how long does it take
for a voice
to reach another
in this country held bleeding between us
(Krog *Country of my Skull* (1999) 431)

1 Introductory remarks

The legal theories tackled in this article are the complex ones of postmodernism, deconstruction and feminism, which are admittedly worth far more than a brief exploration. I therefore urge the reader to keep in mind that this remains a playful exploration of some exciting ideas and is not a complete or universal thesis.

Firstly, I explore Derrida's influential work on the force of law and its deconstructible nature (Derrida "Force of Law: The Mystical Foundations of Authority" in Cornell, Rosenfeld and Carlson (eds) *Deconstruction and the Possibility of Justice* (1992) 3. For a discussion of Derrida's distinction between law and justice see Malan and Cilliers "Deconstruction and the Difference Between Law and Justice" 2001 *Stell LR* 439.). Secondly, I turn to Van der Walt's deconstruction of the bridge metaphor in South African constitutionality (Van der Walt "Dancing with Codes: Protecting, Developing and Deconstructing Property Rights in a Constitutional State" 2001 *SALJ* 258) as an example of the deconstructibility of the law in a local context. In the final paragraphs some questions are raised which we need to ask ourselves when we claim that we live in a postmodern world with postmodern values and deconstructible rights.

2 The problem with modernist legal theory

Modernist legal theory – driven by certain Enlightenment and liberal ideas such as equality before the law and rationality – has attempted to identify a foundation for legal authority and for knowledge about the law that avoids the unequal and seemingly irrational practices and beliefs of legal doctrine. Lawyers and legal professionals tend no longer to accept an infinite and unknowable god as the author of law, preferring in his or her place more

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scientifically grounded principles such as rationality, objectivity and neutrality.

Similarly, the growth and present dominance of legal positivism is based on the notion that the law is describable, indisputably grounded in some foundational and elementary norm or principle, and conceptually (although not practically) separate from all human moralities, politics and instabilities. Kelsen's "pure theory of law" is an example of this type of positivistic thought (see Kelsen *Pure Theory of Law* (1967) Knight (trans); also Kelsen *General Theory of Norms* (1991) Hartney (trans); and Kelsen *Introduction to the Problems of Legal Theory* (1992) Paulson and Paulson (trans)).

Kelsen attempted to identify a basic or foundational norm which authorises all law and separates legal from non-legal norms. Kelsen thus maintains that each legal norm is a legal authority within the legal system. He further states that the constitutional order is authorised by prior constitutions (if any exist). Finally he posits that one would be able to find a historically "first" constitution, prior to which there was a revolution or some radical breach of the previous legal order. However, it is still possible to ask what validates this "first" constitution, and this is where Kelsen hits bedrock.

His solution to this problem was to propose a "basic norm" which he describes as neither valid nor invalid: it cannot be valid because there is no further space to ask questions about validity, and it cannot be invalid because it is itself the source of all validity. It is thus beyond all questions of validity. According to Kelsen it is a fiction, or rather a "proper" fiction which determines that the otherwise "subjective" acts of the legislature, judges or legal officials can be accorded "objective" legal status.

For these reasons, it can be said that there is violence or force at the conceptual and historical origin of law. This violence demands that fictionally founded norms are accorded legitimacy. It also demands that challenges to the law's sovereignty and questions over its rationale must stop.

However, the reality of the moment of the foundation of the law is undecidable. In other words, there is no continuous historical development but rather a rupture with the practices of the past – a rupture which inaugurates a new legal and constitutional system. The point here is that in order for the law to have ongoing legitimacy, the violence of the foundation of the law must be repeatable or *iterable*. This is what Jacques Derrida refers to as self-conserving repetition in "Force of Law" (Derrida 13). To illustrate, every time a judge or legal official applies the law, implicit reliance is placed on the inherent authority of the law and thus on the undecidable foundation of law. Thus the law "continually pulls itself up by its bootstraps, because every decision is a reassertion of the authority of law" (Davies "Derrida and

Law: Legitimate Fictions” in Cohen (ed) *Jacques Derrida and the Humanities: A Critical Reader* (2001) 213 227).

Thus there can be no absolute distinction between the originating violence of law and the violence that is needed to conserve the law.

It is clear from the above that the assumption of a unified legitimacy of law and the paradox which it entails cannot exist in only one place, but must be repeated throughout the system. This means that the price of identity (or separation) is disunity, contradiction and the repression of the force that maintains separation or exclusion (Davies 227).

Davies (217) urges us to remember that to articulate the foundation of authority does not amount to the celebration of violence or of force. It rather exposes the fact that the law as we know it is not justifiable and reminds us that the positive law masks its own violence by reference to some justification which it can never find. Cornell (“Civil Disobedience and Deconstruction” 1991 *Cardozo LR* 1309) puts it like this:

“When there is not peace, we should not pretend there is. Certainly, the patriarchal order does not provide a ‘peaceful’ world for women. The very recognition of the violence, then, can be understood as a step towards its mitigation” (1314).

There exist arguments that gender is a violent hierarchy or that heterosexuality is compulsory. But these arguments do not amount to an approval of force. They rather amount to a revelation of the fact of violence in the practice of sexual relationships as traditionally understood. Similarly, the argument that the law is based upon violent rupture demystifies the legal orthodoxy that the law is a neutral and peaceful arbitrator or means of achieving social order, but does not necessarily posit a universal conjuncture of law and violence:

“[T]he central point is that the thesis of the limitedness of law owes its existence to a formal and conceptual force, which is repeated in the actual decisions of legal functionaries. Understanding the violence of Western and neo-colonial positivist conceptions of the law provides space for reconceptualising and reliving the relationship between homogeneous law and the others which it presently excludes” (Davies 227-228).

3 The deconstructibility of the law and the possibility of justice

The founding violence or force of law is consequently not simply a “foundation” but comprehends all law – it is repeated in each law as a conserving force, meaning that each law and each moment of application or decision of law must come up against this limitedness. Therefore the law is a system of limits which renders it deconstructible (Derrida 23ff). In other words, the law is deconstructible because it is “constructed on interpretable

and transformable textual data” and because its “ultimate foundation is by definition unfounded” (Derrida 23ff).

The fact that the law is “essentially deconstructible” leads us into difficulty if we wish to insist upon a legal structure which is absolutely defensible on social, philosophical, political, or other normative grounds.

Here we encounter a problem: if the foundation of the law is undecidable, how can any decision, any law, or any legal system be judged as being just, or more justified, than any other? Even if the foundation of law is linked to a particular ethics, it will always rest on a fundamental exclusion and force, which cannot be justified once only in the manner of a social contract but which needs continual reconsideration. (See Rawls *A Theory of Justice* (1972) where he bases his theory of justice on the deliberations of a fictitious group of equal, rational individuals seeking to secure their own best interests by negotiating with other members of the group in the “original position” behind a “veil of ignorance”; and see Rawls (136-137). This means that individuals are divested of their context and situatedness in order to ensure fairness. See Rawls (149-150). For a feminist/communitarian critique of Rawls’ theory of justice as fairness see Benhabib *Situating the Self: Gender, Community and Postmodernism in Contemporary Ethics* (1992).)

The deconstructibility of law may appear to pose some practical problems for legal decision-makers for whom the urgency of deciding what the law is, and how it applies to a particular case, is completely unavoidable. As Davies (229) points out, a judge who refuses to make a decision cannot be fulfilling his or her legally designated function. Therefore, *although* the foundation of the law, and thus the law itself, is ultimately undecidable, any case which is subject to the law must be regarded as completely decidable. The importance of deciding consequently ensures that the force of law is continually repeated. The undecidable as a trace or “ghost” haunts every decision, cutting it open, as the irreducible demand of the other, the demand that we must decide the impossible (Derrida 24).

The question which then arises is the following: what is the relationship between law and justice, bearing in mind that the law is deconstructible? In positivist legal philosophy, justice is figured as external to law. Law is its own measure, and although the law may be criticised for being unjust, any such criticism would emanate from a position outside the law and is usually irrelevant to the existence of the law. Justice could be seen to be like law, but it exists in a different space. They may, however, at times intersect. As Derrida (23) says: “Law ... is not justice. Law is the element of calculation, and it is just that there be law, but justice is incalculable”.

Thus, the law is calculable *and* deconstructible, and justice is incalculable. But what does this mean?

Davies (230) summarises this complex statement to mean that “justice is what takes place in the gaps or *aporia* of law”.

The experience of *aporia* is impossible because an *aporia* is a “non-road” and because an experience is “something that traverses and travels toward a destination” (Derrida 23). Law is an attempt at calculation, but it is always deconstructible, meaning in this context that it is always possible to question, examine or demystify its foundation, its authority, its identity, and its applicability.

Justice, on the other hand, is incalculable, meaning that it is not possible to calculate or normalise justice in advance. Justice and law are not opposed, but justice is the noncalculable *response* to the law in a particular case. Derrida (23) maintains that justice demands some *reconciliation* between the rule and the other/ otherness of the case:

“[F]or a decision to be just and responsible, it must, in its proper moment if there is one, be both regulated and without regulation; it must conserve the law and also destroy it or suspend it enough to have to re-invent it in each case ... Each case is other, each decision is different and requires an absolutely unique interpretation, which no existing, coded rule can or ought to guarantee absolutely”.

Justice is not achieved simply by applying the law as though it were a formula. Justice is a deconstructive attitude to law; it is a transgression of law which nevertheless reinvents the law: “[j]ustice is the opportunity to reconstruct the law, having regard to the singularity and otherness of the case” (Davies 231).

To summarise Derrida’s argument:

- 1 The otherness of any case is not accounted for by a rule;
- 2 The foundation of law is undecidable and if a decision is to be just it must come up against this undecidability which is forever suspended in meaning. Thus justice is infinite, even within a decision, and cannot be encapsulated as this encapsulation would freeze it or stabilise it in a denial of otherness and therefore a denial of justice; and
- 3 Even in the face of the undecidability of law and the fact that justice is always deferred, there is nonetheless the need for decisions to be made. In law, decisions are unavoidable and urgent. A decision is finite and puts an end to further questions or rationalising. Because it interrupts the flow of reasons, a decision is a “madness”. In other words, it cannot be accounted for within the calculable, the rational, or the order of ethical reasons (Davies 231-232).

In the light hereof, Derrida (15 (author emphasis)) says that “deconstruction *is* justice” and Davies (232) adds that:

“Justice is the relationship to the other which cannot be determined or simply mediated by the construct of the law, but which reaches out to the other through an experience of the failure, instability, inadequacy and unfoundedness of law. Deconstruction is an intervention in the law, which reveals both the embeddedness of otherness within the law and the impossibility of purity. Deconstruction and justice are impossible, but necessary”.

Davies (232) points out that to speak of the “force of law” exposes a juncture between politics and law which is commonly erased in legal thinking, and allows us to see the *connections* between the question of validity and ultimate authority of law and the “everyday exclusions and impositions which law practises upon its subjects”.

Davies (232) is referring here to the *violence disguised as equality* which the law does to women, to indigenous people, to lesbians, bisexuals, transsexuals, gay men and to many others: “I am speaking of the violence disguised as neutral principle which law does in shaping and determining social relationships”.

In her view, the fact that the law is able to mask its role in determining and maintaining relationships and power is directly due to the legal erasure of the force of law. Violence is in reality systemic and structural in our conception of the law, but this violence is masked by existing legal ideologies of equality, neutrality, objectivity and so on. These are the self-justifications which at one moment erase the everyday violence of law as well as its ultimate force. The force of law that, for example, posits the white, adult, heterosexual, middle-class male as the legal person is conditioned by the force of law which founds and conserves the legal system.

4 Feminist reflections on ethics and the force of law

As explored above, the law may be understood to be founded in – or even to be a system of – violence, since it can carry within itself no account of its own legitimacy. This point is made most graphically in Derrida’s well-known essay “Force of Law”. It is also at the heart of a long tradition within legal theory which engages the fact that positive law can, by definition, generate no explanation of its own foundations and hence has to be understood as an institutionalised system of violence (see Davies *Delimiting the Law* (1996)). However (and this is what interests me), the idea that law’s violence can be tempered by an ethics has now begun to emerge in feminist legal theory, critical legal theory and postmodern legal theory. (In postmodern legal theory, see, *eg*, Douzinas, Warrington and McVeigh *Postmodern Jurisprudence: The Law of Texts in the Texts of the Law* (1991). Douzinas and Warrington’s interpretation of ethics is drawn from Levinas and hence explores the responsibilities generated by a radical alterity. See Levinas *Otherwise than Being or Beyond Essence* (1981) Lingis (trans).)

Law's violence and its ethical limits and possibilities have provided a productive stream of enquiry in legal theory. But the way in which the ethical is invoked here is different from traditional debates about what is "right" or "wrong". In terms of postmodern and deconstructionist approaches, the ethical is a measure of openness and the beyond or not-yet (see Irigaray *An Ethics of Sexual Difference* (1993) Burke and Gill (trans)). Lacey ("Violence, Ethics and Law: Feminist Reflections on a Familiar Dilemma" in James and Palmer (eds) *Visible Women: Essays on Feminist Legal Theory and Political Philosophy* (2002) 117-119) points out that recent literature has a tendency to associate the ethical or the just with the feminine or with sexual difference. Goodrich (*Law in the Courts of Love* (1996)), for example, explores medieval texts describing laws created and administered by women:

"Given the persuasive feminist interpretation of law's masculinity, and the fact that both ethics and justice are often defined by contrasting them to law, this tendency to feminise the ethical is somewhat understandable. It also ties up with the postmodern conception of the ethical as 'open' or 'beyond', via the Lacanian argument that women's jouissance escapes representation in language ..." (see in general, Goodrich).

However, Lacey argues that the feminisation of the ethical threatens to collapse into a form of essentialism (119).

Cornell has however propounded in her work the idea of an ethical feminism (see, eg, Cornell *At the Heart of Freedom: Feminism, Sex and Equality* (1998); and *Just Cause: Freedom, Identity and Rights* (2000)). She focuses on techniques of critique and deconstruction in her analysis of law's specifically sexual violence. Cornell makes an explicit link in her work between the deconstruction of law's sexual violence and "ethics". Van Marle builds upon this particular theory in the construction of her ethical interpretation of the constitutional right to equality. (See amongst others, Van Marle *Towards an Ethical Interpretation of Equality* LLD thesis, Unisa (1999); Van Marle "An 'Ethical' Interpretation of Equality and the Truth and Reconciliation Commission" 2000 *De Jure* 248; and Van Marle "Equality: An Ethical Interpretation" 2000 *THRHR* 595.)

But does it make sense to espouse a broad deconstruction of law's violence and at the same time to entertain utopian dreams about either an ethical law or an ethical space within and around the law? I would agree with Lacey that we should continuously reconceptualise the law in less sexually exclusive and violent terms. The search for an ethical space in law challenges us to move beyond the traditional hierarchical dichotomies in Western thought such as male/female; public/private; active/passive; individual/community; and so on. These dichotomies are not only hierarchical, but also sexualised.

Let us now look at human rights as a subject of deconstruction in the manner discussed above. Traditionally humans are considered to be the

individual bearers of rights. This rights-based reasoning has been understood to be constructed in ways which are either ethically marked as masculine or inimical to women's interests or both. Drawing on Gilligan's work (Gilligan *In a Different Voice* (1982)), feminist legal theorists have noticed the marginalisation of relational reasoning in deductive legal reasoning and the cultural inferiority of the "feminine voice" in moral reasoning and its silencing in law. Also of importance is the marginalisation of emotion, commitment, relationships and the "ethic of care":

"This strand of analysis has generated a huge debate about the 'feminine' voice in adjudication and legislation as well as a controversy about whether Gilligan's gender-association of the two voices really holds up to further empirical scrutiny. But whatever one's view of the general adequacy of Gilligan's approach, there can be no doubt that her argument has been of great importance in pointing up features of legal reasoning which may have exclusionary effects along a number of different lines" (Lacey 125).

For this reason the concept of (human) rights has been criticised as competitive, individualistic and indeterminate. (See Nedelsky "Reconceiving Rights as Relationships" 1993 *Review of Constitutional Studies* 1. Salecl locates rights within an empty space of Kantian universalism. From her Lacanian perspective, the discourse of universal human rights represents the fantasy of the non-split human; and see *The Spoils of Freedom* 1994 Ch 8.) Lacey argues that the law needs to develop a capacity to "accommodate particularity" (Lacey 129) and to avoid violent exclusions. In developing a strategy of contextualisation we can begin to address the issues of "law as violence" and the "ethical spaces in law". In terms of the violence of judgment – of closing off challenge and enquiry – it seems obvious that the law in terms of postmodern theory can be nothing other than violent. However, lawyers should also recognise the ethical duty to attend to otherness. Hence the utopian strategy of contextualisation "sets out to tap the resources of the imagination: to read and speak against the cultural grain, and hence to make possible the impossible task of thinking beyond the present towards a different future" (Lacey 132).

The author will now turn to an illustration of the deconstructibility of the law from a (postmodern) South African perspective.

5 Burning bridges

The late Wits law professor Mureinik describes the interim Constitution (The Constitution of the Republic of South Africa Act 200 of 1993) as a bridge that facilitates the transition from a culture of authority to a culture of justification, entrenching the image of the Constitution as a bridge that spans the abyss of potentially violent transition (Mureinik "A Bridge to Where? Introducing the Interim Bill of Rights" 1994 *SAJHR* 31):

“If the new Constitution is a bridge away from a culture of authority, it is clear what it must be a bridge to. It must lead to a culture of justification ... the new order must be a community built on persuasion, not coercion” (32).

The interpretation of the bridge metaphor has become established in current constitutional discourse and in popular consciousness as a powerful image for social, political and legal transformation and progress. The bridge is thus seen as “an instrument of escape and liberation, of linear movement from old to new, from inside to outside ...” (Van der Walt 2001 *SALJ* 260). Regarded in this way, the bridge metaphor is the expression of a wish to break away from a violent and divided past and the complete transition, once crossed, from old to new, from bad to good, and so on. The point of the exercise is to cross the bridge – make the transition – and get it over and done with. It is a one-way journey, a “long walk to freedom”. (See Mandela *Long Walk to Freedom: The Autobiography of Nelson Mandela* (1994). For Mandela, the long walk to freedom is also based on moving from one place/position to another. In this walk metaphor, there is a possibility of a more complex movement through time and space and it has also become rooted in the popular consciousness as a metaphor of transformation.)

Although many constitutional theorists subscribe to this interpretation of the bridge metaphor as crossing from old to new and not looking back, Van der Walt argues that this metaphor places a particular theoretical spin on the discourse of constitutional transformation. This theoretical spin denies and suppresses other interpretations of and discourses about transition and constitutionalism (Van der Walt 2001 *SALJ* 261). Van der Walt thus deconstructs this dominant metaphor of transformative constitutionalism. He argues that the image of apartheid land law and of transformative land law as two stationary positions on either side of the metaphorical bridge is unsuitable. He introduces a new metaphor – that of dancing or movement (2001 *SALJ* 262, where Van der Walt makes reference to the “madiba jive”):

“However, even when we trade the static imagery of position, standing, for the more complex imagery of dancing, we still have to resist the temptation to see transformation as linear movement or progress – from authoritarianism to justification, from one dancing code to another, or from volkspele jurisprudence to toyi-toyi jurisprudence ... I suggest that we should not only switch to a more complex metaphorical code such as dancing when discussing transformation, but that we should also deconstruct the codes we dance to; pause to reflect upon the language in terms of which we think and talk and reason about constitutionalism, about rights, and about transformation, and recognize the liberating and the captivating potential of the codes shaping and shaped by that language” (262-263).

Van der Walt convinces that we should “continually dare to imagine alternatives” and to “open our imagination to the possibility that things can be different”. (2001 *SALJ* 263. As he states “[o]nce clear meanings are out of the house, we can allow language to dance on the table”.) As a so-called feminist, I have no doubt that things *can* be different, but I believe that dancing may not take us there. Rather, I believe that we need to converse with one another in order to find new ways in which we can live together.

These ongoing conversations require careful speaking and listening as we seek new meanings for our lives together. Conversations are not static or linear, they are possibly a verbal, non-formalised, and interactive “dance” where the parties hide behind words and expose themselves in silence, but nevertheless where we learn much about both speaker and listener. The dance for women has often been the art of seduction and a means of communicating desire – think for example of the gyrations of a belly-dancer. But the silence of women is historically troubling, and therefore I feel that we need to enter into vibrant and imaginative conversations at the party, apart, of course, from dancing our desires. If we think about circulating at a party with a glass of wine in hand we see in our mind’s eye movement as groups are dissolved and re-formed at random. In this way we can retain Van der Walt’s metaphor of movement, and possibly even dance, while adding to it the element of speaking and listening. (In a brief discussion with Van der Walt at the RULCI colloquium after the author delivered this paper, he indicated to me that the metaphor of a party is not necessarily an effective one as it could also be seen as a formalised social ritual with its own inherent systems of exclusion. Be that as it may, the aspects which I wish to highlight are those of movement, interdependence and conversation.)

Speaking about voices, according to the cocktail-party effect, there are certain words, exclamations and phrases which resonate with the individual listener. In the remainder of this paper I will highlight some of the ideas that resonate with me as listener and reader. I will also (re)consider these ideas critically in the light of my passion for feminist theory.

However we choose to see it, transformation is continuous and here I add my voice to the many who seek the “not yet ...” of a (possibly postmodern) democratic South African life.

6 A cautionary tale

It is important for us to keep in mind that postmodernism itself should remain open to questioning (Ahmed *Differences that Matter: Feminist Theory and Postmodernism* (1998)). In questioning postmodernism we need to challenge both its assumed referentiality and indeterminacy. Giving up postmodernism’s generalisability means resisting the process whereby it comes to speak for (or as) others in the event of naming the place they inhabit, that is, The Postmodern World (Ahmed 13). The problem, for example, of placing feminism inside or outside of postmodernism is determined by how postmodernism itself has constructed and authorised the relationship.

Ahmed believes that feminism’s inclusion within postmodernism could very well result in a situation where women’s voices are not heard as the very identity of “woman” is questioned in postmodernism. In fact, the act of

naming feminism as postmodern refers feminism back to postmodernism in such a way that the complexity of feminism's histories is already overlooked.

Let us consider Hekman's (*Moral Voices, Moral Selves: Carol Gilligan and Feminist Moral Theory* (1995)) contention that feminism can add to postmodernism the dimension of gender. This is problematic because there is an assumption that postmodernism has no gender and thus no agenda. In "Feminism, Philosophy and Riddles Without Answers" Gatens argues that sexism in philosophy is not incidental, or accidental, but *structural* (Gatens *Feminism and Philosophy* (1991) 187). As such, philosophy is not and cannot be neutral. The history of feminist philosophy has entailed an analysis of the way in which the seeming sex-neutrality of philosophical discourse entails the function or dynamic of a masculine power, and has articulated the possibility of women being visible and audible in philosophy precisely through a critique of the notion of neutrality.

Gender neutrality may very well then mask the privileging of the masculine. Ahmed thus holds that adding gender to the explicit terms of postmodernism means transforming it – it means destabilising the terms of reference whereby it constitutes itself as an object (Ahmed 15):

"The transformative potential of feminism – its inability to simply inhabit other discourses which marginalize questions of gender – signals the potential of the debate to move us elsewhere, beyond the stage where there are simply two subjects in place. Speaking of the difference of feminism, as a difference that matters, undoes the critical trajectory whereby feminism either mirrors or distorts the face of postmodernism itself" (15).

It is clear that feminists need to engage with "deconstructive theories" but feminism need not be, or perhaps should not be, located within a generalised postmodernity.

Furthermore, when exploring the issue of ethics, Ahmed deconstructs the "postmodern" ethics of alterity which form the basis of the postmodern jurisprudence of Douzinas (see, *eg*, Douzinas *The End of Human Rights* (2000); and Douzinas and Warrington "A Well-founded Fear of Justice: Ethics and Justice in Postmodernity" 1991 *Law and Critique* 115). A careful reading of Levinas's texts shows an "erasure of the particular" (Ahmed 61) where the radically other is dispossessed of her habitat, her particularities. (What Benhabib would refer to as her concreteness. See Benhabib "The Generalized and the Concrete Other: The Kohlberg-Gilligan Controversy and Feminist Theory" in Benhabib and Cornell (eds) *Feminism as Critique: Essays on the Politics of Gender in Late Capitalist Societies* (1987) 77.) We should embrace the voluptuousness of the Other rather than retreating to a psychologist model which reduces the Other to just an-Other Being.

But how might a feminist ethics of otherness proceed differently? Such an ethics may address the particularity of the other by assuming that a philosophy of otherness is impossible as such. Spivak (see Landry and Maclean (eds) *The Spivak Reader* (1996)) achieves this in her reflection on her translation of Devi's *Imaginary Maps* (*Imaginary Maps: Three Stories by Mahasweta Devi* (1995) Spivak (trans)). Here, Spivak formulates a model of ethical singularity, not of the Other per se, but of the subaltern woman, who remains other to the various privileged categories of otherness (migrant/exile/diaspora/postcolonial) within Western knowledges.

For Spivak translation involves proximity to the other. An ethical reading may be a reading which gets close to the text, which caresses its forms with love. It refuses to judge the text from afar and to fix the text as a discernible object in space and time. But that closeness or proximity, which avoids universalism, does not involve the merging of one with the other. While the line between the translator and the text becomes unstable in proximity, it also constitutes the limits of translation; of that which cannot move across. By getting close enough, translation admits to its own precariousness and violence. Hence the ethics of translation becomes for Spivak the "experience of the impossible" (Devi xxv). The impossibility of ethics is negotiated through a singular encounter with a subaltern woman. It is a secret encounter which demands recognition of how the other is marked and constituted in a broader sociality:

By questioning the very possibility of otherness and difference *in abstraction*, feminism introduces the potential for further critique of the valuing of otherness in postmodern ethics and legal theory: "a potential which is at once feminism's gift to the postmodern, the loving caress" (Ahmed 67).

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