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Critical Theory as an Art of Notice: Reification, Alienation, Kaleidoscope

“If the satisfaction of an old man drinking a glass of wine counts for nothing, then production and wealth are only hollow myths”

*Simone de Beauvoir*¹

“Philosophy is to reflection what the work of hands is to action”

*Simone Weil*²

Introduction: The Kaleidoscope

This paper presents critical legal theory as an art of notice. Why? We are latecomers to critical thinking, the inheritors of various legacies in a time when radical thought is both necessary and compromised. Necessary because left or progressive thought needs to be defended and developed. Compromised because our inheritance is a scatter of fragments. These fragments appear to be divided between identity politics and ‘proper’ left politics (Marxist or otherwise); between ‘literary’ post modernism (frivolous, queer, the voice of the marginalised) and philosophy (straight, white, serious, universal). This is, of course, a simplification, but these comments are not meant to preface an argument that seeks to unify. Its aim is to plot one way in which themes that run through different critical

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¹ Simone de Beauvoir, *The Ethics of Ambiguity* (New York: Citadel Press, 1949), 37.

² Simone Weil, “Sur La Pensee et Le Travail”, *Premiers Ecrits Philosophiques, Oeuvres Completes I*, ed. Devaux, D and de Lussy, F (Paris: Gallimard, 1988), pp. 378-79, 378.

traditions can be put into dialogue with each other and kept spinning, so that critical thinking emerges out of its own active ambiguities.

To this end, critical thought might take shape as an art of notice. An art of notice is merely a way of proceeding; or, more precisely, of remaining open to possibilities so that one might proceed. There is no recommended method or required text. An art of notice is, arguably, configured differently depending on the practitioner of the art and the task in hand. However, in critical legal theory these themes have gathered around concerns with commodification, alienation and reification; the vital coordinates of intersectional critical thought. These crucial terms must be taken up from the point of view of a self-reflexive consciousness working on its own self-examination. Intersectional thinking on alienation and reification provides the terms through which thinkers examine their troubles.³ This kind of thinking does not lead to essentialism but thrives on tensions and ambiguities, cross-cuts. Dialectical? Yes, but not mechanical and deathly: rather – the way in which a kaleidoscope brings together a fragmentary picture choreographed by two reflecting surfaces. The kaleidoscope is a figure of critical thought twisting around itself.

The argument will develop in the following way. The first part of the chapter outlines the legacies of critical legal studies (CLS), the critique of CLS and the critique of the critique. We will then look in slightly more

³ This notion of trouble is taken primarily from C. Wright Mills' *The Sociological Imagination* (Oxford: OUP, 2000). However, there are also certain points in common with Donna Haraway's *Staying with the Trouble* (Durham: Duke UP, 2016). Building on the etymology of the term, Haraway write that we live in "mixed up" and "troubling" times. To "stay with" the trouble, we need to "make kin in line of connection as a practice of leaning to live and die well with each other in a thick present" (Haraway, 2016, 1). These "inter-species" practices are definitely intersectional, but in senses far extended from those at play in this essay. Haraway is also arguably concerned with the creation of a form of ethical thinking. This point will not be developed in any great detail in this essay, but living and dying well in a "thick present" could be understood as one of the valences of an art of notice. Trouble, in a Millsian sense, begins with the experience of being trapped in social relations. Within crippling frustration, an intimation remains that life could be lived differently. The sociological imagination allows one to understand the connections between the bigger picture and one's actions and one's "inner life". Trouble interrupts the routines of daily business, precipitating a sense of anxiety and unease. Mills explicitly links trouble to "alienating methods of production" that are working "pervasive transformations of the very 'nature' of man and the conditions and aims of his life" (Mills, 2000, 13).

detail at notions of commodification, alienation and reification.⁴ The next part of the argument introduces the idea of the reflexive work on the self. This opposes the art of notice to alienation and reification. We then turn to an in depth consideration of arts of notice. Our argument requires a combination of points of reference: theoretical, philosophical, experiential, and literary. We will look at texts by Wangari Maathai, Adrien Wing, John McGahern, Simone de Beauvoir and Maria Grahn-Farley. A concluding section will relate these themes to an ethics of ambiguity. An ethics of critical reflection that celebrates the creative, kaleidoscopic power of negation and re-arrangement.

Alienation, Reification and Notice

The conventional account of CLS's legacies is well known. The mandarin nature of CLS was subjected to withering critique by feminists and the first generation of critical race theorists. This critique, in turn, was then also subjected to critique. Those calling for a rejection of certain theoretical voices or styles were themselves criticised for introducing choices between modes of thought that are not necessarily in opposition.⁵

Where does this leave us?

⁴ Concerns with alienation and reification run through Critical Race Theory (CRT), LatCrit, queer theory, feminism and other congruent currents of legal theory. For a review of the relevant literature, see Adam Gearey, "The Parable of Bill Ayres," in Thomas Giddens, ed., *Critical Directions in Comic Studies* (Jackson, Mississippi: University of Mississippi Press, 2020), 288-309. There have been a couple of extended engagements with reification in recent years. See Douglas Litowitz, Reification in Law and Legal Theory, *Southern California Interdisciplinary Law Journal* 9, no.2 (2000): 401-428; see also Rhonda V. Magee Andrews, "Racial Suffering as Human Suffering," *Temple Political and Civil Rights Law Review* 13, no.2 (Spring 2004): 891-926. Andrews is committed to elaborating an "ongoing project of human liberation from dehumanized (alienated, inauthentic) existence" (Andrews 2004, 899). Litowitz's review of reification does not engage with "this kind of CRT approach to reification" nor does he consider feminist or Lat Crit approaches. Thus, whilst a useful review, it is rather limited in its framing its themes. Likewise, Fejfar takes Peter Gabel as his focus. There is no consideration of reification outside of Gabel's deployment of the term. See Anthony Fejfar, "An Analysis of the Term Reification in Peter Gabel's Reification in Legal Reasoning," *Capital University Law Review* 25, no.3 (1996): 579-612.

⁵ The critique of the critique emanated from the work of the latter generations of critical race theorists, the Lat Crits, Queer Crits, Class Crits and other groupings of outsider scholars.

Rather than see the various tendencies of critical thought as separate and mutually antagonistic, can we not also find relations and patterns? Take, for example, the notion of intersectionality. Intersectionality was central to the advances in theory and practice that came out of the critique of CLS. Contrary to certain arguments from the left, intersectionality was not restricted to identity politics. These themes are marked in the work of Angela Harris, and were certainly active in early Lat Crit with its emphasis on the “multiple, variegated” nature of identity.⁶ Harris had stressed the “interconnection” of gender, race and class – and urged the development of modes of critical thinking that can grasp how “thingification” flattens out the complexities of interiority.⁷ Intersectionality – in this tradition – was always concerned with relationships between different ways of thinking and the complex ways in which identity is understood and acted out.

Anthony Farley’s notion of the ‘commodity that talks’ is apposite. In Farley’s formulation race and racism are “ideology made flesh”- they are the way in which economic differences are made to signify in racial terms and become a constitutive wound to consciousness. Racism and capitalism reproduce themselves – but the two phenomena are distinct and need to be understood as such. Farley frames this in a particularly useful way. Reified consciousness is a “spectacle” of itself as it lacks substantial, self-determined being. Objectification is covered up – or “denied” through a “discourse” which positions whiteness and blackness as “natural categories” rather than mutually defining symbols – ideological counters that are “acted out” and made real through practices.⁸ The discourse of racism is the constant repetition of this moment of subordination and dominance. The black body is the result of this convergence of power, knowledge, and objectification – as transmitted through social and cultural institutions.⁹

How can we develop these ideas?

⁶ Berta Hernandez-Truyol, Angela Harris, & Francisco Valdes, “Beyond the First Decade: A Forward-Looking History of LatCrit Theory, Community and Praxis”, *Berkeley La Raza Law Journal* 17, (2006): 187.

⁷ Angela P. Harris, “Theorizing Class, Gender, and the Law: Three Approaches,” *Law and Contemporary Problems* 72, (Fall 2009): 54.

⁸ Anthony Farley, “The Black Body as Fetish Object,” *Oregon Law Review* 76, no.3 (1997): 475.

⁹ Farley, “The Black Body as Fetish Object,” 475.

First of all, it is necessary to make clear that these terms are a second order language – an instrument of thought: a philosophical vocabulary that has its own peculiar political and intellectual dynamic. The complex commodification/ alienation/ reification allows a thinker to work at the interface between “outer and inner lives” – between the personal and the social.¹⁰ Thinking the intersection of outer and inner lives borrows from Mills’ framing of troubled thought as a way of grappling with private and public concerns. The individual, in his/her/their “biographical” life may have an inchoate sense that things are not right. This sense becomes social when the troubled thinker relates their condition, their personal “milieu” to an “historical” structure – working through the overlapping of “various milieux”. We will return to this metaphor presently as it is distinctly intersectional. Emotional and intellectual engagement with the troubles that one experiences requires consciousness to catch onto what explains the “drift” of a world becoming increasingly alien – a creation of forces outside of political or personal control. The troubled thinker grapples with the meaninglessness of the work in which s/he/they are engaged; the stultifying boredom of ‘being managed’ – the “dull comfort” of consumerism, the fetishistic cult of wealth; the loss of time for family (in all its manifold forms), for idling, for love; the disappearance of a decent society; the marginalisation, denigration and exclusion of those ‘that don’t belong’; the impossibility of a future that might be different from the compromised present.¹¹

¹⁰ The quotation in the text above has been modified. Whilst Lukács’ text has “life”, it is perhaps more realistic to see the point of intersection as plural: there is no single ideology that can speak for or represent a totality of lives. Hardly surprisingly, the analysis that follow does not draw specifically on Lukács’ *Reification and Class Consciousness*. George Lukács, *History and Class Consciousness: Studies in Marxist Dialectics* (Cambridge, MA: MIT Press, 1971), 83.

¹¹ Mills, *The Sociological Imagination*, 8. See also Motro on the scholar as a “compromised academic” in law schools dedicated to the reproduction of alienated forms of legal thought: a repetition of the certainties of more or less mainstream law and economic thinking that “jeopardizes the intellectual mission of the university.” The way out of the fly jar is provided by ideas that are only “wild” and “impractical” to those lost in ideology. The isolation and bad faith that comes from “dil[uting] radical views”, squanders opportunities to build forms of intellectual community that would bring together “other colleagues at the margins”. Shari Motro, “Scholarship Against Desire,” *Yale Journal of Law and Humanities* 27, no.1 (2015): 118.

The meditations of the troubled thinker are experienced as the failure of solidarity. How does the “I” relates to “you” or even to a “we”?¹² This approach is rooted in a thinking of ethics. The “properly human” finds itself through action; those activities in which it creates itself.¹³ In order to bring this tradition of ethical thinking together with an intersectional approach, to appreciate the lacing together of “outer and inner lives”, we need to keep in view a critique of the way the market determines the psychic, social and communal forms of experience. Alienation is complete in the anti-solidaristic assertion of the exclusive community of a ‘we’ without difference from itself and dedicated to the preservation of its wealth. A self-enclosure that is only possible if certain ways of being (and certain people) are denigrated, forbidden access, unrecognised, marginalised or expelled. The polity as a statue of itself, frozen in its own self-regard. With these essential insights one can work from the “inarticulate and perhaps even unexpressed” negation of one’s situation to the sense that “[n]o one should be treated like this” – in other words – to solidarity. My own diminishment is inseparable from that of those others whom I see as crippled by exclusion from viable community.¹⁴

¹² Hanna Fenichel Pitkin, “Justice: On Relating Private and Public”, *Political Theory* 9, no.3 (1981): 347.

¹³ Pitkin, “Justice: On Relating Public and Private,” 347.

¹⁴ See Kimberle Crenshaw, “Intersectionality, Identity Politics and Violence against Women,” *Stanford Law Review* 43, no.6 (July 1999): 1241-1299. Crenshaw’s writing on intersectionality give the sense that the term is a way of reading experience. As a method of reading, it can perhaps be seen as a way of re-validating experiences that are not understood for what they are – as they are articulated in terms removed from the lived world of experience. As a ‘method’, this way of reading seems tentative, and radically open to the notion that those who reflect on their experiences face the task of developing the terms of their own accounts, their own “telling” of themselves and their experiences (Crenshaw, 1991, 1242). There are thus some links between Crenshaw’s elaboration of intersectionality and themes within the literatures we have been examining. Whilst alienation is not a key term ‘alienated experience’ is used as a meaningful category (Crenshaw, 1991, 1273). But intersectional reading is resistant to “either or propositions” and is not a “totalising theory”. As such Crenshaw’s engagement with alienation could not be related to the kind of thinking that one finds for example in Lukács. But it might have a closer relation with arts of notice practiced either as critical legal theory or in anthropological studies of experience (Crenshaw, 1991, 1244). There is an interesting link between Crenshaw’s line of analysis and Collins’ notion of “hidden consciousness”: the act of not talking, or even appearing to act in a conventional manner that may conceal existential resistance to imposed social terms. These ways of living are not ‘data’ for social science. See Patricia Hill

But, solidarity does not exist without ambiguity. To assert solidarity with others is not to dissolve difference into bland, infinite sympathy, or, to claim the licence to mandate the meaning of the experiences of others. Solidarity is difficult. A later section will go into a more detail on this point. As work or craft, or as an art of notice, solidarity involves an ethics that demands a fair amount of discipline, luck and judgement. This is because it is an articulation of those ambiguities that exist in the very 'substance' through which the troubled thinker thinks. Ambiguities are hooked up to the milieux of those who object to their common diminishing. It would be very difficult to posit a single 'element' which mediates this commonality, although arguably a Batailleian mangling of Hegel's notion of thinking 'substance' (at once both private and social; a folding of interiority and exteriority; a self grappling with itself) gets at its doughy, malleable plasticity. The plasticities that constitute solidarity are the lived and overlapping experiences of class, race, gender and other forms of social and intimate identity. It is for this reason that we must think in terms of work on the self that is rooted in the experience of ambiguous modes of identification.

Thus, solidarity is neither possible nor impossible. It is a difficult articulation of modes of 'being with' that are rooted in resistances to alienated and commodified being. Provided one can understand the logics, it might be possible to summon sufficient creative power to will modes of collective identity that create a viable communal sense of being.

To further this argument, it is necessary to review Marx and Engels' account of alienation. In order to position the analysis of alienation alongside intersectional thinking, we need to begin with the commodity (to follow the analysis of commodification back to the ambiguities of solidarity).¹⁵ A capitalist mode of production is based on commoditisation

Collins, "Learning from the Outsider Within," *Social Problems* 33, no.6 (1985-1986): 23. I am indebted to Maria Grahn-Farley for pointing out these themes to me.

¹⁵ See Huey P Newton, *Revolutionary Suicide* (New York: Random House, 1973). Newton is getting at the way in which racism determines a form of being. Racism lays down internalised patterns in which one's own being is experienced or 'internalised' as inferior to dominant ways of being. Newton's key question: how is it possible to confront your alienation? How is it possible to make the link between your own degradation and social degradation. How can one bring together "street philosophy" and "academic work" (Newton, 1973, 76). This point is also made very explicitly by Angela Davis in her autobiography: there is no such thing as a private, individual life. One must grasp the links between economic power and the determination of modes of consciousness: "The power

– or the economic drive to ensure that anything can be bought and sold on a market for a profit. The exchange value of a commodity relates to the average amount of socially necessary labour time that predominates in any given sector of the economy that produces a particular kind of commodity.¹⁶ To brutally summarise the first chapters of *Capital*, the socially necessary labour time for the production of commodities in capitalist markets is obscured. But it can be understood through the concept of abstract labour. Abstract labour describes the combination of labour, technology and productive machinery-deployed competitively – in order to put social labour power ‘to work’ at an average rate of profit. Without doubt, these are complex matters. The point is that we don’t notice, or are encouraged not to understand an interconnected global network for the creation and extraction of value. In brief: “the products of labour are prized to the exclusion of the labour that created them.”¹⁷

We are enmeshed in global networks of production and consumption. Champions of the market might see this as the realisation of Milton Freedman’s “fecundity” of human freedom. This sentiment is not generally shared. The more one thinks about the inefficiencies of markets, their tendencies to waste, the creation of poverty, social degradation and environmental destruction, the more one begins to appreciate the reality of this mode of economic organisation. To understand alienation is to begin to realise the “dead weight of things.” Closely related to alienation, reification draws attention to the ossification of emotional and intellectual responses. At its most simple, reification announces itself in the sentiment that the world is the way that it is and it cannot change. Reified thought begins with the acceptance and deployment of concepts and patterns of knowledge that are more or less unquestioned givens. Reified thinking

structure [is] based on the economic infrastructure, propped up and reinforced by the media and all the secondary educational and cultural institutions”. See Angela Davis, *An Autobiography* (New York: Random House, 1974): 4.

¹⁶ It is easier not to think about the commodity and the conditions of its production, distribution and consumption. Of course, the commodity can announce its place of creation through a label added to it at some point in its journey from maker to consumer. But, as they confront us – things to be used – the mystery of the commodity is either effaced by use, or something of a strange remainder. In order not to overburden the analysis by bringing money – that ultimate fetish – into account – the point is that any attempt to notice commodities for what they are builds on the ‘classical’ analysis of use and exchange value.

¹⁷ “Factory Work,” *Politics* 3, no.1 (1946): 371.

resists ambiguity, or engagement with difficulties or paradox. Becoming different is impossible. The reified world is the permanent repetition of the world as it is.¹⁸

The preceding paragraph is offered as a basic sketch of the coordinates of the commodification/ alienation/ reification complex. A real difficulty with the analysis of this complex is the very question of how to proceed. How can lived experience be understood? It is not necessary to assert an 'outside' to capitalism.¹⁹ As we suggest below, working through the trouble means grasping the potential of ambiguities to open something up. There is no single philosophical language that delivers the necessary purchase on this condition of thought and being. Despite the central importance of Marx and Engels for its articulation, this approach is neither dogmatic, nor Marxist. Different techniques and strategies are necessary. Reading between texts is hopefully one way of evoking the necessary energies. Articulating together different texts, languages and reference points might, with a measure of luck, create the necessary patterns – brief awakenings of possibilities. Whilst this might upset some, philosophical or methodological purity should not distract us from putting together the means of addressing our troubles.

So, how more precisely does the complex of commodification/ alienation/ reification enmesh inner and outer worlds? The original term used by Hegel, Marx and Engels is *Entfremdung*. This has been translated as estrangement as well as alienation. There is certainly the sense in which alienation carries with it the estrangement from the social world. We can thus perhaps think of alienation as the failure of the dialectic of recognition. We fail to recognize ourselves and each other in a world made strange by processes that appear to be beyond our control. It is important to link alienation to reification. Reification has been used to translate *Verdinglichung* or 'thingifying.' Whilst these terms come from different phases of Marx and Engels' writings, they can arguably be coordinated in the following way. In *The 1844 Manuscripts* Marx argues that under the

¹⁸ What is the relationship between the critique of ideology and an art of notice? The latter inherits many of the problems of the former. However, it may be the case that an art of notice, unlike the critique of ideology, can thematise the work on the self. It might be necessary to spend more time on the fraught relationship between arts of notice and the critique of ideology. But not now.

¹⁹ J.K. Gibson-Graham, *The End of Capitalism (As We Knew It)* (Minneapolis: University of Minnesota Press, 2006), xxiii.

social conditions of a capitalist mode of production, one is alienated from *Gattungswesen*, “species-essence” or species being.

Let’s not become distracted by the conventional arguments about the recovery of some sort of ‘human essence.’ The complex can be seen as the way in which we are prevented from experiencing ourselves and our constitution as ‘world making’ creatures. Alienation/reification is, in truth, an account of how our conception of ourselves can become thinkable in and against the dominant terms that frame our identities. Species being is this fold in the human substance; a set of coordinates for those points where one begins to access oneself as ‘thinking substance.’ This in the mark of a being that can become its *own* object. To take oneself as one’s own object, though, is not to see oneself as a thing.²⁰ This would be to reify thinking substance. Rather, the thinking substance is its own object because it is what is thrown up ahead of itself: “living” and “free” to the extent that – in troubled thinking – one becomes aware that one is more than how one has been defined. Object in this sense means to *object to something*, and in so doing conceive of one’s self as an object of thought: to think oneself as a potential or a possibility: something still to come. Species being is not a noun at all. The term describes an active process as the thinker notices their own thought.

So, *Gattungswesen* can be understood as a term that requires engagement with the meaningful nature of social being.²¹ The analysis of alienation/reification only really begins to make sense once it takes into account the structural determinants of one’s place within a capitalist division of labour. In other words, we can use an understanding of intersectionality to get at the interior effects of alienation and reification. To be meaningful, these modes of self-identification must be thinkable. To be thinkable,

²⁰ These themes echo within reification. The root of reification is the Latin *res* or *rem*. This can be translated as thing, but can also be extended to the idea of an assembly or gathering – and thus, perhaps, the sense of people talking to each other.

²¹ Recent scholarship has picked up on this kind of interpretation – finding in reification an understanding of a “stance” or an attitude of mind that can be understood as “empathetic engagement” or a “qualitative experience of interaction”. See Axel Honneth, *Reification* (Oxford: OUP, 2008), 56, 57. This has some overlap with the argument thus far. We reify other people to the extent that we do not recognise them as human beings and, indeed, we suffer from reification to the extent that we forget or limit our own emotional responses to others. However, against Honneth, we should not lose sight of “the sphere of commodity exchange” if we want a sophisticated understanding of the interior effects of reification (Honneth, 2008, 24).

the thinker must become aware of a certain slippage or ambiguity; a gap between the imposition of a meaning and a projected meaning where the self becomes the object of thought. It may even be that this projection is inseparable from a kind of pause in thought, where meaning catches or coagulates in thinking. The intersection, then, or the thickening of thought, is the self-interrogation of one's own thought once one attempts to think one's own being.

These contours are laid bare in the following passage:

“[A]t [the] intersection: theoretical reflections start in and through a silhouette of life, after the fact, with all the countless, priceless, motionless layers of time folded, compressed ... and the various corners of the world suddenly brought to light, to the center stage. This seems how a life, instantly, becomes an afterlife, serial constellations of *Nachträglichkeit* (belatedness or deferred effects), as one seeks to “find an order in the drama of time.”²²

The intersectional voice discovers life in vague figures and shadowy representations. The intersectional thinker is focused on the hold of these reified and alienated forms of consciousness. How can “silhouettes of life” be “brought back to centre stage” so that one can find “an order in the drama of life”? Is it a question of how we can read the patterns? How can we see ourselves seeing? It might be said that “[o]ne needs to stand back in order to reflect.” This stepping back is a form of self-examination. We cannot capture all its forms and processes – and it is different for all those who engage in its different practices. Self-examination picks at the complex knot of self-constitution and the inter-weavings of the personal and the historical. One must confront what one has become: a personal or familial drama that is, at one and the same time, an articulation of impersonal social, economic and political forces. One's embodied nature may be what self-examining consciousness snags up against: those intersecting planes of gender, class, ethnicity, sexuality and ability. One can engage in self-analysis using these terms, or supplement them, or make use of an entirely different problematic. As Lee suggests, the ‘feel’ of self-analysis is of an unwrapping of layers, a movement through accretions, forms of solidified time, a realisation of constellations or relationships in which one's being is enmeshed. One does not necessarily find a core or a substra-

²² Kyoo Lee, “Rethinking with Patricia Hill Collins,” *The Journal of Speculative Philosophy* 26, no 2 (2012): 468.

tum of personality. One might find a puzzle: swirling nodes; plasticity; magma. What does this mean?

We can turn to a recent piece of writing by Maria Grahn-Farley:

“The most “localized disruption” of all takes place within oneself. The self is a site from which to reject “totalizing theory”. Totalizing theory takes away one’s ability to experience disruption from within. Totalizing theory prevents one from being aware of one’s own existence. The experience of internal disruption, of ambiguity, is necessary if one is to develop an awareness of one’s own existence as a human being.”²³

The ‘self’ is not something self-same, self-recognising. The self is disrupted by its own living of itself, and demands its own ‘theory’ – an account of its own self-puzzling that cannot be ‘totalizing theory’. Lee and Grahn-Farley are urging us to think about the reified – frozen out self that is no longer capable of becoming new or different. To get at this idea we need to look at what the word experience actually means. The root of the word is ‘per’: “to lead, pass over” which in turn can be linked to *peritus* – “tested” – even a reflexivity – the sense of testing the self – and perhaps into *perius* – peril – putting something at stake; risk, anxiety. It would seem, then, that the process of experience, of putting in question, is an opening of one’s self to experience and personal change. The etymology of experience provides the basic coordinates of our understanding of notice. The root of notice is **gnō-*. The Proto-Indo-European [PIE] root word meaning “to know” also carries the meaning of “having power”. This power is related to what can be found in the Latin *gnoscere* – the process of “com[ing] to know, Etymologically, the PIE roots bring together the idea of cognizance or knowledge with ability or power. Etymological study also shows that common root of intersection and notice in the PIE root word **sek-*.²⁴ Bringing these meanings together suggests that we are concerned with noticing.

What, then, is an art of notice?

Nelson puts the kaleidoscope to his blind eye...

²³ Maria Grahn-Farley, “The Law Room, Hyperrealist Jurisprudence and Postmodern Politics,” *New England Law Review* 36, no 1 (2001): 29

²⁴ Julius Pokorny, *Indogermanisches Etymologisches Wörterbuch*, Vols I, II and III, Francke Verlag, (1969), 373, 939.

Arts of Notice

The section above has attempted to explain the work on the self from the perspective of being in a commodified world. This, of course, begs the question about how one thinks about the commodified world. How does one notice commodification?

Rather than a definitive definition, a working outline might be better. An art of notice addresses how we live with commodities – with things, with people and with people who have become things. To connect to themes developed above, it is important to note that in Tsing's deployment of an "art of noticing", our attention is directed towards "unpredictable encounters" that "transform us" – and throw us into "shifting assemblages."²⁵ Working on the disturbance in the self brought about by noticing is thus an essential element of the art. The art of notice has to address what is invisible but constitutive of the everyday world.²⁶ An art

²⁵ Anna Lowenhaupt Tsing, *The Mushroom at the End of the World: On the Possibility of Life in Capitalist Ruins* (Princeton University Press, 2015), 20.

²⁶ We cannot fully elaborate what we mean by an art of notice as it would overburden this chapter. However, this footnote serves to link some of the themes developed in the first part of this essay to a brief elaboration of a concern with an art of notice. We can follow Dewey in resisting the fetishistic reduction of art to works of art. Art has to be found in the experiences of productive practices. A clue can be found in jazz, movies, comics and sensational novels – not in the dead world of the museum and the gallery, John Dewey, *Art as Experience* (Ontario: Capricorn Books, 1958), 5-6. Thus, the task of art is to repair the breach between representation and "human effort" – between "refined and intensified forms of experience" and "the everyday events, doings, and sufferings." Art is, in this sense, about responding to the world. Art is grounded in those events that grab one's attention: "the fire engine rushing by; the machines excavating enormous holes in the earth...the men perched high in the air on girders, throwing and catching red hot bolts." It is interesting that these are all examples of work – or more precisely observing people at work – but – it would extend to the "tense grace" of the baseball pitcher, gardening, or simply sitting in front of the fire and poking it so that sparks fly up into the air. What cuts across the various examples is absorption in a task; a kind of craft experience, of discovering satisfaction in work well made. Dewey starts to read very much like William Morris. Shoddiness in production is blamed on a market that requires cheap, mass production. This point can be refined from the view point of contemporary accounts of craft, see Richard Sennett, *The Craftsman* (London: Allen Lane, 2008). Sennett notes that in archaic Greece, a craftsman was *demioergos* – a combination of the words for public (*demios*) and productive (*ergon*). The category included "skilled manual" work, but extended to professions of "doctors, lower magistrates and "professional singers" (Sennett, 2008, 22). This was not the case in classical times – Aristotle made use of a word which means 'hand worker'. Plato was much more sympathetic to the classical idea – tracing the

of notice counters modes of not seeing. Mohammed Bedjaoui provides us with the essential insight. People can be “deprived of the means to understand and master their social and political environment” once “a system of unequal economic relations” becomes invisible or unthinkable.²⁷ Thus, to study arts of notice, we have to examine those texts which allow us to experience the coming together of inner and outer worlds. Wangari Maathai, the Kenyan intellectual and environmental activist, is an exemplary practitioner of the art of notice. Speaking in May 2005 about problems faced by Kenyan farmers, at Howard University, Maathai pointed out:

“Most of these farmers that I’m talking about grow tea and coffee. But when they grow this tea and coffee and they send it to the international market, there are some rules of the game—I don’t know whether the food law [programme] looks at that—there are some rules of the game that do not allow this farmer to get enough for his labor. He gets very little from the international market, and he has no control over that. When he needs inputs for his coffee and tea he has to buy [them] at a price that has been set by somebody else, and he has no control over that. Somehow there is a law that does not create justice for this farmer, and as a result, because he doesn’t get enough for his labor, he continues to scrape, to scratch this land and get very little out of it. So we call him poor, and we begin to say that it is partly because of his poverty that the environment is being degraded.”²⁸

Maathai describes the ‘rules of the game’ that may or may not be visible but nevertheless determine whether or not a “farmer [will get] enough for his labour”. As the farmer does not receive a fair price for his labour, because of the way the market ‘works’ (a market over which the farmer has no control) – the farmer becomes poor. People bear the costs of a sys-

word for skill back to ‘making’ or poesis – and the idea of “quality driven work” – aimed at “*arête*” – “the standard of excellence, implicit in any act” (Sennett, 2008, 24). Sennett links this account of art to a point made by Marx: “[i]n the *Grundrisse*, Marx, “framed craftsmanship as “form giving activity”...Before Marx became an analyst of economic justice, [he] promised to realise the dignity of labour...the utopian core of Marxism survived even as the older Marx hardened in a bitter, rigid ideologue” (Sennett, 2008, 29-30). Sennett is wrong about Marx becoming a “rigid ideologue”, but we can certainly begin to appreciate the links between art, notice and making: in craft and in thought.

²⁷ Mohammed Bedjaoui, *Towards a New International Order* (New York: Holmes and Meier, 1979), 5.

²⁸ <https://www.greenbeltmovement.org/wangari-maathai/key-speeches-and-articles/inaugural-world-food-law-distinguished-lecture>.

tem's pathologies: "we call him poor, and we begin to say that it is partly because of his poverty that the environment is being degraded." Social and environmental degradation are the effects of the invisible forces that constitute the price of coffee on world markets.

To elaborate this concern, we can make reference to what Wing has called spirit murder. Spirit refers to the soul, the *animumus/a*; another name for species being. Reading Wing's work in and against *The Paris Manuscripts* – and – attempting to make the idea of the work on the self clearer is a salutary experience.²⁹ The word salutary is related to the ecclesiastical Latin term which gives us the contemporary English words describing redemption from sin. Hardly surprising, the work on the self is unthinkable without these ideas. Perhaps one theme stands out. It is necessary to confront one's own implication in a particular history (with all the questions of how to make recompense). Arts of notice are bound up with understanding the history of a racialized mode of production. In particular:

"[S]pirit-murder consists of hundreds, if not thousands, of spirit injuries and assaults--some major, some minor-the cumulative effect of which is the slow death of the psyche, the soul, and the persona. This spirit-murder affects all blacks and all black women, whether we are in the depths of poverty or in the heights of academe."³⁰

Spirit murder is a general condition: the erosion of a sense of being whole and a failure of viable reflexivity. But what does this mean to me? How, at very least, does this become a matter of concern to someone who has not experienced 'soul murder'? We can continue thinking along the line opened up by the word salutary. Salutary derives from the PIE root **sol-*, which means 'whole, or well-kept' and has links with the Latin word *salus*, which can be translated as health, and which in turn derives from the PIE root **solh₂* – which also carries meanings of whole or completed.³¹ Salutary thus takes us back to the discussion of the self – that which,

²⁹ Perhaps it is difficult for late comers to realise the risks, the dangers of this kind of writing; the way it was tested and put other texts to the test. One of the real impacts in the world of scholarship opened by a generation of CRT scholars was exactly the space in which voices like this could be heard.

³⁰ Adrien K. Wing, "A Brief Reflection towards a Multiplicative Theory and Praxis of Being," *Berkeley Women's Law Journal* 6, no. 1 (1990), 186.

³¹ Michiel De Vaan, *Etymological Dictionary of Latin and the Other Italic Languages* (Leiden: Brill, 2008), 537.

at least at one level is ‘us’ – whole and completed. But “whole and completed” would be a somewhat inaccurate description of CRT understandings of consciousness. The self is experienced, rather, as a contradiction, something of shifting valences; the self is “indivisible” and “multiple.”³² Wing’s writing suggests something strange and worth hanging on to – something that communicates with Rimbaud’s ‘Je suis un autre’: a poetic or literary way of thinking.

To follow this element of Wing’s self notice we can turn to a short story by the Irish writer John McGahern. Why McGahern? McGahern, like Maathai writes about work. Work is bound up with the complex of alienation/reification; and, to borrow a salutary theme from Wing – some kind of transcendence; some kind of redemption:

“I love to count out in money the hours of my one and precious *life*. I sell the hours and I get money. The money allows me to sell more hours. If I saved money, I could buy the hours of some similar bastard and live like a royal incubus, which would suit me much better than the way I now am, though apparently even as I am now suits me well enough, since I do not want to die.”³³

In McGahern’s story – a labourer ‘just over on the boat’ from Ireland – reflects on his work on London building sites. McGahern describes the boring, backbreaking labour of the site and the relationships between the workers. Despite its specificity, McGahern’s story exists in a field set up by Maathai’s observations on Kenyan famers, the value of their labour and a process that remains mysterious to them. True, it is a story about migrant labour – not agricultural labour – but, like Maathai’s farmers, McGahern’s grafters know no more than the dull repetition of work that does not pay. In the extract above, the narrator tells us that he could “buy the hours of some similar bastard and live like a royal incubus.” Can we say that this story is about a labourer (or the labourer who writes) becoming cognisant of his own position? But what does he find out – is it no more than the overpowering normality of the “way things certainly are”? Not really.

Read the line carefully – it is about a most peculiar gap – about imagining a situation that would “suit me much better than the way I am

³² Wing, “A Brief Reflection,” 191.

³³ John McGahern, ‘Hearts of Oak and Bellies of Brass’, in *Creatures of the Earth* (London: Faber and Faber, 2007), 35.

now.” In terms of the grammar of the paragraph, this means simply living like a royal incubus on the labour of others – having “saved” one can now “buy” the “hours of some similar bastard.” Money buys an equivalent amount of labour. But, this remains inaccessible. How the speaker is now “suits [him] well enough.” He cannot save his money. But then the most strange point: “since I do not want to die.” This sets up another equivalent – not so much money for work – but – the terms of a life lived. The passage sets up a false equivalent: being satisfied with work/drunkenness, on one hand, and being dead on the other. It is as if this false equivalent is itself a product of the dulling process of work.

This kind of paralysis – or – rather the thinking that McGahern’s text focuses on the reader, names the difficult space in which an art of notice forms itself. There is multiplicity of consciousness in this story. The “iterative strategy” that the story performs is a kind of growth of consciousness, the development of a perspective on the self that comes through experience.³⁴ The peculiar grammar of the section cited above is important because its tortuousness enacts the very process of gaining a perspective on something that is hard to name: the ‘shifting’[s], frustrations and contradictions that characterise multiple consciousness. Of course, this is not legal analysis or political theory – it’s a short story after all. The key thing is that it produces a particular technique of analysis – a particular ‘local disturbance’ of a self otherwise lost.

An Ethics of Ambiguity

An art of notice is a way of going about things. In this final part of this essay, we will borrow from Grahn-Farley to further this point and argue that arts of notice provoke an “ethics” that “does not furnish” recipes – but proposes ‘methods.’³⁵ Ethics, in this articulation, is meant in a very precise way. We are not describing codes of right and wrong. Ethics names something that has animated our argument thus far. We have been focused on a nameless quality – the ‘knot’ of the intersection, the puzzle or the magma. We have also linked this namelessness with self-reflexivity. It might also be what twists the kaleidoscope of thought around:

³⁴ Wing, “A Brief Reflection,” 182.

³⁵ Simone de Beauvoir, *The Ethics of Ambiguity* (New York: Citadel Press, 1949).

“The path to a society in which people regard others and themselves as human beings is a question of ethics. It is a question of choice. It is a question of rejecting the totalizing system of marks and the totalizing system of law and the way that our understandings of others and ourselves are fixed... It is an ethics of ambiguity. The ethics of ambiguity is an invitation to always question and to always remain in the position between the poles. It is about always questioning one’s way of being and others’...[and] through the choice of constant questioning, creating a localized disruption from within.”³⁶

If critical legal thinking practices arts of notice, it can be imagined as an “ethics of ambiguity” – where ambiguity is rooted in the difficulty of the work on a self that exists in and between thought and action. The “poles” that are evoked above are many and various. Like the reflecting mirrors of the kaleidoscope. If we want to reclaim the language of mediation and complexity, it is perhaps from within this tension; and ethics is the practice of this difficult questioning.³⁷

Grahn-Farley is borrowing from de Beauvoir. Indeed, Grahn-Farley and de Beauvoir become the reflecting mirrors in a kaleidoscope that attempts to articulate a relationship between poles; the ‘mechanism’ that allows the reflecting surfaces to reflect each other. Ethics, as the articulation between poles, is always a way of thinking this ‘in between.’ As an ‘in between’ it is thoroughly positional. Ethical relationships cannot be resolved by some idea of a dialectical process that will reach its realisation in a ‘higher’ resolution of the opposites at its heart. It’s not Hegel (at least, not Hegel read badly). Hegel might make sense in the library, but once one is in the streets, one finds that the world does not conform with totalising theory.

³⁶ Maria Grahn-Farley, “The Law Room,” 57.

³⁷ It is worth pointing out the links between craft, art and ambiguity. Sennett argues that Ruskin “sought to instil in craftsmen...the desire, indeed the demand, for a lost space of freedom” where it was possible to “experiment” and even “lose control” (Sennett, 2008, 114). Sennett stresses Ruskin’s aesthetic of “hesitation [and] mistakes” – something entirely incompatible with working to the rhythms of the machine. Sennett links together commitment, decision and obligation, and relates them all to a notion of practice. In making a decision we affirm that an act is worth doing; in an obligation we “submit to a duty, custom, or to another’s need” – organised by a ‘rhythm’ – a duty that has to be performed “again and again.” The drive to do good work can give people a sense of a vocation. In a broader sense, poorly made institutions will ignore their denizens’ desire that life add up...” (Sennett, 2008, 267).

We must, however, nuance de Beauvoir's *aperçu* a little further. We are not concerned with a relationship between the reality of the street and the silent space of thought in the library. An ethics of ambiguity is the library in the street, the street in the library: a creative tension between terms that are seen as opposites. It would therefore also be wrong to simply see Grahn-Farley as a realisation of de Beauvoir: the truth of the former as given by the latter. We have to find subtler ways in which these two texts speak to, and past, each other. What resonates between these two texts is the necessity of choice:

“Regardless of the staggering dimensions of the world about us, the density of our ignorance, the risks of catastrophes to come, and our individual weakness within the immense collectivity, the fact remains that we are absolutely free today if we choose to will our existence in its finiteness, a finiteness which is open on the infinite.”³⁸

Grahn-Farley is not writing a treatise on existentialist ethics but she shares something of the *anima* of de Beauvoir's text. Nothing will come from totalising theory. If ethics names the explosion of creative magma, or a localised disruption form within, we can see it as an analogue to the moment when one chooses to will something into being. Whilst Grahn-Farley might not call this the moment of freedom, it is effectively the moment at which a creative power asserts itself from a realisation of its intersectional being; its being between poles. At the same time as one wills, one negates. One negates a situation that is intolerable. From this we can derive two further points. The impersonal creative power is what Grahn-Farley calls questioning – which is, in turn, related to our being with others who are also questioning or seeking to evoke their own creativity. If we twist between the arguments of Grahn-Farley and de Beauvoir a little further, we nuance the latter's language of the finite and the infinite. We might say that the finite coordinates with what we have so far called alienation/reification. Alienation/reification is finite because the complex is inseparable from the repetition of a particular form of economic, political and social organisation. The infinite appears in the finite to the extent that one can think ‘between the poles’ – in other words – at the intersection where the negating power of ethical thought seeks something else; and carries on asserting its creative power.

³⁸ de Beauvoir, *The Ethics of Ambiguity*, 64.

The infinite ‘coordinates’ with ethics as it propels the emergence of what is different from what was. As infinite, it is beyond the finite coordinates of the situation from which it emerges. Ambiguity is another name for this “staggering” assumption of the power to think. It appears against the “density” of “our own ignorance” – as a moment of doubt. Etymologically, doubt is what “moves from side to side” – trembles at the moment that the fixity of a pattern is challenged by something that it cannot accommodate. There is within ambiguity a drive, a movement. To see the word as describing no more than a kind of paralysis of uncertain meaning is wrong: the ambiguous one is the thinker who is moved by the experience of thinking towards what remains in excess of the situation at hand. We can carry on twisting the kaleidoscope so another fragment comes into view: the notion of species being. The ethics of ambiguity articulates the complex need of the human being to interpret and create the world in a way in which they find themselves. Twist again. It is the knot of the intersection as the ‘not’ of negation: the rotating poles of the personal and the impersonal reflecting against each other.

This is not a fantasy on the dynamics of thought. Thought can only think about the world and the world for thought is composed alongside those others with whom one shares one’s being. The difficulty is the movement between the human being thinking out of their own existence, and the thought produced. This difficulty constitutes arts of notice as exploratory, non-doctrinaire projects that are nevertheless serious about advance[ing] an understanding of what has called “general human needs.”³⁹ McCluskey’s expression takes us back into the theory of alienation and Marx’s famous idea of the “complexity of human needs.” Solidarity is indeed this complex of ambiguous needs. Is it a need for redemption? A redemption that can only come through work with others and an acknowledgement of legacies of past suffering? Is it a guilt that comes from appreciating that one has done rather well out of the forms of commodified labour to which one objects? Perhaps the complex need that is brought into focus is the troubled sense that one’s own luxury exists in a world of endemic poverty. What should I do? How should I act? These ethical questions return us to the demands of ethical philosophy that provides no easy answers. If the art of notice contests with complex

³⁹ Martha McCluskey, “Eleven Things They Did Not Tell You About Law and Economics”, *Law and Inequality: A Journal of Theory and Practice* 37, no.1 (2019), 106.

needs, it is a spirit, an *anima* – a way of keeping one's own life, and the lives of others, firmly in view.

Kaleidoscope: the Lobachevskian Geometry of Critical Theory

Can we return to the kaleidoscope?⁴⁰

Dialectics as kaleidoscopic thinking happens at intersections; saddle points; at the crossings of rising and falling waves. Might the 'dia' (διά) of dialectics, be this twisting of things alongside each other? Thought, in this sense, is a passage formed by its own curvature. These are metaphors for reflexivity, the folding of thinking substance as it troubles itself. Thought twisting itself is self-questioning. As such, it works with the material conditions of commodification/ alienation/ reification that define the context of the thinker's being. Critical thought, as a working through of one's troubled condition is thus an engagement with the disappearance, or the difficulties of noticing, those ways in which a public and private world can be created communally. Reflexivity, as the activity of thought has been described as the work on one's self. To make the self a piece of work is to confront limiting assumptions that social role or character are fixed and the world is simply what it is. This work on the self – as the mediation of self and world, world and self – is carried out as an art of notice. An art of notice is itself dialectically charged – existing between the poles of the worked self and the world. From a slightly dif-

⁴⁰ The link with notice, or seeing is certainly contained in the etymology of 'scope' – the practice of looking or observing – of being somewhat removed in order to see. The notion of an instrument – an artificial way of seeing – which also plays in the word scope elaborates this line of thought: a scope is, in Bachelard's sense, an instrument of thought. See Gaston Bachelard, *Le Nouvel Esprit scientifique* (Paris: Presses Universitaires de France, 1973), 54. To the extent that we are concerned with an instrument, then, we are examining a way or a means to read between texts, so that new shapes come into view. In the same way that the kaleidoscope needs to be worked, turned by hand, we are concerned with a technique for seeing. If we twist the etymology of κάλος (*kálos*), we can move from the idea of beauty to the idea of moral worth; a sense that picks up on our concerns with ethics as an essential element of a technique of thinking. *Eidos* εἶδος – another exacting term – could here be initially understood as the form that makes something visible (as opposed to the concealed ethos): and so, in this invented understanding of thought as kaleidoscope, the re-arrangement of the texts – those visible traces – become the working method for seeing more than we otherwise would.

ferent perspective, the art of notice can be understood as the existential or psychic correlative of noticing something so that it produces an effect on the self. The thinker troubles what had once been taken for granted or sees clearly what was previously obscure. Notice could manifest itself as an unanswerable question or an ambiguity or something that thought snags upon. Thought whose movement has been snagged or caught, and which twists itself around this imaginary axis, is thought hooked up with complex needs: those of the thinker and those with and about whom the thinker thinks. Thought arrested by itself is the pivot of ethics. Ethics requires forms of conviviality and solidarity. Solidarity demands that we should become other to what we are: re-arranged.