Trying to Transmit:
Working Through the Educative Hermeneutics Implicit in Trials for Past Social Abuses

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There is an apparent "soundness" in the pedagogical call to write, to transmit knowledge or any lesson gathered from an episode of social trauma, through the logic of accountability—more specifically, through a logic that seeks to repair social significance and re-legitimate institutions by way of the dynamic possibilities inherent in memorialization, reparation, apology, deterrence, and/or reconciliation. For many the retelling of a traumatic historical event through criminal prosecution aspires to be most effective for putting forth such a socially adaptive and restorative means of accountability. Significantly, trials for past social abuses are invoked in order to provide the necessary social impetus to rehabilitate our (institutional) relation to the past and to the future. In this sense, the legal forum is valued for its ability in procuring a public space that not only exhibits the various potential degrees of accountability/atonement with regard to a historical record of past traumas, but that also ends up showcasing the collective possibilities (futurity) of a reconstructed (healed) social bond.

Inasmuch as this public process depends on the memory of the event as a means of "asserting legal rights or officially stigmatizing their violation," criminal trials—according to Mark Osiel—"become secular rituals of commemoration" (Mass 6). During the last part of the 20th century, such pedagogical law-related activities have "increasingly been used in several societies with a view to teaching a particular interpretation of the country's [traumatic] history, one expected to have a salubrious impact on its solidarity" (6). Whereas conventional commemorative activities often invoke memories of social trauma through an overly
affective structure of identity that tends to be celebratory and divisive, trials for administrative massacre, which place emphasis on the deliberative-dialogic process for organizing memory, provide a “discursive educative means” of reaching broader solidarity. Noting this, Osiel contrasts a “mechanical solidarity,” which compulsively circles around affective exaltations of identity, with the “discursive solidarity” that is hermeneutically instantiated when collective representations of the past are commemorated through the constraints and opportunities made available by the juridical form (“Making Public” 226). But the pedagogical aspirations for nourishing and binding the communicative competence required for social deliberation, and certainly the implied “salubrious” commemorative lesson that this process seeks to transmit, are complexly and problematically imbricated with the norms and desires of the present—desires that seek to bracket divisive memories and affects that interrupt the integrity of the national imaginary or the instrumental efficacy of the present. Hence, the apparent “soundness” of the need to write and transmit a social traumatic event, through legal commemoration, needs to be complicated.

Although critically aware of the “smoke and mirrors” and the “self-conscious dramaturgy by prosecutors and judges,” Osiel nevertheless is explicit about the tradition and ends that must be served by the law’s performance (Mass 7). He states, “it is not too much to hope that courts in a post-trauma society might “make full use of the public spotlight trained upon them at such times to stimulate democratic deliberation about the merits and meaning of liberal principles. [Such] trials must be conducted with this pedagogical purpose in mind” (300, 2). I agree with Osiel when he notes that in a post-trauma society the pedagogical transmission of stories play a vital role in a society’s (re)construction. But, unlike Osiel, I am interested in how this apparently “sound” claim becomes problematic when it metonymically evokes a telling (a continuity) that reifies and instantiates the norms and conventions of the “we.” Although not simply endorsing tellings and retellings as benign or neutral, Osiel nevertheless ends up celebrating an intertextual framework, a hermeneutics, that ultimately continues and preserves the liberal story (read the tradition of the “we”). Referring to the trial of the military in Argentina, he solemnly observes, “The story of the litigants and their immediate dispute is thereby woven into a larger story about the community, its history, and its evolving normative commitments. . . . In recounting the tale of the crimes the Juntas had ordered, the obedience of their underlings, and the suffering of their victims, the military trials in
Argentina told such liberal stories" (73). To the extent that the work of the law is able to harvest the interpretative tradition of liberal stories, it can, according to this scheme, be judged as nourishing the shared norms and conventions for maintaining competence and establishing discursive solidarity.

But this implied notion of the "good," which depends on weaving retellings into "a larger story" that unfolds a normative *teleos*, always risks excluding the saying of what cannot be said. Seeking to overcome this inevitable ethical risk (limit) Osiel simply proposes that, "individuals who seek to inject their personal stories into the public realm—stories at odds with currently prevailing official narratives—are free to invoke the law to that end, that is, in a liberal society" (263). This faith in liberal representation blatantly ignores those who do not share in the legal harvest, those who are actually maimed or struck down by the reaping-hook of this narrative form: those who provide no "evidence" in a court of law, those who cannot "inject their personal stories" into a descriptive legal economy. Something as imponderable as the mass "disappearances" that were conducted by the military in Argentina cannot simply be translated and reconciled through the legal term "murder," or even death. As one of the mothers of the disappeared made obvious, "Our children are not dead. They are disappeared." Something that surpasses a common vocabulary, something nonencompassable obligates us to think otherwise than any simple reconciliation or retelling within the law.

It is, however, possible and necessary to encounter the ethical and so confront the above problematic by concerning ourselves with what remains otherwise to this form of representation, for the fragments and traces that unwork the congruence of a narrative that fosters discursive solidarity and liberal norms can always be "read" by paying attention to the "idiom that is not given its day in court" (Lyotard, *Differend* 13). This would involve a "reading of the limits," a reading that alerts us to what is lost or to what remains in the margin of any writing of the event that evokes the metonymies of a normative tradition (Cornell 81–82). However, in order to be more precise about what this reading implies for writing, for the work of historiography, I need to ask, what does this reading of the limits transmit? If this reading seeks to point out that which exceeds a common vocabulary, that which cannot be accommodated by our normative terms, what is actually *being* transmitted here? If a reading of the limits is not concerned—primarily—with recovering or representing the event, if it seeks to work rather as a memory, as a residual process that *comes after* the (law’s) writing of the event, it appears that this
reading merely transmits a (negative) protocol for reading. This seems to fall short of registering a "living narration" of the event that can evoke, in this present and in subsequent generations, the relentless obligation to meet with and respond to the past so as to instigate a logic of accountability. If the concern is to read in order to write the limits of writing the event—in other words, to head that which is un-presentable—what could possibly motivate and engage us to take up such a task? In order to engage with the work of memorialization, reparation, apology, deterence, and/or reconciliation, in order to meet with and so feel obligated to the stories of this past, do we not need to begin our response/engagement in our immediate discursive reality? Doesn't our obligation to the past require us to draw out its significance for our time? Do we not have to start any lesson from where we are? Our obligations—it seems reasonable to assume—can only be understood through our shared participation in the contextual contingency of our present language games. Surely, we cannot become obligated to respond/engage with the past through an unmediated form. Surely, then, the past requires a "contact point" with our present ways of saying. Is not then our concern with the other (the past) always already bound and framed by the present mediation, by what we can understand and communicate through a common vocabulary? Without a medium that is intelligible and embedded in the present, the past risks not being understood, and so may remain alien and eventually forgotten.

Once this past becomes expressed as our concern, through our vocabulary, however, how can we preserve its difference from being cannibalized by the present? How can the alien be translated into our terms so that it engages and motivates us to respond to its difference? That is, how can we understand (overcome) difference in order to be changed/motivated by it?

Allow me to condense the above proposal: on the one hand, we require the past (the stories of the event) to be written (transmitted) in such a way that its difference may be overcome, in such a way that it evokes—following Osiel—our metonymic telling (our shared understanding) so that it may resonate, or make a "contact point," with our present; on the other hand, if we are concerned with responding to the past as a means of changing or motivating the present, we must preserve its difference, for that difference is what bursts open (defers) any self-enclosed present. This conundrum, which plagues historiography, has been a concern that Gadamerian hermeneutics has attempted to address. As a process that seeks to transmit the past into the present in order to
preserve the difference of the past while simultaneously generating an understanding that conforms and expands the vocabulary of the present, hermeneutics appears to offer a thorough lesson to our concern for writing the event. But the hermeneutical response—as I will unfold—is ultimately concerned with transmitting the past (the alien) into the present so that a shared understanding (tradition) can be continued and expanded. Much like Osiel’s pedagogical concern to preserve and transmit our liberal stories through the law, Gadamerian hermeneutics seeks the continuity of our tradition through the preservation and transmission of the genres (laws) of interpretation and understanding. What are the ethical consequences of this proposal?

In what follows, I will attempt to work through and consider the indelible limits that face those who interpret and write about a traumatic past primarily as a means for facilitating a shared lesson, understanding, or discursive solidarity within the cover of our morality. This initially will be a speculative exploration that will stage thought thinking the limits of its thinking as it moves from ontology to ethics. By thus rehearsing the limits of the hermeneutical proposal, I will be attempting to expose the ethical necessity for historical writing to bear witness to an exterior point, to an alien imperative, that is beyond meaning, understanding, or anything that we might share in common. Although a large part of my argument is rhetorically staged in a non-descriptive form, it nevertheless is written with the concern for a specific set of problematics that face the particular material site of post trauma societies. The ethical conundrum—discussed above—of attempting to transmit a socially traumatic event through the pedagogical forum of the law will be concretely unfolded in the last section. The discussion is thus divided into four sections: a consideration of what it means to link onto or make a comment upon texts that command us to think beyond our present understanding; an account of what Gadamerian hermeneutics proposes for transmitting the past as one of the shared concerns of the present; a consideration of what the (ethical) implications might be for a way of writing that comes before a Law that commands and defers beyond meaning or any shared understanding; a discussion of the fact that the trial of the military in Argentina is often read through the hermeneutical claims of an “educative dialogue” that champions social unanimity and mutual understanding (I discuss through specific examples from the trial what remains outside of the progressive enlargement of “discursive solidarity”).

In order to walk somewhat less perplexed into the mire of historical transmission, for the speculative part of the argument (the first half), I will
make metaphorical use of the model of the annotation. That is, I will introduce the problematics of writing the event as an issue of annotation. Conceivably in this part of my discussion the model of the annotation will allow me to stress and explore the issues of linking and transmitting that are also of concern to historiography, for the annotation as a process of writing, stitching, and glossing, while simultaneously extending, renewing and perpetuating the text (which is always in the past and so other to the present), appears to be an apt image of what the writing of an historical event resembles. In as much as the model of the annotation always already implies its "secondary position" (Derrida, "This" 203), its dependence on an other text, its reliance on citing and cutting from a larger and previous piece, its emphasis on the position of response, it will allow me to speculatively draw out what is inevitably involved in any act of transmission.

**Linking Onto the Scandal**

Testimonies that tell of historical trauma often *command* us to have "faith" in what is not present, in that which is unseen and exceeds our understanding. Because these testimonies speak about that which has not been—or cannot be—adequately understood or referred to, it would be unjust if we were to link onto their claims in order to evaluate the extent to which they satisfy "truth conditions"—for any attempt to make them subject to a process of verification before a "tribunal of knowledge," which admits only descriptive sentences of cognitive value, would subsume these testimonies into a quotation, a secondary discourse that would annul their command that pleads us to think beyond our present understanding. The temptation for the present to take hold of itself again by understanding what unsettles it, by demanding an explanation, by linking questions of "reality" and "truth" with that which speaks in an "other" way is, according to Lyotard, always a "possible inevitable temptation" that is available to the addressee (to those that hear the testimony and attempt to link or comment on it). But this possible commentary "cannot annul the event, it can only tame and master it, thereby disregarding [forgetting] . . . the other" (Lyotard, *Differend* 163–64). The event (the testimony) remains of course, but the "inevitable temptation" for the addressee to close off its vulnerability to the other by turning the testimony into an object of/for knowledge, accomplishes to efface, not the testimony, but the *command* to think beyond the present understanding. Hence, a testimony is forgotten, not necessarily because its content does not get heard or represented, but because a linking (or
a commentary) forms, in which the “scandal of the other,” that which obliges the addressee to think beyond itself, to make itself vulnerable to difference, comes to be contained in a cognitive set of “qualities” that the addressee “grasps” in order to call itself back to itself.

Concerning ourselves with how we comment on or link onto testimonies is a serious ethical activity that allows us to question the ways in which “meanings” are created or contained in the complex social process of historical transmission. This is an urgent task when we consider, as the problematic unfolded above suggests, that there is an “inevitable temptation” to mend the ruptures of our “traditional interpretive instruments” by reconciling the command of the other, which pleads with us to think beyond the present, within a commentary or a linking that demands a cognitive presentation (a presentation within the same). What is at stake here is how to resist this “inevitable temptation,” how to respect the disjunction between our present understanding and that which continually points to our own inability to decipher or determine any “graspable” meaning. What this suggests is that our endeavors in linking, commenting on, or annotating testimonies should avoid those attempts to fill or patch up the holes in our frames of understanding and interpretation, and instead heed the retrieval of difference, which, in always already deferring the present (the ground for our shared understanding), comes to provide the condition for the possibility of transmitting an other history. But how can we link onto that which continually calls out our limits and stages our epistemological blind spots? What would it mean to annotate (to write as history) that which exposes our lack in understanding and interpretation? Does not the possibility of the annotation break down at this point? Does not the annotation necessarily assume the will to define, maintain, understand, and hence transmit an event/text as knowledge?

The Genre of the Annotation
Although wanting to talk about the possibility of annotating as a potential ethical endeavor, as a linking that respects the words of the other beyond our present frames of understanding, I realize that this gesture toward a differential (as opposed to assimilative) transmission comes before the law. In wanting to posit the possibility of an annotation that attempts to resist the “inevitable temptation” to link the other within the same, I inevitably bump against the genre (the laws) of the annotation. Although I want to talk about the annotation in another way, I must first note the present fact that the annotation is an historical institution brought into being and governed by the laws of its genre (Derrida, “This” 196).
The genre, as a set of laws for transmitting knowledge or information, inevitably relates to many of the dominant traditions/institutions (laws) of interpretation. Its function, at one level, is decisively economic: by transmitting/posting a reading/writing within the institutional borders, it seeks to stabilize the possibilities of interpretation. In this sense, the genre binds the annotation to the text in terms of a “tradition”—that is, in terms of an historically mediated form of understanding that shapes and constrains the possible protocols for determining meaning. Although the annotator may certainly revamp and alter textual meanings, he does so only within the genre of an already mediated protocol that enables his revisioning to be understood. Meaning is thus always situated within a genre: an historically constituted and transmitted institution that is actually a tradition of commentators and annotators (Hanna 178, 184).

Notice here that the genre, as an institution for interpreting or transmitting texts, is not based on a timeless and unmediated (pre-discursive) form. On the contrary, because the genre is reproduced within a tradition of commentators and annotators who stand in history and speak in language, it is historical and linguistic. Rather than being the foundation for meaning, the genre is a function of tradition, which itself is conditioned on the possibility of transmitting and fusing past commentaries with the present. So in as much as the genre binds and conditions the annotator, at one level, the annotator re-binds and re-conditions the genre at another, for the annotation is not a “passive,” “benign mediation,” but an “active transmission” that constantly renews the works of the past as present. The annotator thus reproduces the genre by linking past and present meanings, by the “activation” of past and present presumptions into the fusion of a shared understanding. In this way, the annotator presents a reading that creates “the acceptable range of conversation within the group he supposedly serves” (184). The work of the annotator makes the continuity and self-understanding of a tradition possible while at the same time fusing the text within a “present living actuality,” for the text is not transmitted just to be historically footnoted, but to be “concretized” through interpretation in its current validity.

I have been reworking the genre of the annotation within a hermeneutical scheme that simultaneously acknowledges the constrained nature and creative character of historical interpretation/transmission. As a process of interpretation and transmission that works for the preservation and generation of meaning, hermeneutics promises much to the annotator, to those who seek to write/transmit the text/event into history. Indeed, its concern with the possibility of continuity and understanding seems to
reflect and conform to the laws of annotation, which are to define, maintain, and transmit an event/text. By following a sketch of some of the claims of hermeneutics (as proposed by Gadamer), I wish to point out the inevitable limits that the annotator will face as he or she interprets and transmits the meaning of texts hermeneutically—that is, within the generating and constrained laws of the genre.

Grasping Meaning: The Enabling Prejudices of the Present

According to Gadamer, “everything written is in fact in a special way, the object of hermeneutics” (336). Even that which is intended as little more than a gloss on or a concise reordering of the rhetorical divisions and figures of a text is guided by a genre that works within the past and present presuppositions of our tradition—our historicality. Whereas historicism makes its claims to objectivity by proposing to raise itself from the presuppositions of the past and present, hermeneutics regards these presuppositions as continuous, as bridged by tradition, as making possible the actual fusion of understanding. Because the interpreter cannot occupy some neutral point outside of his or her linguistically mediated understandings and presuppositions, Gadamer claims, “there can be no such thing as a direct approach to the historical object that would objectively reveal its historical value” or meaning (292). There is no Archimedian point from which human reason (the interpretive method of historicism) can order or recover the past as “objective knowledge” for the present. He goes on, “the truth is that there is always contained in historical understanding the idea that the tradition [transmitted to] us speaks into the present and must be understood in this mediation—indeed, as this mediation” (293). For Gadamer then, we can only understand from within our present mediation (within our linguistic-historical presuppositions) and so cannot claim to recover some supposed meaning of the historical object apart from our present reconstruction of it. Gadamer attempts to avoid the problematics that would result from such a claim—namely, that of a self-enclosed present—by proposing that our present presuppositions are not hermetically sealed, but rather are “enabling prejudices” that “open-up” to the reflective application of one’s tradition (258–67).

The fact that the interpreter reads through a specific medium of presuppositions that selects, accents, suppresses, and orders certain aspects of the text, creates not the obstacle for grasping the meaning of the text but its enabling condition. Because a text is always at a distance from the present, we need to overcome that distance by making sense of it, by
drawing out its significance for our time. But in order to be understood, the text requires a contact point with the present, for without this contact point, without a medium that is intelligible to the present, the text will not be understood, and so will remain at a distance and perhaps be forgotten. According to this scheme, the contact point is to be found in the interpreter’s presuppositions (“prejudices”), which constitute the initial directedness of the interpreter’s ability to approach and eventually grasp the text. As the interpreter projects or transfers the language-world that he or she already understands onto the text, the interpreter comes to provide a contact with the text that renders it intelligible in the present. Like the translator who works within the language-world of an audience in order to make the text meaningful to them, the interpreter brings into play presuppositions (which are the fore-judgments of the present) and so manages to translate the text’s distance into the meaningful terms of the present.

Since the interpreter’s present world is projected onto the text, it is evident that there will be no recovery or transmission of the text in its pristine state. In fact the text will be, at all times, selected, ordered, and accented in different ways by different presents. Gadamer sees this as a “productive endeavour,” but this translation into the present “does not, of course, mean that [the interpreter/translator] is at liberty to falsify the meaning of what the other person says. Rather, the meaning must be preserved, but since it must be understood within a new linguistic world, it must be expressed within a new way . . .” (346). So the interpreter/translator must simultaneously “respect the character of his or her own language, into which he or she is translating, while still recognizing the value of the alien, even antagonistic character of the text and its expression” (349). It is all too evident that in order to avoid the critique that hermeneutics is only concerned with how the present (interpreter) appropriates and subsumes the past (text) into its presuppositions, Gadamer must provide a reciprocating (circular) explanation of understanding. That is, hermeneutics must account for how the present and the past modify and act on each other so that they fuse and give rise to understanding. Understanding then is not to be conceived as a unilateral process, but as a reciprocal application of the past to the present and the present to the past. Allow me to unfold the workings of this proposal.

A Reciprocal Proposal: The Fusion of Horizons
Although the interpreter always already starts from his or her present presuppositions, the interpreter’s desire in wanting to overcome the
distance or otherness of the text, by understanding it, means that the text still escapes the interpreter’s full understanding (presuppositions). This “effort of understanding which is found wherever there is no immediate understanding” sets in motion a process where the interpreter’s presuppositions are gradually worked-out (legitimated or de-legitimated) in an encounter with the text. In other words, because the text resists the imposition of the interpreter’s presuppositions, the interpreter must (if he or she wishes to interpret/understand the text) filter out legitimate presuppositions from the illegitimate ones. In this process, the interpreter’s presuppositions will have to prove adequate to the text. That is, they will have to allow for understanding, or they will have to be modified or discarded. Hence, the process of interpretation is a matter not of avoiding our presuppositions but of testing them against the text. As Gadamer writes,

[The] hermeneutically trained mind must be, from the start, sensitive to the text’s newness [otherness]. But this kind of sensitivity involves neither “neutrality” in the matter of the object nor the extinction of one’s self, but the conscious assimilation of one’s own fore-meanings and prejudices. The important thing is to be aware of one’s own bias, so that the text may present itself in all its newness [otherness] and thus be able to assert its own truth against one’s own fore-meanings. (238)

Because interpretation allows us to examine and modify the legitimacy of our presuppositions, we cannot conceive of the interpretive act as merely something that we do to a text, for in this process something also “happens to us over and above our wanting and doing” (xvi). This reciprocal instance can be treated as analogous to a “successful dialogue”: “Where participants enter into a conversation with their particular viewpoints, but as the dialogue unfolds their presuppositions change since “both are concerned with an object that is placed before them.” Gadamer continues,

Just as one person seeks to reach agreement with his partner concerning an object, so the interpreter understands the object of which the text speaks... If successful they both come under the influence of the truth of the object and are thus bound to one another in a new community... in which we do not remain what we were. (341)

In a “successful dialogue,” each participant arrives at a resolution that, thanks to the observations made by each during the discussion, has transformed their original presuppositions into a “richer understanding.”
But this convergence of insight is not the result or the property of either participant; rather, it results from a reciprocal relationship that creates a common third.

Something like this convergence of insight also takes place when an interpreter grasps the meaning of a text. As the interpreter encounters the text in its otherness (in its absence from the realm of understanding), the interpreter reexamines presuppositions while also paying attention to what the text seems to be saying. The interpreter’s success in “overcoming the otherness” of the text will, of course, depend on whether the interpreter has discovered a way of reconciling some of his or her present presuppositions (which have undergone reexamination) with what the text seems to be claiming. This process does “not only [allow] those prejudices that are of a particular and limited nature [to] die away, but causes those that bring about genuine understanding to emerge clearly as such” (264). Simultaneously, we have here not the recovery of an original text, but rather the application of the text into the meaningful terms of the present. Being able to grasp the meaning of the text allows for the “rising to a higher universality that overcomes not only our own particularity but also that of the other.” A “higher universality” develops as understanding renders the presuppositions/particularities of both interpreter and text into a “fusion” that overcomes their parochialness with the common grounds of the tradition. This is “the full realization of conversation, in which something is expressed that is not only mine or my author’s, but [a] common [tradition]” (350).

Because a text understood creates a common language, instantiating a “fusion of horizons” that widens the particularities of the present while translating the text into our present circumstances, no past or present horizon (presumption) can be seen as a self-enclosed totality that is fully determined, for each horizon modifies and acts on the other so that they intersect. Yet, within a given horizon (within the given linguistic-historical presuppositions), a certain order can be detected; and this order, however minimal, comes to govern the ways in which present and past horizonal intersections occur. According to Gadamer, our desire to understand a text from the past is not to be thought of so much as an action of one’s present subjectivity but as the placing of oneself within a process of tradition, for a tradition has always established an order towards any text (258). Thus, in addition to presuppositions, the interpreter begins reading/writing of a text with what has already been previously ordered and handed down to him or her as an “effect” of the text. Since a text is transmitted in time it comes to compile “effects” that will impact upon
(constrain) the interpreter's reading/writing. The ways in which the text has been previously discussed, analyzed, questioned, and annotated in books and other media necessarily affects the interpreter’s understanding of the text and subsequently transmits the tradition into the present. Here, both the "effects" of the text (the old interpretations) and the present understanding to be achieved are the (pro)creators of the tradition.

Concentric Circles: The Continuous Center of the Tradition
The (concentric) circles that I have been sketching seem to provide the annotator with a model that takes into account his or her concerns to define, maintain, understand, and hence transmit the text into the present, for the hermeneutical laws, which see understanding as a reciprocal transference between past and present, seem to provide a way for the annotator to understand and transmit something other than him or herself and the annotator’s present, and yet define this other in a way that contributes to and expands not only the annotator’s present understanding but the continuity of understanding in the tradition. The annotator who works within the laws of hermeneutics does not assume that the text’s horizon is identical with the annotator’s present horizon. However, the annotator’s will to transmit and understand can “only [be] something laid over a continuing tradition, and hence it immediately recombines what it has distinguished in order, in the unity of the historical horizon that it thus acquires, to become one with itself” (273; emphasis added). This circular (self-contradictory) proposal, which moves from difference to identity and back, is what allows the annotator to simultaneously avoid the naivété of historicism (the claim that the interpreter can objectively recover some supposed meaning of the text outside of his or her own time) and the problematics of a self-enclosed present (the belief in no other time outside of the present). But this circular scheme is concentric precisely because its laws lead to and depend upon an all-encompassing and inescapable tradition, for notice that the movement from difference to identity and back is initiated in order to bring about a fusion of horizons that allows us to more fully understand not only ourselves and the text, but ultimately our tradition. In this way, understanding takes place in one direction: toward the common and continuous grounds of the tradition: “Something distant has to be brought close, a strangeness overcome, a bridge built between the once and now” in order to ensure an understanding that allows for the continuity of the tradition (Gadamer qtd. in Ormiston and Schrift, Transforming 33). Here, the tradition forms the evolving matrix through which all signs must pass on their way to
understanding. For Gadamer then, “the truth of the tradition is never put in question, only the dynamics of its communications, extension, renewal, and constant revivification” (Caputo 112).

Although the complex scheme of hermeneutics has attempted to avoid the interpretative constraints of an authorial intention, it ends up replacing it with the constraints of the conventions of the interpretative tradition. While the fusion of horizons claims to allow us to understand the text both in its identity with the present and its difference from it, the scheme remains subservient to the continuity of the tradition “whose being consists in the return to itself from what is other” (Gadamer 15). The hermeneutical project then is ultimately concerned with transmitting and understanding the text in the present in order to “seek one’s own in the alien, to become at home in it, [so as to establish] the basic movement of [the tradition]” (15). The reappropriation of the alien into the folds of the finite (historically determined) but indefinitely evolving tradition makes possible “new” meanings, but only within the traditional form (the previous “effects”) of understanding that shape and constrain the possible protocols for determining meaning. We are thus assured that behind the different finite expressions there will always be “something” that will allow us to return (grasp) back to the tradition (home). Hence, hermeneutics “gives us comfort in the face of the flux . . . [It] reassure[s] us that all is well, that beneath the surface of historical transition an unchanging, infinite spirit [of tradition] labors” (Caputo 112).

The “interpretive community” is obviously an important aspect in the continuity of a tradition, for, as hermeneutics argues, it permits the retelling of the text into the present circumstances, allowing creative transformation while still maintaining the predominant sense of what is “true” and “valuable” about the tradition. Osiel’s account of the pedagogical function of “liberal courts” in a post-trauma society is consistent with the hermeneutical concern to interpret and transmit the meaning of texts within the generating and constrained laws of the tradition. Osiel writes, “while [liberal courts] seek to preserve the normative ‘integrity’ of their community over time, judicial stories also involve a continual effort to rework legal rules and principles ‘in their best light’—to clarify and refine extant norms in the course of applying them to disputes regarding their scope and meaning” (Mass 73; emphasis added). The implication here is that each retelling before the law metonymically preserves and reworks (for like the Gadamarian account of transmission it does not break with but only clarifies and refines) the norms of our liberal stories/tradition. Osiel writes, “The story of what the parties did
to one another [during the period of state-sanctioned atrocities] is subsumed within a broader tale about what communal norms required of them and how these norms got to be the way they are" (73; emphasis added). Of course, this retelling and weaving within the broader intertextual fabric of our tradition (liberal stories) implies the continuity of the protocols for determining meaning—the genre. As Osiel makes evident, "Without recourse to the conventions of some genre, one will not have a genuine story. A story must have a plot, providing an intelligible beginning, middle, and end, located within a meaningfully delimited spatial context, a given community" (71). Reading and retelling within the "interpretive community" clearly implies our coming to recognize and utilize the normative and literary genres that help us to understand ourselves and our traditions more fully. For Osiel, this hermeneutical faith in narratives that foster a common understanding is crucial in a society that is recovering from a traumatic past. Here, both textual predecessors and present interpreters form a fabric of intertextuality that weaves texts to other texts and contexts. Hence, the concern is merely to ascertain "which genre provides the most suitable framework for historical interpretation and public understanding of these horrors" (284). But let us be clear, the texture of interpretation and understanding are to be woven by those literary genres that "prove better than others in choosing particular facts—among all chronicled ones—and arranging them into a national narrative that can effectively foster discursive solidarity and liberal memory" (283).

**The Ethical Limits of Understanding**

But what happens when we come upon that which cannot be told as a "genuine story" with "an intelligible beginning, middle, and end"? What about those tears that cannot be contained "within a meaningfully delimited spatial context"? What happens when we encounter that which does not provide us with any information or understanding? What value do we attribute to that which cannot be told as a retelling, to that which does not make allusions to the generic conventions of "a given community"? To those who cry out: "I cannot light the fire, I do not know the prayer, I can no longer find the spot in the forest, I cannot even tell the story any longer. All I know how to do is to say that I no longer know how to tell this story" (Lyotard, *Heidegger* 47). Reading and retelling within the "interpretive community" seems ethically suspect when we consider these questions, this affliction, for if understanding requires the reconciliation of the interpreter's present presumptions with the text/event and its
mediated “effects,” we can only be affected by that which has already been presently or previously understood within a common vocabulary. In other words, understanding is a matter of weaving and retelling those presumptions that cohere with the already established allusions of a tradition. The intertextual weavings, in this sense, would mummify the singularity and surprise of the strangeness of the other within the familiar. As Nietzsche reminds us, this “familiar means what we are used to so that we no longer marvel at it, our everyday, some rule in which we are stuck, anything at all in which we feel at home. Look, isn’t our need for knowledge precisely this need for the familiar, the will to uncover under everything strange, unusual, and questionable something that no longer disturbs us?” (qtd. in Ormiston and Schrift, Transforming 14).

What happens when a retelling is a telling that disturbs the frames of the familiar? Are we responsible for retelling it so that we can come to understand it on our terms? Are we to understand it so that we can repair the tears of our tradition? By again considering these self-questioning questions along side the hermeneutical will to fuse the past and the present into a horizon that enriches and continues the tradition, we, at this point, must explicitly take note of the limits of the very motor of hermeneutics: the will to understand, to overcome, to grasp the other within the genre of an already mediated protocol for determining meaning, for hermeneutics views the continual expansion of the tradition, and I would add of Being, as fundamentally grounded in the will to understand—that is, in the will to tell an intelligible story that is “meaningfully delimited” within the ways of understanding of “a given community.” In this sense, the writing of the event (the transmission of the text into the present) can only provide understanding if the vocabulary and norms of the tradition are unbreached and continuously “bridged” by a shared identity. Here, the presence of the same identity—for the other and the present—guarantees transmission and understanding.

Early in Truth and Method, Gadamer writes, “The ability to understand is the fundamental endowment of man, one that sustains his communal life with others” (21). Through understanding we have coherences, contexts, correspondences, and thus the fundamental predicate of human existence. In this sense, all attempts at linking or commenting with an other (our “communal life with others”) are inevitably woven within the law for transmitting knowledge or information—more precisely through a law, which, despite the always already dispersing identity of the text, attempts to domesticate or exclude the contradictions or disturbances that might undermine the fusion of understanding, the
identity of the tradition. Hermeneutics thus exposes itself as an ontological project that expels all that overflows understanding/identity.

In what follows, I begin to explore another way of conceiving the task of annotating. That is, I make my way toward a conception of writing that exposes what is at stake in an encounter with those who do not share in our understanding, with that which finds no refuge within our mnemonic cover. I seek to stage this encounter as an opening to an other (ethical) imperative that puts into question the hermeneutical obligation to link (overcome) the other in the constitutive self-understandings of a common tradition or vocabulary. I will start by raveling my discussion within the double bind that Derrida finds the annotator in. Rhetorically this will push my discussion to consider a writing, a means of translation and transmission, which works before the Law of law, a writing that writes its exposure to another imperative.

**Ethical Implications**

The annotator who seeks to transmit the meaning of a text as a story with "an intelligible beginning, middle, and end," that is "meaningfully delimited within a given community," comes before a set of laws that simultaneously constrain and re-create the prevailing relations between texts, contexts, and normative and literary allusions that exist within the self-enlarging totality of the tradition. The danger of fostering "morality and solidarity" (even one that claims to be open-ended) through the claim for a "shared understanding" is succinctly pointed out by Alphonso Lingis; he writes, "The community that forms in communicating is an alliance of interlocutors who are on the same side, who are not each Other for each other but all variants of the Same, tied together by the mutual interest of forcing back the tide of noise pollution" (81). If we are to avoid the ethically bankrupt claim that maintains the priority of a self-enlarging totality over the abject "noise" that disrupts it, we would have to breach all laws that threaten the exteriority of the other. In other words, our annotations would have to cease concerning themselves with the will to transmit/relate meaning and instead attempt to secure the alterity that overflows understanding. This would put the annotator before the law in a fundamentally different way (Derrida, "This" 201). Concerned with preserving the exteriority of the other, the annotator comes before the limits of those laws which constrain and re-create how texts are related to other texts, and how meaning is to be preserved and transmitted within this relationship. Because the other is to be absolutely exterior, the other cannot be grasped in terms of any relation. If the other is to be beyond any
totality, it must rupture and baffle the prevailing intertextual relations of
the tradition. Hence, the inaccessible relation to the other puts the
annotator before the Law of law, before what must not and cannot be
reconciled within the prevailing relations of the interpretative system.

Caught Before the Law of law: An Other Imperative

But what would this coming before the Law of law actually imply for the
annotation? What results when our annotations are obliged before that
which cannot be grasped as a relation? Of course, these questions, which
are always about grasping the meaning of that which is beyond meaning,
cannot be considered without the direct risk of meaning nothing (Derrida,
"Implications" 14). Of course, then, these questions should not be
approached directly; so allow me to further entangle this discussion by
unraveling the threads of a double bind. In the essay entitled "This Is Not
An Oral Footnote," Derrida proposes that the annotator comes before the
"prescriptive double bind of an interdiction and an injunction":

[W]e see how this law text, which makes the law, produces at the same
time a double bind: it says to the reader or auditor, "Be quiet, all has been
said, you have nothing to say, obey in silence," while at the same time it
implores, it cries out, it says, "Read me and respond: if you want to read
me and hear me, you must understand me, know me, interpret me, translate
me, and hence, in responding to me and speaking to me, you must begin
to speak in my place, to enter a rivalry with me." ("This" 201-02)

If we want to transmit the meaning of a text, we come before an injunction
that compels us to read and respond and so create relations (a restitution)
between the text and the interpretative system. Implicitly or explicitly, we
will create these relations by selecting and reframing the text so that it
points to and stands for our present concerns. In other words, our
retellings for the present will displace and rival the text as it speaks in its
place. Having worked through Gadamer’s circular proposal that simulta-
aneously acknowledges the creative character and constrained nature of
transmission, we recognize the setting here and can anticipate that this
injunction (to create) will be insufficient/problematic without an equally
commanding opposite (a constraint). Thus, in what appears to be a
hermeneutical gesture, Derrida binds before this injunction an interdic-
tion that obliges us to be quiet, to humble ourselves so as to respect and
consider the claims and “effects” of the text: all that has been said before.
In Gadamer’s hermeneutical scheme the apparent conundrum between
the injunction and the interdiction would be overcome by the will to understand, for the will to understand sets in motion a reciprocating (circular) process where the interpreter’s present presumptions are gradually worked-out with the constraints of the text’s claims and “effects” in order to produce a fusion of understanding, a fusion that, to remind ourselves, leads to the continuity and enrichment of the tradition. But notice that in Derrida’s scheme the relation between the injunction and the interdiction does not produce any circular or reciprocating movement that would lead to some gradual integration, or an emerging totality, or any ongoing continuity. The relationship between the injunction and the interdiction is unmoving, static, rigid: it is precisely a double bind.

Doubly bound to the constraints of the text and the creative act of interpretation the annotator, according to Derrida, is caught (“This” 192, 201). Equally caught and compelled before an injunction and an interdiction the annotator attempts to wander back and forth, but these circular movements in truth go nowhere: “I cannot or should not speak, but I promised that I would do so. I must and cannot; in truth, I should and should not keep my promise” (201). In truth, the annotator says nothing definite and presents no identifiable relations between texts except for an endless deferral: I must and cannot; I should and should not. Caught between the possibility and the impossibility, between the necessity and prohibition of interpretation, the annotator cannot really transmit the meaning of the text and so “puts off until ‘later’ what is presently denied, the possible that is presently impossible” (Derrida qtd. in Behler 71). Has the annotator broken his or her promise (at least one of them)? Or does the annotator despite it all keep the Promise of the promise? It is true here that the annotator does not fulfill his or her postal function of receiving and sending meaning, but in the preface to the paradoxical binding of the annotator Derrida has already warned us that in one way or the other “the destiny of an annotation is to be always bad” (102). Fated to always break or garble the chain (destiny) of messages between the proper senders and the proper addressee (for recall that the annotator is caught in between an unavoidable and impossible task: the promise to respect the injunction and an interdiction), the annotator can only remain true to the Promise of his or her promise. This Promise is not the promise to transmit/fulfill meaning (later), but the Promise within every promise that can never be now nor have ever a present time: a time when one can simultaneously (and absurdly) say “I promise you now” and hence “I have delivered and fulfilled my Promise to you now!” This annotator’s concern then is with
a lack, an irrecoverable beyond, with a tense state that is never (and never will be) here and now, with an infinitely deferred future perfect—that promises the promise.

This promissory aspect gestures the annotator toward a point of exteriority that cannot be recovered or contained by any reading or retelling (weaving) within the interpretive community. Unlike the hermeneutical gesture, the concern here is not to preserve and re-create the intertextual laws that exist within the self-enlarging tradition but rather to bring these laws before the Law. Before the Law of law, the annotator no longer re-collects or weaves the threads of the text into the intertextual fabric of the tradition. Instead, the annotator unravels the threads and so tears the fabric, exposing the once seamless web of meaning to the very construction and limits of its material. This unraveling, which concerns itself with the promissory aspect of that which will never be present in any present, exposes the law (that which guides the synchronous succession of past and present texts within the folds of the tradition) to the Law (to that which lies beyond all fusion, all totality). This unraveling and tearing unveils the violence in the law: the violence of every interpretation, of every meaning, of every intertextual relation that inevitably excludes in its will to represent. It recalls that “every discourse among interlocutors is a struggle against outsiders, those who emit interference and equivocation.” It recalls that, “in the measure that communication does take place and that statements are established as true, it designates outsiders as not making sense, as mystified, mad, or brutish, and it delivers them over to violence” (Lingis 135). Before the Law of law, the annotator would keep reminding the law of what remains from its inevitable violence. Before this ethical critique of law, the annotator, apart from anything else, would have to attempt to allow the other to (somehow) reappear both as the point of exteriority (as the beyond/possible to every present/totality) and as the excluded other.

But by this point, the “what does this imply for writing” question, which initiated this discussion, and that perhaps insistently retains itself at the back of our minds, must be explicitly posed: What would this annotator (who works before the Law of law) transmit if not meaning, if not relations, if not an intelligible story, if not the application of the text? What type of writing would this be? Yet, again—if the concern is to preserve what is otherwise than meaning—we will have to avoid our temptation to directly grasp these questions with answers, for to restate the matter, our concern is beyond meaning: it presently cannot deliver an answer, not now, for our concern is with a writing that can write (transmit)
the "possible that is presently impossible," an infinitely ungraspable point that opens us to what is before and beyond us.

This discussion seems to be caught up with this point. But what exactly catches us? And why does this account of writing necessarily keep indebting and entangling itself with this point? It cannot really do otherwise. For a writing that aspires to write in order to break out of the circuits of the same inevitably finds itself always already caught (as if a hostage) and obligated to attend the other. It realizes—because it works before the Law of law—that beyond our fulfilling/rendering meaning, we are first and foremost caught in our obligation to the other: to an obligation that signifies itself beyond our present knowledge. This writing then does not seek to write (represent) the other, but writes its non-indifference, its immediate obligation, its being caught and entangled with an infinite concern for the other.

The immensity of this infinite obligation necessarily overflows our finite representations: the imperative of the Law overflows the law. Thus, rather than a settlement within our terms (an answer), rather than the closure of comprehension, the concern here is toward a writing that writes in order to reveal the infinite (ungraspable) obligation that is due. This writing then writes, not with or toward understanding (knowledge), but rather it writes its exposure to an obligation that cannot be accessed by a finite set of “characteristics” or “qualities” that can be recognized or identified by our common vocabulary. This writing writes of an obligation that “dates from before my freedom in an immemorial past, an unrepresentable past that was never present and is more ancient than consciousness of.... A responsibility for my neighbor, for the other man, for the stranger or sojourner, to which nothing in the rigorously ontological order binds me—nothing in the order of the thing, of something, of number or causality” (Levinas, “Ethics” 84).

Because this obligation is beyond meaning—is never graspable or present enough—it can afford to think beyond itself to those who share nothing in common with “us.” It thus faces an (alien) obligation “that not only contests the common discourse and community from which he or she is excluded, but everything one has or sets out to build in common with him or her” (Lingis 11). Beyond a community of shared enterprises, even beyond the “community of genus,” the other—citing Levinas—“remains infinitely transcendent, infinitely foreign; his face in which his epiphany is produced and which appeals to me breaks with the world that can be common to us, whose virtualities are inscribed in our nature and developed by our existence” (Levinas 194). This epiphanic presencing of the
face, which is a provocation and a calling forth beyond anything that we have in common or share in understanding, is the very emergence of ethics. The implication for writing then is to heed and transmit this wholly other imperative. To appreciate the implication of this alien imperative, we will need to pause and consider the “conventionalist ethics,” with its impulse to enclose us in our language games, which implicitly is being challenged here.

The Ethical Irony of Contingency and Solidarity
Ethics is commonly thought to be grounded in the discourses, institutions, and norms that we identify as “ours” and that in turn reciprocally identify us. In this view the face of an infinite ethical imperative (that is, before and beyond anything that we have in common) would make no sense, as ethics stands—in the words of Richard Rorty—“as the voice of ourselves as members of a community, speakers of a common language” (59). Obligations then are understood through our shared participation in the contextual contingency of our language games. Thus, ethics becomes a contingent historical matter of our particular tradition; in this scheme, an ethical imperative does not issue from a noumenal asymmetrical point, nor from any “ahistorical conditions of possibility,” but from its congruence with “the general principles on which we have been reared” (196). In making these claims, Rorty cites Wilfrid Sellars’ phrasing of an ethical obligation as (symmetrical) “we-intentions”: “It is a conceptual fact that people constitute a community, a we, by virtue of thinking of each other as one of us, and by willing the common good not under the species of benevolence—but by willing it as one of us...” (190 n.1). Hence, to breach the protocols of our language games—to breach the obligation to our society’s terms of identification—would be deemed unethical, the “sort of thing we don’t do.” Rorty writes,

An immoral action is, on this account, the sort of thing which, if done at all, is done only by animals, or by people of other families, tribes, cultures, or historical epochs. If done by one of us, or if done repeatedly by one of us, that person ceases to be one of us. She becomes an outcast, someone who doesn’t speak our language, even though she may once have appeared to do so. (59–60)

Because nothing (but the senseless abject) stands outside of the present contextual contingency of our language games, nothing but the “we”—an immanent community of “interlocutors who are on the same side, who
are not each Other for each other but all variants of the Same"—forms the basis of an ethical imperative (Lingis 81). Rorty confirms, "We have to start from where we are—that is part of the force of Sellars' claim that we are under no obligations other than the 'we-intentions' of the communities with which we identify" (198). Since we have nothing that appeals to us other than the common vocabulary of the present day, nothing can command us in its alterity. Nothing then escapes being subsumed into the present-same. In a gleeful tone, Rorty sanctions the *teleos* of this project:

> What takes the curse off this ethnocentrism [the basis of our we-intentions] is... the ethnocentrism of a "we" ("we liberals") which is dedicated to enlarging itself, to creating an ever larger and more variegated *ethos*. . . . The view I am offering says that there is such a thing as moral progress, and that this progress is indeed in the direction of greater human solidarity. . . . It is thought of as the ability to see more and more traditional differences (of tribe, religion, race, customs, and the like) as unimportant when compared with [the] similarities. . . . (198, 192)

Because ethics is here established by the imperative to "see others as like our selves," the other's otherness no longer commands or questions us in its otherness. We are no longer caught or held hostage (obligated) by what we do not understand; the ethical imperative is understood through our similarities "and so *appropriated* by knowledge, and as it were *freed* of its otherness" (Levinas, "Ethics" 74).

The danger of an ethical imperative that admits only the descriptive/cognitive phrases of our kin, or of what we recognize/understand as familiar, is, despite Rorty’s tone, quite grave. Reconceptualizing our obligation to an infinite (exterior) other serves—at least—as a corrective to an ethics that “encloses us in our form of life or language games” (Cornell 17).

Throughout this article, I have been attempting to sketch the ethical (philosophical) consequences of the apparently benign suggestion that the writing and transmission of a traumatic event can be pedagogically conducted as a means to repair and bind a community’s commitment to its moral tradition. Osiel’s exemplary claim—which ultimately seeks “a national narrative that can effectively foster discursive solidarity and liberal memory”—consequently finds its philosophical legitimation/basis in Gadamarian hermeneutics, and in Rorty’s invocation of an ethics that receives its imperative from the liberal “we” (*Mass* 283). My critique of both Gadamer and Rorty—and thus of the claim that our annotations
and ethical commitments are to be woven into the folds of the “we”—is a meta-ethical extension of Drucilla Cornell’s concisely stated reservation of their project:

Rarely does Gadamer reflect on who are the “we” who share a tradition. Rorty, likewise, appeals to “social practice” and “our shared conversation”; in a similar manner, he fails to come fully to terms with the ethical critique of “the conversation of mankind.” ... [B]oth Rorty and Gadamer fail to recognize the difference in identity. [They both fail to recognize] ... the relations of domination and exclusion which are implicated in an abstract appeal to the “we” who share. (35)

Ultimately, by appealing to a mnemonic device that weaves the event into our shared institutions and norms, the vocabulary of the “we” is sheltered from having to confront its own limits. By assuaging that which ruptures the continuity of its identification, the “we” ends up self-enclosed within the craft of its own understanding. Adorno spells out the ethical danger of this circular self-enclosure, “the circle of identification—which in the end always identifies itself alone—was drawn by a thinking that tolerates nothing outside it; its imprisonment is its own handiwork” (172). Hence, I have been highly skeptical of any claims that see the writing of a traumatic event as serving some open-ended “good” (as being ethical) when it is, “woven [by our “we-intentions”] into a larger story about the community, its history, and its evolving normative commitments” (Osiel, Mass 73).

Seeking to transmit the memories of a socially traumatic event through this finite conception of ethics ultimately depends on the comfortable assurance of a translation, of a way of understanding, without facing loss, without tearing the yarn of the “we.” This writing, which comfortably settles on the heddles that grasp the threads of our shared understanding, does not expose itself to any obligation that is beyond itself. It actually transmits and reifies its non-exposure to the other, abjecting that which questions its identification. Regardless of the ways in which the event might confront, disrupt, or plead with us beyond our self-understanding, its transmission, under obligations to a kinship that identifies us, seeks to sustain that which confirms and comforts the familiar relations of the “we.”

The Trial of the Military in Argentina
In this last section I want to concretize the above critique by summing up the assumptions and indelible limits that arise when the law is invoked as
a hermeneutical dialogue that writes and rights an event of social trauma through the folds of social unanimity and mutual understanding. To highlight the consequence of what this strategy of transmission overlooks, I will conclude with a discussion on the limits and exclusions produced through the (1985) trial of the military in Argentina.

Recently, legal scholars have become concerned with the social-educative role that criminal trials play in a society that is coming to terms with past human-rights abuses. This legal-political discourse draws its pedagogical assumptions from the same hermeneutical claims discussed above. Work in this area points to three intertwined pedagogical goals that such trials strive for: deterrence, communicative competence required for social deliberation, and social-solidarity/reconciliation. Thus, in a nation recently torn apart by authoritarian abuses, the trial of human rights violations becomes itself an educational forum that not only commemorates the wrongs of the past, but also stages a communicative and consensual process for appreciating and building solidarity around the deliberative virtues of (liberal) democracy.

Drawing largely from the example of Argentina, Carlos Nino and Osiel note that “the judicial task” in a post-trauma society employs the law of evidence, procedure, and professional responsibility to recast the courtroom drama in terms of an educational “theater of ideas,” where large questions of collective memory and even national identity are engaged. Rules of criminal procedure and professional responsibility end up ensuring a measure of civility when they confront the divisive issues implicit after a period of social trauma. Hence, the give-and-take hermeneutical protocol at work in a criminal trial provides the “enabling constraints” necessary for conducting an edifying conversation that citizens can come to understand and identify with (Osiel, “Making” 221). In helping to overcome mutual incomprehension, the law—in the hermeneutical sense of a “continuing tradition”—provides the horizon of possibility that allows the immediate disputes of the litigants to be “woven into a larger story about the community, its history, and its evolving normative commitments” (Osiel, Mass 73). By narrating the horrific consequences of “illiberal vices” from the past regime, the law stages a formal reconciliatory structure, a concentric axis, for historical interpretation and public understanding that all parties can come to draw upon: “The contrast between legality of the trials and the way the defendants acted is prominently noticed in public discussion and further contributes to the collective appreciation of the rule of law” (Nino 147). Thus, such law-related activities inevitably foster an
ongoing respect and identification with the liberal virtues of a commu-

nicative and argumentative consensual process. As Nino notes, “Even

when pardons are issued at the end of a trial [as was the case in

Argentina], they do not counteract the initial effect of such emphatic

public disclosure. This disclosure of the truth through the trials feeds

public discussion and generates a collective consciousness and pro-

cess of self-examination” (146–47).

According to this formulation, the purpose of such a trial is not so

much to respond to the wrongs of the past as to provide a showcase for the

law’s hermeneutical competence in establishing “discursive solidarity.”

The defensibility of these “show trials,” even when their verdict is

overturned through a state sanctioned pardon, depends on the defensibil-

ity of the lessons being taught—that is, on the “liberal nature” of the

narrative and shared understanding generated by the trial. As long as the

trial stages the opportunity to reconcile and edify the social through the

conversational competence inherent in the “liberal tradition,” we should—

according to Osiel—endorse this means of representing the past (Mass

65). But such claims that suture a “collective consciousness” always turns

out to be based on a denial—a denial of the mangled tissue that holds and

marks the boundaries of our shared understanding. The assumption that

the legal procedure establishes a communicative protocol for producing

an “edifying narrative” that we can come to identify with necessarily

avoids asking who is excluded and what interests are served by the

circulation of this normative narrative. By turning the violent past mainly

into a technical showcase/lesson for how to adjudicate/apply the implicit

conversational norms in a legal case, this process of disclosure not only

obscures the political particularity of liberal representation, but insulates

public discussion from the divisive memories and messy questions that a

traumatic past evokes.

Acknowledging that such a “collective deliberation process” is

constructed through exclusions provides a self-critical moment for taking

care of the remains. Hence, my turn now to the discussion of the limits of

the trial of the military in Argentina does not gesture toward rectifying the

“truth” through mending the law’s capacity for distribution or retribution;

rather, my thoughts are with the remains that remain other to the law’s

representation and adjudication. Drawing on the implications of Derrida’s

ethical critique of the annotator who follows the law of hermeneutics, to

ward the Law of law that gestures the annotator (interpreter) to attempt

to allow the other to (somehow) weigh in as both a point of exteriority (as

the beyond/possible to every present/totality) and as the excluded other,
I ask here: What remains other to this legal hermeneutical dialogue that strives for the progressive enlargement of discursive solidarity? Unraveling the discursive threads and so exposing the tears in the fabric that weaves the claims of the law’s “educative dialogue” allows us to appreciate the fragments and traces that unwork the congruence of a tidy narrative order. What remains other to an orderly protocol of annotating the event? What remains on the way to edifying and reconciling the social? I offer a brief consideration of how the narrative of the trial of the nine commanders in Argentina is inextricably tangled and constructed against an excluded other when it is read as an educative dialogue that accomplishes social unanimity and mutual understanding.

Unraveling the Links in the “Educative Dialogue”

As the Argentine military’s legitimacy disintegrated, and democracy began to situate itself, the discourses circulating about how to come to terms with the past were replete with the need to “uncover knowledge” that could once and for all exorcise the “national spirit” of its ghosts (Donghi 14). The public rituals of producing and deliberating on the “evidence”/“facts”/“truth” about the past trauma became a key means in the will to disinter “the true identity of the nation.” As Santiago Kovadloff claimed, “The trial is founding the Republic. We, through this trial . . . are founding the Republic” (qtd. in Brysk 225 n.81). The longing for the absent imagined community (“who we really are”) was linked with the will to “know.” Of course, the initiation of the trial of the military in Argentina was and should be broadly welcomed; however, the legal means of coming to terms with the past tended to feed into the national longing for a reverential precept that would synthesize the exposed differences, subduing them within an all-encompassing process that would deliver resolution and conciliation. The “treacherous assault on the law” was invoked repeatedly as the explanation for what promoted the “dirty war”: the law was the victim of “terrorisms” from both the left and from the right.7 Although caught in the middle of the senseless violence the law inevitably endured and was able once again to establish normalcy to the nation. For most Argentines who remained quiet and passive during the horrors committed by the state, the presentation of the law as being “caught in the middle,” as being unable to convince “the two violent groups” of its decency, provided powerful tropes for identification, for it bespoke their desires to appear righteous while being absolved of any implications with this period: their morals were “held hostage by rival
extremists who were completely irrational.” Viewing the “dirty war” as a period of “barbarism and chaos” that was the result of a “minority” of people, fueled the need to redeem the “true” identity of the nation.

What are the discursive effects of invoking the trial within the continuum of the nation’s “founding norms”? I want to submit that by linking the founding norms of the nation with the trial/law provides the national imaginary with a means of bracketing its authoritarian ethos as a “regretful and aberrant period” that can now be overcome by (affectively) remembering its “true”/“original” values in the law. The reverence for the law, as the “founding” terrain of the nation, thus shelters the national imaginary from the recognition that an authoritarian legacy has often accompanied the popular desires and claims of Argentine identity: The violent past is now not only presented as an abhorrent event, but is also displayed as an ephemeral episode—one that is aberrant to the Argentine community. This reverence assuages the necessary introspection and possible disruption of identity that would come from admitting that these authoritarian “ideals had been loved by us, although they were also hated, and that they are still parts of ourselves.” The psychoanalyst Gottfried Appy continues, “To declare them [these authoritarian ideals] only as being ‘out there’ [or as an aberrant past episode] denies our identification with them... Only after this sort of recognition of an inner conflict can a renewed separation from them take place” (qtd. in Wangh 296). Appy’s concern, although referring itself to post-war Germany, is also relevant to Argentina, since it points to what Mitscherlich-Nielsen describes as “a particular kind of memory work [that] is needed [in order] to develop the ability to mourn... not only for the loss of persons, but also for [national] ideals and narcissistic self-love”; this would be “less a matter of recalling facts and events,” than of remembering and reconsidering the national community through its “ways of behaving, value judgments, feelings, and fantasies” (407).

The belief that the military’s dirty war was an aberrant episode that was mostly propagated by “a few extremists,” however, tacitly sanctioned the need to reclaim the “true” identity of the nation. To this end, the law becomes the unquestionable principle or unimpeachable terrain upon which Argentina could establish its desired sense/image of itself. As the Public Prosecutor, Julio Cesar Strassera, claimed, “This trial could enable the Argentine people to recover their self-esteem and their trust in the values on the basis of which they had constituted themselves as a nation” (Amnesty 43). Thus, at the core of the nation is the “original position” of law, a unifying and essential ground where “we” dwell in a
situation of complete equality and sameness, where the distillation of the
nation’s norms can be crystallized and sealed. To bring the incomprehensible crimes before the law thus provides a retrospective lesson on the founding values of the nation. The “facts” and the “truth” that would be got from the traumatic event were ultimately to serve in separating and thus abjecting the “false” and “aberrant” values of Argentine identity from the “true” and “original” ones. In this sense, the will to come to terms with the past, to make the trauma into an object of knowledge, reveals the desire in the formation of a redeemed national identity: an opportunity for self-confirmation, a history lesson on “who we really are.”

This retrospective artifice had an incredible force in the “official narrativization” of the “dirty war,” for it was from behind this “veil of ignorance” and through its implicit consensual process that the law would provide a record that could “distinguish dispassionately the legitimate aims of the anti-terrorist campaign from the illegitimate means adopted for its realization” (Osiel “Making” 155). Working from these presumptions, there was no room for the trial to consider the whole “anti-terrorist campaign” as being itself wholly “illegitimate” and as a means to institutionalize class war through the force of the state, for this would have breached the discursive framework ushered by the process of national recovery and reconciliation. Hence, the trial “steered clear of judging the legitimacy of the junta as a government or its decision to combat subversion, [the court] confined itself to judging the defendants for the commission of well established crimes and struggled to make the proceeding resemble an average criminal trial” (Speck 494).9

Because the boundaries within which the criminal case organizes its deliberation of the “facts” assumes that behind the “veil of ignorance” all are equal—that the social differences of race, class, gender, and religion are unimportant—the trial produced a decidedly historically disconnected and individualized narrative of the event. As Carina Perelli observes, “The collective dimension of repression tended to be lost in this bleak recitation of individual pain and despair” (435). Because the extensive documentation of kidnappings, murders, and torture were presented without any deliberate attempt at formulating the connections between them, a despairingly discrete picture was drawn of a process that was ultimately methodical and ontologically driven in its selection of victims. In not considering the broader social milieu, “the trial failed to provide an outlet for the feeling of personal inadequacy, anger, and frustration repressed during the years of extreme individualization, under the culture of fear” (435). The trial was particularly vexing, for although
there was evidence that the military was involved in a specific "cleansing" policy against different groups (against independent labor unions, social movements, certain religious groups, and other political "undesirables"), the issue of "genocide" was excluded from the criminal case. In proposing to be drawing on the assurance of a technically "neutral" mechanism for coming to terms with the past, to be hence applying the unifying and original position of law "blindly" and "rationally" through the protocols of deliberation, the trial could/would not explore the larger "social or ideological" dimensions that were imbricated with the "criminal case."

Thus, the very confines within which the criminal law produces its knowledge and judgments, the very means of uncovering "evidence" through discontinuous accounts (with disregard for historical-ideological motivations), and thus its very basis for showcasing an "educative dialogue" for the purpose of mutual understanding, secured for the "nation" an artifice for assuaging those "dangerous" and "unpredictable" moments that threatened the national recovery and conciliatory process. Hence, we see the "prosecution failing to pursue the periodic suggestions of anti-Semitism among the torturers, offered spontaneously at the trial by several prosecution witnesses" (Osiel, "Making" 163 n.64). Osiel notes, "The fear that the trial might come to be labeled and discredited as 'the work of the Jews' may have restrained the prosecutor from such questions" ("Making" 163 n.64). Because anti-Semitism was (and continues to be) another facet of the "ideology" prevailing within the officer corps, any implication about its motivating the "crimes" of the "anti-terrorist campaign" had to be disregarded in favor of the prudential consideration for consolidation. Moreover, since the exemplary trial was implicitly producing a narrative that was attempting to stabilize "the crisis of identity" through a collective myth of origins, the issue of anti-Semitism, which called up a long history of national fragmentation, threatened to remind the "nation" of its excluded others. It is important to note, then, that the way that the trial's deliberation framed the 1976–1983 period as an aberrant and isolated episode of state violence dehistoricizes the authoritarian ethos that has been entrenched in Argentine society since its inception. Jamie Malamud-Goti notes, "Both official and popular versions of recent Argentine history suggest that state-sponsored human rights violations were the results of the military regime's strategy following the 1976 takeover. However, situating the massive abuses between March '76 and December '83, when the military was formally in power, is a misleading version of history" (166). Thus,
adapting Peter Goodrich’s insight to this case, the law institutes an order
of discourse that prohibits those heterodoxies of speech/identity/memory
that are deemed to threaten not only the legitimacy of legal meaning, but
also the signifying power of the nation (vii).

The desire for national self-vindication and integrity can avoid its
disturbing implications with the now abject authoritarian ideals by
drawing on the symbolic blanket of the law, by drawing on the supposed
assurance of an “objective” (technically “neutral”) mechanism for com­
ing to terms with the violent past. By promising a “neutral” means for
producing knowledge of the past and a communicative and consensual
process for appreciating and building solidarity around the deliberative
virtues of (liberal) democracy, the trial can be read as an attempt at
dejecting or containing the anxieties that riddle the nation. According to
then President Alfonsin, it was imperative for Argentines to face the
violent past through “collective deliberation; ample and logical debate;
in which decision-making is regulated by the rule of the majority and
judicial procedures. In this way, the various groups agree to submit their
differences to the mediation of a shared normative order that establishes
mechanisms to solve eventual conflicts peacefully... and consolidate
social cohesion” (qtd. in Roniger and Sznajder, Legacy 57). Following
Foucault’s claims on the production of discourse, we can read the
collective rational-judicial deliberation process as attempting to produce
knowledge that “is at once controlled, selected, organized and redistrib­
uted according to a number of procedures whose role is to avert its powers
and its dangers, to master the unpredictable event” (qtd. in Gaete 52). By
bracketing the discussion within legal (supposedly “neutral”) questions
and protocols, the possibilities of recognizing the other—both the victims
and the now abject authoritarian ideals—can be more or less framed so
as to avoid those “dangerous” and “unpredictable” instances. In other
words, the appeal to the law as means for “coming to terms with the past”
resides in its very mechanism for bounding knowledge, for it seems that
the “neutral” deliberation process implicit in the law avoids or contains
those “other” messy instances that would contradict the national imagi­
nary and consequently problematize the process for reconciliation. To
frame the legal strategy in this way is clearly to grant a privileged or
determining role to a dialogue that brings about “social deliberation”
within the boundaries of a national conciliatory myth, rather than to what
problematizes, contradicts, or ruptures its vocabulary and cohesion.

In this sense, the educative justification for the trial seems rather
incapable of acknowledging those instances of excess, those other
dejected ways of speaking which, in their very "incapacity" to provide "evidence," signal to what cannot be defined or annotated within the hermeneutical protocols of liberal morality or within the boundaries of the national imaginary. To justify the commemorative lesson of the trial within the principles of institutional coherence, and within the "enabling constraints" of the law, necessarily simplifies one memory of the past over those excluded from the trial’s performativity. Hence, those instances that contradict or complicate the desire to bracket the Argentine authoritarian ethos as an aberrant period are smothered by the conciliatory memory of our true and founding values in the law—our (imagined) liberal institutions, traditions, and norms. And yet, the other remains (returns), for, quite obviously, the fragments and traces that unwork the certainties of a narrative that foster discursive solidarity and liberal norms can always be "read" through what remains. But this "reading" is never a straightforward one. Rather, it is stirred (affected) by a recognition of the limits and the ruptures that reemerge from what was cast-out. This "reading" involves one in the process of "bearing witness" to those enunciations that cannot be represented by what "we" understand. Thus, when we "read" a narrative that claims to have disclosed a "truth" that "feeds public discussion and generates a collective consciousness" (Nino 147), or when we "read" the trial as a mnemonic device for staging the principles of liberal morality (Osiel, Mass), we realize that a wrong has been committed against those (non)utterances that unwork the certainties and primary position of our vocabulary. In realizing that a wrong has been committed—that a narrative that aspires to condense the multiple discrepancies and (non)utterances into any "discursive solidarity," into any unifying project, does violence to the other—we are summoned or stirred by the specter of "justice."

But this is a wholly other idea of justice, one that moves beyond the notion of the application and deliberation of legal justificatory arguments and precedents, to an idea of justice as an ethics that comes before the law, as an imperative of the Law that overflows the law. Justice here functions as a residual force that recalls that we are first and foremost caught in our secondariness, in our obligation of response to the other. As Derrida writes of the annotation, secondariness is its common law: it can only respond; it cannot speak first; it is a discourse of "respondents" ("This" 201). Rather than a settlement within the origins of our terms, the concern here is toward a sense of justice, a sense of writing, that is motivated by the infinite (ungraspable) obligation that is due, by the justice that is lacking, by the response that is awaited and that determines our secondary
position. It is from here that we encounter the “difficulties . . . related to the limit, the problematic limit between an inside and an outside” (196). This sense of justice is thus stirred, not with or toward “discursive solidarity,” but rather by an exposure to an obligation, to an exterior point, which cannot be wholly accessed by a finite set of “characteristics” or by “qualities” that can be recognized or justified within our present vocabulary. Because this obligation does not require or depend on any binding meaning (characteristics, or qualities that would obligate it), the imperative of this obligation is wholly other. It commands not through what we mutually share (through some discursive hermeneutics), not because of our engagements within our institutions or norms (not because of a law), but through a recognition of the call (the face) of the other as an imperative. The ethical manifestation, implicit through this other sense of justice, is thus not predicated on any preexisting grounds; rather, it commands and requests a non-indifference to the other that—precisely through its otherness—interrupts the self-complacency of our common grounds. This acknowledges the tension between what remains to be expressed and the idiom that is supposed to be common to all: a recognition that the framework of political representation is constituted against an excluded other, which cannot yet be phrased.

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Notes

1. For an account of the issues and debates raised around the instigation of criminal prosecutions and truth commissions as a means of coming to terms with the past, see: Osiel, “Why”; Hayner; Roht-Arriaza. With regard to those who propose criminal prosecution as instigating an educative forum and consensual process for appreciating and building solidarity around the deliberative principles of democracy, see Osiel, “Making” and Mass; Nino; Orentlicher.

2. Marguerite Bouvard recounts a conversation with a member of the Mothers of the Plaza de Mayo in Argentina, who explained to her that their slogan, which demanded the return of the “disappeared” alive, was in truth “asking a question of those who do not wish to answer it and questioning a whole system which generated a savage repression” (147). Bouvard comments, “The slogan was a response to the junta’s mythologizing of reality, most especially to its campaign of denials during the terror. It was also a reaction to the legislation under Alfonsin transforming the ‘disappeared’ into victims of murder. . . . In demanding the return of their children alive, the Mothers insisted upon re-creating and reasserting the complexity of reality, the shades of differentiation
that the junta’s reduction and simplification had sought to eliminate. ‘Our children are not dead,’ one of the Mothers insisted. ‘They are disappeared’” (147; emphasis added).

3. It is worth noting the full force of Lyotard’s ethical point here: “An addressor appears whose addressee I am, and of whom I know nothing, except that he or she situates me upon the addressee instance. The violence of the revelation is in the ego’s expulsion from the addressor instance, from which it managed its work of enjoyment, power, and cognition. It is the scandal of an I displaced onto the you instance. The I turned you tries to repossess itself through the understanding of what dispossesses it. Another phrase is formed, in which the I returns in the addressor’s situation, in order to legitimate or to reject—it doesn’t matter which—the scandal of the other’s phrase and of its own dispossesion. This new phrase is always possible, like an inevitable temptation. But it cannot annul the event, it can only tame and master it, thereby disregarding [forgetting] the transcendence of the other” (Differend 110–11; emphasis added).

4. Ralph Hanna III takes issue with those rhetorical rules that require the annotator to avoid interpretation or the imposition of his or her being onto the text. He claims that these rules consequently give way to the dismemberment of the annotator from the annotation: “Twentieth-century annotators are completely removed from the text page (reduced merely to textual evidence) and are required to fragment their activities into tasks presented as rhetorically discrete, so that they can never appear to be a whole consciousness in touch with the text. But... this rhetorical prescription seems to me merely an expression of guilty knowledge, a way of allowing annotation to proceed as a form of benign mediation, a service profession, which it is not” (180–81).

5. See Gadamer.

6. Although “mass support of the citizenry of the dictatorship’s campaign of terror demonstrate that responsibility was shared by many sectors of society” (Malamud-Goti 167), the intention was to bring to trial only a handful of high-ranking officers. The desire for a contained and exemplary lesson that would reestablish the rule of law made it inconceivable to bring to trial any of the institutions, groups, ideologies, or other wide-ranging social concerns that were directly or indirectly implicated in the campaign of disappearances, for if the trial were to do so it would certainly run the risk of exposing the conflicting aspirations and interests within, what Ronald Dworkin exultantly described as “the fresh sense of community [which] Alfonsín’s victory had produced” (CONADEP xviii). The desire to consolidate the military (which was still largely made up of officers who were schooled and/or had served during the repression) within the “fresh sense of community” depended on carefully bounding the issue of criminal responsibility. Hence, the legislative package that initiated the criminal proceedings against the military focused on the nine commanders of the first three military juntas from 1976-1983. In accordance with Alfonsin’s prudential call for “justice,” the legal strategy severely confined further trials against the military as it sanctioned, for those who did not occupy its commanding offices,
an automatic presumption of due obedience—the so called “taking orders” defense (see Nino 69). This overly prudential and limited strategy would prove to be quite contentious. However, despite initial modifications, it ultimately asserted itself, drowning any legal claims that exceeded the canny consideration for reconciliation. On 22 December 1986, the “punto final” (full-stop) law was passed. This law specified a sixty-day limit for submitting charges against the military; after the date all charges would once and for all be extinguished. After Alfonsín negotiated with a serious military rebellion, the “due obedience” legislation was introduced and subsequently passed (4 June 1987) by Congress; the law revised the due obedience defense to favor a perfunctory closure for the trials.

7. The “anti-terrorist campaign” was often invoked, by the Alfonsín government that had initiated the trials and by the prosecution, as a “regretful and aberrant episode” that was the fault of “two terrorisms,” one emanating from certain segments of the military and the other from the “guerrillas.” Interior Minister Antonio Troccoli and Luis MorenO Ocampo, Assistant Prosecutor in the trial of the juntas, both expressed that the military and “the left” were “twin sides of the same coin” (qtd. in Osiel, “Making” 158). Despite the fact that the “guerrilla struggle” was all but eradicated at the time of the 1976 coup, and that the violence which the state wielded was incomparably more damaging than that of the sparse “guerrilla struggle,” both the (phantom) “guerrillas” and a handful of overly zealous military officers were—according to this formulation—equally to blame for the “dirty war,” and hence equally responsible before the law.

8. Even if we were to overlook (and this surely would be quite irresponsible) the atrocities that were committed during Argentina’s early formation, recent history cannot justify a time when “democracy” and respect for “human rights” were “the norm”: consider that between 1955 and 1983 Argentina had only six years of freely elected governments. Of course, the repressive strategy of “disappearance,” between 1976 and 1983, was both abhorrent and unprecedented in the way it affected and implicated large sectors of the population; yet, the authoritarian conceptual framework (that tolerates no sense of otherness) that fueled the military’s “dirty war” does not stand as an anomaly within Argentine history, but is continuous with its uncompromising quest for “national purity.” For a discussion that seeks to grapple with how Argentine national culture is constructed against an excluded other, see Masiello.

9. In its concluding remarks about the trial of the military, Amnesty International made a statement about the possible problematics of attempting to seek justice through the procedural peculiarities of a “criminal” case: “The Court was guided by the basic principle in criminal law that liability and the corresponding sentence must be assessed individually and not collectively. Collective entities cannot stand trial, only individual persons, and this poses major difficulties in cases of offenses planned or perpetrated by groups. Although the question
of collective responsibility was resolved in the case of this particular trial, it will undoubtedly continue to provoke disagreement in legal and moral discussions” (Amnesty 86).

10. On this issue, see Mirelman. For a specific account of anti-semitism during the military’s “dirty war,” see Kaufman.

Works Cited


