Accessing Law: Toward an Ethnography of the Limit[i]

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Abstract

This essay focuses on the issue of ethnographic access in the local context of a private law firm. In contrast to traditional understandings, I approach access as a liminal phenomenon, which I understand in two senses: as an encounter with the radical otherness in general and an encounter with legal otherness, in particular. Both encounters take place in the liminal sphere that precludes either self-crossing or self-appropriation; hence, the idea that access to the other is forever elusive, yet devoid of negativity unless surpassed in excess. An examination of access is set in the narrative frame, with personal experiences of accessing a legal field site and fictional experiences from Joseph Conrad's "The Heart of Darkness" running a dialogical course. As a result of the analysis, access emerges in a variety of guises: as empirical and technical obstacles, on the one hand, and as limit-phenomena, such as paradox, ambiguity, and resistance, on the other. In the end, I argue that investigating the latter is a specific task that requires a particular kind of ethnography, - ethnography of the limit.

Key words: ethnography, law, access, phenomenology, alien, limit-phenomenon, narrative

1. Introduction

> "Like sailing, gardening, politics, and poetry, law and ethnography are crafts of place: they work by the light of local knowledge"
>
> (Clifford Geertz, Local Knowledge)

Geertz's words leave little room for misinterpretation: bound tightly to a place of their ritualized enactment, both ethnography and law are conceived of as local phenomena. In turn, the notion of place presupposes that both "the other" and "law" should exhibit certain observable boundaries. For these boundaries, Geertz offers the concept of knowledge. From here it follows that the ethnography of law must begin with an examination of locally obtained, locally sustained, and locally deployed epistemology. A common place for the

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ethnographer, the emphasis on locally constituted legal practice makes little sense for the philosopher of the jurist. After all, isn't the thesis of universality inscribed in the very project of law? Geertz disagrees: to study law as either "a separate and self-contained legal system" that justifies its existence by separating itself from the ordinary life on analytical grounds, or as "an undifferentiated, pragmatically ordered collection of social devices" employed to advance the interests of those in power means to adhere to "parochial facts" and thus to obscure the facts of life: local facts emerge from local contexts as place bound events (1983: 167). In order to strengthen this perspective, Geertz offers the "city" metaphor. We are all city dwellers. We may call these cities 'law' or 'culture,' but, in fact, they are locally built organizations, social orders. In order to know the city, we must walk its streets, and only by doing the actual footwork, the ethnographer discovers the city's "identity." This identity is never fixed, for the face of law like the face of culture is inseparable from its expression, its locally enacted rituals. Hence, the researcher's task: to observe, describe, and interpret the processes whereby local practices turn universal determinations into meaningful place bound events.

For the sociology that has accomplished the practice turn, that is, has accepted the primacy of the constitutive format produced by local conditioning, the argument about the significance of place is both apt and convincing. Coming from the phenomenological tradition, I do not aspire to undermine these convictions. However, the same tradition calls on me to examine the relationship between law and culture outside of local orders. Geertz identifies this "outside" in the paradoxical structures of "law without law" (e.g., law without legal statutes, or courts, or precedent) and "culture without culture" (e.g., culture without art, literature, or history). In contrast to political and social systems, for Geertz, these structures appear to be empty of any generative force; therefore they cannot be subjected to a critical review, and so he finds no interest in examining them on their own. I wonder, on the other hand, if a close scrutiny of "law without law" and "culture without culture" would not give us

a unique perspective on the outside of the local. Leaving the comforts of observable and describable local practices should lead the ethnographer to the constitutive space before and after practice.

Phenomenological studies of place show that to conceive of place without space is to admit that "place, by virtue of its incompossibility by anything other than itself, is at once limit and the condition of all that exists" (Casey, 1993: 15). From this perspective, each local field is constituted by the means of its own and can be comprehended only as a specific nexus of social meaning.[ii] In this multi-local world, there is no access to the local unless through the local, an impossibility for the ordinary experience that is always already synthetic. Alternatively, phenomenology suggests that in order for a place to be gathered, settled, instituted, it must first separate itself from what comes immediately before or after, that is, mere space. In contrast to place, an already constituted terrain, space is continuous freedom to derive local meanings from the surrounding nomadic territoriality.[iii] The latter is not without order, but, essentially, without limits. Or, to be more exact, nomadic space is all about limit. It is thus, returning to the city metaphor, a space that spreads all the way to the city walls outside of which law and the Other roam together freely, untamed by the practices of their users. It is this space that I propose that we explore here. The purpose of the exploration is to see what is happening at the border which delimits "law without law" and "culture without culture." For the method that should guide us in this endeavour I propose ethnography of the limit, which rises from the phenomenological tradition and is employed to illuminate those aspects of law that tend to hide behind "parochial facts." In next section, I present the phenomenological basis for this approach.

2. Methodological Preliminaries: Limit Phenomena

Traditional, that is, Husserlian phenomenology offers the analyst two methodological paths, or procedures: a) progressive procedure that attempts to grasp the phenomenon in the primary mode of its appearance in the moment of its transcendence; and b) regressive procedure that

works its way toward the phenomenon from the natural attitude.[iv] Both approaches presuppose two respective kinds of reduction. The progressive method reduces the available world to the phenomenal core by way of transcendental reduction. In the second approach, the reductions are carried out regressively, first by describing unreflective appearances of the phenomenon given to the natural attitude, proceeding to thick empirical descriptions and, finally, performing transcendental analysis. One can call the latter procedure the ontological way or the way from the life-world.[v] In comparison to the progressive method, which both philosophers and non-philosophers find rather obscure, the regressive procedure was readily adopted—largely through the sociological phenomenology of Alfred Schutz—by "new" social sciences, including ethnography. A paradigmatic method of this kind is microsociology which unites various off-phenomenological modes of inquiry (e.g., ethnomethodology, conversation analysis, ethnography of communication) by focusing on "ethnomethods," or those methods that the participants themselves employ toward "accomplishing a specific task" (Garfinkel 1969: 63). In contrast to the successful proliferation of phenomenology along the progressive path, the regressive procedure enjoyed little if any attention. I would even claim that it has never made it outside of Husserl studies. And, yet, although never complete, the progressive procedure had never been abandoned by Husserl, who saw its main merit in that it allowed for apprehending the mode of appearance instantaneously as the beginning of phenomenality. This is not to suggest that in his late period Husserl returned to transcendental idealism, the birth project of phenomenology. I rather suggest that Husserl's insistence on keeping the transcendental realm lead him to recognize the significance of history, myth, and ritual in the constitution of the social order. It is on the basis of this recognition that he offered a synthesis of the transcendental and the empirical approaches in the concept of liminal encounter. In his 1931-1933 manuscripts on intersubjectivity we find the following note:

> "There are problems emerging here of creating concrete understanding and mutual understanding; at issue is to somehow accomplish a making home of the alien, as if it

> were home. Of course, there is also the question of the limits of such knowledge and the question of justifying the idea of complete understanding" (Hua XV [1973]: 625).

I take this quote as the guiding clue into the phenomenological discussion of ethnographic access. For Edmund Husserl, limit is predicated on accessing the incomprehensible. This orientation affirms the possibility for the phenomena that belong to neither the visible nor the invisible but exist only as limit, without any distinct or definable shape. Unless captured on the margins of the sphere which delimits them, i.e., the liminal sphere, limit phenomena do not manifest themselves in collectable evidence, for they always extend beyond a purely empirical reach. The encounter with them is possible only as the encounter with the alien (*die Fremdheit*). When Husserl refers to the concept of the alien, he introduces it in two senses: a) as the transcendental structure "home/alien" and b) as the empirical modality the Alien (*das Fremde*).[vi] According to Steinbock (1995), the structure of "alienworld/homeworld" is one of the two transcendental co-structures, that is, it is foundational for the constitution of all experience. The other co-structure mentioned by Husserl in various later texts is "earth-as-ground/world-as-horizon." Although the two structures are intimately connected and can be considered as co-determinate, the explicitly intersubjective dimension of the alien forces me to reduce my conceptualization to the latter. In brief, the relationship between the homeworld and the alienworld is a relationship between what belongs to the recognizable "home" or sphere of ownness and the experience of the unrecognizable "alien" that encompasses everything that is constituted by a world other than my homeworld. The homeworld is therefore a parallel structure that co-constitutes the alienworld. It is through this co-structure that normatively significant lifeworlds are constituted. Simultaneously transcendental and non-foundational, the structure alienworld/homeworld presents the relationship between the home and the alien as the sufficient and the necessary condition for understanding the genesis of all, but especially social experience.

Originating completely outside of the familiar, the alien is encountered in the

paradoxical mode of givenness: as “accessible in genuine inaccessibility, in the mode of incomprehensibility” (Husserl, 1973: 631). It is therefore recognized only as the limit to the familiar home. In comparison, the social stratum of the alien generates a more familiar form, the Alien being. For Husserl, the original category of the Alien is comprised in four types of alterity: animals, children, savages, and madmen. All the Alien modalities respond to the same paradox of accessible inaccessibility. Although embodied and recognizable, Alien dwellers are experienced as heterogeneous, that is, still completely on its own, reflectively outside of our constitutive comprehension, recognizable but only as ambiguous or, in the words of Husserl, “unfulfilled” beings. Paradoxical ambiguity of the Alien types prevents their incorporation into the sphere of ownness. As adults, we cannot experience the world as infants; nor can we experience it as the insane do before we become mad; likewise, foreign modes of constitution irrevocably separate us from other cultural subjects. Coming from and with a world of their own that is delimited from our own world, the Alien types are shadowy or, to put it in phenomenological terms, liminal phenomena. It is for this reason that Husserl calls them “limit subjects” (*Limes-Subjekte*). Positioned at the limit of comprehension, liminal life-forms are given as subjects-in-becoming. Thus the encounter with the Limit-Subjects helps us co-generate our world as always already evolving. It also has dire ethical implications.[vii]

The unfamiliar alien calls to itself; it also repels. However, a disturbing, threatening, and annihilating effect can emanate from the alien only when the excluded matter is kept in exclusion as if it “belongs” there. From this perspective, “the allurement and the menace of the alien become all the greater the closer it approaches” (Waldenfels, 1996: 116). We also encounter the alien within our order but only as something that has been already incorporated. The adapted alien is without menace and without allure. As inaccessibility, it is lost for the semblance of the difference. In contrast, the inaccessible alien appears only as existing elsewhere. It comes as the extra to the home and therefore to what cannot be apprehended:

"paradoxically and ambiguously formulated, the extraordinary is the outside of a certain order, not a vague somewhere or otherwise" (ibid.: 115). It is in this sense that the alien places strong ethical demands on us: we must cross over to the alien in order to keep it as the extra to our own, but without exclusion. We should also avoid bringing the alien back, so to speak, otherwise we run the risk of disturbing the social order of things. Crossing over to the alien for comprehension means that the researcher must resist the temptations of clarity, i.e., the immediacy of reason, and thus embrace the very ambivalence of the excluded irrelevant, atypical, abnormal, immoral, and abnormal matters, for it is this ambivalence that becomes the driving force of resistance that takes place as a departure that does not arrive elsewhere. The alien must remain the alien for the co-foundational structure to retain its productivity. The only gift one should expect from crossing over to the alien is self-transformation, for understanding the alien always requires a change in one's own form of life.[viii]

In sum, the Husserlian concept of the alien allows us to conceptualize ethnographic access as a limit experience founded on paradox, ambiguity, and resistance, with each structure presenting a limit of its own. In the following section I would like to examine the significance of these structures to law.

3. The Limits of Law

> "Every general norm first appears as a *foreign* body not dissimilated by our experience" (Waldenfels, 1996: 45).

As a normative complex, law replicates liminality of the alien by originating in the moral symbolic sphere at the limit between normality and abnormality. According to Aristotle, the essence of law lies in its normative position that connects moral and juridical laws: "juridical laws make pronouncements on every sphere of life; their aim is to secure either the common good of all or of the best" (Nicomachean Ethics: 113/10). In other words, monitoring and execution of juridical laws is a matter of societal control. If a person violates some legal provision, i.e., a norm, it is up to the community embodied in the institution of law to

apprehend this person and bring him to justice. Therefore, juridical laws lie external to the person. They belong to a sphere of their own and, in themselves, are empty. This is why, to an Alien, whether a child, or foreigner, the laws of the other appear alien. They become potent only when assimilated by a person through various normative corpora: space and time, body, customs, language, and social relations. According to Aristotle, law "has no other power to impose itself but as a habit (ethos)" (Politics, II, 8: 1269a 20f.). From this perspective, moral laws are the rules that are upheld by the society to be evoked in the internal forum, that is, within an individual person, her home. Their violation results in the punishment by the qualms of conscience, which is a private matter: "moral laws are to be considered but not applied" (Nicomachean Ethics: 202/25). Originally coded as prohibitive commandments, moral norms are monological; they are designed to be followed reflectively. In contrast, legal norms are dialogical, they function outside of reflection; therefore, their violation is always resolved in the public forum. Together, they form a co-determinate structure separated by limit and founded on paradox: always universally posed, moral rules and legal norms are accessible only locally.

When local enactments come in conflict with the letter of law, its paradox comes about as ambiguity. This feature of law was addressed by Gilles Deleuze, who noted that the normative position of law (*nomos*) is designed to uphold repetition; however, when applied to particulars, it creates a change which is a deviation from the same. In itself, the deviation may be minute, in fact, it must be barely visible for the norm to claim its rule; yet, on occasion, the smallest that tends to the largest, being incapable of overcoming the largest, announces the law's limit by "referring to that on the basis of which it is deployed and deploys all its power" (Deleuze, 1994: 37). On this occasion, law becomes ambiguous, unclear to itself because, unlike a specific case, it can never be taken to its limit and not because it is inexhaustible but because it has no limit other than the limit given to it by its repetition, this very specific case. This explains why, according to Plato, justice as judgement can be done always and only

approximately (Laws: 757b). For him, law's liminality is based on the unquestionable primacy of the divine. Only the divine, of which morality is a derivation, can distinguish between the Good and the Bad. Delimited by the Good of Being, law can only simulate and therefore obscure the divine, being itself an obscurity from the start.

The final condition of liminality that connects the alien to law is resistance. Unlike the liminal alien who resists appropriation from the depths of the liminal sphere, resistance to law comes from the margins. The absolute incomprehensibility of the alien precludes a dialogue with the other and therefore an adequate response, whether in empathy, or in speech or in action. In contrast, law defends itself by deploying its norms; it is on the ground set by normative prescriptions that it conducts its monologue with the abnormal. However, since the juridical norms are contaminated by the continuous establishment of the legal order in happenings that overlap with the liminal sphere, they cannot help but contain the traces of paradox and ambiguity characteristic of that sphere. Once law recognizes the impurities of its limits, it exiles them on the islands of unreason. Resistance to law begins with a challenge to law's norms. Resistance to the norm can come only from the subject, who is the law's habitual and who is the only one in a position to reflect on the encounter with the other in law as it occurs at the limit of becoming a habit. And since this encounter occurs at the limit, telling about it must also be also at the limit.[ix] In the following section I explain what it entails, - telling at the limit.

4. Telling at the Limit

> "Law is a part of a distinctive manner of imagining the real"
>
> (Clifford Geertz, Local Knowledge)

At minimum, telling at the limit means to go to the limit of imagination. The relationship of law to imagination has been implied in the previous sections during the discussion of legal norms. Unstable due to their universalism, norms are stabilized in the telling (testimony) by being reasoned (argued) as facts. Yet, paradox, ambiguity, and resistance of law undermine

narrative reasoning by opening doors for imaginative telling, which correspond to Geertz's "imagining the real" (1983: 183). Although, according to Geertz, different legal cultures exhibit significant variations as to the allowable use of imagination in fact making, no culture can boast of altogether purifying legal language from imaginative components. Whether by common knowledge and convention, or individualized and idiosyncratic ways of telling the "truth," the imaginary manages to get in, tainting facts with enunciative ambiguity: "Truth is inseparable from the expressive operation that says it; it does not precede reflection but is a result of it" (Danto, 1985: 71). In other words, truth--understood not as certainty but as epiphany--is always given at the limit of experience. To an equal extent, the force of imagination accompanies the experience of encountering the other. Because the other is radically inaccessible, we must resort to the extra in trying to comprehend the other. There are two sources for this extra; in the beginning, there are prior expectations and anticipations. By anticipating what the other could be we gain access to the unimaginable and incomprehensible in the space where otherness meets the familiar and understandable. Not just personal experience but ethnographic research as well is necessarily grounded in anticipation. From anticipating the other, the actual experience of meeting the other propels us to the limit where the experience of the other breaks out into imagining the other. It is in this perspective that literature is a phenomenon of transcendence. As Maurice Blanchot put it, "the space of literature is bottomless" (1982: 99).

The epistemological porosity of literature allows not only to intermesh personal experiences with cultural and communal "histories," but to generate new formerly unknown, alien identities. According to Mikhail Bakhtin (1982), literary narratives are neither monovocal, nor singly authored; rather they are the products of past, present, future, and hypothetical dialogues with various interlocutors. A conventional genre such as the novel, for example, is inherently imbued with the voices of others, for it has been historically shaped by other authors in that particular discourse tradition. Spoken narratives also count as multivocal

or heteroglossic in nature, for they are affected by the ideas and representational styles of others. In contrast to the novel, however, the spoken narrative is not "worked out aesthetically;" it does not have the border of literary conventions (Bakhtin, 1979: 79). The co-dependence of the written text on the spoken word is not unlike the relationship between place and space. It is at the limit of the two that the construction of law and the other, the other in law takes shape. This view complements the phenomenological perspective: "every statement and every action occur indirectly, refracted through the medium of intermediary actions, forms, and authorities" (Waldenfels, 1996: 27). This means that no action or interpretation belongs to the subject fully, nor should it, for expression is an ontological necessity.[x] By including other voices into one's personal experiences we grow beyond ourselves and thus become more human. We are human when we tell ourselves; self-disclosure makes us vulnerable. But we are most human when we tell others because we make them vulnerable.

Thus, telling at the limit must forego an empirical route of self-centered narration. Personal experiences simply do not suffice to cover the generative terrain of transcendental constitution. Moreover, on their own, personal experiences complicate this terrain; their empirical "here and now" places various barriers on the way to its unfolding. So does empirically-based ethnographic research. Crossing over the empirical limit would have to be aided by imagination. In other words, the matter that the ethnographer brings from the field must be extended by the imaginary extra. The extra to the ordinary may come from the original narrator. It may also come from artistic creations. For example, Eco (1986) argues that an encounter with a literary work creates a mirror moment, a "threshold phenomenon" that helps the actual ego to make a transition to the social ego, which is an "imaginary double" (204). According to Derrida, the double of imagination is attached to one's actual experiences "*au bout*, at the edge" (1979: 67; author's italics). The main function of the edge is not to connect one text to another, however, but to make their falling into each other visible. In other words, while converging, various texts edge out of the world. This is how crossing

over the limit of personal experiences takes place: over the edge to the limit experiences of the imaginary: "It is by the voice of the imaginary witness that the inaccessible other is told" (Levinas, 1998: 146).

Following this thematic build-up, in the following section, I would like to offer a phenomenologically-motivated reading of Joseph Conrad's novel Heart of Darkness, which I take to be a paradigmatic tale about the other, law, and ethnography. The selection of Conrad's novel is not arbitrary. The novel's numerous re-textualizations testify to its thematic richness and stylistic plasticity as well as mythological and archetypal qualities, making it a limit text about limit. In my reading, I attempt to avoid prioritizing literal descriptions, focusing instead on the structure of the novella's *sujet*, its thematic consistency. While trying to stay at the edge of the text, I will attempt to push my interpretation to the edge, and, as long as the two tracks do not interrupt each other but extend each other, their power to reveal the phenomenon--law at the limit—is going to be double strong. As a result, I anticipate that interpretative manoeuvres bring law to its edge, without exhausting their force in the crossing. This journey should disclose paradox, ambiguity, and resistance in their relation to law; in turn, establishing those borders should facilitate the crossing from empirical to liminal encounters, bringing us to the ultimate limits of law and the other.

Exploring the limits of law and the other in experience and imagination will hopefully encourage us to think deeply both about ethnographic access in terms of methodological and observationally applicable expertise. It will also make us contemplate about how such evolving expertise might change the ways we collect, record, transcribe, analyze, and display naturally occurring data, especially those gathered as a result of actual face-to-face encounters. In addition, it will pose the challenge of treating personal experiences not as free-standing commentary on access but as experiences which are contingently dynamic and unfolding in narrative time. In order to meet this challenge, we will have to appreciate the meanings, actions, and social relations that seep into the contemporary present from both the

historical past and the fictional aside. This may not be an easy task. Telling at the limit generates a different kind of liminal dynamism that demands a bottom-up engagement with the other whose immense proximity goes beyond the light of theory and rationality to the twilight of alien encounters, a demand as risky as it is sublime.

5.1 The Beginnings: Accessing the Other

When Joseph Conrad wrote his Heart of Darkness, he intended it as an allegorical narrative about "mysterious life of the wilderness that stirs in the hearts of wild men" (1902: 9). Setting up his protagonist Charlie Marlow for an exploration of this life, Conrad showed how, by encountering different limits posed by the other, Marlow experiences himself and the other at the limit, without being able of crossing this limit: for the white man, there can be no initiations into the mysteries of the wild. At the same time, variegated to the utmost, Marlow's experiences as he journeys into the heart of darkness force him to undergo severe transformations which make him evolve beyond his self. Several phases adumbrate this journey. In the first part Conrad describes Marlow's state of personhood before he leaves the continent. Unlike other seamen, Marlow is a wanderer. His stories are thus the stories of a wanderer, who owned the world and therefore could make connection that exceeded his life. He begins his story about Kurtz with the Romans who crossed the European vastness to reach England. It is as if he is untouched by history. Is not taken by it, not usurped. As if all he sees is the mist, the haze, the uncertainty. As an ethnographer, he tells at the limit:

> "…to him the meaning of an episode was not inside like a kernel but outside, enveloping the tale which brought it out only as a glow brings out a haze, in the likeness of one of those misty halos that sometimes are made visible by the spectral illumination of moonshine" (8).

A disillusioned member of the English middle class at the time of the Edwardian reign, Marlow wants to experience the world before it is swallowed by the advances of civilization. He has "a passion for maps" (ibid.: 11). Fascination with cartography stands as a metaphor for

the colonial enterprise that takes the other in geographical abstraction, as the other reduced to the representational "here and now."[xi] It also shows Marlow to be very much a product of that enterprise; even his malaise is but a contrastive attitude toward the prevalent English complacency. With this, he is less concerned wit the other; rather, he desires to experience himself. As his disillusionment about the homeland grows, so does his disengagement with his self until the point when it begins to border on despair, as in "loosing his sense of place, purpose, and the self" (ibid.: 17). His desiring leads his imagination to Africa, where, in the biggest and emptiest of places filled with dark blank spaces, he expects to meet sheer otherness, "abomination". By encountering the extreme of "abomination" he expects to purify his contagion in the midst of the incomprehensible darkness, reach some kind of redemption. At first, Marlow views redemption not as an act but as an idea, the only idea and only an idea, "something you can set up, and bow down before and offer a sacrifice to" (ibid.: 10). Later, he realizes that redemption is not about replacing one system of beliefs with another but a change of one's self. Logically, it follows that in order to institute this change, one needs an alternative and since this alternative can not be obtained anywhere at home, one must seek it outside, in the other place. But, first one needs to make a transition. His idea jells into a plan. In order to exercise this plan, he engages his upper class aunt who pulls some strings and helps him obtain a post in a Central African trading company that deals in ivory.

Approaching the notion of the beginning as literature, Edward Said (1975) made a useful distinction between "the pure beginning" and "a transitive problem- or project- directed beginning" (50).[xii] He further distinguished between "real" and "fictional" transitive beginnings (ibid.). Said explained the distinction as the uniquely modern problem. Modernity likes to separate fictional and non-fictional experiences. The purpose of the beginning for the modern subject is rationality; hence, the divide between the rational (empirical) and the non-rational (fictional) ways of being. For the modern mind, only the former can claim authenticity. However, the post-modern revision renders the distinction irrelevant, if not

harmful. Instead, it offers to consider the relationship between the two realms in terms of the elevated ground. Adhering to the higher ground means no discontinuity between traditional research and fictional depictions. Embarking on his imaginary journey, my fictional counterpart was destined for the heart of darkness. In contrast, the ethnographer rarely follows her destiny, preferring clear instructions.

Hammersely and Atkinson's classic text Ethnography: Principles in Practice provides us with the following instructions concerning ethnographic access: "Not only does its [access] achievement depend upon theoretical understanding, often disguised as 'native wit', but the discovery of obstacles to access, and perhaps of effective means of overcoming them, themselves provide insights into social organization of the setting" (1983: 54). In a condensed form, this definition illuminates the key points of access for ethnography: it can be a theoretical issue, on the one hand; on the other hand, it presupposes field-dependent obstacles and thus specific techniques for their management. Thirdly, the problem of posing and overcoming access reflects back on the field itself. Importantly, the activity of negotiating and obtaining access should not coincide with the practice of collecting data. The researcher can be granted a permission to observe legal activities; yet, she may not have the permission to record these activities. Similarly, it is methodologically wrong for the researcher to equate access with her physical presence in the field. Archives ensure a rich pool of data for the researcher whose embodiment is non-coincident with the system of spatio-temporal coordinates that lead to the formation of documented other. By the same token, those human figures who stand guard before the field should also fall under scrutiny, and not just in terms of overcoming their gate-keeping, but in terms of it being an explication of the boundaries, fortifications and hideouts in the setting itself. Importantly, methodological and interpersonal ethics ought to be the source of a separate concern. Maximum transparency, reflexivity and accountability by the researcher for her intentions and actions must secure the minimum conditions for reaching access, i.e., to become admitted first and then included.

Upon examining some ethnographic research of legal practice, it becomes clear that the maxims offered by Hammersely and Atkinson apply to a wide range of actual projects. An approved and funded ethnographic project could simply collapse if the researchers fail to secure an approval from their host (e.g., Danet et al., 1980: 908). A wide variety of strategies are employed by legal ethnographers to overcome these hurdles. For example, Sarat and Felstiner (1990) suggest that one could resolve the problem of access by securing support of the judicial community who can help the researcher "to convince lawyers that they were selected for some positive reason" (134). Another way to gain access is for the researcher to enter a law firm in a semi-formal position, for example, as a paralegal, a secretary, or an intern (e.g., Travers, 1997). Kritzer (2004) shows that one can reach the same objectives by taking the informal route: he himself met his "hosts" through personal contacts, for example, in the local bar, or during the preliminary stage of research, in the university setting. The personal way of accessing the site allowed the researcher to be "literally sitting in his office watching them work regardless whether that work involved interviewing the client, talking on the telephone, reading documents, writing a brief" (20).

This potpourri of ethnographer's tactics may continue; however, there is an explicit omission of dangers in ethnographers. What is the main danger. I find the above studies sufficiently representative both in terms of their approach to access and in terms of conceptualizing access for ethnographic fieldwork and for law. First, whether the legal insider is interested in the ethnographer's work or person, or wishes to contribute to social sciences is beyond the point: she cannot just walk into a law practice, even if all formalities are put to good order. Second, there is a variety of strategies with the help of which an ethnographer, an outsider to the legal field, enters an alien community of practice. It appears, and my experience confirms this appearance, that his chances to a successful transition are better if he follows an interpersonal route; in other words, if he is ushered in by an insider. This was my route and I can fully identify with anticipations, anxieties, pains, and serendipities of gaining

access when walking along that path. For the above researchers, including myself, the path ended with a formal or semi-formal agreement to let the researcher in. From this perspective, access is both an initial and finite problem, resolvable at the point of entry. In the next section I would like to continue with the description of my own experience of entering a legal field for legal fieldwork.

5.2 Meeting Law. Paradoxical Other

I began my fieldwork as a tourist. All I saw upon my arrival in Mound City were legal attractions: courts, jail, legal professionals, legal codes, clients, paperwork. Pondering upon this situation lead me back to consider the manner in which I had entered the law firm that had agreed to host me. As a protégé of my host's sister, I came as a semi-insider that is, somehow related to the host. That way of entry obscured my readiness to anticipate the Other's expectations of myself. I wish I could remember the advice given to the ethnographer about the need to present oneself as a "researcher" and to maintain that role for the duration of the fieldwork.[xiii] Entering the field as a "friend" presupposed the connection that allowed me in almost automatically. Yet, my fake identity was not strong enough to let me identify with the Other's personality, communication style, professional standing, and social milieu. On the contrary, from the first moment, they appeared incompatible with my personal interests, preferences, and beliefs. My first conversations with the host were wrapped in distress; there was little continuity in our talk; very few questions were asked about the project and my prospective fieldwork, while my own questions about legal practice were either dodged or produced ambiguous answers: "you know how the lawyers are, what they do." Actually, I didn't know. My "host" turned out to be the very radically other who I had not expected to fear. In the beginning, I tried to account for these difficulties as being typical for the initial encounter with a complete stranger and his *habitus*; yet, I couldn't help but feel that it was me who was an absolute outsider, and that it was my home that stood as the biggest hurdle on the way to a successful passing. In the face of the law's otherness and its servants, the home did

not hold either but began to slowly fade away.

Marlow was a different breed. Conrad introduces him as a wanderer (1902: 8). Before crossing Europe on the way to Africa, he was made scared by the people who left home, went to the Other, met the Other and returned scared by the encounter. A Company doctor who performed a physical examination for him mentioned "a point of no return," which was also the point of origin. When Marlow arrived to his destination, he identified that very point in the "ominous something sitting in the atmosphere" (Conrad, 1902: 15). Conrad's description of the Company's headquarters is filled with apocalyptic notes. The image of the Head Station was that of a foregone place in great disarray, and everbody else there appeared somewhat insane, or so unabashedly opportunistic that their conduct bordered upon insanity. Despite Marlow's impeccable, albeit enigmatic references and his unassuming demeanour, he did not made friends but was met with inordinate suspicion. Some new colleagues of his immediately distanced themselves from him, others attempted to gain his trust in order to manipulate him. His questions about the administration of the company gave him little of substance. His observations confirmed his initial sense: "all the work out there was made of paper; it had no object but itself" (ibid.: 21). Looking at their labour made Marlow suspect that "perhaps they were hiding something" (ibid.: 34). Perhaps, he thought, they were hiding what was not there: themselves.

Beginning to harbour similar suspicions, I wish I could hear Marlow's words: "the work gives one the chance to find yourself. Your work creates your own reality--for yourself, not for others, what no other man can ever know" (Conrad, 1902: 41). The upside to my experience of homelessness was the realization that, in contrast to my ideal expectations, nothing was lost yet and that there would have to be another journey to make. The two days of driving westward was not the journey; it was transporting myself to the location. I have got my site and gained a glimpse of various data, but I haven't got to the other of law. I got adjusted to the personal style of my host, met his family, and got acquainted with his

colleagues, I accompanied him to the court, sat on his conferences and looked through his files, but I remained a guest and an uneasy one, to that. As a guest, I was privileged to observe what a guest was permitted to observe: the unproblematic content of lawyering. In order to become other than a legitimate audience member, I needed to gain access of another kind: I had to become an insider. The role of the insider, the one that Marlow strove to assume as well, connoted an entitlement and a privilege to know the other intimately. In order to earn the right to intimacy, I had to cross the limit that separated me, the outsider, from Jack, the insider. Practically, this attitude meant shadowing my attorney for the duration of his workday, watching him closely with the clients, counterparts, judges, secretaries and by himself, making calls, distributing tasks, working on his computer, driving to local courts, coaching witnesses, writing letters; by observing him that closely, I could see how law in his hands folded into cases.

And so, while Marlow's path brought him to understand that his fascination was not about the other place but about the extraordinary in the other, I was shedding off my affiliations, trying to become the other. Coming out there with a position of the other, a white man on some colonial business, Marlow fell in the cracks between the same and the other. He found himself in the liminal zone and in order to get out, needed to embark on a real journey, more outside or inside the limit. Crossing over into the open was the only way to get out of the predetermined place, predefined role, and proscribed sentiments. There was a ship and a legend, so all Marlow needed was to outfit the ship and reach the Inner Station where the greatest treasures were being collected in the face of the enigmatic Mr. Kurtz. Kurtz was the desired other, a treasure. The stories that people told Marlow depicted Kurtz as "a prodigy, an emissary of pity, and science, and progress, a special being, the company's future" (Conrad, 1902: 36). At the same time, there was a blemish on that future: the legend also told the story of Kurtz's madness; the Company accused him of crossing the limits by violating its policy. The Company declared his methods "unsound." Encountering intelligent madness in the face

of mad ordinariness lead Marlow to an idealization of Kurtz as “the lone white man who turned his back on the headquarters, on relief, on thoughts of home—perhaps; setting his face towards the depths of the wilderness, towards his empty and desolate station” (ibid.: 46).

In my place of work, my field, there were no legends and no extremes. There were no personified symbols, no role models, and no ideal researchers who I sought out to reach. Thus, inevitably, Marlow and myself parted ways: for his journey, Marlow went through the otherness, traversed the liminal zone, looking for the same in the other. I chose to stay. I also chose to not question the place of my choice, hiding behind the task of walking its streets. And so, if Marlow was going after a distant limit, my other was encountered at an armseach. Once I become an insider, I my journey would end.

5.3. Ambiguity of Limit: Self in Transition

Gaining trust with my host by asking the right questions and sheer continuous undisruptive presenceopened the flood gate of data. The clients’ permissions provided, I could sit on his conferences, look through his files, accompany him to court, jail, and prison. I made notes, copies, recordings. Most importantly, I no longer felt like I was outside of the legal process. The process dragged me underneath. I was in the company of law-men. Through them, I found my data treasure, I accessed it, and now I was filling up my bags, with the feeling that I was eavesdropping on law gone. Becoming an insider gave me access to all kinds of legal treasure. It was then, at the height of my complacent agitation, that I began to experience strange emptiness: the more data I collected the less law the more at a loss I felt. I realized then that, in a paradoxical reversal of my intentions, I lost the very thing I thought I had just acquired: access to the other, whether the other was law or the attorney or both. This is how Marlow expressed the beginning of his self-transformation: “For a time, I felt that I belonged still to a world of straight-forward facts, but that feeling would not last long. Soon it was gone” (Conrad, 1902: 20).

By replacing my outsider home with the insider shelter, I ended up gaining nothing.

First, there was a physical threshold that I had crossed, gaining access to a home-place of the other. As if it was not enough, I settled in that place, albeit temporarily. At the time, all the limits there seemed to have been overcome. Only later I came to realize that the encounter with the other was not owned by the researcher and that there was no threshold to cross, no continents to conquer, no legal goodies to collect. I could only sense that access was a phenomenon at the limit of experience and that there was something else besides the emptiness of collecting. As my familiarity with the law and his other grew, so did my access until it disappeared in the dark completely, leaving me rich with data and poor with understanding. Properly speaking, I did not even see law, all that I made available to me was but its simulacra. My notion of access was holding me tight from transcending those appearances. In the course of appropriating them, I was constructing my insider identity. In a manner of speaking, I became my access. Neither academic sources, nor my reflections allowed me to see law as paradoxical, ambiguous, or resistant. Properly speaking, there was little that I could tell about law. It is therefore with Marlow alone that I am going to continue this narrative, for the true crossing into the heart of law is his.

5.4 At the Limit of Resistance

In the second half of the book, Conrad depicts Marlow's shipping himself and his companions down the river to the "innermost" Station of the Company, where the "unsound methods" of Mr. Kurtz wrecked much terrifying havoc. The idea of Kurtz's methods being unsound is paradoxical, and it is paradoxical in the same way his figure stands paradoxical: he looks terrific on paper, the most of the same, he is the best of the Company's men in the field; but he is also outside of the Company's reach. His place outside of the place makes him inaccessible to the very body that begot him. With his unsound methods, he is lost to the Company in the other. The loss is irrecoverable. It is in this sense that Kurtz embodies the paradox of the limit both in regards to the alien and to the law. Kurtz does not break the law; he is submerged underneath it inside the otherness before law. That is why he cannot be

judged by the Company: its norms no longer apply to him.

Marlow's journey to the Inner Station retraces this paradox: the ship does not seem to bring him any closer to his destination. On the contrary, the station appears more and more distant the closer he comes. Leaving his home further behind opens Marlow wider to the otherness that exudes darkness, taking away the remains of his home and his self, leaving but the ambiguity of his place and his destination. Soon, ambiguity begins to acquire shape. Brought about by otherness, terror engulfs Marlow, providing the only anchor for his dissolving subjectivity. Terror exhibits the other side of ultimate satisfaction, excruciating pleasure, the joy of sacrifice that only a new convert could experience, for he is reaching the other side of the limit for the first and the last time. The other side meets him with the "implacable force which is brooding over an inscrutable intention" (Conrad, 1902: 48). This is the point when Marlow realizes that the real home is not the country. The real home is the liminal space that divides the home and the alien, the ordinary and the extraordinary, the object and the abject. One cannot dwell in this home, however, for it is a "tremulous and prolonged way of mournful fear and utter despair, the voice of darkness."

Being seduced by this Voice, Marlow is falling into liminality not unlike Odysseus's friends were falling under the spell of the Phaenikean sirens: "And I heard him—it—this voice—other voices—all of them were so little more than voices…." (Conrad, 1902: 69). Deleuze (2004) calls this Voice "excessive equivocation" that signifies pure event (285). The voice that Marlow hears is prophetic, testimonial. As in mad interruptions and breakages, the prophetic voice spells out poetry, pouring the open out into the open. It is neither comprehensible not incomprehensible, but *glossolalia*. Agamben (1999) explains: "*Glossolalia* is not pure utterances made of inarticulate sounds but rather a 'speech in glosses,' that is a speech whose meaning is unknown" (66). This is how Kurtz's methods are unsound; their meanings are uttered in the unknown voice; grave, profound, vibrating, the voice of brooding darkness that is the voice of terror. The terrifying voice whose meaning is

unknown except in terror institutes the law in its absolute essence: terror. Terrified, Marlow is beginning to understand and revere Kurtz who, by undertaking the law of terror, transgressed.

> "Transgression is an action which involves the limit, that narrow zone of a line where it displays the flash of its passage, but perhaps also its entire trajectory, even its origin; it is likely that transgression has its entire space in the line it crosses" (Foucault, 1977: 33-34).

At the end of the journey, the transgressor reaches the ultimate limit and the final destination--madness. This madness is not a simple mental condition; it is the divine madness of the Platonic kind, an affliction that strikes the genius, the poet, and the philosopher. But Kurtz went all the way to the end of the liminal territory: he was also mad as an animal, that is, inhumanely mad. The complete dissolution of Kurtz's self in the other lead him to the first law: terror. The rotting body parts, pools of blood, cannibalistic feasts and piles of ivory showed Marlow that Kurtz's law was about death, that Kurtz himself was death, seduced by the limit, torn between the monstrous and the divine. Marlow too felt the pull of the unsound. He himself was becoming unsound. Holding Kurtz's diaries, he was standing at the limit of comprehension about to convert to the incomprehensible: "it was written that I should be loyal to the nightmare of my choice […] I saw an inconceivable mystery of the soul that knew no restraint, no faith, and no fear, yet struggling blindly with itself" (Conrad, 1902: 92-96). He saw that soul falling but remained at the edge watching it fall. There, at the edge, he met the last kind of limit, resistance. This kind of resistance to the law was not about acting against the law but rather the empirical resistance of the limit on the way to transcendence in law. "The law is transcendent and theological, and so always to come, always promised, because it is immanent and so already past" (Derrida, 1990, p. 993). Standing on the brink of madness, Marlow resisted its pull by becoming a witness to Kurtz's self-sacrifice. The responsibility of a witness made him accept the body of Kurtz and his story. Both bodies had to be laid to rest: Kurtz's body in the dark waters of the River, and his story in the testimony

of the encounter with the impossible. His journey was complete; he came full circle, telling back about the spaces he traversed and the limits he encountered:

> "He surrendered during the moment of complete knowledge. Kurtz was a remarkable man. He had something to say. He said it. True, he made that last stride, he had stepped over the edge, while I had been permitted to draw back my hesitating foot. And perhaps in this is the whole difference. Perhaps all the wisdom and all truth and all sincerity are just compressed in that inappreciable moment of time in which we step over the threshold of the invisible" (Conrad, 1902: 101).

6. Post-scriptum

Now, as I and my imaginary double have reached the edge of narration, in conclusion, I am compelled to retrace the path that led me there. The task for this essay was to find out about "law without law" and "culture without culture." The search began by my problematizing the mundane view of access. With the help of subsequent phenomenological reconceptualizations, the issue of ethnographic access as an entry to the other and law yielded to the phenomenon of limit as a paradoxical structure "home/alien." A subsequent investigation of the encounter with the alien and the law disclosed two other limits—ambiguity, and resistance. In the second part of the paper, I examined those limits at the edge between the two narratives, my own story of accessing a small law firm in the United States and the imaginary journey of Charlie Marlow into the heart of the African jungle. Walking the narrative path between the two experiences helped me expose several senses of limit. My own experiences of the limit were of a traditional kind, the pragmatic tasks of blending in and collecting good and plentiful data made me seek access to law in its own praxis. Continuing with the Conrad's character pushed access beyond ethnographic work into the liminal sphere. Marlow's journey through this sphere into the heart of darkness revealed the intrinsic connection between law and the other. At their crossing, the traveller encountered the paradoxical structure of law as universal particularity; proceeding further made him see the

law as unarticulated space before law; finally, resisting and falling for law exposed the essence of law, terror. The circularity of the journey showed the possibility of access to be limit in becoming, a space that eludes the researcher unless he steps outside of the local inside the space of law and thus becomes a witness to its formations through his own transformations. The ethical force of these transformations will make the researcher tell his stories about the law at the limit of his experiences, and this is what means doing ethnography of the limit.

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[i] This essay is an expanded and revised version of an earlier manuscript on access.

[ii] This is how, for example, Bourdieu (1987) defines the juridical field: "as a symbolic area of structured and socially patterned practices" (805).

[iii] The notion of nomadism comes from Deleuze who defines it, with Huserl, as vague, i.e., "morphological essences" (1987: 367)

[iv] For a detailed presentation of Husserl's method, see Steinbock (1995).

[v] This characterization belongs to Bernet et al. (1989).

[vi] To be consistent with the common convention used to distinguish Other and other, I consider Alien (with a capital "A") to be the alien person. The use of alien (with a lower case "a") refers to alienness generally. In this essay I am primarily interested in alienness.

[vii] From here onwards, I use alien and Alien interchangeably as alien (with a lower case "a").

[viii] Further elaborated by Jacques Derrida, the ethics of resistance is inseparable from hosting *Xenos*. As the etymology of the term connotes, *Xenos* is both a stranger and an enemy. Derrida asks: "Do we have the right to ask the foreigners to understand us before hosting them?" (2000: 15). Indebted to Emmanuel Levinas for his ethics as first philosophy, Derrida shows that the only ethical way to accept the stranger as the stranger is to keep the enemy/guest heteronomy but turn the enemy component into the limit posed by the receiver herself. In other words, only when the guest retains the limit by resisting being one or the other that the ethics of the encounter with the other and the other's unsurpassable difference are going to be preserved.

[ix] In a study that focuses on the presentational side of ethnographic research, Van Maanen (1988) gave a variety of ways to tell tales from the field. Only his "confessional" tales bear some similarity to telling at the limit.

[x] Paul Ricoeur (1983), who presented his narrative hermeneutics as the experiential foundation for history-making, also argues for the generative morphology of narration on account of its multi-temporal structure.

[xi] For a detailed phenomenological analysis of place-mapping, see Casey (2005).

[xii] While Said's "pure beginning" may remind of Derrida's concept of "origin," his "transitive beginning," which has no eschatological implications, finds no analogues in Derrida.

[xiii] Conley and O'Barr (1990) wrote much about the need to maintain the researcher's role for the duration of the fieldwork; otherwise, the researcher faces the risk of crossing over, loose reflective distance, becoming just a participant (64).