

INCLUSIVE HERMENEUTICS: ETHICAL PERSPECTIVES

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ABSTRACT

This article is concerned with inclusive hermeneutics. Six attitudes will be developed in order for hermeneutics to be inclusive. In the first four attitudes, we are inspired by the resolutions of Husserl's paradoxes in his book *The Crisis of European Sciences and Transcendental Phenomenology: An Introduction to Phenomenological Philosophy*, discussed in the paragraphs 52-54. After this, the term *reversibility*, reworked by Merleau-Ponty, will be essential to broaden our conception of inclusiveness. Finally, the new perspectives on the concept of *otherness/alienness* in Waldenfels will support an inclusive ethical-practical interpretation. This inclusiveness will lead us within an authentic judgment, fostering a realization of the Law in the context of the recognition of the differences, through a constant process of Law itself.

Keywords: Hermeneutics; Phenomenology; Inclusiveness; Law

1. Introduction

The book *Phenomenology of Inclusiveness*² has already laid the theoretical underpinnings for an inclusiveness that can measure the inclusive scope of ethics. It is characterized as an inclusive phenomenological method, and we wonder if there is a possibility of a proposal ethics that is not inclusive. Now, we need to know whether the human being, in fact, feels included; if the person to whom is said to have education, health, housing, life, etc., feels that she has these rights. The integrity of Law is not only in the letter, only in the due process of Law, but it is in the *life-world (Lebenswelt)*.³ In this respect, Law is a vocation by which self-realization comes together with social realization. This leads us to the construction of an inclusive hermeneutics that will guarantee an inclusive method to all interpretation. To do so, let us reconstruct the inclusive phenomenological method, extending it to hermeneutics.

2. First attitude: latent reflection

In his work *Cartesian Meditations*, Husserl reports that we cannot form, by a process of abstraction, the idea of a foundation for all science. Also, we can neither construct nor accept

judgment that is not derived from the experience in which we live,⁴ where things appear by themselves, through their own evidence.

Due to the actuality of the world, we cannot force an objective judgment on it. For the author, the world claims its own being (*Seinsanspruch*),⁵ not as a static block, but as a lived world (*Lebensumwelt*), a phenomenological being (*Seinsphänomen*)⁶ in which the evidence of the world comes as a field of presence (*Gegenwartsfelde*), in the way it presents itself to us.

In order to understand this actuality of the world, Husserl will introduce his method called *epoché* or *phenomenological reduction*. This method consists in the non-acceptance⁷ of what is taken for granted objectively and subjectively. In this way, Husserl brings forth a pure *Ego* in the transcendental sense with the *pure flow of its cogitations*.⁸ Thus, the evidence comes from the very gift of the living world and not from pure objective abstraction, nor from the world seen as a static block. What Husserl proposes is original evidence, through which consciousness and the world are given through the experiential flow itself, through a latent experience. Consequently, the world is not even a piece of our *Ego*, nor is our *Ego* a piece of the world.⁹

Husserl approaches the consciousness according to the modes of the *noetic* and *noematic* structure.¹⁰ To understand them, a transcendental reflection according to the phenomenological *epoché* is necessary. In this way, we abstain from our natural attitude of taking for granted what is given, namely, that attitude of placing things in an abstract objective sense (*noematic*). When we perform this suspension, we are aware of an original gift, making us recognize the infinity of the space-time flow between consciousness/world (*noetic*). Thus, we will have a division of the *Ego* (*Ich Spaltung*)¹¹ in relation to the recognition of latency (*its noetic side*) and abstract objectification (*noematic side*). Therefore, the *Ego* is inevitably in constant latency, but it also has an objectifying tendency, - it lives in between.

The flow of consciousness brings with it the implication of a non-objectification of the present, by which new possibilities may arise. There will always be something open (*Offenlassen*).¹² In these circumstances, actuality involves its own potentialities.¹³

The attitude by which the *Ego* will deal with the discovery of reduction leads it to develop some particularizations, which Husserl will call *personal character*.¹⁴ Thus, the open attitude brought by the *epoché*, lived within the immanent consciousness of time, forming its objectifications (*noema, ideal types, idealizations*), along with an implicit flow, develops our personal character. Thus, our personal character is constituted by our attitude through the process itself, whether by a natural attitude that takes for granted the thematized, or by an

attitude that seeks new possibilities. We can say that our (concrete) *Ego*¹⁵ has its own form of constitution.

If we consider our constitutive life, that is, how we develop our knowledge about things, we soon realize that we have a natural attitude of objectively securing what is given as existing against possible controversies. We have a natural tendency to establish abstractions that will determine certainties. After all, we cannot even drink a glass of water without having certain certainties regarding measures, weights, distances, temperatures, etc. These objectifications are necessary and need not be lost in the *epoché*, but they are placed in parentheses in order to find an originating flow. In the reorientation of *epoché*, nothing is lost,¹⁶ none of the interests and ends of the *life-world*, nor any of the ends of knowledge, but it opens the way to new possibilities, through an attitude that goes beyond what is given as it is given. It provides a latent reflective attitude that can refocus knowledge, forming a personality that constantly reflects and not simply takes for granted what is given. The latent reflexive attitude shapes the character of the researcher, and the Judge.

With the discoveries from the phenomenological method, we can verify that the first attitude of the Judge is reflexive and this attitude will reveal her *personal character*. She will have the task of always placing the Law in parentheses, so that justice appears within its own latency. It is not a question of giving a deterministic interpretation by means of hierarchical normative scaling,¹⁷ but of placing all the cards on the table, allowing a greater understanding of the integrity of the process. In the reflective attitude, nothing is lost, all the cards are exposed in the phenomenal way, that is, in the way they appear.

Ronald Dworkin, for example, will defend Law as a broad interpretive concept,¹⁸ whereby Judges with their own convictions and instincts develop theories of the best interpretation, without detracting from due process of Law. According to Dworkin, Judges do not think through laws outside the world in which they live, of the society in which they participate, nor of their beliefs and principles. The right possibilities are gained when everything is placed out in the open. Since past and future are united in the integrity of Law, they are suspended and prepared for reflection; we can build new possibilities, and move innumerable situations of possible questions about the evidenced statements.¹⁹

A latent reflective attitude evidences our first approach to inclusiveness. In suspending our theses, in the reflective light, nothing is impartial and nothing is self-interested, everything is at stake, in order to reflect on the best form of inclusion. To prevent the inclusive attitude

from becoming exclusive, we need to keep reflecting our assumptions.²⁰ Such a reflexive attitude seeks the gift and not the given, that is, it strips itself of prejudices of the natural attitude of subjectivizing the world and of deterministic objectivism. Although all this is not lost, nothing is excluded, - for everything is possible. A hermeneutic is only inclusive when all the aspects by which the phenomenon is presented is available to reflection. Analogously, the Judge is involved in the process itself, as the therapist is involved in the patient's healing process.

3. Second attitude: inclusion in the life-world

Constant reflection (*latent*) leads us to include on the *life-world*. When we reflect and allow the world to be incurred as a gift, that is, in its way of appearing, we provide an attitude that leads us directly to the world itself. For Husserl, people generally deceive themselves, because they believe that reduction to phenomena would lead them to move away from the world. On the contrary, a reflective attitude sheds light on everything that is disregarded for theoretical reasons or for self-interest. For the author, placing the world in parenthesis means to abstain from a single path toward the possibility of others. For this reason, we argue that the method of reduction becomes inclusive, because it leaves behind its theoretical rational sphere, in order to direct and reorient us to what is actually given. We, by phenomenological reduction, are reformulated (*umgestaltet*) in our goals through the whole of the sense of being (*Seinsinn*). In the words of Husserl: "The world is the open universe, the horizon of the termini, the universal field of what exists in which all praxis is presupposed and continually enriched by its results".²¹ We do not leave the world, but we are brought to it, that is, we enter into the world itself and not removed from it by our objectified theoretical presuppositions. This method, according to Husserl, allows the way of what is given (*derjenigen der Gegebenheitsweisen desselben*).²²

The first step necessarily leads to the other, when the latent reflection focuses on the way of appearing from the phenomena in the world, it enters within its presence, that is, to what appears as an original phenomenon. This attitude seeks not to leave the world, but to enter into the world, in other words, to get out of the objectivism and subjectivism that characterize the solipsistic comfort.²³ To deny an inclusive attitude and its possibility is to deny that people can face their prejudices as well as to defend egalitarian rights and advocate for a fairer world.

The hermeneutic of inclusiveness, in its way of interpreting Law, requires a *personal character* of the magistrate that would be authentic, because it projects possibilities and does not rely on the *publicness of they*.²⁴ Thus, an authentic interpretation, whose attitude would turn to the *life-world* as offered, would be part of the very character of the magistrate. These

two steps, by which we are building the foundations of an inclusive hermeneutics, favor an authentic character of the hermeneutic. For this, an interpretation would be sought in which the phenomenon appears in its integrity and not under the solely objectivist bias of the Law or a product of subjectivist discretion.²⁵

There will always be a fault,²⁶ something intact, something invisible that will provoke, that will summon our conscience to an authentic foundation. Interpretive authenticity avoids both the inclusive/exclusive and alienation/freedom paradoxes, that is, of including without excluding and the viability of freedom without enslavement, since it opens itself up to possibilities by means of a latent attitude. In this way, inclusiveness is only possible within the framework of a latent reflective attitude that brings us to the *life-world* and does not maintain a distance from it. The inclusive attitude should be part of the magistrate's practice as a free and authentic being. Foucault reminds us that in order for Freedom to take place, practice is necessary, but it must be continuous. Freedom opens a field for new power relations, which must be controlled by practices of freedom itself.²⁷ Thus, inclusive hermeneutics is also possible through inclusive interpretive attitudes; it does not stop in a trial, does not form a recipe from practice, as it is part of the magistrate's character to Judge in an inclusive manner. It has the (precedent) recipe, but by reflection it has the *life-world*, has the present, has the perspective of the future, and has possibilities.

The one who judges is not removed from justice. She has the same rights that are included in the scope of justice. Thus, she must judge with freedom and authenticity, practicing an inclusive hermeneutics that invigorates justice, makes it more dynamic and more inclusive in the *life-world*. A father and mother are not expected to be impartial or partisans, but to be authentic, as well as a scientist is not expected to be impartial or self-interested, but genuine. After all, what testimony do we want to give our children and what scientific innovation do we want for the future of humanity? Will we judge our judgments in a legalistic or self-interested way? The answer will define the ethical character of the Judge, whether a Judge, a mother or a scientist.

We understand that the best way is neither legalistic nor self-interested, but inclusive. In our proposal for an inclusive hermeneutics, nothing is lost, neither the Law nor our interests; everything is placed for the benefit of an authentic justice that is characterized by fostering practices of freedom. Now, how can we avoid self-interested and legalistic forms if nothing is lost?

4. Third attitude: avoid closing our theses

For Husserl, in the process of enrichment of knowledge, we find an objectification that corresponds to the synthetic work of the *Ego*, being part of its way of being.²⁸ In this process of judgment, there is a passive and active side by which the *Ego* progresses constitutionally. According to Husserl, two things can happen:²⁹ (i) one can follow the determination process through passive/active development, or (ii) one can stop the process. This interruption is given by its end (the process finds its limit) or by the open horizon found in the process itself.

Husserl sees that logic helps to establish various relationships through judgments. If one goes deeper, examining comparative relations, associations and similarities, one arrives at a universal repetition.³⁰ However, if anyone has an object in front of him, judging it as such; it will lose its relevance. It stops the flow of experience itself, which enables a process of judgment that goes beyond mere comparison, association and similarities. Thus, judgments are constitutive of experience as a whole, and are not separated from the flow of psychophysical experience of existence. This means that in judgments we have the experience of the constitution of truth, - a never-ending history.³¹ We can say that there will always be a reality that escapes our objectifications and goes beyond their own, making the perspective of truth dynamic. This approach to the latent flux, haunted by a timelessness that is never fully exhausted, will be updated by the *guilt* in Heidegger,³² by the *invisible* in Merleau-Ponty, by the *universal* in Gadamer,³³ and by the *otherness* in Waldenfels.

Husserl reports that *the flow of Heraclitus*³⁴ makes impossible any form of describing, definitively documenting the elusive flow of life. For this reason, there will always be an unsaid in the said, a certain originality proper to the gift by which the *life-world* is given. However, we cannot guide our lives through something that we cannot capture, that is, we need objectives, well established parameters, guidelines by which we can guide, even because they are also part of the way of being in the world. What the flow of the Heraclitus gives us are inclusive possibilities of what was once excluded. Understanding that there is an unsaid in the said, an originality that supports the whole visible side of our theories, is fruitful, rendering our judgments and theories dynamic. Imagine that we get a belief, or we form a solid thought about something. What happens? Automatically a fortified square is constructed by which everything that does not belong to its dimensions, is excluded by our own rational justifications.

Of course, we need certain guidelines, even though we are alienated from a social organization, we participate in joint activities, we plan together, etc., but that does not mean that they are unbreakable laws that cannot be modified as we walk. We need to avoid closing our theses, that is, leaving something invisible in order to sustain the visibility of the inclusive.

Closing our theses means stopping the flow of immanent time consciousness. It means stopping something latent, removing it from the *life-world* and taking it as its own world of life.

From a legal perspective, Dworkin says Law will always go beyond itself, for it cannot be exhausted by a catalog of rules or self-interests. He does not see Law as a territory, but as an interpretive attitude that comes to be self-reflexive, aiming at a critique, and to a creative concretization in character to the commitments assumed. As in a chain novel,³⁵ story must continue, the novelist must create the best possible interpretation as if it were the work of a single author, even though they are different novelists. It is continuity and not a new beginning, prevailing the idea of the whole, aiming at an integrated result. Thus, Dworkin finds that the verdict, a correct answer, the last word, for its integrity, is not *the best word*,³⁶ since Law, in being constructive, maintains historical latency. Law is a process, not a verdict, that is, the right does not stop at the last word; it begins at the last word.

Inclusiveness only occurs through an attitude toward what is presented as a gift. The challenge of the Law lies in providing an inclusive attitude to those involved with justice. This attitude should be part of the character of the Judge, because it reveals a hermeneutic authenticity that is inclusive. Through a latent reflective attitude, an inclusion in the *life-world* and an attitude of non-closure of our theses, any form of exclusion can be denuded and justice can emanate inclusively. Therefore, inclusivity is only possible through an authentic hermeneutic attitude that makes everything clear, - my intentions and the due process of Law.

37

5. Fourth attitude: avoid reductionism of the subjective and objective poles

These three first steps (paradoxes exposed by Husserl) involve a temporal flux that requires our reflective attention, for they reveal an inexhaustible originality present in the *life-world*. At this level, where everything is suspended, nothing is thrown away, for everything is held in reflection. However, everything also is placed out of play,³⁸ all our safe ground in which we placed blind and absolute trust. Here we can establish a central difference between impartiality and authenticity in our judgments. The impartial attitude seeks an objectivist judgment imposed by the Law, that is, seeks to place their personal interests aside for the exclusive benefit of the Law. An impartial Judge would be one who would judge from the technicality of the Law. An authentic attitude does not abandon the Law, nor deny its alienation, but is self-critical,³⁹ that is, at the same time that nothing is lost, everything is out of play. Basically, reflexive latency does not allow for anything to be taken for granted, but nothing is lost, because everything is a

possibility. In authentic self-criticism, while considering everything as possibility, nothing is taken for granted. An authentic Judge would be one who judges from what appears as a possibility, such as Law, interests, cultural *Ethos*, human achievement, freedom, etc.

Everything is swallowed up by *epoché*, subjectivity and objectivity.⁴⁰ Thus, at the same time that everything is exposed, everything also can be a reason for inquiry. In *epoché*, neither logic, nor an a priori, nor any philosophical demonstration in the old style furnishes us with sufficient artillery, for everything is under the umbrella of the *epoché*. The reflection, fostered by the *epoché*, begins without any underlying ground. Now, its own terrain is created from the original self-reflection, in which the naive world is transformed into a phenomenon, or rather a universe of phenomena.⁴¹ The *life-world*, by which we make our considerations and find our correlations, imposes a questioning horizontality on our own interests and that of the real sciences. In the phenomenal dimension of the world, subjectivism and objectivism are displaced from their polarity, thus avoiding reductions both to the subjective pole and to the objective pole, causing them to shift to the horizontality of life. Such a horizon is immensely vaster than any subjectivity or objectivism, questioning and giving them a more inclusive perspective.

When we privilege one of the poles (subjective / objective) in our judgments, or when it happens in a legal sphere; what we have actually constituted had already been predetermined. So what there is, is not a judgment, but an imposition. An inclusive hermeneutics provides an authentic judgment by which reductionism is avoided for the benefit of a *dia-logos*,⁴² seeking the best way for justice to be recognized. Ritual, that is, due process, serves to promote justice, not to bury it.

Aristotle, in his *Nicomachean Ethics*, reveals that justice relates to people and things, goes beyond the individual wisdom of conducting one's own life well.⁴³ Justice is born of the relationship, of how one is fair with respect to things and people, being this relationship inseparable from the *polis*. Husserl finds the same difficulty: at the same time that we place the world as the object for ourselves, we are the object of this world. There is another *Self* before a community of *Selves* that, in the same way, transforms us into phenomena. As in Aristotle, Husserl comes up against the problem of the other.

For Husserl, the other and the world are involved in the constitutive processes, being involved in a transcendental subjectivity, of which, ultimately, the subject is the only endower of meaning.⁴⁴ This implication, advocated by Husserl, who leads the subject as the sole endower of meaning, needs a radicalization, since the meaning, for an inclusive hermeneutics, must overcome the egological barrier in order to find a complicity in the *life-world*. The other, the world, the body and the *Ego* itself, are not implied, instead they are intertwined, constituting

a sharing, a complicity. How do we overcome the egological barrier, the last word of the *Self*? How can one feel that he is included, - not as an insider, but as an accomplice? How does radicalization (going to the roots) occur in the *life-world*? How does one *be-in-the-world* in an authentic way?

6. Fifth attitude: promote the reversibility of complicity of meaning

Merleau-Ponty goes beyond the concept of implication/correlation proclaimed by Husserl. Now, the subject is not only responsible for the signification, but is found as an accomplice of signification. This change brings more radical characteristics to our proposal for a hermeneutics of inclusiveness. In this way, the human being loses the status of the endower of meaning in order to become an accomplice of meaning.⁴⁵ In her intertwining with the world, with her body, with others, and with herself, the *Ego* that gives meaning, also receives meaning, - as the hand that greets receives the greetings, so, also, when we interpret the world, we are interpreted by it.

In the situation of judgment, reversibility teaches that a self-interested attitude or objectivist judgment removes authenticity from the process, relying solely on the inclination and perspective of the magistrate. The Judge is not the donor of meaning; she is part of the interpretative process itself.

In his *Phenomenology of Perception*, Merleau-Ponty criticizes intellectualism and empiricism.⁴⁶ When we find ourselves thrown into the world of things, the natural attitude allows us the security of obtaining reality beyond appearances and a truth beyond illusions. Intellectualism does not question the value of these notions: it only confers power to a universal creativity that recognizes the same absolute truth that realism simply deposits in a given nature. Intellectualism presents itself as a doctrine of science; it believes that it draws its truths from mathematical proofs and not from simple evidences of the world. However, it cannot comprehend the fact that previous ideas, which remain in our memories, influence our current ideas. For Merleau-Ponty, our clear and distinct thoughts always make us use thoughts previously formed by others and by the *Ego* itself, settled in the memory, that is, in the nature of the mind itself or in the community of thinkers; - from an objective spirit.⁴⁷

Empiricism, in turn, remains on absolute belief in the world as a spatial-temporal totality of events, treating consciousness as a region of this world. Empiricism does not care what happens to the reflective understanding of things - the most it sees is a passage from simple to complex ideas, and the closer to the object these ideas are, the closer they come to the truth. Of

course, this quarrel, already initiated by the Greeks, in which pure and true ideas determine reality, or the objects themselves and their connections determine ideas, has done a great harm to our human condition. This separation removes us from the *life-world*. According to Merleau-Ponty, we are cut off from the origin of our own knowledge; we have been cut off from the horizon of experience. It is in perception that Merleau-Ponty locates the necessary overlap between transcendence and existence. What makes this link is the flesh itself, that is, the body. The way we perceive the world around us reveals itself as a reversibility that promotes all meaning as complicity. What history has separated for so long now finds its relation in blood, its carnality. For Merleau-Ponty, we are not a part, not a whole, but we share meaning with the world. My word in the world will not be the first and certainly not the last. To borrow an expression from Dworkin, it is as if our life were a chain novel, -but that romance will continue after us; we will not be the first, nor its last authors. Reversibility reveals something else, a presence originating in one's own carnality. Thus, we share meanings because each person, each thing, each body has its originality that enriches all meaning. To ignore this is to lose possibility.

Axel Honneth, a member of the Frankfurt School, offers a good way to talk about differences by talking about social relations of *asymmetrical esteem*,⁴⁸ stressing that these will provide a prerequisite for solidarity. In this sense, to estimate one another asymmetrically means to see the other in the light of values that allow the skills and traits of the other to appear significantly in social praxis. Here, the different produces no fear, but rather possibilities for the formation of ethical life. Honneth goes beyond a passive tolerance, toward a concern for what is particular about other people. In this sense, *asymmetrical esteem* places the other as a significant possibility in the mutual recognition of rights. We cannot recognize the other if we do not see their differences from us.

It is clear that a Judge is not a social administrator who seeks ways for people to live in harmony within their asymmetrical characteristics. However, she is a researcher of the Law and needs to know how this Law should be exercised among people. Perhaps there is a crucial difference between a researcher and a norm enforcer. The researcher reflects on possibilities, the applicator imposes the Law as it is. However, people need to have their rights recognized and feel they are part of that right themselves, they need to feel that they are part of the same flesh of the world as everyone else.⁴⁹ Right means access to the flesh that binds us to the same body, although the members have their particularities and differences. Not everybody can be the foot, or judging that the hand is more important than your fingers. Difference unites us, indifference separates us. Inclusive hermeneutics seeks this non-prescriptive or non-utilitarian

radicalization, but a unity in difference, a radical unity, that is, that goes to the root of their differences.

An authentic judgment presents possibilities and their aspects of reversibility. Such a judgment goes beyond mere letter, interests, and all inclinations without any of them being lost, and none of them being imposed. The Judge need not cease to be a human being or leave the world to be part of the trial process, but must endure a space and a time for which the rights of the parties involved are recognized, both of the accuser and the accused. No one totally loses his rights, since there are rights that can never be lost, since they maintain our humanity, as Foucault reminds us: “In the worst of the murderers, one thing at least must be respected when they are punished: their humanity”.⁵⁰ How does judgment reach this recognition? How can we transform our hermeneutics of inclusiveness in such a practical way that will effectively contribute to the recognition of justice? How can the hermeneutics of inclusiveness be authentic and practical at the same time?

7. Sixth attitude: promote the frontierization of the senses as an ethical-responsive possibility

As we have seen, we have a carnal relationship with the world to which it promotes and sustains all meaning. Our constitutive artificial constructions can inhibit spatiotemporal flow in its gift, obstructing new possibilities. Hence, the challenge of making our theses remain sensitive to the originality of the *life-world*, of an original presence that insists on revealing its value. We stand for inclusiveness to be this path of possibility, not an inclusiveness of the *thing-in-itself*, but phenomenological, that is, not an inclusiveness of placing something inside or *all-inclusive*⁵¹ as is the criticism of Lindahl against the universal rationalism from Habermas, but, instead, that which creates possibilities through what appears. Inclusiveness is the practical exercise of ethics; it demands an attitude towards the *life-world*.

The investigations proposed by Waldenfels in relation to *otherness* become very important for the development of our inclusive hermeneutics. Now, the complicity of meaning will henceforth reveal its threshold side, in which we will find a practical ethical character, indispensable to any inclusive attitude. According to Waldenfels, our attitude in the *life-world* is a responsive attitude by which we are commissioned to a response due to the character of challenges (*Aufforderungscharaktere*).⁵² Meaning that, one cannot not respond to these challenges. As Waldenfels says: “No answer is also an answer”.⁵³ Such challenges appear as claims (*Anspruch*), that is, they demand a response from which we cannot escape, for they are there, insistent,⁵⁴ claiming their possibilities. It is precisely on this aspect that there is a

reversibility already proposed by Merleau-Ponty and that we will now return to understand exactly this moment of possibility, arising from the claims that imposes challenges on us and by which we are precluded from a non-response. This reversibility will place us at a level of essentially responsive/interrogative beings. According to Waldenfels: “The answer is not higher or lower in relation to the claim, especially to the interrogative claim from which we respond”.⁵⁵ Waldenfels will seek a reversibility concerning responsiveness, for it emerges (*hervorgehen*) already being interrogative, transforming into a claim itself.

The word claim (*Anspruch*) has several meanings in Waldenfels, among them; we can allude to the meaning of *Ethos* or justice. In this perspective, hermeneutics must be responsive to this claim, which, in turn, will not leave the process unharmed. The science of Law involves responding to the claims. We cannot respond to the claims by being impartial or self-interested, since such a reductionist perspective would make no sense. The judge must hear, understand, respond to the claims that come as a question to the process. These claims require an answer, demand a right, demand recognition. The Judge goes beyond the natural attitude to face the challenges presented to her. Thus, phenomenological *epoché* will place preconceptions in parentheses, so that the claims are not silenced by a positivist or partisan science. The Judge, who judges, justifies her answer through the basis of the Law, through antecedents and principles of justice. She is in front of the claims that are presented to her and she needs to give an answer.

Waldenfels will use two key concepts to develop his responsive ethics, called: claim (demand) and response.⁵⁶ From them, he will analyze how we respond to the claims that come from elsewhere, before any determination we can make. Waldenfels will characterize this moment of responsive time, which would not be a time that we could measure, but a time that is given *to whom* something happens.⁵⁷ According to the author, through this event, something becomes visible, audible, sensitive, invading and displacing our presuppositions and will.⁵⁸ This *what happens (Widerfahrnis)*,⁵⁹ is an attempt to elucidate that such an event cannot, nor be reached by a generalization, nor by a unifying process. He is without position, happening, coming from somewhere, giving rise to the responsive movement, being responsible for the experiences that happen between us. It is not possible to establish the beginning or the end of this event, having a kind of deviation caused by the very event that brings the responsive movement to the surface, bringing all possible/impossible experiences that happen between us.

There is a struggle for recognition⁶⁰ that claims for justice, whether or not it is part of the enacted Law. The great problem of the Law is also the great problem of the bureaucracy; it sometimes lacks recognition. Thus, the official responsible for the bureaucratic process sees in

front of her only papers, not the human being to whom the paper represents, as the Judge who only sees the Law, blinds herself to humanity. Our inclusive perspective would not advocate de-bureaucratization or slower processes, nor would it neglect its effectiveness and benefits; what is contested is the insensitivity to everything that is human. Streamlining processes, such as de-bureaucratization, are meaningless if they do not recognize the burning aspects of humanity. Inclusive hermeneutics aims at recognition, aims at integrity, aims at autonomy and aims at the achievement of humanity. When we speak of humanity, we mention, along with it, everything that makes it full in its relation to the *life-world*. The right must go beyond placing the other inside, because people, on the fringes of the Law, do not just want to enter, they want to participate in the same flesh, having their blood recognized as that of any other, just because his blood is also blood like any other blood.

The space of Law has no beginning and no end that is predetermined, it comes as an event that happens between us. In this space that happens, occurs the event of the judgment that has a responsive character. However, the norm has a certain space and time.⁶¹ Now, how could the Judge judges in such a way that the norms could contemplate the Law, the very justice by which they are based? How to go beyond just placing one more within in order to gain the perspective of an authentic inclusiveness?

Before answering these questions, we need to make it clear that when we speak of autonomy, realization, integrity and recognition we are talking about the reversibility, that is, there is no autonomy, realization, integrity and recognition without the other, without the body, without the world and without the *Self*. In this sense, we seek authentic autonomy, realization, integrity and recognition, the central marks of an inclusive hermeneutics. These excellences of Law are also under the very sieve of our inclusive interpretive phenomenological method. In these terms, there can be no autonomy without the presence of the other, nor solipsistic realization, inclinatory recognition or crumbling integrity. In our view, the practice of inclusive hermeneutics will reveal the authenticity of Law.

The inclusive interpretive attitude of the Judge is not an act of the Judge, but of the process. The Judge has not only her conscience; she hears several voices, several claims. She must be open to what is outside and not only to what is inside, since the authentic judgment is imbricated in an authentic justice. This reversibility between authentic interpretive attitude and authentic justice reveals that the character of the Judge is intertwined with the authenticity of justice. Therefore, justice is not in the thing, nor in the consciousness, both must be intertwined.

When Waldenfels contemplates the thresholds of meaning, proposing to push to the thresholds (*Grenzen stösst*)⁶² the constituted itself, he sees an ethical-practical attitude towards

the possibilities, not seeking the elimination of the problems, but their possibilities.⁶³ In these terms, inclusiveness only happens within the field of possibility, when otherness is seen as a possibility and not as a threat. We tend to consider the different, the strange, the abnormal as a threat to the constitutive system, and then we try to see ways of healing them. However, Waldenfels, through an open attitude towards the challenges presented, not only by a look that sees threats, but a look that sees possibilities, will give an ethical-practical character that alludes to new ethical perspectives. Lindahl seeks ways, pointed out by Waldenfels, to raise the Law to a threshold of possibilities that comes from what is outlawed, as a contribution to what is within the Law. Thus, the horizon of the Law finds lights outside its borders, making familiar what was once strange. Inclusivity is the art of becoming familiar with the stranger, not of eliminating it, but lighting it up. Somehow, we are always included between familiarity and strangeness.

Of course, it would be much easier to judge from objectivity or from our interests, but in order to be a scientist, a researcher of the Law requires integrity, requires *hercularity*.⁶⁴ This authenticity is given phenomenologically from *what happens*, in the words of Waldenfels, from the event. For Waldenfels, what happens between us makes all the difference because it requires a response independent of our position or presuppositions. The event comes before all this and makes it representative to ethics. The ethical event demands justice, it requires recognition. It causes an original displacement in time (*originäre Zeitverschiebung*),⁶⁵ an event of varied possibilities. What happens unexpectedly, an accident, a moment of depression, a situation of injustice or disrespect for our rights, brings about a claim for recognition, an ethical response. The Law becomes dynamic from a displacement of its normativity

What causes two people who have everything to be separate, instead, be united? Well, it can be a lot of things, like love, affinities, common views and so on. Whatever it is, one thing will always happen: the boundaries that separate them have been overturned. There was a displacement from what was once foreign to them, because it does not separate them anymore. How did this happen? There was a fronteirization of the senses, that is, the limit was questioned not only for a reflection, but also for action. In the fronteirization one sees the internal/external side of the constituted and the way of its constitution. When frontiers are eliminated, a reflection becomes practical. The change of Law happens in the same way. Countless can be used for a change. However, one thing always happens: - the boundary has been questioned, through which borders fade.

The event gives the Judge a chance to see the fault lines of the Law,⁶⁶ its rifts, its tensions. This is a problem. But what is the difference between a corrupt change and a just

change? In simpler words: How do we know if Law is being positively revitalized in favor of justice, or negatively, in favor of injustice? Our answer is: what is in fact authentic cannot be corrupted. An authenticity does not come from a notion of good, or from a religious ethic, nor does it need to draw a parallel, or bring a balance between it and the concept of good. The origin of authenticity comes from the interweaving between reflection and practice, which emerges between us and places everything out in the open.

We believe that hermeneutics is inclusive in its authenticity when everything is exposed, when everything becomes fragile and at the same time strong, open and willing to change. This inclusive hermeneutics proposes the possibility of an authentic Law imbricated in an authentic hermeneutic. We do not espouse any particular theory; what we seek to do is to expand inclusiveness through authentic attitudes and practices. In this sense, we present some questions: Is it an ethics possible that does not seek be inclusive? If the Law involves ethics, would it not be more excellent if it sought authenticity in its judgments? Is not justice authentic and inclusive at its essence? And, if this is so, would we not be in the process of developing a method to foster such perspectives?

Notes:

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⁵ Husserl (1973, §8, p. 58).

⁶ Husserl (1973, §8, p. 59).

⁷ Husserl (1973, §8, p. 60).

⁸ Husserl (1973, §8, p. 61).

⁹ Husserl (1973, §11, p. 65).

¹⁰ Husserl (1973, §15, p. 74).

¹¹ Husserl (1973, §15, p. 73).

¹² Husserl (1973, §19, p. 83).

¹³ Husserl (1973, §19, p. 82).

¹⁴ Husserl (1973, §32, p. 101).

¹⁵ Husserl (1973, §41, p. 117).

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¹⁸ Dworkin, Ronald, *Law's empire* (Cambridge, Massachusetts London, England: Harvard University Press, 1986), p. 87.

¹⁹ Gadamer, Hans-Georg, *Wahrheit und Methode: Hermeneutik II* (Tübingen: J.C.B. Mohr, 1993), p. 52.

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²² Husserl (1976, §52, p. 181).

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- ²⁹ Husserl (2001, §56, pp. 303-304).
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- ³⁶ Dworkin (1986, p. 413).
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