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5-2023

From Law and Literature to Legality and Affect

Peter Goodrich

Benjamin N. Cardozo School of Law, goodrich@yu.edu

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Recommended Citation

Peter Goodrich, *From Law and Literature to Legality and Affect*, 17 *Law & Human.* 199 (2023).

<https://doi.org/10.1080/17521483.2023.2205329>

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From law and literature to legality and affect, by Greta Olson, Oxford: Oxford University Press, 2022, ix 230 pp., £60 (hardback), ISBN 978-0-19-285686-9

Pronounced dead not far from two decades ago, the sub-discipline of law and literature appears not only to have withstood such *damnatio memoriae*, but to have expanded and pluralized its forms.¹ While one might contest the stability of the umbrella term, the conventional study of law as represented in the literary canon has digressed and reformulated itself in conjunction with rhetoric, narratology, history, aesthetics, film studies, art criticism, theology, psychoanalysis, jurisliterature and, in Olson's new treatise, affect theory. The multiplicity of disciplines has as its focal point not so much the literary transmission of law as the narrative relay of legal normativity in multi-modal forms, such as film, television, mobile optimized streaming, artworks, protests and other visual installations. What coheres this trend to remediation of the message of law is a dual transformation. First, law in its traditional monochrome textual form, Gothic typeface, black letters, has transformed into a more nebulous and mutable sense of legality, meaning a more quotidian and subjective interpretation of what is popularly perceived as law, the multiple social relays and reactions to the normative. In the wake of this shift of focus to *lex populi* or communal senses of legality comes affect theory and the passions that attach a populace to law in the Germanic sense of *Rechtsgeföhle*, meaning popular feeling about the legal environment.

Embedded in the political project of feminist theory, the work is driven both by the author's own affect, her rage against injustice, as well as by a profound appreciation of the effects of the remediation of law in online and visual forms. The book is partly classificatory in that it tracks the various movements within the broadly defined remit of law and literature over the last two decades, but with tendrils that return to the late nineteenth-century German concept of 'living law'. It is also prescriptive in that it advocates strongly for an affective concept and critical appreciation of the expanded boundaries or collapsible borders that the conjunction of passion and legality promises and promotes. So let me immediately address the straw and tingle, *sturm und drang* of my thesis, which is that the novel methodological and heuristic conjunction of legality and affect is best understood as a powerfully positive and pericranically proleptic thesis. In ontographic and epistemic terms the generosity of pluralization and the incorporation of the varied forms of the imaginal remediation of legality, aesthetic, poetic, affective and multimodal presented in such rigorous classificatory and beneficially didactic forms provides significant heuristic openings and political potentials while at the same time requiring a certain degree of contestation.

¹Announced in J Stone Peters, 'Law, Literature and the Vanishing Real: On the Future of an Interdisciplinary Illusion' (2005) 120 *PMLA* 442–453 and much referenced and discussed since then.

Let me begin, *politesse* thrown to the wind, with the copula, the ampersand, the 'and', which both joins, orders and separates Law and Literature for which, a formalist at heart, this treatise uses the capitals. As with all copula, and also like mirrors, it multiplies and divides. It is the multiplication that appeals and Law and Literature, far from being dead, becomes an umbrella term that in pluralized forms is somehow always pulsating towards political intervention and radical effect. The affectivity that drives legality is thus academically corralled into the diversity of disciplinary techniques – rhetorical, filmic, poetic, hermeneutic and deconstructive – that can aid in dissecting and critically apprehending a variety of emotive triggers of political controversy and legal action or inaction. The death of a child, the plight of asylum seekers, patriarchal professional practices, viseralities relayed via television and film dramatizations of legal practice, all come under detailed scrutiny, indeed so much so that law and literature could be reformulated as politics of law or more precisely of disciplinary norms. So what is distinctive, what is literary or, to use a nascent neologism, what is jurisliterary about this pluralizing politicization of the narrative of social conflict and communal events?

My answer is to hypothesize that there is a subtly implicit trajectory to the work, which I will link and depict in terms of two statements. The first comes at the beginning of Chapter 4 and states that '[a]ffect ... has replaced Literature as the Other of Law in Law and Literature' (123). This view undulates between the two spectral points, affectively bringing them together and then critically tearing them apart. My question about this copula is preincubatory: what does it mean to be 'the Other'? What definition of the singular article is implied, and where, in what mirror, across what reformulated spectrum does this signifier the Other float? Is it a musical contropiano, an artistic guerilla installation, a theatrical intervention in the mode of poor theatre? The author has the skills of the historian, the limbs of the narrator, the pen of the orator. So the image, antinomy and conjunction, is likely more than it seems. Looking back, consider the underprospect of the first term. The Other, with its capital, the big O. It is quite literally or letterally an opening, not a counterpoint because the Other cannot reference anything, it is a hole, a cenote, dark matter. There is an old term that I hesitate to recall but it seems curiously appropriate, from that greatest of lawyers, François Rabelais, who spoke, in Urquhart's English translation, of 'circumbilivagination'.² For Rabelais this was a matter of the about and about, of searching, of the Other that motivates and activates but that in being other will always elude apprehension. In *Legality and Affect*, and I don't think we should be afraid of the body or of sexualized terms in their apposite context, the big O is her way of avoiding bifurcation and circumventing dualism; it is her circumbilifabulation that implexifies legality through seeing it as Other to itself. The mirror turns to the interior and seeks that jurisliterary extimacy that is hidden in the soul of the bleached-out lawyer.

²T Urquhart and PA Motteux trans., F Rabelais, *Works* (Baldwin, London 1693) Bk 3 xxii, 178, referencing: 'Gyromonick Circumbilivaginations, as by two Celivagous Filopendulums, all the Aunomack Metagrobolism of the Romish Church, when tottering and emblustricated with the Gibble gabble Gibbrish of this odious Heresie, is homocentrically poysed' and one could add from elsewhere, *testiculos non habet*.

And thus to the second sentence which undresses the subject as a node and a nube (*nubia*): ‘emotions do not positively inhabit any-body as well as anything, meaning that “the subject” is simply one nodal point in the economy, rather than its origin and destination’ (101). It angulates that crucial transitional intersection. The subject is a point of diffraction, a plurality that mirrors the diversity of disciplines that *Legality and Affect* connotes, conspires and circum-bilifabulates. It is a question of the aftermath of the copula, the atemporal moment of conjunction and of the big O of affect within the subject. A matter of one in the other which makes the obvious yet legally occluded point that affect circulates in and between bodies. Affect is implexified in law, meaning in essence that far from being the Other of legality it is the driver and propulsive force that triggers legal decision as much as it propagates fictions of legality in the online viral spheres that are so inundated with the images that are critiqued with viral force throughout this book. The imaginal circulations are rendered and torn apart, consumed and digested in this collect and collection.

I will pursue two aspects of this implexity of affect and legality.³ The first concerns multi-modality, the remediation of law in its various fragmented modes of online circulation, from the filming of encounters to televisual series and movies, to omnipresent streaming of real time events and then their viral circulations. Affect is not exterior to the bodies and the imaginal materials that are relayed from and through them to become the manifest forms of legality. The tones and moods that emerge in sound, in motion, in colour as also in cut and framing, staging and editing, provide the affective relay of juridical events, be they legislations, trials, decisions ‘handed down’, responses, artistic protests, demonstrations or, as in this book, murals and other works of art. In this dimension of affective implexity, in which emotions, hate and laughter, rage and sorrow, love and resistance pass through the bodies of viewers, mediated imaginably by the lenses that transmit to the lenses that look, affect is no longer the Other of legal sensibility; it is as much a part of the subject of law as it is an integral and interior aspect, both felt narrative and projected sense of the judicial body through which such imaginal relays also pass and pass on.

In a recent UK decision involving a claim of intentional infliction of emotional harm upon a patient by a doctor, the judge begins by quoting Plato to the effect that ‘[t]he greatest mistake in the treatment of diseases is that there are physicians for the body and physicians for the soul, although the two cannot be separated’. Martin Spencer J then undoes this insight from the *auctoritates philosophorum* by saying, ‘thankfully, medicine has moved on in the intervening 2,400 years and the separation of medicine and religion is well-established’.⁴ The glimmer of affect coming to consciousness is quickly quelled by the Judge in the weak-minded elision of religion and affect or soul. Nonetheless, extimacy in view, there follows a lengthy juridical

³G Didi-Huberman, ‘Image, Language, the Other Dialectic’ (2018) 23: 4 *Angelaki* 9, at 22–23.

⁴*Brayshaw v Partners of Apsley Surgery* [2018] EWHC 3286 (QB), [2019] All ER 997, at 999.

discussion of the impact of the doctor's prescription of faith as a cure for the soul of the claimant. The judgment is imbued with affect and so too the judge has strong feelings that intermingle with and are a necessary part of the deliberations, including the strange citation to the Platonic source of Christian theology as negative authority for excluding religion from the process of treating pneuma and caring for the soul.

The recourse to a jurisliterary analysis, the relay of a philosophical source as the major premise of the narrative of judgment in the form of negative incorporation, is symptomatic. Affect will out and that is as true of the Judge as it is of the analysis in the present work, save that the latter is conscious of the emotional projection onto figurative objects whereas the former is lacking any such acknowledgement or analysis. The power of *Affect and Legality* as conjoined, con-jobbled and co-constituted lies in addressing the remediation, the different media and multiple devices through which legality circulates, augments and diminishes, accelerates and declines, according to the affect it is imbued with and the viscera that it encounters in the realms of its circulation. What this brings to the rejuvenation, expansion and rethinking of law and literature is thus a vital sense of the implexity of its forms. It is not just the judge, the clerk, the enforcement officer, the drafting official that is now manifested in colour. There is also the question of the transformation of the medium itself. The monochrome of the printed law report has fallen to near desuetude to be replaced by the glimmer and flicker, pop-ups and sounds of relay onscreen, streamed, micro-blogged, in clips and memes.



The implexity of remediation is that of introducing sensibility into the substantive relay of legality. Affect emerges in the novel modes of transmission, and as the elegant coloured pattern of the cover of *Legality and Affect* indicates, the purple, yellow and white stains, tinctures, flows, tints and hues manifest in material form, that the judgment that incorporates images with colours engages with affect. In language that one Law Lord in a judgement on emotional harm borrowed from the novelist Iris Murdoch, law encounters 'knowledge of the soul, if I may use that unclinical but essential word ... and faces "certain seemingly impassable limits".'⁵ Here we can return to Mr Justice Martin Spencer's judgment and the reference to Plato and the unity of the Idea. The introduction of colour transgresses the epistemic model of the Idea, the concept of a pure knowledge as reason without affect or sensibility because the introduction of colours invades the certainty of science with a visible aesthetic, a sensory and haptic reality of the phenomenon of transmission in the very crucible of its transfer. The colours of the cover thus bleed and evoke, mingle and shift, vary according to light and context while all the time defying rational or actuarial accounting. Colour is untameably subjective and while it may still be excluded, banned from the monochrome of printed law reports, it is everywhere present in all the alternate relays of the affects of legality that are here curated and collated. In putting those colours on the cover, in incorporating images and using pictures to make arguments,

⁵*R v Ireland; R v Burstow* [1997] 4 All ER 225 at 231.

Legality and Affect presses against the repression barrier of the legal. It enacts now in vaticinate proleptic modality what lawyers in the wake of the intellectual path developed here will struggle to perform in the decades to come.

Peter Goodrich

Cardozo School of Law, New York and School of Social Science, NYU Abu Dhabi

 goodrich@yu.edu  <http://orcid.org/0000-0001-8013-5850>

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<https://doi.org/10.1080/17521483.2023.2205329>

