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‘Kandinsky-fying’ the Law: A Translaborative Use of Abstract Art in the Law Classroom

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Abstract:

Sources of law are made up of terms that, amongst other things, mediate between facts and different results, and it is the role of lawyers to explain or justify why a particular interpretation or permutation of a given term should be taken in a given case. Such terms do not exist in isolation, but are hugely contextual and play an integral role in intermediating between different potential outcomes. Therefore, the skill of carefully applying and using legal terms is one of the primary focuses of legal education and calls for a consideration of the intricate role that legal terms play in legal argumentation. However, sometimes this endeavour in the law classroom is affected by the focus placed on the meaning of individual terms, as opposed to the broader role they have in legal reasoning and the analysis of legal outcomes. In considering this, this paper draws a contrast between the way in which students sometimes use different legal and moral terms in the various roles in their lives outside of the classrooms and within, and contends that one of the reasons for this is the greater liberty that they feel in using different terms

outside of the classroom. This paper contends that, pedagogically, a similar level of independence can be achieved through the collaborative translation of legal concepts into abstract art, by enabling students to take greater co-ownership of legal language. Specifically, it argues that Wassily Kandinsky's art theory, with its emphasis on the spirit and emotions, can provide an effective framework for this.

Keywords: law, legal language, legal pedagogy, intersemiotic translation, Kandinsky

If he thought, or may have thought, that in throwing the child he was exposing him to only the slight risk of being injured, then you would probably readily conclude that he did not intend to cause serious injury, because it was outside his contemplation that he would be seriously injured. But the defence say here that he never thought about the consequence at all when he threw the child. He did not give it a moment's thought. Again, if that is right, or may be right, you may readily conclude that he did not appreciate that serious harm would result. It follows from that, if that is how you find, that you cannot infer that he intended to do Karl really serious harm unless you are sure

that serious harm was a virtual certainty from what he was doing and he appreciated that that was the case.

(Regina v Woollin 1998)

1. The Spaces of Law: Translaboration and Abstract Art?

From one standpoint, lawyering can be understood as the considered utilisation of normative terms in the construction of an argument with a view to identifying just outcomes (Lindahl 2004). Different sources of law in this jurisdiction, England and Wales, including Acts of Parliament and common law cases, for example, enshrine principles comprised of legal terms, such as ‘fair’ and ‘reasonable’, and it is the role of a lawyer to put forward why those terms must have certain legal outcomes in settling disputes between parties in a case. Logic is fundamental here. Lawyers have to carefully show why a set of facts must lead to a particular set of outcomes. This gives rise to a number of observations, not least that most legal terms are not inert, but can only be understood in the complex ecosystem of a set of facts and potential legal results. For instance, the legal term ‘duty’ is important to a claim of negligence. However, it cannot be fully appreciated in the abstract. In order to appreciate the full significance of the legal term ‘duty’, it must be conjoined to yet another legal notion, ‘to care’, resulting in an entirely new legal term, a ‘duty of care’; but even then, to fully appreciate what a ‘duty of care’ actually imports to a negligence case, it is important to then, in the context of a

negligence case, connect it to a set of facts. Hence, a multifaceted chain emerges. For example, if a case concerned a doctor, a lawyer might use the legal notion of a ‘duty of care’ to posit the argument that a certain standard of behaviour was expected of the doctor and that a failure to behave in that manner supports a claim of negligence and an outcome of damages. In this way, the legal terms of ‘duty’, ‘standard of care’, etc. can only be understood within the universe of a set of facts and potential legal outcomes and become an integral part of a logic-based, deductive syllogism that leads from the former to the latter. This has similar parallels, for example, to what Alf Ross argued in relation to legal rights, particularly ownership – that the one term ‘ownership’ links certain sets of facts with potential rights-based outcomes (Spaak 2014). However, the legal terms that are used in such a syllogism to intermediate between different legal outcomes are, of course, normative and can be developed in many different ways depending on the ethical and other reasons that are used to support them (Lindahl 2004). It follows that such complex terms of law operate within an ecosystem dependent not only on the facts in a particular case and the plethora of possible outcomes that a legal system may support, but also various other, interspersing atmospheres, including the social, the economic, the cultural and ethical amongst many others, which may be used to develop legal argument (Philippopoulos-Mihalopoulos 2015). Such terms, which exist in a number of different spaces, therefore draw and call for an analysis of a multitude of different strata, in the

development and posting of arguments. As such, the faculty of utilising legal terms by deciphering their many different nuances and spaces is an important skill of a lawyer – and law classrooms can be perceived as an environment where the lecturer and law student collaborate on this endeavour, and deconstruct the different shades and significance of legal terms.

However, occasionally, this collaboration does not go as far as it could do. What ought to be a vibrant, all-embracing discussion between the tutor and student on the outcomes of various legal terms, within an intricate ecosystem consisting of different spaces and colours, stops short. One of the reasons for this, which will be explored in this paper, is that legal analysis in the classroom occasionally gets fixed on legal terms as isolated lexical units for longer than it should do. A lot of time is sometimes spent on looking at what legal terms such as ‘reasonableness’, ‘duty of care’ and ‘intention’ mean, both in and of themselves and further with reference to sources of law, such as cases. Whilst this is, without question, fundamental, it is also crucial, given what has been said above about the wider contextual role of legal terms, to continue to explore their many spaces and milieus, particularly in the factual ecosystem described above. Tutors do, of course, have many effective pedagogical methods for doing this. Moots, debates and presentations, amongst other methods, are common in law schools across the world. However, this paper posits that using abstract art can also be a powerful

medium, especially from a translaborative perspective. This is because, as discussed above, legal terms can only truly be understood within the context of an ecosystem made up of facts, possible legal outcomes, and many further intricately connected social, ethical and other spheres – indeed some changing over of time – and it is the central role of a lawyer to take those legal terms within those spheres, picture them together in a syllogism, and argue why a particular outcome must follow given the different premises in a case, such as the legal and evidential, and various standards of proof. In this way, legal terms are specifically used to identify and render appropriate legal results within the context of a case. It is arguable that what occurs within this intricate ecosystem is a normative transformation, or ‘translation’, of particular legal terms, such as ‘reasonableness’, ‘remoteness’, and ‘fairness’, into appropriate legal results and, not just in law classrooms but also in legal cases, this often involves a multitude of different actors who each bring their own subjectivity and power, collaboratively, to bear upon this transformation/translation of the law into outcomes. An element of translation as collaboration (‘translaboration’) occurs and this paper will now develop the pedagogical value that abstract art can bring to this activity in law classrooms.

2. The Soundlessness of Lexical Units: Regina v Woollin (1998)

As mentioned, this paper reflects on a state of affairs that sometimes occurs in law classrooms – namely the focus on legal terms as isolated lexical units.

Important concepts such as ‘foresight’, ‘reasonableness’, and ‘proximity’ are often defined and looked at in and of themselves, without reference to the various colours or strata that may determine if such legal terms do or do not apply in a particular case. For this reason, when these legal terms are later applied to facts, or examined in essays, the analysis is often not as detailed or probing as it could be if there were an absorption in the wider vibrations, or interpretations, of those concepts. Silence sometimes abounds when there ought to be sound.

The seminal case of *Regina v Woollin* (1998) provides a very useful illustration. In this case, the House of Lords had to consider if the defendant, who had thrown his three-year-old son against a solid surface, had intended to kill him or cause him serious injury. The Law Lords identified that ‘intention’ in criminal law was not just limited to where the defendant specifically wanted something to occur, but could also exist when a particular outcome was a virtually certain consequence of the defendant pursuing another particular aim and the defendant appreciated this. This latter two-stage test, otherwise known as ‘oblique intention’, constitutes one of the two main legal tests for intention in English criminal law, a culpable state of mind, the first one being ‘direct intent’. As the definition of oblique intention in *Woollin*, the leading case, states, it is based, *inter alia*, on an appreciation of the risk – that there is a virtual certainty said outcome will occur. This imports the requirement that the

defendant must have had some realisation of risk, which in turn can be related to the importance that criminal law attaches to the notions of agency and blame (see, for example, Section 8 of the Criminal Justice Act 1967 on subjectivity). The issue of whether a given defendant had an appreciation or foresight of the risk requires one to put oneself in the position of the defendant. It necessitates a consideration of a multitude of different factors, including the characteristics of the defendant, his or her mood around the time of the offence, the circumstances in which s/he found himself or herself, and also his or her reactions to them. As such, the application of the concept of ‘appreciation or foresight of risk’ is a composite one that takes in a complexity of many factors.

However, the notion of ‘an appreciation or foresight’ of risk has often been approached in terms of its constituent and individual lexical units. This has sometimes influenced, as discussed above, the analysis of the various spaces that are indispensable to the application of legal terms. The focus has every so often been on what the words ‘appreciation’, ‘foresight’ and ‘risk’ mean per se, devoid of context. This has, from time to time, led to a staid consideration of the law as opposed to its wider import. However, returning back to the point that was made at the beginning of this paper, from one perspective, lawyering in and of itself is about the considered application of terms and their various meanings across different spaces. As contended, one may argue that legal

terms get their validity from this and cannot be understood devoid of this consideration of law's different spaces (Philippopoulos-Mihalopoulos 2015). However, in classrooms, this consideration sometimes does not go as far as it could.

For this reason, this paper furthers that the collaborative, intersemiotic translation¹ of legal terms into particular types of images (specifically abstract art) could provide an effective means for analysing the many nuances of law, and the contextual and semantic strata of legal terms. How might this intersemiotically translaborative method of transforming law into abstract art in law classrooms work and what are the pedagogic rationales for it?

3. Ontology and the Importance of Ownership in Legal Education

Looking at new ways of studying law is important, especially in terms of engaging formative assessment (Feliú and Frazer 2012). Ontologically, this paper posits that there should be no difference between how law students discuss situations outside of the law school environment and within it.

However, there is sometimes a tendency to perceive the law school as a closed system that is removed from other spaces in their lifeworld. One of the bases of this paper is that these systems are, essentially, one ontological continuum. At home, for example, law students will have been involved in disagreements with family and friends, amongst others. This will have involved the defence

of some position that the law student holds. These standpoints will naturally turn on and be underpinned by strong normative terms such as ‘right’, ‘fair’ and ‘wrong’. In the course of these arguments, the conscious focus will not be on the meaning of these terms as lexical units – but often on developing a persuasive and compelling argument out of the many different milieus that bring or coalesce those terms together in their favour. One of the fundamental bases of this paper is that law students should take the same argumentative and questioning approach in law classrooms.

This leads onto another strand of this paper. As mentioned, the primary assertion that is being made is that, ontologically, there ought to be no difference between how law students look at contentious arguments outside of law school and within. They all call for a wider, contextual analysis and application of normative and other terms. However, many complex existential boundaries can arise (though certainly not in all cases). We need to ask, first of all, why students tend to see themselves differently within law schools and outside of them. One reason that will be postulated here can be related to emotions. When students are asked to defend a position outside of the law school environment, then it is feelings and emotive responses that sometimes propel them to fervently consider and apply many wider contexts – the moral, the social, the economic, the political etc. It is their own personal, emotional investment in a given viewpoint that strengthens their application of such

terms during the course of arguments and helps them further what they believe. That is not to say that students never get passionate about the law! But law students differ from one another. As Deborah Zalesne and David Nadvorney (2011), for instance, identify in their work on ‘academic intelligence’ and ‘othering’, students have different intelligences and will approach the study of law in many different ways.

For this reason, some students may strongly focus on a need to look at and understand the lexical units that make up legal principles – as opposed to the many nuances and spaces that imbue the application of the law in its ecosystem, as considered at the outset of this paper – and this may sometimes lead to a heavy emphasis on lexical units in isolation as opposed to the multiple spaces in which they exist and, indeed, on which they rely. This can affect the extent to which the law is argued with. Such a heavy focus on words can sometimes also arise because of a misunderstanding of the taxonomy of legal education (for an interesting discussion on the growing taxonomy of legal education, see Feliú and Frazer 2012, 189). Taxonomies generally arise when competencies are linked and classified according to objectives. It is, of course, important to identify learning outcomes. Nevertheless, some students may focus heavily on the words that constitute the learning outcomes, as opposed to their detailed, contextual application within a course, which can limit argumentation.

As such, another premise of this paper is that, essentially, stimulating a greater and freer emotive attachment amongst students to the law – such as they have outside the law classroom – can foster a stronger analysis of the law in the ecosystem discussed above. There is, of course, nothing novel in that. Every law lecturer endeavours to deliver a motivating and thought-provoking class. However, taking recourse to intersemiotic translation, in particular between legal language and abstract art, can add value. As will be discussed below, the collaborative transformation of law into abstract art, drawing particularly upon the art theory of Wassily Kandinsky (1866–1944), can provide a powerful and effective medium for emotively examining the ecosystem of the law and enable students to discuss how complex terms, cutting across many different spaces, mediate between facts and possible legal outcomes.

4. The Concreteness of Words in Contrast to Art

What is the rationale for this form of pedagogy? On a very broad level, normative terms can, of course, have many different permutations. For example, the single word ‘morality’ can be approached from a number of different standpoints, including the consequentialist and deontological, amongst others. Terms change their meaning when they are added to other terms, as seen with a ‘duty of care’, and even more so when various contexts are added. Moreover, there is obviously a multitude of other layers and

nuances associated with the way words ‘mean’, including alterity as well social, cultural and literary aspects, among many others.

It is arguable that these many semantic nuances can, in and of themselves, already lead to the powerful feelings that are required to encourage a deeper, more personal attachment to a given term. For example, the word ‘fair’ often leads to impassioned discussions. But despite the fervent debates that such powerful terms may encourage, they are often bound to strong preconceived meanings, backed up by frameworks of power – which, in some cases, can stymie the freedom and independence required to encourage their deeper consideration.

The natural question here becomes why abstract art? (Shusterman 2000). For the purposes of answering this question, this paper postulates that art is any configuration whose sovereignty of meaning for a stirred actor must at all times be in abeyance. This can be explained by way of a simple example. A person goes to a coffee shop with a friend. They sit down at a table with a coffee and start talking to their friend. They are not conscious of their coffee cup. At this stage, arguably, the coffee cup cannot be art for them, as they are not engaged with it. But they then notice the cup. They see how perfectly round it is. They conclude it must be round as this is conducive to drinking and that is it. It is arguable that at this stage the cup cannot be considered art

but rather a simple instrument as the agent has claimed meaning. But they then become intrigued by its form – and ultimately conclude that they will never be in a position to know why it is round. It is only when the drinker concedes that sovereignty of meaning must by definition rest elsewhere that the object, in this instance the cup, is on its way to becoming art. Thus, from one perspective, art is a meaningful and elusive search for meaning, and a forever continuous search at that.

This can be broadly related to the important notion of ‘apartness’, which Simon O’Sullivan (2001) explores in relation to theorists such as Jean-François Lyotard and others. Following this line of thinking, for the artist, art can arguably be pure liberation (Scruton 1998). They realise that, in creating a piece of art, whose meaning is by definition always held in some abeyance, they are free and they can feel emotionally liberated. That is why this paper claims that collaborative translations of legal terms into art between a student, lecturer and others in the law classroom can free students, in the ontological ways examined above, and potentially provide a medium for looking at the meaning of legal terms in their complex ecosystem. Students can draw those spaces and discuss them precisely because art is different to written or verbal communication. Terms tend to sit within the structure of a lexicon and they can bind the writer or speaker. That is, of course, not to belittle language as a form of art. There have, of course, been countless theatrical, poetic and

narrative pieces of writing that have taken human feelings to many different levels. However, I would suggest that what made these actual ‘words’ art was that the reader or listener could never claim complete ownership over their meaning. Art is, by definition, always the meaningful yet elusive search for meaning itself.

It is on the grounds that this paper posits that an artistic and collaborative ‘translation’ between the different actors in the classroom can provide a free and emotive space in which to go beyond the meaning of isolated terms and explore the multiple spaces under which the law operates and, indeed, on which legal terms depend. The next section will explore how abstract art and, in particular, Wassily Kandinsky’s pedagogy, can specifically assist in this endeavour.

5. Using ‘Kandinskyian’ Pedagogy in the Law Classroom

From one perspective, there is a criticism that can be levelled against the idea of using art, and particularly abstract art, in teaching law and exploring how it may apply in a case. It could be argued that law should not be compared to art since, while the ambiguity and suspense of meaning is the very *raison d’être* of art, the precision of terms is the actual bread and butter of law. The very industry of law often entails using a tribunal to settle the meaning and application of terms in order to resolve legal disputes, as opposed to art where

any form of meaning must always remain in some form of anticipation. It would thus be paradoxical if legal terms were open to different, subjective meanings, as this would prolong rather than settle cases.

However, legal terms are not stagnant. They are, by definition, contextual. This is because they are normative and provide lawyers with the propositions that they need to form legal arguments in a given context. Furthermore, even tribunals need terms to be flexible in order to render a fair judgement. So, whilst the end point may be certainty, the actual process of getting there is highly context-specific and rests upon logical deduction and the skill of using complex definitions (Macagno 2010). For example, if one were to take the legal concept of ‘appreciation of risk’ per se from *Regina v Woollin* (1998), it would require one to be cognisant of a number of wider strata as discussed above. Indeed, learning outcomes in law often talk about the need to understand the law in its wider contexts and this is undeniably a fundamental skill in working with the law (Lynch 2011). However, as discussed, sometimes some law students cling tenaciously to words. Rather than by necessity venturing out and exploring the law’s many diverse, contextual spaces, they prefer to stick closely to its literal interpretations. Therefore, the very freedom that art, and abstract art with its emphasis on feeling in particular, affords is an effective means to motivate students to explore the various contours of the law.

The idea that students can, collaboratively, explore and transform law via its intersemiotic translation into images with the assistance of their facilitators and peers is, of course, not original. Many lecturers use diagrams and pictures in teaching law. However, this paper argues that Kandinsky's ideas on 'the spiritual in art', explicitly, can form the basis of a dedicated pedagogy in law (Kandinsky [1911] 2011).

As raised, there is a basic ontological divide between how some students apply different normative terms, such as 'fair' and 'right', within the law school environment on the one hand and in the many diverse situations in which they find themselves outside of that environment on the other. In many cases, this can be explained with reference to emotive attachments. Students tend to feel more emotively connected and in ownership of the language that they use outside of the law school environment and, as such, they feel much more self-assured in making use of their lexicon's various meanings, connotations, and nuances. They may also spend more time, and often take more care, in exploring the different spaces and contexts that engage the concepts denoted by a given formulation as a result of this feeling. That is not to say that feelings are the only reasons. However, there is often resonance and assurance that comes with the feelings associated with ownership.

It is for this reason that I claim that Kandinsky's 'spiritual in art', which focuses on the way in which representations in and of the world can be transformed into images through emotive engagement ultimately leading to emotive translation, can be used as a means to enable students to take greater co-ownership of legal argumentations in the law classroom (Easteal 2008). Rather than being bound by the finitude of complex legal terms, the transformation of such legal terms into abstract art and the emotive ownership and freedom that this can bring, as explained by Kandinsky, can stimulate them into looking at the complex nature of terms beyond just a literal approach to words. The production of abstract art, in particular the discrete theory underpinning Kandinsky's approach to this form of art (Kandinsky [1911] 2011, cited in Ringborn 1966), can free students in a way that can not only facilitate greater legal discussion and analysis, but also be conducive to the placing and use of legal terms within the various spaces that are necessary to understand them. This specific form of intersemiotic translation can thus prove a very valuable add-on to more traditional teaching methods in appreciating the context-specific nature of legal terms and their role, and multi-spatial dimension, as normative propositions in the construction of legal arguments. The next section will go into more detail on why Kandinsky's theory has been chosen as a specific frame of reference for this paper.

6. The 'Kandinskyian' Spirit and Legal Analysis

Kandinsky's later art is mainly of an abstract nature and thus does not always directly represent actual phenomena in the world. Instead, a symphony of points, lines, shapes, and colours on a canvass is used to depict what Kandinsky sees. Often difficult to comprehend at first, these visual orchestrations are best read as expressions of complex emotional states. Indeed, for Kandinsky, art was mainly a medium of the 'spirit'. A simple point, or mark on a canvas, was both silent and spoke at the same time – because it did not necessarily represent anything in particular, but rather constituted a language through which the artist expressed himself. The artist could turn any point on a canvass into a line to represent movement, or make that line horizontal to convey stillness, or vertical for anticipation. Diagonals represented a symbiosis of the two. Varying forces could be applied to the brush, turning lines into different shapes, angles or curves – and space and colour could also be used to represent sensation. Indeed, the width of lines often depicted sound (Kandinsky 1979).

Kandinsky's notion of abstract imagery as expressive of interiority was furthered by his synaesthesia, a neurological phenomenon where an experience in one sensory modality simultaneously triggers a sensory resonance in another. For instance, if a sound-colour synaesthete hears a given sound, this is also, and simultaneously, perceived as a particular colour. Indeed, colour played an important role in Kandinsky's life and work, partly

due to his ‘eidetic’ ability to remember colours and pictures with practically photographic recall from a very early age. From a synaesthetic perspective, this eidetic ability was linked by Kandinsky to auditory-based notions such as principles of consonance and discord: the adult Kandinsky was a keen music theorist and personal friend of the avant garde composer (and amateur painter) Schoenberg (1874-1951) (Brand and Hailey 1997). Colour is thus ‘vibrant’ (the auditory again) in many of Kandinsky’s images and is a fundamental component of many of his abstract compositions.

This can be further related to the notion of the ‘spirit’ that formed a strong element of Kandinsky’s work – Kandinsky felt that what he perceived through the senses touched or awakened something transcendent inside of him, and it was this transcendent element, or ‘spirit’, that he represented on the canvas. The notion of the ‘spirit’ in Kandinsky’s work, particularly his reference to the ‘soul’, connotes specific qualities connected by him to esoteric theosophical doctrines, a set of beliefs according to which a particular blend of comparative religion, philosophy and science can provide direct knowledge of the origins and purpose of the universe (Carlson 2015). Such knowledge was often attributed to what was, at the time, understood as a capacity for synaesthesia restricted to an initiated few. Ideas of synaesthesia inflected through theosophy, often of a Russian hieratic nature, were a major influence on Kandinsky’s contemporaries in the arts, such as the composer Scriabin (1871-1915) and

fellow visual artists Mondrian (1872-1944) and Klee (1879-1940), the latter of whom was one of Kandinsky's teaching colleagues at the Bauhaus in Germany. While synaesthesia is now known to be much more widespread than was believed at that time and hence the opposite of a psychological 'curiosity' (Hubbard and Ramachandran 2005, 509), figures like Kandinsky saw it as offering privileged aesthetic insights, notably into the holistic, creative nature of perception. For example, Vincent Tomas's exposition of Kandinsky's interpretation of synaesthesia states that when "we aesthetically see colours, points, lines, and shapes, what we feel is analogous to (expressive of) sounds, tastes, odours, and touches. We apprehend the 'spiritual vibration' as a means of using the senses" (Tomas 1969, 27).

Recent theorists of law pursuing equivalent aesthetic implications of synaesthesia in the light of findings of neurocognitive science have argued that the law is more fruitfully understood as existing in multi- and cross-sensorial dimensions too, which challenge long-standing notions of the juridical: "What is the 'smell' of law?" is a serious question posed by one such study in this field (Carneiro, Venturi and Becker 2014). While recent interpretations of Kandinsky's synaesthesia place the emphasis on its being an involuntary experience (Van Campen 1997), the special significance attributed to it by Kandinsky can still be used as a point of reference, in conjunction with what has been said earlier about the spaces of law, to motivate liberation and a

greater emotive connection with the law and encourage more freedom in looking at its many lexical nuances (Poling 1986). How might this work?

Let's imagine that students were given the following hypothetical set of facts:

A urgently needs a large sum of money, but does not have any means of getting it. Therefore, one evening, he decides to burn his house down to claim the insurance. He realises that there is a near certain chance his family will die, but realises that he must act now. He burns his house down and his family dies. A is charged with murder, which requires, *inter alia*, that the killing was intentional. However, A argues that he should not be liable for murder as it was not his *intention* to kill his family, but to claim the insurance.

In such a case, students would have to apply the criminal law of intention, which, as mentioned above, can be found in cases such as *Regina v Woollin* (1998). This says a defendant can intend something not just where it was their primary purpose for acting (direct intention), but also where they had a separate primary intention for acting, and in the course of doing so, a particular result was virtually certain to occur and they realised this too but still went ahead (oblique intention). As the court in *Regina v Woollin* (1998) held with respect to oblique intention: "you cannot infer that he intended to do Karl really serious harm unless you are sure that serious harm was a virtual certainty from what he was doing and he appreciated that that was the case."

Oblique intention would arguably also apply to the hypothetical case of A above, and in such a case, a number of discrete pedagogic approaches could be taken in analysing this form of *mens rea* (guilty mind). There could, for example, be a straightforward, general discussion of the law of oblique intention and what notions such as ‘virtual certainty’ mean, and the test could then be applied to the facts. The tutor could also divide the students into two teams, the defence and the prosecution, and ask them to consider if A did have the oblique intention to kill or cause grievous bodily harm his family and, if so, why so under the law. The tutor could also ask them to draw any number of diagrams to depict this. There could be many other approaches too.

However, abstract art can provide a particularly effective medium here. If art is any configuration whose sovereignty of meaning for a stirred actor must at all times be in abeyance, and thus has the potential of freeing the student/artist and is conducive to expression, it can act as a conduit for useful and efficient discussion. In other words, the personal investment that comes with a piece of art can provide students with the feelings and liberty to consider the different nuances and ambiances of the law within its complex factual and legal ecosystem as described above, and express and explore their ideas about the law, all of which they may otherwise not do, especially if the focus remains on lexical items in isolation.

Aspects of Kandinsky's art theory, with its emphasis on sensations, can thus prove very effective here. Indeed, the very personal nature of Kandinsky's focus on emotive translation would not require that students follow a particular form. Rather, its main point would be to encourage students to draw the law based on how they feel about a case – to look at what the legal terms in their legal ecosystem mean for the students, how the legal terms might interconnect with a set of facts, what results the students might expect to follow – and once they have drawn their images, to ask them to talk about them. This would enable them to move away from the law as a mere code made up of individual lexical units. By way of example, a horizontal line could, for instance, represent the 'you' in *Regina v Woollin* (1998):

INSERT FIGURE 1 HERE

The word 'inference' by a diagonal line conveying possibility:

INSERT FIGURE 2 HERE

The consequence of 'serious harm' could be a circle with no end or beginning, signifying the complexity of harm:

INSERT FIGURE 3 HERE

The notion that oblique intention is based on whether serious harm was ‘virtually certain’ could be shown by a wavy line representing the many forces that contribute to certainty:

INSERT FIGURE 4 HERE

And the requirement that the ‘defendant also appreciated that risk was virtually certain’ could be depicted by numerous diagonal lines:

INSERT FIGURE 5 HERE

Colour could be added to suggest feeling or emotion: for example, red to represent ‘serious injury’, green on the flexibility of ‘virtual certainty’, and a white plane imbuing all with justice:

INSERT FIGURE 6 HERE

Such abstract images, with their various points, shapes, lines and colours, put together to represent the diverse ecosystem of the law, can give students liberation and a frame of reference to explain how and why they

believe the law applies in a certain way – in a way that words, with strong preconceived associations of meaning and other possible lexical and power structures, may not. On the facts above, for instance, students could alter the green arrow in a way to show that death was more of a virtual certainty. The images would stand in the same, albeit intersemiotic, relationship as the words amidst an ecosystem and syllogism mediating between the various facts, relevant normative major and minor premises and conclusions, but the students would feel more liberated because of the ‘apartness’ that comes with art. The images would show their arguments and it would be up to them to explain how the image represents their analysis and understanding of the law. They could use their images to discuss the various valid arguments that often arise within the various milieus of the law, for example, around whether a defendant who set fire to a house knowing that there were people inside could have ‘obliquely intended’ the killing or serious bodily injury of those inside, the *mens rea* of murder – but this time, using the transformative freedom of law drawn as abstract art. They could also look at the various logical spaces in between facts and the law (Sartor 2008) making reference to the images they have produced. A broad comparison can be drawn with what Sara Gordon (2013) says about the importance of considering different techniques for instructing juries in trials as they may all apply their own personal schemas and lexicons to interpreting and applying the legal terms that the judges give

them in instructions. The images could serve as one such technique for students to discuss their different schemas.

7. The Piano and Sounds of Justice: A Conclusion

Whilst any images that students may draw may seem abstract at first and appear to have no ostensible, logical meaning, any depictions would have absolute legal resonance and meaning for students. If we hold that art is a meaningful yet elusive search for meaning, the composition of abstract art would give the tutor and students a free and powerful space in which to discuss how legal terms mediate between facts and the law and also provide scope for a critique and analysis of the very law itself. In collaboration, the lecturer would be required to talk to the student, and students to each other, about the art pieces in order to discuss their feelings about that particular piece of law and how it applies, and provide feedback. In this way, students would use their art as a medium to render and navigate different legal concepts (DeGroff 2012). The liberation inherent in art could facilitate this, whereas often the perceived finitude and concreteness of words with their many different structures may not (Tomas 1969). That is the basis on which this paper posits that abstract art in particular could support a powerful, transformative and collaborative space in which to explore the many nuances and applications of the law. The ecosystem could be mapped. Students in law schools begin their legal education with words. They tackle those words with

great fervour and this often means that they take a rich approach to the law. Many students maintain this energy and do extremely well. However, sometimes, the finitude of words and a misconstruction of SMART (Specific, Measurable, Achievable, Realistic, Time-Related) learning outcomes (Feliú and Frazer 2012) disrupts this flow and students begin to focus more on the abstractness of legal terms as opposed to their deeper, contextual strata, which, as discussed above, is fundamental to give legal terms proper effect. I argue that using abstract art as a pedagogic tool may assuage this.

Furthermore, some of Kandinsky's ideas discussed above, especially on the 'spirit' and emotive translation of interiority into images, provide a good framework for this rendering of the law into art. This is because, as a result of the ontological continuum considered in section 3 above, they enable students to fully connect with themselves and their emotive responses in understanding the law. Kandinsky believed that when artists perceived the world their soul vibrated. These vibrations could then be drawn as points, lines and colours on a plane. In this way, art was an intricate manifestation of how the world moved their soul. It encapsulated their spirit. As Kandinsky wrote, "the soul is the piano with the strings and the artist is the hands which by mean the tangents call forth the vibration of the human soul" (Kandinsky [1911] 2011, cited in Ringborn 1966, 400). For Kandinsky, art was the external expression of an internal. In parallel, I would argue that, in the same way, students can

begin by asking themselves what a law means to them: how it evokes their inner feelings and emotions. They could be asked to focus on the facts of a case, and how they think the law should apply, and in working with their tutors and peers, be asked to represent this as a symphony of lines, shapes and colours. In this translaborative space, such works of art can be used to give sound to their inner feelings and understanding of a case, and, indeed, the piano of justice within them, justice being, not least, a feeling: and they can draw their feelings about the law and how it should apply in its many contexts, thus giving full voice to the orchestra of law and logic that resides within them. The legal ecosystem can thus be explored.

References

- Brand, Juliane, and Christopher Hailey. 1997. *Constructive Dissonance: Arnold Schoenberg and the Transformations of Twentieth-Century Culture*. Berkley, CA: University of California Press.
- Campan, Crétien van. 1997. "Synesthesia and Artistic Experimentation." *Psyche* 3 (6). <http://www.theassc.org/files/assc/2290.pdf>.
- Carlson, Maria. 2015. *No Religion Higher Than Truth: A History of the Theosophical Movement in Russia, 1875-1922*. Princeton, NJ: Princeton University Press.
- Carneiro, Maria Francisca, Eliseu Raphael Venturi, and Laércio A. Becker. 2014. "What is the Smell of Law? First Assumptions for the Semiotics of Juridical 'Matter'." *Social Sciences Research Network (SSRN)*, October 6, 2014. <https://ssrn.com/abstract=2506265> or <http://dx.doi.org/10.2139/ssrn.2506265>
- Criminal Justice Act 1967*. London: Her Majesty's Stationery Office. http://www.legislation.gov.uk/ukpga/1967/80/pdfs/ukpga_19670080_en.pdf.
- DeGroff, Eric A. 2012. "Training Tomorrow's Lawyers: What Empirical Research Can Tell Us About the Effect of Law School Pedagogy on Law Student Learning Styles." *Southern Illinois University Law Journal*, 251: 251-254.

- Easteal, Patricia. 2008. "Teaching about the Nexus between Law and Society: From Pedagogy to Andragogy." *Legal Education Review* 18 (1&2): 163-172.
- Feliú, Vicenç, and Helen Frazer. 2012. "Outcomes Assessment and Legal Research Pedagogy." *Legal Reference Services Quarterly* 31 (2): 188-203.
- Gordon, Sara. 2013. "Through the Eyes of Jurors: The Use of Schemas in the Application of 'Plain-Language' Jury Instructions." *Hastings Law Journal* 64 (3): 643-678.
- Hubbard, Edward M., and Vilayanur S. Ramachandran. 2005. "Neurocognitive Mechanisms of Synaesthesia." *Neuron* 48 (3): 509-520.
- Jakobson, Roman. 1959. "On Linguistic Aspects of Translation." In *On Translation*, ed. by Reuben Arthur Brower, 30-39. Cambridge, MA: Harvard University Press.
- Kandinsky, Wassily. 1979. *Point and Line to Plane: Contribution to the Analysis of the Pictorial Elements*. Translated by Howard Dearstyne and Hilla Rebay. New York: Dover.
- Kandinsky, Wassily. 2011. *Concerning the Spiritual in Art*. Translated with an introduction by Michael T. H. Sadler. New York: Dover.
- Lindahl, Lars. 2004. "Deduction and Justification in the Law: The Role of Legal Terms and Concepts." *Ratio Juris* 17 (2): 182-202.

- Lynch, Mary A. 2011. "An Evaluation of Ten Concerns About Using Outcomes in Legal Education." *William Mitchell Law Review* 38 (3): 986-1016.
- Macagno, Fabrizio. 2010. "Definitions in Law." *Bulletin Suisse de Linguistique Appliquée* 2: 199-217.
- O'Sullivan, Simon. 2001. "The Aesthetics of Affect: Thinking Art Beyond Representation." *Angelaki: Journal of Theoretical Humanities* 6 (3): 125-135.
- Philippopoulos-Mihalopoulos, Andreas. 2015. *Spatial Justice: Body, Lawscape, Atmosphere*. London: Routledge.
- Poling, Clark V. 1986. *Kandinsky's Teaching at the Bauhaus*. New York: Rizzoli.
- Regina v Woollin* (1998) Judgments, 22 July 1998. London: UK House of Lords.
<https://www.publications.parliament.uk/pa/ld199798/ldjudgmt/jd980722/wool.htm>.
- Ringbom, Sixten. 1966. "Art in 'The Epoch of the Great Spiritual': Occult Elements in the Early Theory of Abstract Painting." *Journal of the Warburg and Courtauld Institutes* 29: 386-418.
- Sartor, Giovanni. 2008. "Legal Concepts: An Inferential Approach." *European University Institute Law Working Paper No. 2008/03*. San Domenico

di Fiesole: Department of Law, European University Institute.

<https://ssrn.com/abstract=1093627>.

Scruton, Roger. 1998. *Art and Imagination: A Study in the Philosophy of Mind*. South Bend, IN: St Augustine's Press.

Shusterman, Richard. 2000. *Pragmatic Ethics: Living, Beauty, Rethinking Art*. Lanham, MD: Rowman and Littlefield.

Spaak, Torben. 2014. "Alf Ross on the Concept of a Legal Right." *Ratio Juris* 27 (4): 461–476.

Tomas, Vincent. 1969. "Kandinsky's Theory of Painting." *The British Journal of Aesthetics* 9 (1): 19-38.

Zalesne, Deborah, and David Nadvorney. 2011. "Why Don't They Get It: Academic Intelligence and the Under-Prepared Student as Other." *Journal of Legal Education* 61 (2): 264-279.

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Notes

¹ Intersemiotic translation was defined by Roman Jakobson in his essay “On Linguistic Aspects of Translation” as “an interpretation of verbal signs by means of signs of nonverbal sign systems” (Jakobson 1959, 233).