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Abstract

As a normative discipline, law defines its territory according to simple categories which establish absolute principles purporting to offer a single truth as to what is just and unjust, right and wrong, good and bad. In addition, linguistic and extrasemantic devices such as synecdoche, metonymy, rhythm and metaphor serve a referential function with which to penetrate the collective consciousness. The core assumptions derived from the implementation of socio-linguistic mechanisms transform the nature of legal analysis and are embedded within a diverse interplay of meanings. Aesthetic imaginings are evidenced to underpin and sustain 'law's symbolic processes and doctrines, institutions and ideas; that is, a realm of limitless fantasy, of free-flowing nomological desire, fixed around, and fixated upon controlling images that condense its central juridical concepts'; as the 'jurists follow their own poetic and aesthetic criteria, their own spectral laws' (MacNeil in Novel judgments: legal theory as fiction. Routledge, Oxford, p 9, 2012; Goodrich in Legal emblems and the art of law: obiter depicta as the vision of governance. Cambridge University Press, Cambridge, p 155, 2013). Yet still, founded on the negation of its own history, legal practice maintains that juridical arguments comprise only dialectical reasoning about objectively determined concepts: 'law is a literature which denies its literary qualities. It is a play of words which asserts an absolute seriousness; it is a genre of rhetoric which represses its moments of invention or fiction… it is procedure based upon analogy, metaphor and repetition [that] lays claim to being a cold or disembodied prose' (Goodrich Law in the courts of love: literature and other minor jurisprudences. Routledge, Oxford, p 112, 1996). This article will explore the continuing commitment of modern legal practice to particular aesthetic values and how these are crucially implicated in a variety of legal competencies including the formation of key legal concepts and general intellectual activity.

Keywords (separated by '-')	Law - Aesthetics - Imagination - Metaphor - Narrative - Legal truths
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Aesthetics of Law and Literary License: An Anatomy of the Legal Imagination

J. A. Julia Shaw[1]

Abstract As a normative discipline, law defines its territory according to simple categories which establish absolute principles purporting to offer a single truth as to what is just and unjust, right and wrong, good and bad. In addition, linguistic and extrasemantic devices such as synecdoche, metonymy, rhythm and metaphor serve a referential function with which to penetrate the collective consciousness. The core assumptions derived from the implementation of socio-linguistic mechanisms transform the nature of legal analysis and are embedded within a diverse interplay of meanings. Aesthetic imaginings are evidenced to underpin and sustain 'law's symbolic processes and doctrines, institutions and ideas; that is, a realm of limitless fantasy, of free-flowing nomological desire, fixed around, and fixated upon controlling images that condense its central juridical concepts'; as the 'jurists follow their own poetic and aesthetic criteria, their own spectral laws' (MacNeil in Novel judgments: legal theory as fiction. Routledge, Oxford, p 9, 2012; Goodrich in Legal emblems and the art of law: obiter depicta as the vision of governance. Cambridge University Press, Cambridge, p 155, 2013). Yet still, founded on the negation of its own history, legal practice maintains that juridical arguments comprise only dialectical reasoning about objectively determined concepts: 'law is a literature which denies its literary qualities. It is a play of words which asserts an absolute seriousness; it is a genre of rhetoric which represses its moments of invention or fiction… it is procedure based upon analogy, metaphor and repetition [that] lays claim to being a cold or disembodied prose' (Goodrich Law in the courts of love: literature and other minor jurisprudences. Routledge, Oxford, p 112, 1996). This article will explore the continuing commitment of modern legal practice to particular aesthetic values and how these are crucially implicated in a variety of legal

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competencies including the formation of key legal concepts and general intellectual activity.

Keywords Law · Aesthetics · Imagination · Metaphor · Narrative · Legal truths

Introduction

The practice of law and legal scholarship is constituted by a diverse range of social practices which distinguish law as a socially significant and analytically valuable category of signification. A repertoire of visual codes and systems of classification supplement the sophisticated array of texts and discursive practices, based on previous texts, which are deeply inscribed in the legal landscape of institutions, performances and tradition. Close examination of legal practice reveals a set of profoundly aesthetic characteristics, specifically literary tropes, which are habitually associated with authority and reason. There are clear connections to aesthetic matters, for instance, obscenity laws, municipal aesthetic regulations, copyright, environmental law, the representation of rights and issues of textual interpretation. Aesthetic dimensions are also claimed to lie at the very heart of law and justice, to the extent that legal discourse is asserted to be 'fundamentally governed by rhetoric, metaphor, form, images, and symbols [which] can illuminate both the meaning and force of law' (Manderson 2000: *ix*). As well as being portrayed as a form of literature, 'the debates among major jurisprudential traditions can be viewed as aesthetic contrasts among competing narrative methods and visions, and some debates *within* major jurisprudential traditions can be viewed as contrasting aesthetic mixtures of vision and method within major narrative categories' (West 1985: 204).

The cognitive processes that govern our thoughts and actions are not purely matters of the intellect; as aesthetic concepts they structure experience, shape perception and mediate our relationships with others by constituting reality. In support of this thesis, a growing body of scientific evidence from cognitive psychology and neurobiology has recently proposed that aesthetic forms of knowing precede other forms and, significantly, influence how they function (Damasio 2000). As Early Modern playwright, essayist and literary critic Ben Jonson observed some 400 years ago: 'Without Art, Nature can ne'er be perfect; and without Nature, Art can claim no being', in other words art both produces and refines the natural order (1906: 127). Although aesthetics is commonly thought of as art, the beautiful and taste, American Pragmatist John Dewey described the aesthetic as extending to 'everyday experience' and as having a close connection to morality. He emphasised the …'continuity between the refined and intensified forms of experience that are works of art and the everyday events, doings, sufferings that are universally recognized to constitute experience' (Dewey 1980: 3). In a late essay, *On a Newly Arisen Superior Tone in Philosophy*, Immanuel Kant acknowledged the usefulness of an aesthetic methodology which was receptive to the form and imagery of legal concepts, but warned against 'the possibility of the presentation of the supersensible' and more specifically, the 'aesthetic manner of personifying the moral law as

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a 'veiled Isis' or veiled goddess, as he considered it to be beyond figuration (1993: 71). Although, against Kant's admonition, it could be argued that the demand made upon us by the moral law (because it is unavailable to the senses) is always understood analogically, via the veil of personification; having first begun by careful consideration of the bare concept. Pierre Schlag further maintains that: 'Law is an aesthetic enterprise. Before the ethical dreams and political ambitions of law can even be articulated, let alone realized… aesthetics have already shaped the medium within which those projects will have to do their work' (Schlag 2002: 1049).

As advocate, negotiator, legislator and judge, a lawyer is already a writer and orator and, as such, legal aesthetics naturally comprise a core element of the anatomy of the legal imagination. As Robin West observes, 'modern legal theorists persistently employ narrative plots at strategic points in their arguments' (1985: 145–146). In offering what is their perceived simplification of reality, judges are also given to literary abstractions or flights of fancy. For example, in *Tomlinson v Congleton Borough Council* [2003] UKHL 47—a landmark case concerning the tort of negligence and occupiers' liability in which the claimant was seriously injured after diving into shallow water where swimming was expressly forbidden—Lord Hoffman took issue with the trope, 'a siren call strong enough to turn stout men's minds', from an earlier judgment by Lord Walker. This instance of simple analogical reasoning generated a conceptual metaphor that facilitated further complex analogical reasoning from Lord Hoffman in his response to, what he considered to be, 'gross hyperbole':

> 'The trouble with the island of the Sirens was not the state of the premises. It was that the Sirens held mariners spellbound until they died of hunger. The beach, give or take a fringe of human bones, was an ordinary Mediterranean beach. If Odysseus had gone ashore and accidentally drowned himself having a swim, Penelope would have had no action against the Sirens for luring him there with their songs. Likewise in this case, the water was perfectly safe for all normal activities' (para. 38).

Tomlinson v Congleton Borough Council is widely regarded as one of the first attempts to halt the development of a US-style compensation culture in the UK, and the application of various literary devices—such as the powerful metaphoric image of the Council 'luring people into a deathtrap'—carried considerable ideological weight. The influence on law of stylistic techniques that occur in literature, for example, whether at the phonetic level (as alliteration and rhyme), the grammatical level (as inversion and ellipsis), or the semantic level (as metaphor, irony) cannot be understated, particularly in their potential for ideological distortion. Far from being merely embellishment or decoration, therefore, it is proposed that the subtle application of an aesthetic methodology—augmented by imagistic language and literary devices—continues to be fundamental to the formation of legal principle, key concepts and judgment, without which law would lose much of its persuasive force.

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Law as an Aesthetic Enterprise

The aesthetic is an essential component, the raw material, of human experience and although subjective and beyond the remit of formal concepts or universal standards, aesthetic expression represents a form of interaction between individuals and the precognitive world of idiosyncratic established meaning. Through our senses we encounter the world as alternately beautiful and grotesque, alluring and repellent. The communicative power of this sensory information allows for richer intellectual and emotional engagement with objects and concepts as they are in lived reality, according to their sensible essence. We become more conscious of a multiplicity of dissident perspectives and sensuous content from which to inform both our individual life choices and capacity for moral judgment. This proposition can be understood in semiotic terms on the basis that individuals respond to a diverse range of images and experiences which resonate with a personal or shared history of particular cultural traditions and practices. Our sensate relation to this network of symbols and metaphors constitutes a productive force which, in relation to the legal community, contributes to the formation of legal principle and judgment.

Whilst aesthetics is considered by legal practitioners to be extraneous to morality and ethics in the formulation of law, the narrative form and figuration can obscure an underlying structure of oppression as well as nurture a real sense of unity and common purpose. The creation of a link between 'justice and beauty' is argued to arise from the 'enriching asymmetry of [the] encounter' between law and aesthetics; however, this encounter could just as easily produce an unjust or ugly connection (Ben-Dor 2011: 1). For example, the aesthetic fabrication of legal truths such as 'equality of all before the law'—with the promise of impartiality portrayed as the blindfolded Roman Goddess Justitia holding a set of scales and an unsheathed sword—appeals to an innate desire for justice as fair, swift and final. The allegorical personification of 'justice for all' gives shape and form to abstract notions of fairness and equality in law-making and adjudication and, importantly, appeals to a call for social justice and the basic human need to belong to a community of equivalent others, which in turn nurtures a culture of compliance (Shaw 2013: 119). To maintain the illusion of communal cohesion under the law also requires a sophisticated process of rhetorical dissimulation, which makes it possible to mask the exacting and coercive ideological standards which, in reality, locate the subject outside the law within the context of an exclusionary and socio-symbolic schema.

Through various speech acts and experiences, the cultural constituents of legal identity are signalled aesthetically in the sense that a feeling for law, particularly law as justice, arises from within the context of the imagination; a capacity shared by all human beings in ordinary life. Austin Sarat and Clifford Gertz refer to, respectively, 'the imaginative life of the law and the way law lives in our imagination', and that 'here, there and everywhere [law] is part of a distinctive manner of imagining the real' (2011: 2; 1983: 184). Whilst relying predominantly on denotative interpretations of law, legal practitioners, particularly members of the judiciary, have habitually employed imaginative literary devices to exploit and manipulate the latent potential of figurative language. The cognitive function of

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metaphor, for example, is to create an opportunity for modifying the conceptual frameworks used in sense-making. Metaphors such as 'the floodgates' produce a special effect by conveying connotative meaning which enriches the text and renders meaning more precise and determinate. Equally, picture language has the ability to easily communicate ideological propositions which support the values shared by the legal community and, being semiotically-loaded and subject to aesthetic interpretation, it has the capacity to elicit a cohesive sense of belonging and, significantly, legitimise the authority of law. Estranged from material life and set over against it as a commanding force; of the law, political state and other institutions of control alike, Herbert Marcuse asserted that 'every structure of domination has its own aesthetics' (1991: 65).

As an important component of law's aesthetic armoury, metaphor melds intellect and world, sign and object, cognition and appearance in an illusion of unity, because while constructing likenesses between categories it can just as readily dissolve difference. Consequently, distinct classes identified by, for example, race, gender and sexuality, may be excluded; just as one of law's most enduring legal fictions, the suspiciously masculine 'reasonable person' standard, for many years embodied a gendered interpretation of reasonableness—leading to a famous parody in A.P. Herbert's fictional case of *Fardell v. Potts*: *The Myth of the Reasonable Man*, first published in *Punch*, 9 July 1924 (1979: 1–6). The aesthetic function of metaphor means it also has the capacity to facilitate a positive transformation of the emotional framework of institutional processes; however, to place the phenomena of language within their proper context requires lawyers to develop their imaginative capacities: Consequently the activities which make up the professional life of the lawyer and judge 'constitute an enterprise of the imagination, an enterprise whose central performance is the claim of meaning against the odds: the translation of the imagination into reality by the power of language' (White 1973: 758). Legal discourse comprises many different voices, from the legal specialist and expert witness to the layman as jury member and claimant. The divergence between ordinary speech and legalese, as well as between the world of words and mute world of inexpressible thoughts, feelings and experience require a good lawyer to be an artist in translation. Although is not always possible to resolve such tensions, they merit a response which is more than a simple 'matter of logic, or ends-means rationality, or conceptual analysis, but requires an art, an art of language and judgment' (White 2012: 7).

Between blackletter law and the unwritten discourse which surrounds it, a legal text can never be understood as a simple or complete representation of its contents. Interpreting the law as text and speech requires not only acts of inference, association and recollection, but also the imagination (Goodrich 1996: 107). The soundest interpretation of a rule or legal concept would, therefore, demand a combination of both creative legal and literary energies. Historically, this was widely-recognised as 'lawyers were ministers and maestros of culture… [their] broad cultural responsibilities and literary impulses were the same', and so it would not have been unusual to treat a legal authority as literary text and the product of an imaginative, inventive and even artistic, legal mind (Weisberg 1989: 9, 10). For that reason, a critical reading of law would have begun with a careful analysis of its

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images, figures and other forms of poetic substitution. Irony, caricature, metaphor and allegory or 'false semblant' were fundamental concepts of 16th and 17th century court culture and the skilful deployment of figurative language was likened, by Elizabethan lawyer and alleged author of the anonymously published 1589 *Arte of English Poesie* George Puttenham, to the art of duplicity. He used the classical maxim, *Qui nescit dissimulare nescit regnare* (who knows not how to dissemble, knows not how to rule) to suggest that all successful sovereign authorities engage in the habit of dissimulation; implying that the mystic foundation of law's authority may be little more than trickery, lies and deception (Puttenham 1936: 197).

Ostensibly modelled on the world of experience, the production of imagistic language by lawyers continues to be an issue of primary significance as it offers a variety of semantic and semiotic possibilities for elucidating complex legal formulae and authenticating contentious legal values and beliefs. As well as foregrounding elements of connotative meaning via text and speech, the conscious application of linguistic and figurative devices to insinuate aspects of meaning constitutes a powerful emotive force. Without borrowing or stealing from the armoury of aesthetic concepts to support the formation of legal rules and principles, law would lose most of its persuasive impact; as the constant fabrication of a variety of aesthetic expressions, mythologies, fantasies and mystical discourse enables the construction of both social values and legal dogma.

Legal Aesthetics and Culture: The Metaphorical Masks of Law

A significant part of our vocabulary originates from metaphor. Even the Latin term for 'tongue', *lingua* (originally, 'that which is produced with the tongue') was used figuratively for 'language', deriving the terms 'linguist' and 'linguistics'. The English language is replete with faded metaphors, for instance, 'the eye of the storm', 'headland' and 'coalface'; and the legal profession has supplied everyday speech with many examples, such as to 'plead poverty', 'standing', 'last resort', 'swear by', 'benefit of the doubt' or 'fruit of the poisonous tree'. Metaphor not only performs an aesthetic function, it has an important epistemic role in facilitating the generation of knowledge about the world. According to George Lakoff and Mark Johnson, in *Metaphors We Live By*, they comprise a significant part of our conceptual system by critically informing how we understand and organise reality (1999: 3). Since ancient times, metaphor has been understood as the transference of concept-categories from the literal to the figurative; where the properties of a word or phrase comprising the source (e.g., shark) are transferred to an event, individual or object comprising the target (e.g., lawyer), where the source and target are not directly associated. In one of Aristotle's main works on aesthetics, the *Poetics*, metaphor is defined generically as 'the application of a word that belongs to another thing'; a rhetorical figure in which a name is reassigned to something else (1995: 21.7). Metaphorical language was customarily recognised as an important tool of subtle persuasion, with which it was possible to move the audience from one locus of thought to another.

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Metaphor remains a pervasive feature of language just as persuasive language is a quintessential characteristic and instrument of legal practice. It is the most important of rhetorical tropes and the principal figure in poetic works where the imagination is creatively employed in describing the subject in terms of something it is not. Understood as a disarticulation, it constructs a novel perspective by transposing meaning between two semantic spheres without losing the original connotation, causing an endless movement of meanings across numerous fields. For the modern lawyer, the influence of metaphors, myths and symbols in their deliberations has been described as unavoidable, as 'metaphor and narrative act as ideological baggage carriers that transport messages without conscious discussion' because 'meaning is constructed, and metaphor and narrative are the frameworks of its construction' (Berger 2009: 262–266). As Lon Fuller stated almost ninety years ago, '[m]etaphor is the traditional device of persuasion. Eliminate metaphor from the law and you have reduced its power to convince and convert' (1930: 380).

According to eighteenth century jurist and political philosopher Giambattista Vico, metaphor preceded denotative language as early humankind communicated via images transposed into expression. Long-established figures of speech such as 'the mouth of the river', 'heart of gold' and 'the mind's eye' were used to recall familiar images, meaning an image could be produced effortlessly without having to be chosen or willed by the recipient. Such metaphors, deriving from a pre-discursive level of existence relating to the body and characteristics of the human face, were claimed to be able to provide a 'quasi-bodily externalisation' which in turn made discourse appear (Riceour 1979: 142). Not easily dismissed as mere literary embellishment, metaphor forms a significant role in how we think and communicate. Our ordinary conceptual system is essentially metaphoric in nature. As Albert Camus wrote in his *Notebooks* of 1935–1942, 'feelings and images multiply a philosophy by ten. … People can only think in images. If you want to be a philosopher, write novels' (1998: 10, 210). Franz Kafka's *The Metamorphosis*, George Orwell's *Animal Farm* and *Nineteen Eighty Four* famously illustrate the proficient use of extended metaphor to satirise, respectively, the fragile nature of identity and human relationships; Stalinist Russia and the rise of totalitarianism; and a dystopian society where totalitarianism had taken over. Metaphor is cognitively important, it allows us to draw comparisons and amplify a certain aspect of a particular thing, and 'brings something before the eyes' (Aristotle 1959: 3.10.6). The deployment of metaphorical 'masks of law' (such as in establishing 'legal personality') also enables the construction of legal identity by obscuring the true self and replacing the authentic individual with an idealized representation. The creation of masks not only produces a sense of alienation in the victim but has important implications in terms of the 'plot and significance of the masquerade' (Noonan: 2002: 24).

Much of English law is replete with lyrical and mythic imagery which resonates from ancient times to modern life. Ernst Kantorowicz's *The King's Two Bodies* traces the assumption of theological metaphors by English common lawyers for secular political ends; in particular the ecclesiastical body of the Church and the incarnated body of Christ. He explores the influence of medieval thought and political theology in constructing a metaphysical image of the monarch, and begins

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with an analysis of the early use of metaphor by lawyers from the 1571 Reports of Edmund Plowden. Plowden's Reports were written as part of a legal dispute concerning the right of a king to own land privately, as a person and not as a monarch, in relation to inheritance; so that property could be passed to their descendants and removed from the administration and control of the Crown. Lawyers used the metaphor of the king's two bodies in order to fathom the paradox that whilst individual monarchs expired, the Crown survived. Plowden concluded that even though the king's body natural and body politic are distinct, he was incapable of possessing a private identity as the sovereign body is not separable neither could it be divested:

> For the King has in him two Bodies, viz., a Body natural, and a Body politic. His Body natural (if it be considered in itself) is a Body mortal, subject to all Infirmities that come by Nature or Accident, to the Imbecility of Infancy or old Age, and to the like Defects that happen to the natural Bodies of other People. But his Body politic is a Body that cannot be seen or handled, consisting of Policy and Government, and constituted for the Direction of the People, and the Management of the public weal… So [the King] has a Body natural, adorned and invested with the Estate and Dignity royal; and he has not a Body natural distinct and divided by itself from the Office and Dignity royal, but a Body natural and a Body politic together indivisible (Kantorowicz 1957: 7–9).

The lawyers for the Crown equated the idea of the state with a perpetual corporation insisting that the body politic transferred to the body natural of the succeeding monarch at the time of death. Although the metaphor of the state as a human body or corporation was advanced by leading jurists such as Plowden and later by Edward Coke, an influential Huguenot treatise from 1579 *Vindiciae Contra Tyrannos* argued that it was the people and not the king that constituted a perpetual corporate body. Yet the allure of the monarchical body metaphor prevailed against more abstract and complex ways of imagining the state. Once the appropriation of a forceful metaphor has successfully established a foundational myth, such as the 'myth of the state' and the fiction of the royal body, the initial image of the actual monarch recedes, is displaced and assumes a malleable fictional character.

Even though aesthetics is capable of elucidating a particular fact or difficult legal concept, it is vulnerable to the prevalence of the irrational influences of myth because 'it is beyond the power of philosophy to destroy the political myths. A myth is in a sense invulnerable. It is impervious to rational arguments; it cannot be refuted by syllogisms. But philosophy can do us another important service. It can make us understand the adversary' (Cassirer 1946: 296). Beginning his critique with Shakespeare's *Richard II* and Dante's *Divine Comedy*, Kantorowicz presents an illuminating account of how a literary fiction neatly segues into legal fiction. The legal fictionalisation of the Crown, explored in relation to the medieval metaphor of the king's two bodies, not only had an obfuscatory effect where real power was conflated with symbolic power; it also exposed a gendered hierarchy of values.

The gendered construction of sovereignty was illustrated in the case of reigning monarch Queen Elizabeth I, who wished to lease the Duchy of Lancaster. Masculinity was the norm for monarchy until the succession of Queen Elizabeth I to

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the throne in the sixteenth century, and she was always described as a king and never a queen. In an era where women were expected to be unsullied, submissive and held no regular positions of authority in the church or state, the anomalous nature of female sovereignty meant that a queen would be treated as a king and be expected to exhibit fitting attitudes in her performance of kingly duties. Elizabeth I accepted the metaphorical endorsement of misogyny, customarily referring to herself as 'king'. In a famous speech to her troops in 1588 at Tilbury prior to an invasion of the Spanish Armada she declared, 'I know I have the body of a weak and feeble woman, but I have the heart and stomach of a king, and of a king of England too… [that[any prince of Europe should dare to invade the borders of my realm; to which, rather than any dishonour shall grow by me, I myself will take up arms, I myself will be your general, judge, and rewarder of every one of your virtues in the field' (Neale 1990: 302). As well as displaying her mastery of persuasive rhetoric, by first appealing to the commonly held view of female feebleness Elizabeth was then free to continue with bold masculine pronouncements using the metaphors of heart and stomach, symbols of courage and loyalty, which demonstrated her commitment to traditionally male virtues. Nevertheless, such was the power of the prevailing masculine monarchical metaphor that Elizabeth felt the need to renounce her female body by choosing, shortly after her coronation, to remain unmarried; and thus ensured she would always remain 'king' and never be diminished to merely the wife of a king.

Legal texts offer many examples of aesthetic contrivances in a variety of forms, and illustrate the necessity of fictive idealisations in order to support the illusion of law's self-legitimation. In discussing the practice of judges 'finding' the law as more akin to 'creating' the law, Jeremy Bentham famously alluded to the creation of useful fictions, by the priest and lawyer alike, as a 'coin of necessity' (1977: 119). Undoubtedly, figurative language performs an important function, without which many of law's abstract formulations would be impossible. For example, far from being mere decoration, metaphor is one of the principal methodological devices for constructing legal principle and a necessary tool in the critique of legal theory. To misquote the famous speech of Viscount Sankey, Lord Chancellor in the House of Lords appeal case of *Woolmington* v *Director of Public Prosecutions* [1935] AC 462, at 481 (HL), if there is throughout the 'web' of the English law 'one golden thread' that is inseverable, it is that the law has since the beginning of legal memory formed a distinctive literary genre within which metaphoric imagery continues to infuse and inspire the legal imagination.

Law as a Metaphoric Language

The metaphor is a significant symbolic medium in the legal process, expressing itself in legitimating rituals, traditions and in figurative language underpinning fundamental legal principles and concepts, yet there is no unified approach to the non-literal use of language in law. From the moral purity metaphor of 'clean hands' in the equitable maxims of the Court of Chancery, a court of 'conscience'; and William Blackstone's four volumes of the *Commentaries on the Laws of England*

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which were accused of 'enliven[ing] the common law with metaphors and allusions' (Bentham 1977); to the figure of Lady Justice, linguistic and imagistic devices are omnipresent features of the lexicon of law and constitute the legal imagination. The image of Roman icon of justice, Justitia, exemplifies the connotative force of legal metaphor in the paradox of privileging feminine reason and judgment in the female face of justice, whilst simultaneously repressing the political rights of women by denying them legal personality, inheritance rights and public office until relatively recently. This obvious irony was effectively subsumed under the overwhelming performative force of the imagistic metaphor. The addition of a blindfold is a further ironic gesture, since Justitia's eyes are concealed from view and her vision impaired. Consequently, we are forced to question this representation of justice as equating to either impartiality or arbitrariness, due to an obscured view of the whole picture and a lack of foresight. For Goodrich, the particular choice of metaphor is not innocent: 'the blindfold on the face of justice seems plausibly to have also benefitted men through the limitation, mutilation… or sensory deprivation of women. In a secondary sense, the blindness of justice can be taken to represent the peculiar folly of common law in its dependence upon the blind reason of precedent and the unseeing eye of an aural or auricular tradition' (1993: 296).

As psychological mechanisms, metaphor and irony have attracted criticism from scholars of linguistics due to their equivocal nature and lack of specificity in the communicative process. While aesthetic expression is subjective and beyond the remit of any settled formal concepts or universal standards, it can nevertheless be understood to represent a form of interaction between individuals and the precognitive world of established meaning. Imagistic and linguistic metaphors are not only related to rhetorical effect, they comprise significant conceptual devices in law, as they have the capacity to repudiate truth-conditional semantics by resisting the imposition of any clear, unambiguous or settled propositional outcome. Although capable of eliciting a diverse range of alternative deductions based on connectives such as 'if', 'and', 'or', and 'not', metaphors have the capacity to reveal the basis for concept formulation and move from implication or inference, guided by relevance considerations, to an explicit level of meaning. Encompassing both a functional and artistic role, as well as providing beauty in form, metaphor plays a key role in foregrounding elements of connotative meaning in the text. Although legal knowledge is predicated on objective standards, absolute facts and realities, an aesthetic appropriation enables the sacralisation of legal norms. Sacralisation itself makes the reinterpretation and critique of normative standards more difficult in practical terms, and helps to reinforce the mythologies which lend law its awesome power. Much more than a stylistic figurative device; by acting as a semantic signifier, metaphors produce the literal manifestation of figurative meaning in their transformation of symbols into legal truths. Having internalised the symbolic idealised nature of their origins, these legal truths are then able to mask their normative origins whilst exerting enormous influence in the formation of popular opinion and social values.

It is perhaps unsurprising that the judiciary is often of mixed opinion on the application of literary language and, especially metaphors; since they perform a substantial intellectual function while deviating from the typical doctrinal

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exposition and analysis of 'black letter law'. In *Designers Guild Ltd. v Russell Williams (Textiles) Ltd.* [2000] 1 WLR 2416 at 2423 Lord Hoffman was commended for his apt reference to 'copyright law protect[ing] foxes better than hedgehogs' by Lord Fysh, who approved of this 'sibylline observation'. The metaphor comes from Isaiah Berlin's essay *The Hedgehog and the Fox*, and elaboration of the ancient Greek poet Archilochus' proposition, 'The fox knows many things, but the hedgehog knows one big thing'. Hoffman alluded to the ability of copyright law to offer better protection for a detailed basic idea (fox) as opposed to an indeterminate, simple and abstract idea (hedgehog), since the former was likely to indicate originality and constitute substance. Although for some it is a source of irritation and bewilderment, many have admired the easy elegance and versatility of this novel legal metaphor; it has been cited and analysed by several intellectual property lawyers and legal scholars since its first use. Conversely, in an ironic application of the metaphors of slavery and liberation, Justice Benjamin Cardozo famously warned, in the case of *Berkley v Third Avenue Railway Company*, 244 NY 84 (1926) at 94, 'Metaphors are to be narrowly watched, for starting as devices to liberate thought, they end often by enslaving it'.

Social reality is constructed from the relationships and communications of many different forms, ideas, oneself and other selves, and expressive language is capable of imbuing any act or phenomenon with a multiplicity of meanings or a single signification. The elucidation of an abstract principle of legal reasoning in denying an equitable remedy to a person who does not present themselves to the court with 'clean hands', for example, is instantly familiar because it uses an image which is evocative and commonplace in human experience. Figurative language not only has the capacity to shape to a complex thought but it can render that thought possible.

The imaginative impulse and instrumental nature of the law are forever intimately connected, and neither one has the capacity to maintain order and stability or fully represent the dynamism of the law independently of the other. As Goodrich suggests, 'law speaks in the mode of repetition; it is dogma and so speaks in the manner of dream, through symbols, allegories, metaphors and other species of irony and dissimulation' (1996: 143). Legal doctrine is unable to supply definitive answers and certainties; rather, it generates more questions and uncertainties. As law originates from and is an expression of broader social and political relations, it constantly reinvents itself by means of a series of settled linguistically encoded preferences; creating the rules which in turn determine law's authority and serve to presuppose and validate the conditions of those preferences. Since narrative and counter-narrative, heroes and villains, categories of judgment, crimes and punishments are all produced by the creative use of the legal language; constant vigilance is required as to how metaphors are formed and the circumstances of their implementation to ensure their associations are always legitimate and constructive.

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Legal Truths, Moral Metaphors and Moral Panic

Metaphors are commonly taken for granted and treated as expressions of literal truth. They have a compelling representational function, standing in for or substituting the very things they merely symbolise. As metaphoric speech deviates from the ordinary use of language and is capable of expressing higher order values, Aristotle cautioned that a sense of appropriateness for the occasion, audience and situation was necessary; adding that 'the greatest thing by far is to be a master of metaphor. It is the one thing that cannot be learnt from others; and it is also a sign of genius, since a good metaphor implies an intuitive perception of the similarity in dissimilars' (1995: 23.5). In pursuit of a 'good' or appropriate metaphor, it is therefore incumbent on lawmakers to carefully consider how a particular representation may communicate ideological bias; as it is likely, if not inevitable, that the use of figurative language will result in some degree of moral ambiguity when implemented by ruling authorities such as law and government.

The associative, expressive, attitudinal or evaluative meanings transmitted by metaphor necessarily serve as an essential part of an underlying, invisible organising principle; namely, a connotative order of signification. This wider referential order also comprises legal fictions and facilitates the construction of 'myths', in the sense of the legal culture's conceptualisation of abstract ideas and principles which appeal to an aestheticised ideal of community. Most laws are not articulated in explicit form nor are they reflected upon by the general populace; rather legal dogma operates invisibly in the community, being uncritically accepted and shared by others as practical or self-evident common sense. The engendering of social feeling and a sense of partnership with others, when far from being partners or equals, elicits a compliant self-conscious sociability which appears to legitimate, by failing to interrogate, law's truth claims. Foucault describes 'regimes of truth' in which reality is constructed, historically and politically, according to the singular vision of powerful institutions of civil society which control and monitor the production of discourse (1980: 131). The individual is reconstituted in relation to a particular prevailing cultural or political ideology, within which language constructs and contextualises the social subject. Structures of power such as law and the state set out what is true and false, the means by which each is authorised, how truth is acquired and the status of those determining what counts as true; and it becomes impossible to be defined outside of these discursive formulations (Shaw & Shaw 2016: 33, 34). In this way, law's narratives of truth are manufactured via language, with the corollary that language is the site of struggle and resistance in which the control of meaning is the winner's prize.

Ian Ward presents an eloquent argument for the inherent textuality of the law, using the example of terror and 'terrorism', explaining how the use of figurative allusion, hyperbole and metaphor is fundamental to constructing the 'terrorist', in *Law, Text, Terror* (2009). It is suggested that the cultural embeddedness of terrorism can only be properly understood within the context of various aesthetic expressions, mythologies, fantasies and mystical discourses (Shaw 2013: 128–129).While public safety and crime prevention are legitimate aims, the implantation of Kafkaesque

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cybersecurity mechanisms supported by sweeping suspicion-less surveillance and monitoring (along with the bulk interception of electric communications) is driven primarily by the concerns of government operating in an often-exaggerated and orchestrated 'climate of fear', rather than as a response to the actual experience or corresponding incidence of crime (Munster 2011: 4; Shaw & Shaw 2015: 239). Meanwhile, the economic capital accumulated by the knowledge industry facilitates the manipulation of reality and privileging of particular interests, which has an adverse effect on employment policies, health and welfare standards, and the social stability of ordinary citizens.

As revealed by Edward Snowden in 2013, the nefarious obsessive information-gathering activities of a variety of public and private agencies are typically beyond the reaches of law and regulation. Yet people overlook the profound societal implications of the corporatisation of political power and intrusive legislation such as the Data Retention and Investigatory Powers Act (DRIPA) 2014, the recently amended Computer Misuse Act (CMA) 1990 by the Serious Crime Act (SCA) 2015 and so-called snooper's charter, the Investigatory Powers Act (IPA) 2016. Perhaps, in part, acting on a utopian longing for genuine community and social solidarity, they continue to collude in invading their own privacy by sharing their most intimate thoughts and secrets with strangers on social media; in the expectation that an appeal to the 'right to be forgotten' law, established by the European Court of Justice in 2014 (*Google Spain SL, Google Inc. v Agencia Española de Protección de Datos, Mario Costeja González* [2014] Case C-131/12) will prompt the 'Court of Google' to delete any web links bearing personal remarks of a derogatory nature (Shaw 2015b: 247). New technologies—and the interests of those who 'own', legitimise and control these vast networks of information—are deeply embedded into what Christian Fuchs defines as 'structures of domination' which act as far-reaching structures of social control (2008: 114). It is, therefore, unnecessary to coerce the collective will into compliance, as people passively accept particular ideological conceptions validated by the instruments of legal authority. Slavoj Žižek suggests in *Welcome to the Desert of the Real* that the terms designated to fundamental concepts such as democracy and freedom, human rights and, more recently, the war on terror have been co-opted by law and mask their origins. These 'false terms' only serve to mystify our 'perception of the situation instead of allowing us to think it. In this precise sense our "freedoms" themselves serve to mask and sustain our deeper unfreedom' (Žižek 2002: 2). Accordingly, the fabrication of such reality-framing untruths or partial truths, and their being passed off as law's narratives of truth, means we lack the language to articulate our 'unfreedom'. Aided by a subtle utilisation of interpretative framing language, such as 'military force' and 'war', it has been possible to create bias in favour of evermore draconian and intrusive laws on terror; and consequently the lives of individuals continue to be transformed by those agencies with power.

Whilst conceding the right of private organisations and governments to monitor and hack at will, in relation to the activities of non-state sanctioned computer hacking, law relies on the metaphors of disease (e.g., virus, quarantine and inoculation) and criminal activity (e.g., theft, burglary and trespass) to justify a range of harsh punishments. Even though theft, burglary and trespass have an

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564 'ordinary' meaning in the material world and are subject to a clear, albeit broad
565 interpretation in English law; applied to the abstract realm of cyberspace, they are
566 often given a wider interpretation to justify harsher treatment than their more
567 measurable physical equivalent. Under the CMA 1990, for example, computer
568 trespass is regarded as a more serious offence than actual trespass and carries a
569 broader range of sanctions. By the metaphorical association of all hackers with
570 infection and robbery, even inconsequential or ill-judged actions are routinely
571 transformed into pathological and predatory behaviour which demonises the
572 perpetrator, and legitimates a control ethos in law-making. Moreover, in relation to
573 the 'war on terror', framing expansive and invasive legislation on the premise that
574 electronic communication is the principal means of orchestrating acts of terror is a
575 *non sequitur* as, after all, Attila the Hun, Adolf Hitler, the Vikings and other
576 terrorising aggressors managed to communicate efficiently before the World Wide
577 Web. This assault on our freedom of expression is, therefore, referred to by Ian
578 Ward as a 'juristic black hole', and he further claims that the objective of the real
579 'war' is to 'control our thoughts', constrain our expression and crush our sense of
580 humanity' (Ward, 2009: 179). While global terrorism is an ongoing problem, it is
581 evident that the use of military, crime and health metaphors in the media and
582 political discourse only serve to foster the endless fear of terrorism which in turn
583 legitimates more legal intervention.
584 Moral panic is engendered when a hyper-mediated representation of an act or
585 event enables the fabrication of a 'spectacle' which galvanises public opinion
586 (Debord 1994: 12). The culturally encoded imagistic representation creates
587 widespread concern, while the news media acts as a proxy for public opinion and
588 further legitimates the imposition of oppressive legislative reforms (Baudrillard
589 1995). In response to ubiquitous calls for greater security in the 'combating' the
590 'war on terror', mass routine surveillance and categories of exclusion—referred to
591 by Giorgio Agamben as *homo sacer*—have been imposed on particular societal
592 groups, which have impacted on everyday life. By separating the 'accursed'
593 individual or 'bare life' from the rest of humanity (via emergency legislation,
594 rendition and detention camps) entire categories of people have been relocated
595 outside the protection of law. This permanent state of exception is said by Agamben
596 to comprise 'a *fictio iuris* par excellence which claims to maintain the law in its very
597 suspension', but instead yields a violence that has 'shed every relation to law'
598 (2005: 59). That is not to say there is no threat of violence in society but, as Ian
599 Ward articulates in *Law, Text, Terror*, the counter-terrorist rhetoric, urging 'trust' in
600 the government to deflect the 'threat' of acts of terror, elicits more fear than the
601 terrifying acts of violence themselves (2009: 36–37). As Lord Hoffmann stated in
602 the Belmarsh Prison case, *A and others v Secretary of State for the Home*
603 *Department* [2004] UKHL 56 at 97, the word 'life' as in 'threat to the life of the
604 nation' is to be understood only in a metaphorical sense, because 'the life [or spirit]
605 of the nation is not coterminous with the [actual] lives of its people. The nation, its
606 institutions and values, endure through generations'.
607 While non-legal judgments describe the world of reality or what *is*, legal
608 judgments deal with the prescriptive ethical realm of what *ought* to be; from which
609 moral judgments fall into two distinct categories, namely, prescribing what *ought to*

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be done prior to an action and what *ought to have been* done after the fact. Metaphors are often used to ascribe morally evaluative descriptions of individuals and groups; their words, actions, inaction, intentions, motivation, personality traits and imputed predisposition are attributed a moral value and gauged against an objective standard of 'good' behaviour. Ascriptive characteristics such as race, ethnicity, religion and social class are often associated with typical behaviour or attributes which can be used to stigmatise and exclude someone from being treated as a member of society, and disqualify them from an entitlement to basic justice (Shaw 2015a: 95). Attendant figuration such as scum and dirt induce associated feelings of disgust and revulsion; for example, the metaphor of filth has functioned as a powerful determinant of criminal justice policies. Law commonly responds to the threat and incidence of actual or environmental filth or pollution in three different ways, either by tolerance, prevention or avoidance; however, because 'a polluting person is always in the wrong', the perception of criminals as vermin (both contaminated and contagious) has prompted the implementation of various pollution avoidance measures such as segregation and a tendency to detain and incarcerate offenders in dirty, fetid pest holes (Douglas 1988: 113). Equating wrongdoers with filth hides their humanity and encourages the perception of them as objects and less than human.

In relation to aspects of human subjectivity and notions of social and cultural value, there is to date a rich critical history that tackles the legal, ethical and political significance of the vocabulary of waste, degradation, disgust and abjection. In the nineteenth century, for example, many cases relating to pollution, under the common law of nuisance, treated the foul odours and noxious gases emanating from a neighbouring farmyard, factory or city streets strewn with horse manure as a physical invasion of person and property. The nuisance or inappropriateness of the polluting agent depended on the relation of 'substance' to 'space', constituting a social construction of stink and filth which founded the legal doctrine. Norbert Elias explored the evolving concepts of cleanliness and disgust in relation to the 'civilizing process', in his eponymous monograph (2000). The management of dirt and smell was not only a breeding ground for modern environmental rules but also of more general *them* (the polluters) and *us* (the good citizens) politics of the modern state.

Aesthetics often functions as the minor premise underpinning social syllogisms embedded in discourses of legal justification. The metaphors of pollution and disease are influential rhetorical devices which shape social values, legitimate draconian laws and create moral panic when used to signify violation, perversion and the corruption of moral standards. For Lakoff and Johnson, the main issue is '…not the truth or falsity of a metaphor but the perceptions and inferences that follow from it and the actions that are sanctioned by it' (1980: 157). Not only ought 'our legislatures and public officials be less inclined to exploit the fears of citizens', but the symbolic foundations of attitudes towards immigration and AIDS, as the 'gay plague' for example, need to be recognized for their role in manipulating social consciousness (Murphy 2012: 228).

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Law, Affective Rhetoric and *Licentia Poetica*

Language is the primary medium through which humans are able to shape, transmit and cultivate particular thoughts, values and actions; it enables the realisation of consensus and community, and allows for the persuasion of the individual and motivation of the collective will to action. While the cultural embeddedness of aesthetic forms which rely on narrative and imagery (such as poetry, visual arts and of course literature) has been well-documented, the aesthetic rudiments of law and justice are often neglected; yet law is also an embedded cultural medium of expressive form. Just as the aesthetic dimension is the necessary precondition of the political; literary stratagems, rhetorical figuration and aesthetic appeal are essential features of legal argument. In Ancient Greece storytelling was the primary method of imparting law from one generation to the next and was touted as the primary skill of lawyers, who were also expected to be excellent orators. The tradition of *ars iuris* required an aptitude for rhetoric, abstract juristic thought, dialectical thought and the art of conversation; as the earliest laws and customs were founded on myths, legends and stories. Myths were often used because of their ability for telling a tale with moral import to a diverse audience and, as a cloistered profession, the legitimisation of legal authority was premised on the sacral myth of perfect speech.

Quintilian, in his AD 95 *Institutio Oratoria*, juxtaposed the art of law with the art of persuasion, deducing sophistry to be a necessary prerequisite to legal science as 'rhetoric precedes justice' (II.17.25–26). Aided by the employment of figurative language and tropes as a natural extension to any literal meaning, Quintilian espoused the view that skilful oration uniquely enables the connection between idea and image after which the next consideration is the intended audience of participants, in other words 'know your listener' (IV.2.121). He continued, 'as soon as we have acquired the smoothness of structure and rhythm… we must proceed to lend brilliance to our style by frequent embellishments both of thought and words… with a view to making our audience regard the… [case] which we amplify, as being as important as speech can make it' (IX.1.26–28). Style was viewed not merely as ancillary to legal argument, rather the particular choice of rhetorical technique, metaphor and other literary devices were forms of expression chosen to support specific content and a precise objective.

For classical Greek lawyers, expression and textual meaning were indivisible and together considered to have the capacity to induce a *vehemens applicatio mentis ad aliquid*; acting as a motivating force on the sensory and cognitive faculties of the receptive legal subject. Even now the performance of law can be compared to the performance of literary works in that both seek to resonate with lived experience within the practical realm of human affairs, also each assumes an uncontested hierarchy of social relations and aspires to a form of transcendence. A lawyer recounts and reimagines the experience of their client in the courtroom, retelling their stories of disappointment, frustration and mistreatment much like the actor who brings the author's script to life. Although one performance is an imaginatively dramatized narrative construction of experience in the form of a story and the other elaborates on fixed legal concepts and formula, both exhibit analytical and

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theoretical skill and each require an imaginative representation and rely on persuasive flourishes of clever rhetoric. Later works on legal interpretation and legal reasoning such as Stephanus de Federicis' *De interpretatione legum* (1495) readily acknowledges their indebtedness to literary technique and rhetorical theory, especially in respect of the ancient *status legales* where, for example, there was a conflict between the letter and spirit of the law (Hohmann 2000: 230). Lawyers were, at that time, considered to be the most literate members of lay society and among its most active in public affairs, and emphasis was placed on eloquence in public oratory with the ideal of combining eloquence with civic and moral virtues.

While a mastery of the rhetorical art of affective speech and skilful use of language continue to be important accomplishments, modern lawyers have been less keen to acknowledge the influence of symbols, rituals and representations on the development of legal principles and legal discourse. Since legal truths are founded on certainty and exactness, admitting the use of images and tropes—characterised by ambiguity and fluidity—would militate against law's avowed orderliness, uniformity and predictability. In the tradition of Plato and Kant, poetic virtuosities and aesthetics are thought to diminish in people the need for law and, importantly, ought to be separated from rhetoric and the normative. This is because although moral inclinations can be stimulated by lyrical persuasion, aesthetic forms are viewed by their detractors as deficient in their ability to impart intellectual virtues AQ2 which are deemed necessary for an authentic inquiry into law. Plato hated the theatre for this reason, and sought to censor poetic expression because '…it makes its insolent way into laws and government, until in the end it overthrows everything, public and private' (1987: 424). The banishment of the imitative poets from his ideal state is, however, generally considered to be one of Plato's most loathed ideas (Popper 2003). In common with Plato, Kant distinguished rhetoric from poetic or imagistic language. He believed 'the poet's promise [to be] a modest one… the use of play to provide food for the understanding, and the giving of life to its concepts by means of the imagination' whereas 'the orator gives something which he does not promise, namely, an entertaining play of the imagination… [thus] he fails to come up to his promise… which is his avowed business, namely, the engagement of the understanding to some end' (1952: 184). While, if modest and honest, the poet is considered to perform more than he promises, Kant disparages the deployment of aesthetically enhanced rhetoric. He refers to 'the art of transacting a serious business of the understanding as if it were a free play of the imagination'—an act of frivolity which detracts from and demeans its object—and accordingly judges the orator to be deficient in 'performing less than promised' (Kant 1952: 185).

Contemporary critics of the law and literature movement have similarly claimed that, in transforming or misshaping legal principle by appealing to aesthetic ornamentation and distracting the mind by emotion, the lawyer is removed from their proper purpose in service to the purely mechanical business of textual transcription. The appropriation of literary techniques for legal analysis has even been argued to be 'a dangerous occupation' (Posner 1988: 17). As Costas Douzinas and Lynda Nead observe, '[m]odern law is born in its separation from aesthetic considerations and the aspirations of literature and art, and a wall is built between the two sides. …Art is assigned to imagination, creativity and playfulness, law to

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control, discipline and sobriety' (1999: 3). Accordingly, the legal community prefer to assert their objective detachment, insisting that law simply reproduces objects mimetically, as they are: To acknowledge the explicit borrowing of literary techniques would be tantamount to admitting to the practice of a swindler's art. However, in *Law and Aesthetics* Adam Geary argues that law is accountable only to its own internal formalistic criteria, and performs 'a kind of confidence trick …the system manufactures its own conditions of legitimacy and then attempts to legislate them as a priori universals that have a legitimizing effect through their appeal to reason' (2001: 4). Law impels compliance by justifying spurious or contentious edicts as 'properly construed' via an 'appropriate' process for representing the will of society; and yet despite all protestations to the contrary, its representations are often inescapably figurative rather than mimetic.

As a social phenomenon, law cannot maintain a separate discourse and rely solely on internal definitions and coherence. It is not an autonomous enterprise; legal issues and disputes arise from the circumstances of human life. Also a corollary of the narrativity and literariness of law is its dependence on a range of other expressive disciplines. Similarly, within this context, aesthetic expression does not exist as a separate entity, additional or peripheral to law, neither does it is assume a privileged position in relation to law; rather both are intertwined to the extent that neither can be fully appreciated without taking into account the possibility of the other. Like art, law can be a vehicle for oppression or a means of emancipation, as it reimagines the world by producing a cornucopia of images which demand interpretation and classification. Given that law is argued to have become a literature that supresses its literary character, persuasive arguments exposing and defending an often problematic legal aesthetic have been advanced by a variety of international legal scholars. Peter Goodrich, for example, explores the imagistic representation of law and governance in the public realm via legal emblems which convey the subtly-coded hierarchies of power, origins and symbolic authority of law in *Legal Emblems and the Art of Law* (2013). In *Songs without Music: Aesthetic Dimensions of Law and Justice* (2000), Desmond Manderson repudiates the claim that law is a purely rational and barren construct, frozen in antiquity. He uses music as a paradigm to describe it more accurately as a cultural form in which legal meaning is enriched through rhetoric and metaphors, form, images and symbols. In *Empty Justice: One Hundred Years of Law, Literature, and Philosophy* (2002) Melanie Williams investigates the intersection of narrativity and legal normativity. Maria Aristodemou, in *Law and Literature: Journeys from Her to Eternity* (2001) highlights the similarities between literary and legal discourses by presenting law as a form of literature and literature as a form of law; and explores the law-making qualities of fiction to explore the fiction-making qualities of law. In *Memory, Imagination, Justice* (2009), David Gurnham exemplifies the use of literary metaphor, analogy and hidden subtext to signal the absence, force or vulnerability of justice; and in a collection of essays edited by Oren Ben-Dor, *Law and Art* (2011), law, justice, ethics and aesthetics are shown to be deeply implicated in each other.

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Conclusion

In spite of the abundance of symbols and figurative devices that classify and communicate law, legal practice continues to privilege the intellect, reason and use of abstract language whilst simultaneously repudiating its aesthetic, literary and metaphoric attributes. By interpreting a text or utterance as if it were purely a series of logical propositions, the symbolic significance of legal proclamations is understated if not overlooked. The violent separation of law from its literary qualities comprises not only a rebuttal of the literary soul of law; it also frustrates the imagination of alternative laws which may emerge from the interplay between aesthetics and morality. Moreover, in their resolve to be anti-aesthetic and so avoid an excess of meaning, the legal community appears to fetishise the literal, the truth of absolute fact and reality. Consequently, the persistent denial of the use and influence of literary tropes in legal discourse has the effect of denying the possibility of critique about the construction of what is, for example, just, principled or reasoned: Whereas 'observing the aesthetic factors operating in an area purportedly purified of such an influence can help widen appreciation of the importance of aesthetics in everyday concepts such as reason' (Butler 2003: 216).

By constituting and being supported by state authority, legal institutions have the power to stipulate what is real in the world; determining the parameters of what is true or false, good or bad and right or wrong. They create categories of crime and punishment within which to attribute blame and innocence against a set of incentives and disincentives intended to shape the conduct of individuals. Whilst judges privilege particular sources of law above others and offer a plurality of interrelated reasons, including morally valid reasons, for following precedent or applying the norms of the legislature, the core meaning of settled legal rules and principles along with the norms governing their use do not readily admit of alternatives. In its imposition of legal truths, law not only has the power to manipulate, dictate and constrain how individuals live their lives, it also acts on the imagination by prescribing the manner in which the world must be seen and understand, as through the 'eyes of law'. These formative narratives of truth are a potent stratagem for establishing the legitimacy of legal hierarchies and maintaining structures of power, as well as having the effect of stymieing public debate and functioning as a vehicle of oppression (Shaw 2013: 111).

The monopoly of formal legal knowledge as truth, against other forms of knowledge and truths or realities, constitutes a negation of difference which calls for an 'ethics of alterity' in order to challenge all efforts to 'reduce the other to self' (Douzinas & Warrington 1994: 167). For Goodrich, the demand for ethics can only be satisfied by recognising the 'other scenes of law' as potential sites of resistance which oppose how and what law traditionally represents:

> The other scenes of law – its images, its figures, its architecture, its rites, myths, and other emotions – are potentially the economies of resistance to law. They evidence… the possibilities of a jurisprudence of difference, and specifically a genealogy of other forms of law, of plural jurisdictions and

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distinctive subjectivities, of other genders, ethnicities, and classes of legality and writing (1995: 15).

This 'discourse of the other' stands in opposition to the aestheticisation of oppression; against the framing of bad laws supported by subtly coded language, imagistic references and metaphors which serve to mask inhumanity. As maintained by South African artist Kendell Geers—in his provocative 1995 text-based work 'By Any Means Necessary' reproduced as an epilogue in *Law and Art*—'Art, like its mentors law and religion, constitutes by definition the only legal form of moral transgression' (Ben-Dor 2011: 305). Geers' entreaty to substitute desirable images with images that are difficult to confront—or injustices that remain ignored—is a reminder of the fine line between aesthetics, politics and law. Similarly, for Jack Halberstam, the imaginative capacities are a necessary condition of hope; '[w]e have to be able to imagine violence, and our violence needs to be imaginable because the power of fantasy is not to represent but to destabilize the real' (2001: 263). By becoming attuned to the operation of aesthetics in constructing law's mythologies, we are better able to envisage a wider discourse of alterity and ethical judgment and, in turn, pursue and reimagine other, more authentic and inclusive, stories for law.

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