

Introduction

Hanne Petersen & Rubya Mehdi

This is the second volume on Law and Art of *Navein Reet. Nordic Journal of Law & Social Research*. The first volume was primarily the outcome of a workshop held in Copenhagen in December 2013 on “*Law and Art: European and Global Perspectives*.” We announced already in the 2014-volume that we would need to publish a second volume because of the considerable interest in this topic. This volume demonstrates both this interest and the quality of the contributions and reflections on this topic.

In the introduction to Vol.1 we speculated about the reason for the interest for this topic, which surely cannot be said to be mainstream – so far – and we wrote the following:

“One reason for the growing interest to integrate law with various art forms perhaps has emerged from a necessity of understanding plurality in the globalized world. The language of art can be interpreted in multiple ways regardless of linguistic, literacy and professional skills. Thus they may give more space to law professionals to open up for diversities. Art has the potential to help in comprehending the complex human experience of law and legal process in a globalized world. And it may give voice to experiences of (in)justice and ambivalence as well as to many other emotions, which may have difficulties in reaching the ears of professionals and of normative institutions.”

Several of the articles in this volume deal with the relation between and combination of law and images and imagery – be that in paintings, sculptures or films. Others focus on the performing arts such as dance and music. Images are perhaps particularly receptive to interpretation regardless of linguistic and professional skills, and in a time of globalized social media, they have also become accessible to a degree yet inexperienced. Image and representation via images are also closely connected with ambiguity.

This introduction is written in the early fall of 2015, where Europe is overwhelmed by images on all types of media witnessing the plight of refugees fleeing from especially the ‘civil war’ in Syria, but also from the seemingly never ending atrocities in Afghanistan, as well as the authoritarian regimes in Eritrea to name just some of the areas the refugees are coming from. Elsewhere in the world, Muslim minorities have been fleeing Myanmar – although this is not something often portrayed in the Western press.

We are witnessing the biggest numbers of refugees in the world since World War II – in an era, where the role and impact of the image has probably never been stronger. We are not dealing in this period with images, which are necessarily ‘artistic’, but clearly with images which are contributing to contested processes of witnessing of suffering and injustices in the world.

The actual massive movements of people and the photographic representations on different media platforms – which may be as well symbolic as iconic and strategic – have so far also moved considerable parts of civil society in Europe. Communities in European societies and national and European politicians have been moved and have been reacting and have demonstrated not only fear, xenophobia and exclusion, but also empathy, openness and hospitality. The present situation seems quite chaotic and overwhelming. Practices and rules are breaking down, and several of them may probably not be reestablished again, but have to be transformed and adapted to the global challenges.

This issue presents several articles, which deal with a combination of artistic and legal/normative approaches to ‘dark sides’ of societies, communities and their law. ‘Law’ and ‘art’ supports certain groups and interests in writing and imagery in times of both peace, civil war, founding of states, decolonization and (ecological) transformation. A legal and social order needs to (re)interpret itself continuously to face the challenges ahead. Individuals and artists are perhaps more important participants of these processes today than legal professionals have so far acknowledged.

Sionaidh Douglas-Scott in her article on *Law, Justice and the Pervasive Power of the Image* considers law a cultural entity, as much an art as a science and in her article she focuses especially on the power of the image, which she holds may help us to clarify legal meanings. Images, often strongly grounded in our emotions, provide very powerful arguments for action – regardless of whether these images are in fact trustworthy, or form the basis of a sound argument, as the power of advertising illustrates. Through history, the practice of law has been manifested in images, by way of custom, usage, practice or precedent. Law’s own aesthetic is a form of cultural experience that shapes and enforces our cognitive and emotive understandings of law. However, law also manipulates its images, rather than permitting a dialogue with them. Alison Young has asserted that the relationship between art and law is one of *co-implication*, a notion which Douglas-Scott uses as the basis on which law and the image interact, her argument being that, while law’s own management of images must be scrutinized with care, law itself may be illuminated, enhanced or undermined by the work that images do, and our own understanding of law thus enriched, or even destabilized. Douglas-Scott uses images to understand law, and

especially the rule of law, including the ‘dark side’ of ‘the rule of law’, which undeniably has a connection with a certain type of liberalism, which renders it amenable to criticism. The rule of law offers protective functions for business, sheltering trade against political arbitrariness, or expropriation of property rights, and has sometimes served as an ideal partner for market capitalism. She discusses a ceiling painting by De Lairese from 1672 “Allegory of the Freedom of Trade” in the Peace Palace, The Hague, as an example of ‘pictorial capitalism’ intended to glorify free trade and link it to peace, liberty and justice through its iconography.

In a section called “From the Rule of Law to the Survival of the Fattest” she mentions the spread of neoliberal reforms across the world, in what has been described as an ‘economic constitutionalism’. These ‘reforms’ supposedly reproduce the economic and legal conditions of the developed world, but in actual fact the countries undergoing these reforms have not flourished. In this context she discusses a sculpture called ‘Survival of the fattest’ by Danish sculptor Jens Galschiøt, depicting a grossly obese western *Justitia* on the shoulders of an emaciated African boy. The fat lady holds up diminutive scales as a meagre mockery of justice. According to the artist the sculpture represents the ‘self-righteousness of the rich world,’ which sits on the backs of the poor while pretending to do justice. This modern *Justitia* brings not ‘freedom’ with trade but harm, not peace and security but profit for the already rich, at the expense of the very poor.

Monica Lopez Lema discusses *Ethics of Non-violence in Guillermo del Toro’s Pan’s Labyrinth* in relation to Francoism and the Spanish Civil War in her article. *Pan’s Labyrinth* is a film from 2006, set in 1944 which combines the imagery of dark fairy tales with images of torture and murder in a retrospective reflection on anti-Francoist guerillas from the perspective of a Francoist captain, Vidal; a woman, Mercedes, involved with the resistance; and eleven year old Ofelia, whose mother follows Vidal. Ofelia lives in a world of both fantasy and history. The film has been associated with contemporary legislative and civic efforts in Spain to recover the historical memory of the victims of Francoism and to revisit what has been referred to as the “pact of forgetfulness” or “oblivion” reached during the transition to democracy from 1975-1978.

The author actually lives in Finland, where Swedish-Finnish fiction author, Kjell Westö in 2014 received the Nordic Literature Prize for a novel called *Mirage 38* taking place in 1938 with a lawyer and his secretary as the main characters – illustrating the painful heritage of the much earlier and shorter, but also very violent Finnish Civil War from January to April 1918 – a Civil War, which has until very recently remained a taboo in

Finland. At present a Civil War is going on in Syria, which is also very violent and tragic, and which may very well leave traumas and traces for a long time to come.

Violence is an important element of the film, *Pan's Labyrinth*, and the author asks how images of violence shape our views and attributions of responsibility, blame and (in) justice. In her perspective *Pan's Labyrinth* constructs responsible witnessing. The film uses three different but interconnected cinematic techniques: narrative reversal (the story is told 'backwards'; third person voice-over, and direct address. A reverse chronology (also used in *Mirage 38*) has a destabilizing effect; the third-person voice-over frames the entire film as a fairy tale, placing the viewer as an invited confidant; and the direct address parallels a face-to-face encounter with a world of Francoism, a world of resistance and a world of fairies and monsters.

The Franco regime used a strategy of a 'hunger-pact', a food rationing system, which ensured that families of fighters had no work and went hungry (again with certain parallels in *Mirage 38*). The film turns the defeat of the resistance into a narrative of 'heroic memory' that presents the guerilla fighters and their supporters not as helpless victims but rather as fighters and heroes. Monica Lopez Lema emphasizes that the fairy tale framing of the film enables construction of vigilant and ethical witnessing. The vigilant perspective is constructed by a double mediation, where history is mediated by fantasy and fantasy is mediated by history. The film blurs the Manichean binaries of fantasy vs history, good vs evil, and challenges viewers to rethink their own implication in the scenes of violence. By merging past and future, the film compels viewers to acknowledge the effects of past harms in the present for the sake of a better future. The film constructs a position for viewers that enables them to self-critically reflect on their own act of witnessing and to take responsibility for it, and thus moves beyond suffering.

In his article *Power, Violence and the Paradox of Founding in John Ford's The Man Who Shot Liberty Valance: An Arendtian Approach*, Danish based American lawyer **Russell L. Dees** presents an analysis of John Ford's film *The Man Who Shot Liberty Valance*, widely regarded as one of the director's best and darkest films and as a deep meditation on the American foundation myth. According to Dees an Arendtian approach provides new insights into the message of the film, and the film provides concrete illustrations of concepts developed by Arendt in her writings on the distinctions between power and violence. There is general agreement that the message Ford is trying to convey in his film is variation on the so-called 'paradox of founding': the establishment of any legal order, of whatever doctrine must be illegal, violent, unjust and brutal, and a society must

find a way to represent that fact to itself as a national memory, which is usually done by mythologizing.

The film presents education as an American utopia and as the basis of law and order – education that is of all ages, genders, and races, which mix together harmoniously to learn about American constitutional government. In the film the townspeople of Shinbone are going to elect two delegates and the people they elect are “representatives of what were traditionally believed to be the cornerstones of American democracy – the rule of law (Ranse Stoddard) and a free press (Dutton Peabody): the lawyer and the newspaperman, professions that depend on words on persuasion. (One cannot help but contrast the contempt with which both lawyers and journalists are held in the US today). In Arendtian terms, this truly is an exercise of ‘power’ as opposed to violence.”

However, in order to secure the election of these representatives the lawyer accepts a duel with Liberty Valance, whom he at first mistakenly thinks he kills. It is however another man, Tom Doniphon, who shoots Liberty Valance, and tells Stoddard this, meaning that Stoddard is basing his later career as a (pompous and self-important) senator, governor and ambassador – and as ‘the man who shot Liberty Valance’ on a lie. But it is the killing of Liberty Valance, which lays the real foundation of the city, “the constitutions of a public space where freedom could appear”, in a quote from Arendt. Dees writes that “The ‘real’ America is an America of violence. And when the truth is known, the comfort of the legend is preferred,” comparing the film with Hannah Arendt’s very controversial book on Eichmann in Jerusalem, where she claimed that the Jewish councils who cooperated with the Nazis were somehow complicit in the Holocaust. Arendt’s friend, Karl Jaspers, explained that her critics were upset because the book was an act of aggression against ‘life-sustaining lies’.

Marrett Leiboff is an Australian, who has a background in both theatre and law. She presents an essay which ‘proceeds in an unlikely manner, drawing on diverse and unlikely sources based in theatre theory of a kind rarely if ever used in legal theory.’ Through these intriguing combinations her article *Towards a jurisprudence of the embodied mind*, uses the Danish television series, *Forbrydelsen (The Killing)* and the lead actor, Sarah Lund as an example of the importance of ‘the mindful body’. Leiboff claims that we in law prefer to imagine that our bodies are surplus to the real task of endeavours with word and thought. This is not the conception in certain forms of theatre, which only need a body, a space and another body. Sarah Lund is the example of somebody whose body in space, ‘with an often expressionless face that appears emotionless’ encapsulates what we really need to pay attention to when watching this series. Leiboff links the thoughts and

practices of physicist Niels Bohr with the theories and work of Eugenio Barba, founder of the international Odin Theatre based in the Danish provincial town Holstebro, who was again inspired by the Polish theatre theorist and director Jerzy Grotowski, whose practice according to Leiboff suffuse the TV-series *Forbrydelsen* and the main character Sarah Lund. Leiboff writes that law and its jurisprudences are based in theologically grounded ontologies, which treat the *body of the scholar*, the interpreter, as an unwanted intrusion into the mind. Its practices seek to render the body, with all of its foibles, mute. Law insists on and valorises the *disembodied mind*. She quotes Peter Goodrich, who writes that Christian doctrine prohibited tears, and expression of emotion was to be covered. Law sees the body as something unworthy and untrustworthy. Bodies are even dangerous and uncontrollable in Christianity and law. A Danish reader may almost be reminded of the way the (present) Danish female minister of immigrants, integration and housing has been acting during the present refugee crisis. She has been described as tough and ice-cold – epithets often associated with especially female politicians – and she is a member of a minority government, which has explicitly declared itself Christian. According to Grotowski *the embodied mind* also holds and expresses *embodied virtuous morality*, something which Sarah Lund represents in *Forbrydelsen*. “Words, logic, rationality are confounded by our bodies, which do far more thinking for us than we would like to believe. Even in law.”

Afshin Akhtar-Khavari is another Australian based contributor to this issue, whose article on *Fear and Ecological (In)Justice in Edvard Munch’s The Scream of Nature* touches on several of the concepts and perspectives already addressed in other articles in this issue but in a very different and interesting way. The article argues that the capacity to appreciate the nature of the kind of ecological justice that is needed in the Anthropocene Era, which we are now living in, requires that we pay closer attention to our emotional experiences and fear in particular. Edvard Munch’s painting, which is often referred to in English as *The Scream of Nature*, provides intrinsic symbolic support for and expression of the potential of fear to expose the reality of the impact of ecological injustice on human beings. The author reflects on the contributions of ‘wild approaches to the natural environment’, on ‘new materialism’, which provokes and encourages us to rethink and explore new ways of seeing our interactions with physical and biological matter and processes. Our senses, emotions and feelings are critical to ways in which we experience and shape the world materially, and the article particularly discusses the emotional experiences of fear in a world of matter to help further illuminate the discussion of the connections between our experiences of the Anthropocene Epoch and ecological justice. In this context fear is not understood as a highly negative experience, as is often the case, they are more nuanced emotional experiences sometimes emerging

from breaches of planetary boundaries. Fear is an important emotion for understanding our relationship to the natural world and the capacity to experience fear is important for understanding ecological justice, but context is important to give expression to this idea. In her discussion of Edward Munch's painting she quotes a comment by the painter, who 'felt a great scream pass through nature' when he was perhaps inspired to paint one of his paintings on this topic of *The Scream*. Akhtar-Khavari argues that despite alternative interpretations of *The Scream* the world of Munch can be said to be about matter, materiality, and the human emotional engagement with it. "The painting most importantly conveys the potential fear that one will experience should nature's scream emerge from the injustices we commit against it." It makes a valuable contribution to understanding the place of the human species in a world of matter.

Merima Bruncevic is a European and Swedish based legal academic, who defended her dissertation on access to art and the cultural commons at the University of Gothenburg in 2014. In this article she analyses the possibility of constructing a legal concept of the cultural commons - *We need to talk about the cultural commons: Some musings on rhizomatic jurisprudence and access to art*, and reflects on a theory of rhizomatic jurisprudence, inspired by Deleuze and Guattari. The notion of the common is presented as a concept used to describe one of many categories of co-ownership, of resource distribution, allocation and management. It has usually been linked to nature and in Sweden especially to the concept of *Allemansrätten* (the right of everybody to access and roam in nature). A concept of cultural commons according to Merima Bruncevic does not have to presuppose the removal of entitlements or the restriction of individual rights as intellectual property rights. It has to do with conceiving of an economically, culturally and democratically *sustainable management* of the cultural commons that comprises of cultural resources and cultural heritage, and that takes into consideration all types of interest – be it owners, users, state, public, future generations and so on. Such a concept can be envisioned by employing the rhizome theory.

The rhizomatic approach encompasses the possibility of revealing the potential of law and conceiving of alternative jurisprudential concepts and tools. The notions of connectivity, heterogeneity and multiplicity are especially important here and allow for a move from an either/or thinking (eg. owner/non-owner) to a both/and model. The rhizomatic approach to legal reasoning opens up the possibility to conceive of concepts that may handle the public and private together as an alliance in law.

Stine Simonsen Puri is Danish and trained in anthropology. She writes about *Formal and informal laws of 'temple dance' in India*. The aim of her article is to examine moral boundaries tied to the female moving body in India. She deals historically with the Devadasis, who were women often of low social status, who would be dancing in front of temples in especially southern India. This was understood as close to prostitution especially by the British, and in 1947 before independence an Act was passed banning the dancing of women in front of Hindu temples. However, donations and dancing would also give women certain privileges at these temples, such as rights to own property, adopt children as single women, and give their property to their daughters instead of their sons. Becoming a temple woman could become a way to climb the social and economic ladder. The British saw this practice as proof of Hinduism being a degenerate religion as opposed to Christianity, and this influenced the views of the Indian Westernized elite. In this context law was used to uphold (colonial) morality. However, as part of a growing wish to lead the sub-continent out of colonialism after 1947, there was a search for a common cultural heritage, and as part of this search, arts became of great political significance, as they were to define a common cultural ground for the subcontinent. In this process, regional traditions were primed as representation of this common culture, and dance became one of the signifiers of a national culture and identity, which came into the spotlight among the Indian elite. Thus the devadasi dancing was transformed into Bharatanatyam – a form of dance used for these purposes. Anthropologists of dance emphasize how dance can both incorporate and communicate basic ethical codes of society – as well as challenge these. Contemporary middle class dancers of Bharatanatyam are in a seemingly difficult position. The transformation from Devadasi to Bharatanatyam poses moral dilemmas to the performers. Whereas the law meant a marginalization of the Devadasis, who were banned, while not offered alternative life paths, the cultural coded part of the 'laws' for the Bharatanatyam dancers has meant a specific framing of the dance as a spiritual practice beyond economic and erotic realms. The dancers nevertheless move in an ambiguous space, similarly to the Devadasis, where they balance a role of independent erotic career-seeking women, with that of a dependent traditional religiously devoted woman – which continues to put them in the spotlight of moral negotiations.

In the first volume on Law and Art, we published an article law and music dealing with the view of lawyers in Western opera, written jointly by a lawyer and an opera singer, who were old friends. In this volume we are pleased to present another jointly written article by two Chinese authors, **Qi Xiong and Jie Fan**, who are a couple, one of them a lawyer, the other a practicing musician. They are writing about especially Western and German law and Western theory about music in their article *Legal and Musical Interpretation – On the historical and systematical elements in the interpretation of law and music*,

but they are also drawing some interesting comparisons with Chinese normative and legal culture. One of the most important “internal” similarities between (Western or westernized) music and law is that they both treat rationality and order as some of their merits so that the manifestation of both (Western modern) law and music requires strict formalization. In this issue, this is also underlined in another context in the article by Marrett Leiboff. The “texts” of both law and music are generated by a series of regulations with tight logic: “Since early times, music has been associated with order, and from there it has often been equated with law”. According to the authors the wisdom from music can be helpful for legal interpretation in the sense that if an interpretation seems at first glance “superfluous” in the legal system, it does not necessarily mean it is redundant and must be avoided. On the contrary, it might be a hint that it is an “attentional” provision, which has its own value in the legal system, just like the attentional symbols in music, which can be very important reminders to performers. This view is particularly related to an indirect comparison with Chinese legal culture, where the link between the two disciplines is different. Although Chinese modern legal system has to a large extent been “westernized”, some of the legislative and interpretive techniques of Chinese law still have inherited several important characteristics from Chinese traditional culture, which make modern Chinese law system (and its legal practice) quite different from its Western counterparts.

This has its roots in the aesthetics of Chinese traditional culture. The convention that the detailed formal elements have often been deliberately omitted in the (Guqin’s) music notation system is very similar to the traditional Chinese painting skill of “blank leaving”, which requires the artist intentionally leave some places on the canvas untouched. According to the traditional Chinese art philosophy, to leave blankness in appropriate spaces in a picture will considerably promote its aesthetical taste. This phenomenon has something to do with Chinese philosophical worldviews. In the basic Taoist thoughts, the “image out of the image” as well as the “ideas not expressed by the texts” are pursued; consequently, the rhythm and tempo of a music piece need not be “strict” – on the contrary, just like the “hidden meaning” of life, the appropriate rhythm and tempo of a piece are to be freely explored by each interpreter. However, according to the Confucian doctrine of the “golden mean”, the right tempo and suitable rhythm should not be too far from the conventional standards even if it is unsaid.

The last article in this volume deals with an issue of considerable importance for the future of the world – the development and supply of energy for communities in the world. **Bent Ole Gram Mortensen** writes about *Hans Christian Andersen and the Blue Flame*, combining the world of fairy tale with that of modernization. One could perhaps describe Hans Christian Andersen as a re-interpreter of the genre of fairy tales at a period

of social transformation, where the society he lived in was moving from absolutist to constitutional monarchy and from a feudal to a 'modern' industrialized economy, where sources of energy were becoming cheaper and more readily accessible. Andersen was an avid supporter of modern technology as well as of modern development and speed – for instance in the form of the rapid steam trains. This article gives an idea about the interrelationship between the change of social and economic conditions of increasing importance (in an ever more energy hungry world) and the optimism about development of technology, which was common among artists in the late 19th and the early 20th century. As Afshin Akhtar-Khavari writes in her article not everybody may have shared that optimism, which is probably met with much more ambiguity in many parts of the world in this century.

Finally we present a book review written by Stig Toft Madsen of a book by Osama Siddique, who wrote an article in the first volume on law and art. In that article Siddique dealt with the traumatic outcomes of the partition of India in 1947, as expressed by an important short story writer Saadat Hasan Manto. In his book on Pakistan's Experience with Formal Law: An Alien Justice we witness Franz Kafka resonated in a system that is simultaneously familiar and alien; a very critical perspective on experiences with post-colonial law in Pakistan.