View metadata, citation and similar papers at core.ac.uk
brought to you by CORE
provided by Birkbeck Institutional Research Online

BIROn - Birkbeck Institutional Research Online

Bottomley, A. and Moore, Nathan (2018) On new model jurisprudence: the scholar/critic as (cosmic) artisan. In: Philippopoulos-Mihalopoulos, A. (ed.) Routledge Handbook of Law and Theory. Routledge. ISBN 9781138956469.

Downloaded from: http://eprints.bbk.ac.uk/31025/

Usage Guidelines:
Please refer to usage guidelines at http://eprints.bbk.ac.uk/policies.html or alternatively contact lib-eprints@bbk.ac.uk.

DRAFT

new model jurisprudence: the scholar/critic as (cosmic) artisan.

Anne Bottomley and Nathan Moore.

> *Next I have to depict Wisdom; …... We could choose no better model of wisdom than Milesian Aspasia, the admired of the admirable 'Olympian'; her political knowledge and insight, her shrewdness and penetration, shall all be transferred to our canvas in their perfect measure. Aspasia, however, is only preserved to us in miniature: our proportions must be those of a colossus.*
>
> Lucian of Samosata *A Portrait Study*, XVII.

> *We are not by any means alone in searching for places of respite from over-determined theoretical paradigms and outworn descriptive tropes.*
>
> Annelise Riles *Documents: Artifacts of Modern Knowledge*[1]

To have done with judgment.

What kind of theory does scholarship of/in/about law need? What can the use of theory make possible? The movement between these two questions, so much more than a slippage, is critical. In the first, the use of the word 'need' recognises that theory is employed for a reason; the intended use of theory is never innocent, the question is the purpose in turning to seek, claim, create, or indeed even presume the necessity of/for theory. This does then, at the least, acknowledge that the use of theory is formed within and through a conjunction of material circumstances which give rise to a perceived 'need' for theory. But then the question is 'what kind' of theory? Which of course returns to the question: what is it for? or rather: what is the need for it? The problematic is that too often, when addressing the use of theory of/in/for law, the issue of 'kind' becomes dominant, and the question of 'need' assumed rather than addressed. It is rather like saying: we all already know theory is important, so let's just get on with it. Posing the question in the second formulation forces a much more active engagement with thinking about the use and practices of theory, and therefore of the material circumstances on which the question is posed. In a more overtly Deleuzean formulation, the question is: what can theory do? Each time that question is addressed and engaged with, it takes form within specific material conditions. However, having said that, it is also, of course, a specific kind of theory, or mode of theorising, which allows for the question to be posed and the materiality of the circumstances in which this occurs to be acknowledged and addressed. This form of (engagement with) theory is pro-active and acutely aware of the material processes of producing/using theory, which includes, of course, the very activity of thinking in theoretical, that is abstract and reasoned, framings. This process of theorising is one of working always in-between the materiality of becoming; becoming abstract, becoming material, taking form from, and within and between, the encounter and the engagement. A process of working through which is one of

[1] Annelise Riles in eds Annelise Riles *Documents: Artifacts of Modern Knowledge* Michigan: UMP, 2006, p 1.

abstracting from what is being learnt, rather than applying what one already (thinks one) knows. But none of this would have purpose or momentum without a prior impulse; what do we want of theory? What is our desire?

We began with the question of 'need', and have moved to the question of 'desire'. 'Need' can be thought of as a pragmatic recognition of a lack which 'needs' to be met, a space which needs to be filled, an identity which needs to be confirmed. 'Need' can be formulated, coldly, as a purposeful and rational search for a solution to an obvious, even common-sense, problem. Need requires answers, now. Need is needy. Conversely, 'desire' is about a wish for something different, hopefully better than we now have. Lack turns back seeking completion through answers; desire reaches forward seeking an openness of potential(ities) which will always address the formulation of questioning rather than the closure of solutions. Theory, in these terms, is a process not an end. The pursuit of the process of theorising is an expression of desire as a kind of ethical ontology, an ethico-ontology. What is demanded of (the practice of) theory is that it enables patterns of scholarship informed by, if not committed to, progressive change for a justice which we do not as yet, cannot as yet, know. This is, necessarily, thought and practiced as an inchoate potential within which what is sought (more accurately, forged) are ways, means through and with which, to progress - to move, to develop, to mutate, to become, to create, to make possible.

For Deleuze, such a form of (the practice of) theory is, necessarily, to seek escape from being entrapped by the confines, the (en)closure, of (the practices of) judgment.[2] Deleuze understands the act (and intended consequence) of judgment as a cutting out and off, a setting apart and turning away; a cut (the unkindest cut) which separates, excludes and expels, in the name of (a) transcendent truth:

> *No-one develops through judgment…judgment presupposes criteria (higher values), criteria that preexist for all time (to the infinity of time), so that it can neither apprehend what is new in an existing being, not even sense the creation of a mode of existence…such a mode is created vitally.. Judgment prevents the emergence of any new mode of existence…Herein, perhaps, lies the secret: to bring into existence and not to judge. If it is so disgusting to judge, it is not because everything is of equal value, but on the contrary because what has value can be made or distinguished only by defying judgment.* [3]

Judgment may, of course, be the central mark of a particular type of legal system, but it also concerns the practice of judgment by a theorist or critic. For a legal theorist, a critique of judgment will be, most obviously, focused on the practice of judgment in law, but Deleuze reminds us that the process of judgment can also be characteristic of a certain type of theoretical work. To presume to judge, as a theorist, indeed to presume either the need to judge or the inevitability of judgment, is, for Deleuze, not only a failure but a betrayal in that it cannot allow for practices of theory concerned with the potential of 'new modes of existence'. Judgment can only repeat the past; it never learns. It may acquire the shiny gloss of a kind of purity in its continued allegiance to, and persistence in, out-world logic; but it is dead, it lacks vitality, life and future; it is simply that it remains unburied.

---

[2] Gilles Deleuze, trans. Daniel W. Smith and Michael A. Grego, 'To Have Done with Judgment' in *Essays Critical and Clinical*, pp 126-135, London and New York: Verso, 1993. See also 'Plato, the Greeks', pp 136-137.
[3] pp 134-135.

We are often reminded that to 'critique', a mode of theory practiced as systematic and close analysis, can be associated, etymologically, with the verb 'to cut'.[4] This association is particularly attractive to critical scholars concerned to 'cut through' false image and ideology in order to reveal truth, especially when this is framed as a cutting-edge enterprise. The Greek verb *krinein*, to separate or divide, leads to *kritikos* that is 'one who is able to make judgments' (the critic as judge). But rather than being limited to the force and violence of cutting as separation and judgment; the etymology of critique is also associated with the root *krei*: 'to sieve, discriminate, distinguish'. It is 'to sieve', rather than to cut or judge, which marks, we will argue here, a practice of theory which is vested in forging a vitalist mode of critique.

To sieve. Earth, wheat, flour: information, ideas, concepts. In the 1583 portrait of Elizabeth I by Quentin Metsys,[5] the queen is portrayed carrying an empty sieve, around the rim of which is inscribed '*a terra il ben mal dimota insella*'.[6] It is usually assumed that the use of the iconography of the sieve is no more than the association of the sieve with virginity[7] and therefore a sign of the Virgin Queen; however, Ripa[8] uses the symbol of the sieve as also, or alternatively, signalling 'wisdom and discernment' which can indeed be read as significant in a portrait of Elizabeth as wise (as well as Virgin) Queen. The sieve of 'wisdom and discernment' replaces the cutting sword of judgment as the practice of critique – a very different image of thought, of theory.

To have done with judgment. But to understand how compelling judgment remains, and how much it still curtails the potential of theory in relation to law; we need to trace, to sketch, the material conditions through which theory has been and is formed and practiced in relation to law, or more precisely, scholarship in law schools. Even more precisely, in English law schools:

> *..what is the habit which constitutes the subject? This is the question posed by pragmatism. English law is a law of custom and convention, as the French is of contract (deductive system) and the German of institution (organic totality). When philosophy is reterritorialised on the State of Law, the philosopher becomes philosophy professor, but for the German this is by institution and foundation, for the French it is by contract, and for the English it is solely by convention.*[9]

Foundational narratives and place making.

In 1967, fifty years ago, an inaugural professorial lecture imaginatively entitled 'Pericles and the Plumber', laid out an argument for the development of legal education and law schools which would

[4] See, eg, Costas Douzinas and Adam Geary *Critical Jurisprudence: the Political Philosophy of Justice* London: Bloomsbury, 2005.
[5] Usually referred to as 'The Sieve Portrait', Quentin Metsys (The Younger), 1583, Pinacotela Nazionale di Siena.
[6] 'The good falls to the earth and the bad is caught' (literally 'the bad remains in the saddle'). The grain from the wheat falls through the sieve; what remains is chaff. Drawn from Valerius Maximus by Cesare Ripa in *Iconologia* 1763 ed., reprinted ed. Edward Maser, New York: Dover, 1971, Vol. 11, p 257.
[7] Petrach records the story of Tullia, a Vestal Virgin, who when falsely accused proved her innocence/virgin status by carrying a sieve of water through Rome without spillage. Metsys' portrait of Elizabeth clearly makes use of both aspects of the iconography of the sieve.
[8] Ripa (see n 6 above) describes a mature woman holding a sieve in one hand and a rake in the other.
[9] Gilles Deleuze and Felix Guattari (trans. Graham Burchell and Hugh Tomlinson) *What is Philosophy?* London: Verso, 1994, p 106.

draw together the strengths of a liberal academic programme with the technical tradecraft required as preparation for law (legal practice, legislative drafting, decision making in court etc).[10] Rather ironically, given the scope of the title framing an argument for creative inter-action, as law faculties debated their role (the provision of legal education and the potential of scholarship in law) in following years, the pairing often became reworked into a necessary choice between philosopher prince or technician (and which would you rather be?), rather than a closer critical engagement with Twining's vision of productive interaction.

Twining's evocation of the figure of Pericles can be situated within a modernist project to (seize and) make 'law' work for the building and delivery of (a better) social justice. Referencing Pericles was a calling forth (speaking out) of a renaissance, a re-newal of law and of governance through (the rule of) law: capable of, and legitimated by, a search for social justice as a process of creative discovery.

This modernist project in/for law did not need to presume a necessary potential in law as a progressive force for social justice, let alone that law carried this as inherent promise (the contours of the political ideology of liberalism may seem to shape the modernist project but must be distinguished from it); rather it pushed in and at law to test how far it could be deployed, struggled in and with, as tool and technique, for social justice. Twining's lecture evidences the culmination of the modernist project in/for law, which still refused to give up on the possibility of potential in law, or indeed in the ideal of social justice itself; and looked forwards to the building of an emergent (better) world using, as far as they could be pushed and bent and exploited, the tools of the old world.

In 1967, the UK Labour government was struggling out of the heritage of the restrictions of post-war retrenchment and introducing a second wave of welfare state planning in which law reform was a central item on the agenda. In 1965, the Law Commission was introduced by a reforming Lord Chancellor (Elwyn-Jones) committed to bringing 'law' into the service of the public as part of a political programme committed to social change. Law needed modernisation, not only in terms of the 'rules' but also in how law was made and applied. Concerns were expressed as to the extent to which the legal profession and judiciary would be prepared for, let alone be prepared to co-operate with, an activist agenda for the development of law and an expanded delivery of legal services. Within this context, Twining's design for pro-active law schools was in accord with Elwyn-Jones's vision for an expansive legal system, and a profession working with/for a politics for social change rather than operating (instinctively and institutionally) to protect and maintain the traditions and privileges of the establishment.

In 1967, Elwyn-Jones appointed a committee, chaired by Ormrod LJ, to make recommendations (create designs) for a modern legal education benefiting from a collaboration between profession and academy through the prism of an education for law, rather than limited to a training in law. The committee reported in 1971, by which time the Labour government had lost power and Elwyn-Jones had been replaced by the establishment figure of Hailsham. The report, in retrospect, clearly reflected the entrenched power of the legal profession as *the* legal establishment (as well as their ability to defend their interests). A potential role for law schools and academics as active

[10] William Twining *Pericles and the Plumber* Belfast: Belfast University Press, 1967, republished *Law Quarterly Review*, 83 1967, pp 396-426, and then as a revised chapter in William Twining *Law in Context: Enlarging a Discipline* Oxford: Oxford University Press, 1997.

collaborators and partners in law was diminished to a minimum, and the profession asserted, once again, the marginal significance of the academy to law.

Ormrod framed legal education, and thereby the work of law schools, through into the 21st century.[11] Whilst recognising a role for an academic stage (education) in legal training, and defending it as properly framed by a liberal arts education, Ormrod set the scene for a confrontational struggle between academy and profession played out over the role and purpose of a law degree, and through this vector the issue of the place of law (as scholarship rather than as junior partner to the profession) in the academy. In many faculties it wasn't really much of a struggle at all – the profession exerted control, and the academy (in general) fell into the role of trying to keep them happy. Ormrod confirmed the weak position of law in the English (and Welsh?) academy; if anything what had changed was that the profession now confronted and attempted to control the academy rather than simply ignoring it. The majority of the profession were united in approaching and thinking the law degree purely in terms of a staged approach to 'legal education' as training; and those on the academic side lacked, on the whole, the confidence to assert an academic framing for legal studies which was not hinged onto or validated by reference to professional accreditation.

The weak position of the academy was the heritage of a history in England of academic marginalisation from the activity of law. Before the 18th century the universities of Oxford and Cambridge taught, inter alia, the liberal arts, Roman and some Canon Law (an awkward post-reformation fudge); but no common law until Blackstone's lectures in 1753.[12] The Inns of Court provided a process of training for intending barristers in the arts and skills of law (the mysteries of the craft) in an enclosed environment which protected the privileges of the established profession. A more clerk-like set of skills and services (eg the design, execution and management of contracts, wills, trusts etc) was the province of a range of law practitioners, formed into a number of trade guilds, with whom we now associate much of the work undertaken by (the consolidated profession of) solicitors. The delivery of legal services was not associated with benefitting from, let alone requiring, a university education.

Blackstone's project of laying out a systematic account of common law through lectures (with notes!) introducing the principles and rules of common law, signalled a move towards making law visible, and thereby accountable, outside of the craft heritage of being trained (with)in common law. Asserting an underlying rationality which could be teased out of common law, and then taught alongside the formal patterns of Roman law, suggested a cohesive, coherent potential which was imminent in the case-material but needed to be brought (in)to light through the labour of scholar/lawyers. The lack of a codified structure and framing could be explained and defended

---

[11] Until the Legal Education and Training Review, June 2013.

[12] Wilfrid Prest *William Blackstone Law and Letters in the Eighteenth Century* Oxford: Oxford University Press, 2012. After a period trying to establish a career at the bar, and preferment into the judiciary, he returned to Oxford in 1785 as the first holder of the first chair in common law (the Vinerian Professor in Common Law). Common law was lectured as an adjunct to the established curriculum, rather than adapted as a chance to re-think an education in/through law. Further, the trajectory of Blackstone's career made clear a preference for the profession rather than scholarship as carrying more social prestige as well as economic benefits. The presumption that being a scholar was a mark of failure rather than choice remained a strong narrative well into the 20th century. As a further twist in the contortion of English class politics, the majority of 'gentleman' who attended the 'old' universities had no wish to engage in any profession anymore than they would work in trade; gentlemen expected to live on income rather than earn it.

through extrapolating and revealing what was already present without (too much) recourse to importing and attempting to superimpose organisational patterns derived from Civilian law – especially as a severe (and foreign, even if Roman) classicism sat awkwardly on the organic baroque folds and interfolds of common law. Blackstone's pattern of systemisation, through clarification and distillation into an easily digestible form, was one which lent itself to acting as a primer in law.[13] It was, essentially, a conservative and deferential project, and became the template for the beginnings of 'teaching' common law in universities – Blackstone's-letter rather than simply black-letter.

For Bentham, Blackstone's project of systematisation did not go far enough. Blackstone was too much an apologist and defender of what should be condemned, by scholars as reformers, as the irrational elements of/in common law. To truly address common law systematically was, for Bentham, a chance to deal with what had become visibly in need of change in order to achieve greater, real, systemisation through rationality: this was a project to modernise rather than to defend common law. Bentham's rigorous reformist approach insisted on revealing and expelling common law's excesses; exposing and eliminating confusion, contradiction and lack of clarity in a massive 'clearing up' operation to eliminate the irrational and the discretionary, and thereby limit the power of lawyers to manipulate rather than simply apply (the rules of) law. This was law under the control of emergent state; delivering, rather than obstructing, state policies designed to promote social stability and economic growth. A centralised system of order and command carried through law; preferably (more efficiently) as rationally codified rules rather than carried through case-based, law.[14] Lawyers needed to be legislators for a future, rather than defenders of the past; technocrats applying law with social purpose, rather than craft-workers constructing argument for the benefit of clients.

The establishment of University College (London) in 1826 was the first opportunity to design a law school focused on (the practice of) common law, the potential of a modernist project in law, and the establishment of an interface between an education (the academy) and a training in law for preparation as a practitioner.[15] The ethos of the London approach to a university education focused on delivering practical (and scientific) courses designed as learning for earning, as well as carrying and propagating a culture of utilitarian commitment to rational reform for a modern world. London introduced a law degree programme focused on common law, organising it into 'subject' areas framed through lecture series and textbooks building a project of an education for lawyers through a systematised introduction to the rules (principles and methods) of common law. It was as if this process of setting down (making visible) the law became a kind of English version of (modified) codification; a project with which a number of the lawyers who became first-wave academic textbook writers had become familiar when working as civil servants in the India Office. The India Office had been a training ground for designing a Benthamite programme for governance and law

[13] Which it indeed became when, published in saddlebag-sized editions, it was carried into America and other colonial incursions; becoming, especially in Anglo-American jurisdictions, a blueprint for law and a template for legal studies.

[14] This agenda was informed not merely by the political climate 'at home' but also, crucially, by the wish to find patterns for the governance of India. See Jon Wilson *Conquering India* London: Simon and Schuster, 2016, pp 200 – 207.

[15] Of course, the actual training for, and admittance into, the profession remained controlled by the professional bodies.

reform for India through centralisation, codification and the systemization of law.[16] It was also as if the Benthamite project for reform, and training the right kind of lawyers to enable and consolidate reform, could be accomplished by exposing intending practitioners to an 'academic' approach (revealing, testing, reforming and then protecting the underlying rationality of law) before they entered (the mysteries) of craft training and became vulnerable to the seductive powers of establishment privilege.[17]

The Benthamite design for a modern legal education capable of delivering, rather than impeding, a technocratic design for law's role in carrying reform, marginalised to the point of supressing a potential for a form of scholarship linking academic law back into the civilian traditions and, more importantly, the heritage of humanities and liberal arts. This is underlined in the key lecture series delivered by John Austin, the Benthamite professor of jurisprudence at University College from 1826 until his resignation in 1834. Published as 'The Province of Jurisprudence Determined' in 1832, what became known as a 'positivist' approach to law limited jurisprudence (framed here as philosophy of law) to the study of issues arising from (and consolidating the regime of) state law (positive law).[18] Excluded from the study of jurisprudence (and therefore the education of lawyers) were any normative questions concerned with evaluating (judging) law ethically. In such a politically inspired and scholastically limited programme, what was important was to create and maintain a vision of law as no more and no less than a technocratic tool for the delivery of governance – this was skilled plumbing with Pericles as philosopher off site (and out of sight) in another place.

The paradox, of course, was that this challenge to the establishment of the profession could only, at best, allow for uneasy relations between the two whilst the profession remained in control of entry into law and consequently continued to produce a judiciary untrained in, let alone sympathetic to, a Benthamite approach to law. It did, however, open a potential in a role for academic lawyers as guardians of a more rational approach to law than the profession and judiciary could be trusted to follow and provide. A space, and possibly a place, was slowly opened within which academic lawyers moved between describing law as found in judgments, critiquing those judgments in terms of underlying rationality, and, occasionally, suggesting a better way forward for developing and applying doctrine. The principal problem in establishing this as an authentic enterprise for scholarship in law was that it was not only premised on delivering commentary on activities taking place elsewhere, but that these activities were generally pursued without reference to any 'scholarly' commentary developing in their wake. There were, however, important alliances forged between scholars/lawyers and the emerging political sphere of/for reform developing from close linkages between politicians working for law reform, the establishment of commissions to report on causes of concern and recommend reform, and a new breed of activist civil servants (links often initiated and consolidated through shared clubs and societies, religious practices and kin networks). Links with the profession might be fragile; but links into the politics of law reform were not. The modernist project for law in the academy was carried forward in this alliance; casting scholarship as moving between describing what law 'is', and outlining what law should, or could, be. But legal

---

[16] See n 14 above, Chapter 10.

[17] Underlying this history of changes in university education in general, and more specifically the education and training for law as well as the role and social position of lawyers, is the struggle by the emergent middle classes laying claim to the professions against the traditional privileges of the establishment.

[18] Again, the spectre of legitimating imperial governance of India clearly informs the political concerns underlying Austin's determined focus on law as command with sanction. See n 14 above.

scholarship still remained uneasy in establishing an identity which was not dependent upon the professional/practitioner as embodying what was still thought of as the 'true' lawyer; and the banks of undergraduates seated in lecture theatres saw more to attract them in a future of practicing law rather than choosing scholarship. Pericles did not emerge as a confident figure embodying the full potential of a partnership in/for law, and by 1967, and even more clearly by 1971, the project for delivering social reform through law had reached a point of exhaustion.

The political context to the use of law as a tool of/for governance had become sharply contested. Twining delivered his lecture in Northern Ireland, shortly before 'The Troubles' erupted in a violent challenge to the sectarian politics of privilege and discrimination, and the repressive role of the British state revealed a willingness to go beyond the use of the criminal law and due process, employing the army to police and introducing internment without trial. The overt exercise of state power through law, as well as beyond law, forced into the open questions about both the power of state, and the role of law. The legitimacy of state authority, and the role of law in protecting establishment privileges, was also being challenged in colonies pushing towards independence and in ex-colonies where privileged minorities acted, through state violence and oppressive laws, to maintain the status quo. Twining's background in Africa, and his contribution to the development of legal education (within the context of addressing constitutional planning and designs for post-colonial law) in African states preparing for independence, undoubtedly informed his vision of a law school committed to an activist and engaged emancipatory project. It might have seemed (still) possible in England, if so much more contentious in Northern Ireland and moot in the post-independence jurisdictions. However, the potential of law as a challenge (however weak) to state authority remained acknowledged as one mode of defence.

From the early 1970s, the law centre movement refreshed and reframed a version of the modernist project. 'Radical' lawyers worked in a new form of legal service designed to bring legal advice and representation to people with whom the profession had had no interest, and in 'new' areas of law developing, under the auspices of legislative reform, legal protection for disadvantaged sections of society – in social housing, social benefits, employment, discrimination law, etc. Not only did law centres take on individual casework, including test cases; they also campaigned to raise awareness of law and for the need for reform in and through law. The right of access to law, and to be able to use law against power, including the excesses of state power, even when recognising the limits of law (and the power of power), was a pragmatic ideal which fuelled the law centre ethos. Unsurprisingly they found themselves inundated by excessive workloads, dogged by problems with finance and debilitated by the politics of struggle against establishment (including the profession) and authority (especially when it was authority which provided finance!). But the engaged idealism of the law centre movement and related projects inspired a generation of faculty and students to engage with law through law; and it found fertile ground in the new law schools of the 1960s plate-glass universities. The experience of a radical politics of/for law, and the potential for a more progressive education in law, inspired English law schools into forging the beginnings of what became the critical legal studies movement. Two crucial factors pushed forward the development of critique in law at this stage: an increased awareness of the (overtly violent) politics of the English state in Northern Ireland and other colonial settings, and the lack of a practice of consistent theorisation to underpin political accounts of the role of law in the rule of law. The critical legal studies movement in the UK was forged out of political engagements and contestations; in the clear

and sharp awareness that neither the traditions of legal education nor the limits of jurisprudence provided any useful insights into the condition of law, or the potential for engagement.

The territory surveyed; critique emerges.

It is critical to our argument that we recognise the material conditions within which scholarship (as the potential, use and limits of the practice of theory) arises. To understand the implications and to exploit the full potential of 'theory' we must ground it, briefly but frequently, in order for it (and us) to fly.

'Law' 'and' 'theory'; or perhaps you prefer 'theory' 'and' 'law'. The difference between each formulation might be an innocent process of thinking that one just sounds better than the other; but it can also be used (or read) as a more purposeful decision representing a trajectory in which the first frames the approach to the second. 'And' is, of course, a problematic linkage. It can be used to suggest 'and as well as', or the very different 'and as a consequence of'. Whilst the first might suggest a bracketing by being brought into an equivalence, even if originating in different registers, the latter denotes a priority in which the first identifies, delineates and explores the second within terms set by the first. Each may have their own (internal) logic,[19] but the question is whether and how one is privileged over the other; because that, quite simply, over-determines how the other is framed and portrayed. It is our contention that, too often, the bringing together of law/theory (or theory/law) has failed to confront, explore and make conscious choices about the *process* of bringing into relation, through distinctive forms of encounter, the material conditions and specific projects which underlie patterns of movement *between* them as well as *through* them. Too much has been simply taken for-granted, as if already 'known', in the sense of properly theorised, but is actually grounded in little more than assertions of common sense and common practice – and the consequence of this has become, we would argue, a blockage on the productive capacity, the activity, of theorising law.

Nowhere is this more visible, and more paradoxical, than in the emergence of 'critical legal theory' out of the critical legal studies movement – the very place where one might reasonably expect (look for) a more nuanced, careful and creative account of patterns of inter-relations between law and theory than in any other area of law school scholarship. To understand how this situational stasis has become such a strangle-hold, we need to ground it back into the material conditions from which it has arisen. A 'situation' (or 'crisis') in theory is not countered and critiqued simply by more or (an)other theory laid out on an abstract plane unconnected to the materiality of time/place as the grounding from which the processes of theorisation emerge. The theoretical practice in which we are engaged refuses to treat theory as only, and only ever, operating as an abstraction beyond, and outside of, material conditions.

The practice of theory as an embedded process is, drawing from the traditions of materialist philosophy, the strongest form of critique; a process of critical practice formed through and within a creative and risky, edgy, close engagement with the questions of mess using a compass and a set of diagrams as aids in an adventurous journey, rather than seeking to create a complete map of untrammelled purity which will provide, as long as you can read it correctly and follow it precisely,

[19] 'Logic' is used here following Annemarie Mol *The Body Multiple: Ontology in Medical Practice* Durham and London: Duke University Press, 2002.

answers as conclusions and a steady lens through which to view and make visible, at a safe distance, the terrain of law. These are two very different accounts of theory – and we need to understand why one has been perceived as so attractive to contemporary scholars of law, in particular those who think of themselves as critical legal scholars.

As we have outlined, the foundational stories which produced a narrative and rationale for law's place in the English academy have been based not on scholarship, and thereby the potential of theory, but rather in educational training and policy based research. However, a small thread has always connected legal education with the use of theory; in the teaching (texts and scholarship) of 'jurisprudence' as theory-of-law. Nota bene: not theory 'and' law, but theory 'of' law.

The province of jurisprudence has been limited, but not finally determined, by the heritage of Austin's positivism. However, the project of jurisprudence as knowledge-of-law still tends towards a focus on definitions of law, to which either normative or material questions are then added as supplements. For instance, in a recent collection focused on (potential) inter-relations between 'theory' and 'history' of law, the introduction begins with the conundrum that theory is about what law 'is', rather than what law 'does' (the basis of history), and therefore the difficulty of 'theory' being framed together with, or teased out from, materially based practices (rather than being 'applied' to them).[20] Jurisprudence is still wary of being brought to ground: partly because of the heritage of positivism, but also because of the more recent adoption of an abstract mode of philosophy (or rather philosophising) as wisdom-of-law. Philosophy becomes the means through which to move (in)to theory beyond the confines of orthodox jurisprudence. Love of Sophia can replace, or at least open up a space beyond the worldly figure of Prudence. Theory becomes transcendent – a move out-of-world (away from flesh) in order to seek and be able to discern truth and thereby the truth of law. 'Critical legal studies' has become a conduit for the delivery of this form of theorizing into law schools.

Jurisprudence as an academic exercise has not been treated, in practice, as central or foundational to legal studies; but it has come to provide a space for scholars to identify themselves with the wider enterprise of academic scholarship. In reaching out to theory as abstract philosophy, a means has been found to claim a place in the wider academy through the meritorious and elitist activity of hard abstract thinking. There is then a kind of a virtue in placing theory on the margin in law schools; it allows for a distance from the dominant technocratic project and an escape from the social science frame of policy based empirical research. Not limited to the boundaries of theory *of* law, these scholastic activities delineate a territory in which law, or at least jurisprudence, can be bought into an encounter with theory by the importation of theory into (or rather 'onto') the terrain of law schools. Scholarship *in* law failed, essentially, to provide sufficient intellectually stimulating material and isolated scholars from the rest of the academy, particularly the humanities. In a gesture of refusal and reversal, scholars committed to the pursuit of theory flip identities or rather reference point – no longer law (as practiced in world-out-there) but theory, and therefore the academy, now establishes their credentials, direction and sense of purpose. Theory is offered as *the* way forward into scholarship, and law becomes simply another terrain for evidencing the importance of theory.

[20] eds. Maksymilian Del Mar and Michael Lobban *Law in Theory and History: New Essays on a Neglected Dialogue* London: Bloomsbury, 2016. This construction is challenged within the collection (eg Sionaidh Douglas Scott 'Legal Theory and Legal History: *Which* legal theory?') but there is a clearly perceived need to struggle out from this beginning; a constraint in itself.

The powerful allure of mastering theory is a seductive pull away from law; especially when theory operates to reveal the truth of law hidden by and in law. This from the flyer for a book introducing and delineating 'critical jurisprudence':

> *….. after a long process of decay, legal theory is today characterised by cognitive and moral poverty. Jurisprudence has become restricted and academically peripheral, a guidebook to technocratic legalism and a legitimation of the existent. Critical jurisprudence returns to the classical tradition of a general philosophy of law and adopts a much wider concept of legality….. Law's complicity with political oppression, violence and racism has to be faced before it is possible to speak of a new beginning for legal thought, which in turn is the necessary precondition for a theory of justice. Critical Jurisprudence offers an ethics of law against the nihilism of power and an aesthetics of existence for the melancholic lawyer*…[21]

Sophia's territorial aspirations: critical jurisprudence.

A close reading of this argument for (the need for) 'critical jurisprudence' reveals a crucial slippage between framing the project through the limitations of heritage and then moving quickly into the promise of over-coming through the assertion, or presumption, that the 'only' route out is to cut through with theory achieved through a 'return to the classical tradition of a general philosophy of law'. To return in order to begin again: a life at last, a rebirth, as philosopher/scholar, a true Pericles. However, whilst we might concur with something of the diagnosis of condition; both the prognosis and the remedy require more careful consideration, especially when framed as something called 'critical jurisprudence'. What are the potentials for practices associated with the terms 'critical' and 'jurisprudence' and then the bracketing of them? What is forged: a sheath or a hinge? Theory becomes jurisprudence; and so jurisprudence becomes theory. Before (the) Theory.

The rebirth of jurisprudence as theory is made possible by a doubled movement: the return to an authenticity to recast, and thereby find (another) voice, and the practice of critique to reveal, using the old/new voice, the truth (an ethical and aesthetical transcendent 'real') which has been hidden in and by law/jurisprudence. Return, rebirth, reveal. Theoria/Sophia sees all, offers and answers all; however this is a form of completion which always requires continued proof of need and use(fullness). This form of promise is, so paradoxically, actually a form of entrapment into a continued search for what we have already-been-told is already-there; a completeness just out of reach, even as this formed the ground(ing) which made the beginning of the search possible. This is the ontology of lack; the search for completion through the continual escape of over-coming (made possible through a continual return to find the authentic truth-purity of origins) maintaining momentum through having given allegiance, the commitment of belief, to the knowledge that transcendence is always there in the-beyond. Truth and justice can be revealed when we can (through theory) reach them. The question is how this form of theory/theorising became linked with 'critical' thinking.

The beginning of contemporary critique in law (or rather in the academy of law) was the critical legal studies movement, which then morphed into 'critical legal theory' and from that is now moving into 'critical jurisprudence'; what does this re-casting of critique (in/or 'and' law) tell us? How is it made

[21] See n 4 above.

possible? There is, of course, a conjuncture of events and trends which lie behind the emergence of law and critique as critical jurisprudence. We have already outlined the limitations on legal scholarship (including jurisprudence) in English law schools, the domination of a concern with education as training, and the consequent marginalisation of law as an academic subject in universities. Further, we have suggested the significance of a modernist project in law, and its exhaustion, to understanding the present condition of law schools and legal scholarship. The fate of the modernist project is clearly traceable in the changing contours of critique in/of law.[22] The critical legal studies movement of the early 1980s still bore the traces of not only the possibility of radical, emancipatory change through (legal education and) law, but also the continued belief in the politics of the (or 'a') left. Further into that decade it became all too clear that neither were, anymore if ever had been, possible. Critical legal studies began to migrate – from education into (research) scholarship, and from practical politics and into the pursuit of theory. In that migration, it sought to carry forward the heritage of critique as a political practice:

> *(critical jurisprudence) is concerned both with posited law and with the law of the law. All legal aspects of the economic, political, emotional and physical modes of production and reproduction of society are part of critical jurisprudence. This widening of scope allows a radical rethinking of the nature of rights, justice, sovereignty and judgement. A political philosophy of justice today must examine the political economy of law; transitions from Empire to nation; ideological and imaginary constructions through which we understand ourselves and relate to others; ways in which gender, race or sexuality create forms of identity that both discipline bodies and offer sites of resistance. Law's complicity with political oppression, violence and racism has to be faced before it is possible to speak of a new beginning*…[23]

The political agenda has, of course, been widened to encompass all forms of oppression, all plays of power and, at the same time, what is revealed and 'must be faced' is 'law's complicity with political oppression, violence and racism'. Jurisprudence, which for so long suppressed and denied the politics of law, is re-connected (in)to politics in a doubled movement: first, there is the encompassing gesture of recognising *all* forms of oppression as political issues, but, second, at the same time, politics as critique is limited to theory as framed through the orthodox traditions of political philosophy and therefore to politics as state. Law is presented and understood as no more and no less than state power; the role of critique in law is therefore to reveal the perfidious nature of law and the violence of its origin. Law is an institution of state, and the state is the enemy. At a minimum, critique must always be at a sufficient distance in order to resist being sucked back into (seduced back into) law; at best, there may be places outside of law in which freedom, true expression, real identity and self-determination can, finally and fully, exist and from which resistance to law can be built. If this heaven is to be achieved it can only be through theory:

> *Law's complicity with political oppression, violence and racism has to be faced before it is possible to speak of a new beginning for legal thought, which in turn is the necessary precondition for a theory of justice. Critical Jurisprudence offers an ethics*

---

[22] As is the wavering fortunes of/in the politics of the left.
[23] See n 4 above.

> *of law against the nihilism of power and an aesthetics of existence for the melancholic lawyer…*[24]

This offers, in effect, the complete life-style package of (politically aware) philosopher/scholar to the world-weary lawyer/scholar seeking an identity as 'true' (and at the same time 'progressive') academic rather than subaltern lawyer. From critical legal studies to critical jurisprudence: the triumph of Theoria as Sophia.

Two trends in particular feed this turn of critique into all-encompassing meta(major)-theory. The first is the adoption of critique as the practice of revelation: an inheritance from The Frankfurt School's practice of cutting away the false in order to reveal the hidden (violent) truth.[25] As law is subjected to critique which (looks for) and exposes both the violence of state power, and the suppression of that knowledge of truth through the false idols of democracy and the rule of law; so law can only be reduced to being understood as an agency of state. Ironically, positive law and command theory is rebirthed in critical jurisprudence. 'Law' is no more than an institutional arm of the state which serves to legitimate the exercise of state power, and critical jurisprudence is the revelation of critique carrying the potential of resistance. To evidence the power of this trajectory research case-studies tend to be, unsurprisingly, drawn from examples which illustrate the violence of state power carried through law. As if that is all there is to law: or to the politics of critique. And to compound the limitations of this focus on state/law as the central problematic, the politics of either the market or the emergence of societies of control remains marginalised. The practice of critique as critical jurisprudence tends to portray and examine both law and politics through a very limited agenda (reproducing a province of jurisprudence over-determined).[26]

The second trend is towards a specifically transcendental form (or type) of philosophy as if that is the only, or true/best, practice of philosophy. When critical legal scholars challenged the isolationism of English (common) law schools from scholarship in the wider academy, some also realised how isolated they had become from scholarship in Europe. It is instructive that before the critical legal studies movement in England was established in the 1980s, under the auspices of Critical Legal Conference (UK), the network and annual meeting for those interested in critical legal scholarship was the European Critical Legal Studies (ECLS) grouping. Whilst early CLC (UK) meetings tended to be focused on steams organised around legal subjects, legal education and radical

---

[24] See n 4 above.

[25] Later augmented, of course, by a faux-Lacanian/Derridean practice of revealing an absence which cannot be filled; a continued process of lack/desire which can never deliver but keeps gesturing forward (or rather further in) towards the promise of a fulfilment just beyond. Hence the melancholy: a draining and at the same time sustaining exhaustion.

[26] Contributing to this collapse of law into a one-dimensional image of law is the material factor that an increasing number of post-graduate scholars and faculty in law schools have been trained in disciplines other than (common) law and yet are placed into teaching (common) law subjects at undergraduate level. Ironically this can give rise to a tendency to rely on a reduced form of 'black-letter law' in teaching, at the same time as rejecting it (often through the caricature of black-letter law) in scholarship. Further, presumptions are often made about (common) law which are based on little actual knowledge of (common) law. See eg this comment from a book review by a specialist in law in literature from a civilian jurisdiction: '…the book is concerned with law…as a cultural practice. This sounds strange to outsiders of the juridical field that have always considered law as a hard, dreary practice, unimaginative and empirical'. Daniela Carpi review, of Gary Watt *Shakespeare's Acts of Will; Law, Testament and Properties of Performance* London: Bloomsbury, 2016 in *Polemos* (2016) 10.2. 453-457.

practice, ECLS was from the beginning about theory as theory, rather than as an adjunct to scholarship in law. Aware of the paucity of scholarship in law, the attractions of moving, quickly, out of law and towards 'theory' was indicative of a perceived lack, or failure, in legal scholarship *as* scholarship. ECLS provided a forum through which the formative developments in continental scholarship became available to English scholars. However, this mode of importation into academies unused to the practice of theory (other than the modest theoretical excursions made in jurisprudence) meant that theory tended to be experienced as arriving (from the outside) as fully formed and requiring a great deal of concentration to explore and understand it within its own terms of reference. Rather than emerging from legal scholarship, even as jurisprudence, this engagement with theory was one which became an embrace which required total commitment before turning back to re-encounter (common) law. Was it something in the paucity of previous encounters with theory which led so many critical legal scholars into the arms, the seductive pleasures, of transcendental philosophy? What alchemy mixed from insecurity of lack (as scholar) and desire for fulfilment (as scholar) led to the recovery of the contemplative Platonic mind in turning away from the materiality of flesh/law/world? What aspect of the failure of modernity (or of politics, especially of the left) led back (in)to the search for the purity of transcendent truths (found out-of-time, before or at the beginning of time) and complete ontologies? What was it that led to the embrace of not merely theory, but the fusion of critique with a mode of theorising drawn from a form of political philosophy which looks back and up, rather than forward and down? How is it that the virtuous figure of 'the melancholic lawyer' turned scholar became as much a given as the nihilism of law as power? Material conditions, most especially the perceived need to move on from the failures of modernity and to escape the confines of the legal academy, explains the seductive pull towards the pleasures of mastery of theory and the comforts of knowledge that there is always-truth-out-there (it is just that we cannot quite see it yet, but the outline seems to become visible if we concentrate carefully and are not diverted by distractions).

The strange strength of 'critical jurisprudence' is that it oscillates between the revelation of critique of/in this world, and a promise of understanding founded in an ontology dependent upon a 'beyond', an outside of this world of space/time. Politics becomes, in practice, a continual movement between ethics and resistance, premised on identities and rights born before law and now subjected to the force of law. What is 'critical' is to be outside, and to be outside requires an ontology which is not limited to material conditions but can claim a truth beyond the constraints of time/space (and the dread of relativism). Thus critique is both authenticated by, and at the same time transformed into, a meta-philosophy: a major jurisprudence committed to judgment. Out of the fudge, mess and experimentation of the critical legal studies movement emerges the certainty and authority of critical jurisprudence. Critique arrives as a fully-fledged all-encompassing theory able to claim (through the assertion of bounded identity) its place in the academy.[27] What does this make possible: other than careers and the addition of a chapter to books exploring the patterns of jurisprudence?

Walking with Aspasia: Poiesis becomes her.

[27] Similar trajectories mark other modes of critique, eg feminism into feminist theory. See eg Anne Bottomley 'Theory is a process not an end: a feminist approach to the practice of theory' in eds Janice Richardson and R. Sandland *Feminist Perspectives on Law and Theory* London: Glasshouse, 2000.

What do we want of the practice of theory? 'We' in this context has a specific reference point: a material immediacy. We are (common) lawyers/scholars concerned with the present conditions of the economics of globalisation, the emergence of control societies[28] and the urgent need for political engagement. We employ theory as a practice through which we seek greater understanding in order to think/imagine a potential for (alternative) futures: a political project. We experience the pleasures of theory, but we want more. We are ethico-pragmatists who seek from the practice of theory a political affect in creating/finding potentiality. It is, we admit, a kind of modern puritanism which finds no attraction in a lifestyle of melancholy or dreaming myths of an outside transcendent real; this is a much more messy engagement with the materiality of world and with ideas as flesh. This is a minor jurisprudence, a modest jurisprudence, which progresses in stutters before it can speak and perseveres in resilience rather than seeking escape in resistance. It draws, through Deleuze, from a philosophical tradition which is not premised in transcendence but rather in imminence. It looks forwards rather than backwards, and opens itself to desire as opening something new, rather than responding to the emptiness of lack. This mode of philosophy, this practice of thinking, is not about the purity of definition or completeness of ontological design; but rather the teasing out of potential, motivated by an ethico-ontological imperative. It is premised in a creative process of engagement *with* world rather than as an escape *from* world.[29]

A process of critique should be able to understand that there is choice: we are not limited to only one account of the practice of philosophy and therefore of jurisprudence, and therefore of law. We are not limited to an emergent orthodoxy that theory is marked by (and limited to) thinking as a form of philosophical practice, which insists on abstraction as a process of necessary disengagement from the materiality of circumstance *in order to think, and thereby (in order to) be able to discern truth.* For us, this fetish for distance is problematic: leading to attempts to disengage from the material context and circumstance and thereby limiting the potential in the question 'what can theory do?'. We have to distinguish between practices of philosophy which have become territorialised into following in the footsteps of Plato and his maps; and practices of thinking which free philosophy through (for and out from) engagement with the material world. Not searching in abstraction for truth, but feeling our way into a potential for kinds of truth. Not mastering 'theory' through thought as, and in, mind alone; but through incursions into the world (using all of our senses) which open up and challenge us to think through body and soul as well as, as part of, mind. This is a very different topography; a very different set of contours and a very much more open horizon (more precisely, the opening of a plane of immanence).

Prudence: artisan as (cosmic) critic.

Deleuze and Guattari argue that philosophy is no less and no more than the development and use of concepts which enable us to think.[30] Philosophy, in this sense, employs concepts as techniques, and as long as we are aware of, paying attention to, the technical processes of concept-use we will not get lost (entrapped, territorialised) in the (content of) concepts themselves but rather focus on what is important: what does this make possible? How can we imagine this? By not thinking of concepts

[28] See Gilles Deleuze (trans. Martin Joughin) 'Control and Becoming' and 'Postscript on Control Societies', *Negotiations* New York: Columbia University Press, 1995.
[29] See, in particular, Gilles Deleuze and Felix Guattari (trans. Graham Burchell and Hugh Tomlinson) *What is Philosophy?* London: Verso, 1994.
[30] See eg n 29 above.

as immaterial abstractions but rather as material forms: Images of thought, images for thought. Image as diagram: outlines which allow us to, for instance, trace potential in an image of thought which links concepts into patterns for thinking.[31] Imaging, diagramming, creating concepts, is a continual movement between abstracting and (re)investing; a de-territorialisation away from and then the oscillated move back into. This is not praxis following after theoria; it is a teasing out, a sifting, from continual use-patterns of (dis)engagement.

Deleuze and Guattari use the figure of the artisan (not an artist!), to embody, diagram, the practice of creative, engaged thinking.[32] The artisan employs material to craft artefacts; she bends, pulls, hammers and shapes material to give expression to what is carried within/by the artefact. Her hands feel the contours of material and draws shape from it. She works with intensity and closeness; pausing to draw back in order to consider her work and how she might continue it and then re-engaging. The material, her skill and her imagination explore and shape potential. Deleuze and Guattari extract her from metal, Serres moulds her in bread: '*Analysis cuts; the baker folds*'. [33] This is topographical imaging; it feels, as much as sees, contours and horizons emerging. In crafting artefacts within the materiality of here/now what is glimpsed and pursued is the cosmic of soon here/maybe now, as always. Concepts allow us to move out of the immediate but are only useful when we understand how they arose (were crafted) and how we can (as craft) use them. Not the non-world aesthetics of the world-weary; but the well-crafted grounding which can reach for the stars.

It is a very different process of engagement with thinking than that espoused by critical jurisprudence, and seems well suited to not only jurisprudence, but especially a jurisprudence of/for contemporary common law:

> *When philosophy is reterritorialised on the State of Law, the philosopher becomes philosophy professor, but for the German this is by institution and foundation, for the French by contract, and for the English it is solely by convention.*[34]

Post-Brexit it might seem overly nationalistic to insist on the specificity of time/place as crucial material factors in the crafting of juris-prudence; but the moment of territorial grounding is crucial for theorising to be productive as something other than its own continuation. Common law needs to be engaged with as a specific form of legal reasoning and rationalisation. Unlike the civilian tradition, it is a craft of teasing out from case-decisions principles and concepts which carry law forward (even if only going backward!). It is, as Weber understood and Bentham wished for, not a 'rational' codified system of deductive application but more fuzzy and pragmatic.[35] If we wish to understand

[31] See eg Gilles Deleuze *Francis Bacon: The Logic of Sensation* New York: Continuum, 2002. See further Anne Bottomley and Nathan Moore 'Law, Diagram, Film: Critique Exhausted' in *Law and Critique* 23.2. (2012) 163, and 'Blind Stuttering: Diagrammatic City' in *Griffith Law Review* 17.2 (2008) 1308.
[32] See Gilles Deleuze and Felix Guatarri trans. Brain Massumi *A Thousand Plateaus* London: Athlone Press, 1988 pp 411-412.
[33] See Michel Serres trans. Felicia McCarren *Rome: The Book of Foundations* Stanford: CA: SUP, 1991 at p 81. See further Anne Bottomley 'An exploration of the Time(s) of Equity Diagrammed through Image' in *Polemos* 10.2. (2016) 357.
[34] See n 9 above.
[35] Which is not to say that we believe (with Weber) that codified systems are more rational, or (with Bentham) that rationality is the norm with which legal systems should be judged, neither are we arguing that one is better than the other: they are simply different.

law, to engage with and make (some) sense of law, we must recognise and theorise the different modes of legal reasoning and different processes of rationalisation. Deleuze and Guattari remind us that theory must move through the process of territorialisation: into history/geography as well as, once again, out of immediate space/time. Of course there is a level of abstraction within which we can talk, more generally, of LAW as an institution, including as an institution of state or as a vector for the protection of power and privilege; just as there is a further level of abstraction within which we can speak, more generally, of normative concerns and the constant return of questions of legitimacy and authority.[36] But juris-prudence is more than theory of law as generalised and generalising abstraction, in which all is treated as similar or equivalent. Juris-prudentia is not limited to or by juris-sophia (our apologies for the mixing of Latin/Greek): it is the provenance of Prudence, artisan, and that seems particularly apposite for those of us who work with(in) the common law tradition in insisting that assumptions are not made of law as if it takes only one form, one shape. This opens a potential to become conversant with a multiple of laws (as method and legality) at different times and in different places: teasing out difference and repetition in seeking to understand our own heritage and what it has led us towards, as much as recognising what we wish to struggle away from.

Creative, engaged theory is, within our present political conditions, so urgently necessary. What is, or could be, the role of law in countering the excesses of globalised markets or the perfidious strangulation of control societies? Has (common) law become more relevant or increasingly marginalised? How is (common) law being reshaped? Is there a resilience[37] to be found in, or crafted from, legal concepts and modes of reasoning which may provide us with some tools and techniques (however fragile) for the defence of the most vulnerable and a challenge to the most powerful? What use might we make of law when we can no longer invest in an exhausted modernist project or the false promise of a new Jerusalem? How do we craft a minor jurisprudence as a modest endeavour which reaches forwards into a new cosmic grounded in becoming just? How do we avoid the trap of judgement and have done with it?

Juris-prudence, especially as critique, must be more than the lifestyle of a melancholic scholar,[38] or a rationale for a politics of resistance couched as escape to an outside which can never actually be accessed: it must turn away from the seductions of transcendental theory in order to build practices of theory, a new model of/for jurisprudence, which draws from the wisdom of Prudence as an affirmative potential tempered within a sharp understanding[39] of the limitations of the material we work with:

> *We could choose no better model of wisdom than Milesian Aspasia, the admired of the admirable 'Olympian'; her political knowledge and insight, her shrewdness and penetration, shall all be transferred to our canvas in their perfect measure. Aspasia,*

---

[36] See further Anne Bottomley and Nathan Moore 'Blind Stuttering: Diagrammatic City' in *Griffith Law Review* 17.2 (2008) 559-576.

[37] Resilience is the key to contemporary political engagement, not resistance. BUT RESILIENCE HAS ALSO BEEN CRITICISED…

[38] On the dangers of transmuting theory into aesthetic pleasures (and misreading Deleuze!) see Douglas Spencer *The Architecture of Neoliberlism: How Architecture Became an Instrument of Control and Compliance* London: Bloomsbury, 2016.

[39] 'Understanding' rather than 'explanation'; this is a teasing out and tracing in outline rather than cutting through to reveal underlying truth.

however, is only preserved to us in miniature: our proportions must be those of a colossus.