



UNIVERSITY  
OF WOLLONGONG  
AUSTRALIA

University of Wollongong  
Research Online

---

Faculty of Law, Humanities and the Arts - Papers

Faculty of Law, Humanities and the Arts

---

2014

# D.H. Lawrence's plural jurisprudence: an enquiry into Desmond Manderson's post-positivist 'law and literature'

Luis Gomez Romero

*University of Wollongong*, [lgromero@uow.edu.au](mailto:lgromero@uow.edu.au)

---

## Publication Details

L. Gomez Romero, 'D.H. Lawrence's plural jurisprudence: an enquiry into Desmond Manderson's post-positivist 'law and literature'' (2014) 23 (2) Griffith Law Review 232-260.

Research Online is the open access institutional repository for the University of Wollongong. For further information contact the UOW Library:  
[research-pubs@uow.edu.au](mailto:research-pubs@uow.edu.au)

---

# D.H. Lawrence's plural jurisprudence: an enquiry into Desmond Manderson's post-positivist 'law and literature'

## **Abstract**

The border means more than a customs house, a passport officer, a man with a gun. Over there everything is going to be different; life is never going to be quite the same again after your passport has been stamped and you find yourself speechless among the money-changers.

Graham Greene, *The Lawless Roads*

This article draws on Desmond Manderson's theorisation of 'law and literature' in order to undertake a jurisprudential reading of the last two 'leadership novels' that D.H. Lawrence published in the 1920s: *Kangaroo* and *The Plumed Serpent*. This reading demonstrates the strengths and weaknesses in Manderson's methodology while simultaneously contextualising the experience of modernity through Lawrence's Australian and Mexican narratives. In sum, the article tests Manderson's (Australian) jurisprudential reading of *Kangaroo* with the troubled (Mexican) modernity that emerged from the Mexican Revolution, as it is channelled through *The Plumed Serpent*.

## **Keywords**

lawrence, plural, jurisprudence, enquiry, into, desmond, h, manderson, literature, post, positivist, law

## **Disciplines**

Arts and Humanities | Law

## **Publication Details**

L. Gomez Romero, 'D.H. Lawrence's plural jurisprudence: an enquiry into Desmond Manderson's post-positivist 'law and literature'' (2014) 23 (2) *Griffith Law Review* 232-260.

## D.H. Lawrence's plural jurisprudence: an enquiry into Desmond Manderson's post-positivist 'law and literature'

Luis Gómez Romero\*

*University of Wollongong, New South Wales, Australia*

The border means more than a customs house, a passport officer, a man with a gun. Over there everything is going to be different; life is never going to be quite the same again after your passport has been stamped and you find yourself speechless among the money-changers.

Graham Greene, *The Lawless Roads*

This article draws on Desmond Manderson's theorisation of 'law and literature' in order to undertake a jurisprudential reading of the last two 'leadership novels' that D.H. Lawrence published in the 1920s: *Kangaroo* and *The Plumed Serpent*. This reading demonstrates the strengths and weaknesses in Manderson's methodology while simultaneously contextualising the experience of modernity through Lawrence's Australian and Mexican narratives. In sum, the article tests Manderson's (Australian) jurisprudential reading of *Kangaroo* with the troubled (Mexican) modernity that emerged from the Mexican Revolution, as it is channelled through *The Plumed Serpent*.

### Introduction: two countries, two tragedies

D.H. Lawrence visited both Australia and Mexico during his lifetime journey across the world. Lawrence's encounter with these countries respectively resulted in two novels: *Kangaroo* (1923) and *The Plumed Serpent* (1926). In each of these novels Lawrence exposes the advent of discrete crises resulting from the failure of human ideals and institutions to prevent and tame violence. Lawrence's hatred of the political and cultural developments that he believed inevitably accompanied modern society arises in both works. Yet the crises exposed in these novels are not identical: different contexts amount to different mythologies and tragedies.

'Modern' began to appear as a term more or less synonymous with 'now' in the sixteenth century.<sup>1</sup> By the eighteenth century, the term 'modernise' shifted its meaning and began to indicate updating and improvement.<sup>2</sup> 'Modernity' is thus described nowadays as a set of economic and social conditions—including capitalism, bureaucracy and technological development—that are accompanied by specific experiences of historical consciousness: for example, scientific innovation, the development of the nation state, urbanisation, the industrialisation of production, the expansion of

---

\*Email: [lgromero@uow.edu.au](mailto:lgromero@uow.edu.au)

<sup>1</sup>Williams (1988 [1976]), p 208; (2007 [1989]), p 31.

<sup>2</sup>Williams (2007 [1989]), p 32.

capitalist market or the spread of mass entertainment.<sup>3</sup> Lawrence's Australian and Mexican novels speak out distinct social, political and legal predicaments that are actually rooted in distinct *modernities*. In other words, Lawrence perceived that the 'modernising' processes (and outcomes) whereby Australian and Mexican societies were transformed from traditional forms of political and economic organisation to contemporary capitalism were significantly different.

Lawrence's discontent with modernity is as plural as modernity itself. This insight into the possibility of multifaceted and contesting modernities constitutes Lawrence into an authentic postmodern political philosopher and *jurisprudent* whose work should be reviewed by men and women of law not for the refined amusement of reading modernist literature, but for the study of the shortcomings and limits of the conceptions of justice and methods of legal modernity. Desmond Manderson's latest work—*Kangaroo Courts and the Rule of Law: The Legacy of Modernism*—constitutes an ideal pre-text to undertake such endeavour.

My departing hypothesis is the following: Lawrence's work reveals that the experience of modernity depends on the contexts in which it is produced, therefore disclosing different ways of being modern in Australia and Mexico. The dream of modernity developed into distinctive nightmares in each of these countries. This article thus aims to extend Manderson's 'law and literature' by analysing the 'Mexican novel' written by the very author he chose to develop his theory: D.H. Lawrence. In other words, it offers a jurisprudential reading of two of Lawrence's novels—*Kangaroo* and *The Plumed Serpent*—alongside one another. In doing so it assesses the strengths and weaknesses of Manderson's engagement with Lawrence and addresses some of the limitations in his critique of positivism which are implicit in his focus on Lawrence's Australian novel, rather than in the *continuum* of his work—including his Mexican stories.

I must explicitly affirm that Manderson's latest work must be read not only as a keystone for an authentic renaissance of the field of law and literature, but also as a groundbreaking contribution to contemporary jurisprudence that interrogates and challenges the very language in which we are used to think about law. *Kangaroo Courts* makes a strong case for a post-positivist rule of law that is based upon a *literary* experience of justice. This post-positivist rule of law intends to be equidistant, on the one hand, from positivism's confidence in the emancipatory potential of purely logical systems, objective rules and abstract reason and, on the other hand, from romanticism's appeal to some transcendent ideal of justice situated outside of the parameters of legal rules but, at the same time, capable of overcoming and redeeming them. Manderson defends a model of judgment in politics, law and literature that is 'genuinely committed to undecidability, corrigibility and constant renewal'.<sup>4</sup> Drawing upon the intersections between D.H. Lawrence's literary experience while writing *Kangaroo* and the theoretical work of Jacques Derrida and Mikhail Bakhtin, Manderson argues that 'this openness to conversation, revision and to judgment as a process of learning through discourse, does not destroy the rule of law but gives it a

<sup>3</sup>See, for example, Habermas (1981), pp 444–464; Foucault (1994 [1984]), pp 679–688; Kant (2008 [1784]), pp 25–33; Adorno and Horkheimer (2012 [1944]).

<sup>4</sup>Manderson (2012a), p 6.

new honesty, a new dignity and a new legitimacy'.<sup>5</sup> Most importantly, Manderson contends that 'if we look around the world at societies in transition, and the profound legal problems they face', a dialogic construction of the rule of law seems 'a more important goal to advance than an ill-fated promise of [positivist] objectivity that is increasingly viewed as without credibility'.<sup>6</sup>

New theories call for new academic styles. The 'dialogic imagination' in which Manderson grounds his literary and intersubjective legal methodology<sup>7</sup> is itself a seductive invitation to dialogue. I intend to test Manderson's (Australian) legal methodology with the troubled (Mexican) experience of modernity, as it is channelled through D.H. Lawrence's novel *The Plumed Serpent*. By applying Manderson's methodology to the Mexican story that Lawrence told immediately after he transmuted his Australian experience into *Kangaroo* I pursue to show the huge contribution that Manderson's theoretical elaboration on law and literature entails to our understanding and criticism of legal modernity, while making evident what I regard as its main weaknesses: the treatment of both D.H. Lawrence and modernity as *uniform* objects of study.

Manderson's methodology can be summarised in three steps. First, he contextualises *Kangaroo* among the Western cultural tendencies that were prevalent in 1922, that is, the year in which this novel was written. By 1922, according to Manderson, the idea of a 'crisis of modernity' was 'already shorthand for a comprehensive loss of faith in the foundations of the modern world'.<sup>8</sup> Second, he carefully develops a close reading of *Kangaroo* that stresses not the contents of the novel, but its modernist style: the fractured subjectivities that are portrayed in its pages, along with the formal inventiveness of Lawrence's language. Third, he stretches Lawrence's understanding of language and literature in order to include legal discourses in it. This allows Manderson to address, on the one hand, the social and political criticism of Australian modernity that Lawrence implemented through *Kangaroo* and, on the other hand, the ideological limits of legal positivism. In my opinion, this third methodological step requires some pluralist nuances as the elision in Manderson's work of Lawrence's treatment of Mexican modernity places in contention the basis for his critique of legal positivism outside the Australian context.

Manderson maintains that 'Lawrence did not think of a story as the handing over of some truth or other from writer to reader, but rather as a process by which the writer learns something through writing just as the reader learns through reading'.<sup>9</sup> In other words, Manderson claims that Lawrence conceives writing as a way of learning through imaginative experience. This conception of writing, according to Manderson, is central to Lawrence's views on literature, politics and justice. Yet Manderson offers us a *still picture* of Lawrence's work that is mainly focused on *Kangaroo*. If writing was a learning process for Lawrence, it seems reasonable to assume that his Australian novel does not embody his last word on these issues. *Kangaroo* was written in the south coast of Sydney, at the seaside town

---

<sup>5</sup>Manderson (2012a), p 7.

<sup>6</sup>Manderson (2012a), p 168.

<sup>7</sup>Manderson (2012a), pp 92–96.

<sup>8</sup>Manderson (2012a), p 29.

<sup>9</sup>Manderson (2012a), p 56.

of Thirroul, where Lawrence and his wife Frieda stayed for six weeks during the Australian winter of 1922. They migrated a few months later to the United States. In the spring of 1923, Lawrence went down to Mexico, where he conceived and wrote the first draft of *Quetzalcoatl* (later titled *The Plumed Serpent*), the third and last of his (*in*)famous ‘leadership novels’—after *Aaron’s Rod* (1922) and *Kangaroo*.

The common tenet of the ‘leadership novels’ is an outright hostility towards the emancipatory horizons of bourgeois modernity. Critics often regard these three novels as a direct expression of Lawrence’s proto-fascist propensities.<sup>10</sup> However, a novel is not a political treatise, as Raymond Williams effectively acknowledged when he dismissed as a plain *matter of ignorance* the rebuke of Lawrence as a precursor of fascism.<sup>11</sup> Depicting an authoritarian leadership cult or using a proto-fascist ideology as subject matter for a novel, even sympathetically at moments, does not necessarily indicate an endorsement of fascist politics.<sup>12</sup> Manderson’s approach to *Kangaroo* avoids the naiveté of translating Lawrence’s plot and characters into direct and transparent expressions of his political thought. He convincingly argues that this novel does not represent a notorious instance of Lawrence’s reactionary ideology, but it rather ushers in a quite relevant moment of vacillation in his political thought that ended in his rejection of the romantic dream of authoritarian transcendence.<sup>13</sup>

This essay asserts that Lawrence’s repudiation of ‘leadership’ politics continued and reached its zenith in *The Plumed Serpent*. Following Manderson’s methodological route I will show, by contextualising *The Plumed Serpent* in its Mexican scenery, that the gloomy style of this novel imposes crucial nuances on any jurisprudential reading of Lawrence’s views on the ongoing crises of modernity and their effects on our conceptions of law and justice. In other words, I contend that Lawrence’s *Australian* jurisprudence is different from Lawrence’s *Mexican* jurisprudence because, as Boaventura de Sousa Santos observes in his sociological critique of globalisation, different actors in historical processes tend to see the same developments at different scales depending on their contexts, leading the way to mixtures (and clashes) of different forms of law.<sup>14</sup>

I have thus divided my reflections on Manderson’s take on law and literature into three sections. First, I will explain Manderson’s characterisation of D.H. Lawrence’s novel *Kangaroo* as “‘law and literature’ *avant the lettre*”<sup>15</sup> that, along with the theoretical work of Derrida and Bakhtin, ‘offers us a theory of justice born of the crisis of modernity and forged in the practice of literature’.<sup>16</sup> In the next section I will address the cultural context in which *The Plumed Serpent* was written, mirroring this way Manderson’s methodology that explicitly situates *Kangaroo* within the frame of the non-reactionary modernism that emerged as a response to the disillusionments of World War I. In the last section, I will briefly outline a contextualised jurisprudential reading of *The Plumed Serpent* that is framed in the

<sup>10</sup>Guttman (1964); Millett (1971 [1970]), p 281.

<sup>11</sup>Williams (1968 [1958]), p 199.

<sup>12</sup>Smith (2002), p 7.

<sup>13</sup>Manderson (2012a), pp 96–97.

<sup>14</sup>Sousa Santos (1995), pp. 456–478.

<sup>15</sup>Manderson (2012a), p 21.

<sup>16</sup>Manderson (2012a), p 7.

pragmatic—and murderous—upheavals of the Mexican Revolution. This will set the argument to conclude that the triumph of political authoritarianism in Mexico, as recounted and predicted by Lawrence, restates both the theoretical importance of (legal) contexts and the emancipatory possibilities of legal positivism as a response to the problems that ‘societies in transition’—to keep up with Manderson’s terminology—still face today. Let us remember that Montesquieu once wrote that ‘[t]he political liberty of the citizen is a tranquillity of mind arising from the opinion each person has of his own safety’.<sup>17</sup> This is precisely one of the key virtues of positivism: it compels law to provide every individual with certainty about how to conduct his/her social and political life by calculating the legal consequences of his/her actions and, specifically, of the exercise of his/her rights.

### ***Thirroul of Law or, the literary horizons of a post-positivist rule of law***

*Kangaroo Courts* constitutes the height of the recent work that Desmond Manderson has developed around the nexus between ‘law and literature’ and the rule of law.<sup>18</sup> His approach to this matter is unique in its earnest comprehension of both literary theory and the aesthetic aspects of literary texts. Manderson rightly observes that back to their very origins the discourses constructed around the conjunction of ‘law and literature’ have suffered from two structural weaknesses: first, ‘a concentration on substance and plot’; and, second, ‘a salvific belief in the capacity of literature to cure law or perfect its justice’.<sup>19</sup> The first fails to question the ‘mimetic fallacy’<sup>20</sup> which regards the imitation of nature or reality as the main function of art.<sup>21</sup> The second fails to question the ‘romantic fantasy’<sup>22</sup> which sets the purpose of art in ‘healing the world’s wounds’.<sup>23</sup>

Manderson contends that what makes literature worth reading is neither its coherence with the world, nor the morality it endorses. The ideals of modernism, which so dramatically transformed the landscape of literature, philosophy and politics around the turn of the twentieth century, completely reject the aesthetic aspirations that underlie the mimetic and romantic fallacies. Modernist texts are noteworthy because of their quest for aesthetic autonomy through ‘the eternal recurrence of play and form and the priority of voice over event’.<sup>24</sup> From a modernist perspective, thus, reading a novel as a ‘normative framework to convey information concerning “the real world”’ miserably forsakes to appreciate ‘the dimensions of form and style in works of literature as central elements of our experience and enjoyment of them’.<sup>25</sup> Modernism simply has not happened yet in the academic field that we call ‘law and literature’ as it clings to a time ‘before the crisis

<sup>17</sup>Montesquieu (1979 [1784]), vol 1, p 294. Unless otherwise stated, all translations are mine.

<sup>18</sup>See Manderson (2011), (2012b,c,d).

<sup>19</sup>Manderson (2012a), p 9.

<sup>20</sup>Manderson (2011), pp 108–118; (2012a), pp 10–17.

<sup>21</sup>See, for example, West (1985, 1986); Posner (1986); Nussbaum (1995); Lacey (2008).

<sup>22</sup>Manderson (2011), pp 118–121; (2012a), pp 17–20.

<sup>23</sup>See, for example Nussbaum (1995); Ward (2003); Williams (2005).

<sup>24</sup>Manderson (2012a), p 16.

<sup>25</sup>Manderson (2011), pp 116–117.

of modernity' that shook both law's and literature's claims to 'the certainty and objectivity of the written text'.<sup>26</sup> In this regard, it must be noted that while *modernism* and *modernity* are related, they should also be sharply distinguished. The term modernism refers to the specific cultural forms—notably to experimental art and writing—accompanying the developments of modernity in the late nineteenth and early twentieth century.<sup>27</sup>

The ascension of modernism overlaps with the 'crisis of modernity'—it must be noted that Manderson regularly uses the noun 'crisis' in its singular form—that was triggered by World War I, which in turn virtually destroyed the trust in the systems, beliefs and institutions whereon the so-called Western *civilization* was erected: reason, science, liberal democracy, capitalism and industrialisation. To put it briefly, Manderson regards modernism as a response to the 'crisis of modernity' that implies 'a commitment to individual over social good, a sense of rootlessness and exile, and, coupled with an emphasis on the varieties and uncertainties of individual subjectivity, the most comprehensive critiques of representation and the most radical experiments in form'.<sup>28</sup>

In each of the arts, stylistic variation and reinterpretation—even parody or pastiche—of the past canon were central to the modernist period. In the literary field, modernism entails therefore an understanding of literature 'as a site of questions not of answers, of the creation of textual doubt and ambiguity not certainty'.<sup>29</sup> Modernism destabilised the syntactic and logical articulations which had previously communicated a story to the reader by focusing instead on fragmentation, indeterminacy and singularity both in voice and perspective.<sup>30</sup> Irony is thus central to our understanding of literary modernism as it juxtaposes 'the play of levels and registers within a text, and the tensions between levels of meaning which thereby undermine the most innocent of speech acts'.<sup>31</sup>

Nonetheless, the emergence of new artistic styles that stressed the importance of subjective experience was not the only effect of the horrors that emerged from the Great War's trenches. Romanticism regained momentum. Even though liberals have consistently identified romanticism either with reactionary or plainly totalitarian politics,<sup>32</sup> Manderson appropriately avoids this misleading account of its political, philosophical and aesthetic ramifications. Based on the seminal work of M.H. Abrams on romanticism, Manderson identifies as its central philosophical feature 'a metaphysics of integration, of which the key principle is that of the "reconciliation" or synthesis of whatever is divided, opposed, and conflicting'.<sup>33</sup> The romantic

<sup>26</sup>Manderson (2012a), p 20. For a comprehensive introduction to the development of 'law and literature' within the history of literary and legal thought, see Binder and Weisberg (2000).

<sup>27</sup>Williams (1988 [1976]), pp 208–209; (2007 [1989]), p 32; Manderson (2012a), p 26.

<sup>28</sup>Manderson (2012a), p 27.

<sup>29</sup>Manderson (2011), p 108.

<sup>30</sup>Manderson (2012a), p 19. This is the case, just to mention a couple of examples, of James Joyce's *Ulysses* (first published in 1922), whose encyclopaedic intertextuality displays multiple levels of conceptual and formal structures; or Virginia Woolf's *Mrs Dalloway* (first published in 1927), which follows the stream of consciousness of its central characters through 24 hours.

<sup>31</sup>Manderson (2011), p 121; (2012a), p 17.

<sup>32</sup>Talmon (1960); Berlin (1999).

<sup>33</sup>Manderson (2012a), p 17; Abrams (1971), pp 177–183.



sensibility is bound up with the painful conviction that in modern capitalism something precious has been lost, at the level of both individuals and humanity at large. Romanticism resists therefore the alienation of certain essential human values—*qualitative* values as opposed to the purely *quantitative* exchange value that predominates in capitalist modernity—and promises instead the overcoming of difference, the accomplishment of inward plenitude and the instauration of harmony among human beings.

Manderson diagnoses a growing dilemma between introspection, individual self-assertion, and the claims of the collective among Western intellectuals as modernism moved *in crescendo* into the political tensions of the 1920s. In the years that followed World War I ‘many writers, artists and thinkers were virulently opposed to the legal and social history of positivism and rejected in almost identical terms its obsession with mechanics, systems, technology and rules’.<sup>34</sup> In the writings of the German New Romantics—Eugen Diederichs, Paul de Lagarde and Julius Langbehn, among other authors—‘we can observe the same fusion of nature, tradition, custom, religion; the same belief in justice as hierarchical and leadership as manifest’.<sup>35</sup> Manderson maintains that this cultural mood fostered the *reactionary* constituent of modernism, that is, ‘romanticism which has taken a political and nihilistic turn’.<sup>36</sup>

No author better shows the implications of this resurgent romantic spirit for the rule of law than Carl Schmitt, whose work virtually dissolves law into the mutually enticing forces of politics and emotions. Manderson acknowledges that the association of Schmitt with romanticism is not obvious: his *Politische Romantik*—published in 1919—is precisely ‘a vitriolic diatribe *against* political romanticism’.<sup>37</sup> Nonetheless, Schmitt clearly fits into a pattern of antimodernist legality that reinstates transcendent decision as the key element of the legal system. Manderson contends that ‘[i]f he dismissed political romanticism as “the sovereignty of the ego”, his solution merely substituted the egotism of the sovereign’ by transferring it to an original and charismatic authority that is ‘underived from any institutional structure’.<sup>38</sup>

Schmitt’s critique of legal positivism was forged out of the ashes of the Great War. 1922 marks a critical turn in his thought. The publication that year of *Politische Theologie* exhibited his decisive rejection of the liberal rule of law as expressed through positivist legal theory. Contrarily to the basic idea of the rule of law, which is expressed in the phrase ‘government by law and not by men’—that is, that the government shall be ruled by the law and subject to it, making it possible for individuals to foresee with fair certainty how the authority will use its coercive powers, and to plan their affairs on the basis of this knowledge,<sup>39</sup> Schmitt had come to believe that justice could not be achieved even by the best of rules. Schmitt’s key theses can be encapsulated in the following threefold principle: (i) ‘Sovereign is he who decides the exception’; (ii) ‘[t]he exception is that which cannot be subsumed

<sup>34</sup>Manderson (2012a), p 40.

<sup>35</sup>Manderson (2012a), p 41.

<sup>36</sup>Manderson (2012), p 15.

<sup>37</sup>Manderson (2012a), p 42; Schmitt (2011 [1919]).

<sup>38</sup>Manderson (2012a), p 43; Schmitt (2011 [1919]), p 65.

<sup>39</sup>Raz (1977), pp 195–198.

[... it] appears in its absolute form when a situation in which legal prescriptions can be valid must first be brought about'; and (iii) '[t]he exception in jurisprudence is analogous to the miracle in theology'.<sup>40</sup> For Schmitt, justice was not found in legal structures but in their exceptions; not determined by reference to established procedures but by summoning the voice of the people and the force of the leader who would condense and amplify it.

The exasperation that Schmitt and the New Romantics expressed about the logical and moral limits of positivism resonates today in us as forcefully as it did in 1922. The attack on the Twin Towers and their collapse on 11 September 2001 gave birth to the *brave new world* of Guantanamo Bay and Abu Ghraib. Both listlessness in regulating economic powers and corruption have spread all over the world dystopian realities in the form of a devastating economic crisis.<sup>41</sup> Law seems helpless to constrain public powers that have resuscitated a Hobbesian conception of untrammelled sovereignty as well as private powers that do not accept any legal constraints in their quest for profit.

Manderson compellingly claims that the traditional positivist conceptions of language, objectivity and meaning in law seem highly inefficient to address these challenges. The rule of law is lethally imperilled, but we still do not have anything to replace it. Manderson thus asserts that D.H. Lawrence's work constitutes a timely platform for reassessing our problems with justice and judgement because no less than him 'we still face the terrible problem of what to do once we can no longer believe in our old habits of thought: for belief has died though the habit of believing lingers on'.<sup>42</sup> *Kangaroo* responds to the disorientation caused by the Great War and its implications for art, politics and law through a faithful depiction of the *allure* that emanates from totalising ideologies that promise the redemption of justice and community under the authority of a wise and loving leader—*Duce*, *Führer* or *Caudillo*. Lawrence, however, ultimately recoils from them and renounces his own fondness for authoritarian politics. He actually changed his mind about the need of leadership for achieving justice as he was writing the leadership novels. In a much quoted letter written to Witter Bynner, dated 13 March 1928, Lawrence categorically asserted:

The hero is obsolete, and the leader of men is a back number. After all, at the back of the hero is the militant ideal: and the militant ideal, or the ideal militant seems to me also a cold egg. We're sort of sick of all forms of militarism and militantism [...] the leader-cum-follower relationship is a bore. And the new relationship will be some sort of tenderness, sensitive, between men and men and men and women, and not the one up one down, lead on I follow, *ich dien* sort of business.<sup>43</sup>

Manderson's reading of Lawrence's *Kangaroo* as a dialogic and polyvalent text provides us with a basis to state that this letter does not inaugurate a new stage in Lawrence's thought but rather continues an earlier one whose origins can be traced

<sup>40</sup>Schmitt (1985 [1922]), pp 5, 13, 36.

<sup>41</sup>For a recent account on the present worldwide dystopian realities, see the section titled "Seeds of Dystopia" in World Economic Forum (2012), pp 16–19.

<sup>42</sup>Manderson (2012a), p 3.

<sup>43</sup>Lawrence (1991), p 321.

to his brief sojourn in Australia.<sup>44</sup> In *Kangaroo*, Lawrence tells the story of Richard Lovatt Somers, his own *alter ego*, an English writer whom a group of war veterans who call themselves ‘Diggers’ tries to recruit to the cause of a rightwing takeover in Australia. The righteous authority of their leader, a lawyer born Benjamin Cooley and known as ‘Kangaroo’, is their only political creed. *Kangaroo* summarises his view on the polity and the role the leader plays in it in the following terms:

I want to keep *order*. I want to remove physical misery as far as possible [...] And that you can only do by exerting strong, just *power* from above [...] The secret of life is in obedience [...] And he [man] needs to be relieved from this terrible responsibility of governing himself when he doesn’t know what he wants, and has no aim towards which to govern himself. Man again needs a father [...] Man needs a quiet, gentle father who uses his authority in the name of living life, and who is absolutely stern against anti-life. I offer no creed. I offer myself, my heart of wisdom, strange warm cavern where the voice of the oracle steams in from the unknown; I offer my consciousness, which hears the voice; and I offer my mind and my will, for the battle against every obstacle to respond to the voice of life, and to shelter mankind from the madness and the evil of anti-life.<sup>45</sup>

According to Manderson, *Kangaroo*’s pretended legitimacy comes from ‘the ability of a true leader to act wisely outside of the rules, to realize that the unity of the people transcends vested interests, and to receive the allegiance of his subjects [...] by virtue of his natural and manifest authority’.<sup>46</sup> This is certainly an accurate reading of the novel. Somers initially succumbs to the seduction of these ideals of cohesive community and charismatic leadership as *Kangaroo* directly appeals to his contempt for egalitarianism and *corrupt* modernity. He regards Australia as a loathsome ‘*terre* democratic’ without any sense of ‘class distinction’, where ‘[t]he proletariat appoints men to administer the law, not to rule’.<sup>47</sup> Somers craves instead ‘[t]he mystery of lordship [...] the mystic recognition of difference and innate priority, the joy of obedience and the sacred responsibility of authority’ that ‘democracy and equality try to deny and obliterate’.<sup>48</sup>

Manderson suggests that to understand *Kangaroo*’s argument properly we must pay attention not just to Somers, but to *all* its characters and to the different voices that struggle in each character’s conscience.<sup>49</sup> Somers’ voice in the novel is constantly undermined and destabilised by others voices: by the narrator, by his wife Harriet and even by Somers himself through an internal dialogue between the yearning to lose himself in collective unity and the desire for solitude. Somers

<sup>44</sup>Philip Sicker (1992) argues that Lawrence’s retreating from leadership politics lasted only until 1929, at which time his Grand Inquisitor essay reasserted the importance of the hero. However, as Jad Smith (2002, p 21) observes, the question of whether or not Lawrence eventually reaffirmed his interest in leadership politics matters less than his hesitation while he was writing the ‘leadership novels’.

<sup>45</sup>Lawrence (1923), pp 126–128.

<sup>46</sup>Manderson (2012a), p 58.

<sup>47</sup>Lawrence (1923), p 18.

<sup>48</sup>Lawrence (1923), p 121.

<sup>49</sup>Manderson (2012a), p 125.

repeatedly berates himself as he acknowledges he is merely a ‘preacher and a blatherer’, a plain fool and even a ‘beastly’ and ‘detestable little brat’.<sup>50</sup>

Indeed, Harriett’s is the most powerful voice that subverts Somers’ pretensions.<sup>51</sup> Manderson calls our attention to a particular example which illustrates how Lawrence ironically modulates his own voice, citing his own opinions in contexts that subtly disrupt them.<sup>52</sup> On a cold day at the beach, Lawrence tells us, Somers’ hat is caught by the wind and carried into the waves. He clumsily manages to rescue it.<sup>53</sup> Chilled and wet, he continues to lecture Harriet on the way home about the convenience of reawakening ‘the aristocratic principle’ that advocates the recognition of ‘the *innate* difference between people’. Harriet retorts brutally: ‘Aristocratic principle! [...] You should have seen yourself, flying like a feather into the sea after your hat’.<sup>54</sup> Later, Somers sits in a little barrel with a rusty tin-lid to warm himself near the fire. She pours scorn on him again: ‘Old tin lids! How can you *sit* on it? [...] Is that your aristocratic principle?’<sup>55</sup>

The novel’s embodiment in multiple characters provides resistance to the claims and arguments of each of them. Somers’ engagement in active dialogue with other characters’ voices transmutes his viewpoints about politics and justice. As Somers gradually abdicates the hierarchical and collectivist creed he endorsed at the time he arrived in Australia, he ruminates that ‘[l]ife makes no absolute statement [...] because] Life is so wonderful and complex, and *always* relative’.<sup>56</sup> In the end, he refuses to be seduced by the promises of any man to truly possess the insight and authority that Kangaroo vindicates. Somers just wants to be left ‘alone by himself, alone with his own soul, alone with his eyes on the darkness which is the dark god of life’.<sup>57</sup> Thus, he finally declines Kangaroo’s suffocating embrace:

It’s the will-to-love that I hate, Kangaroo [...] Don’t love me. Don’t want to save mankind. You’re so awfully *general*, and your love is so awfully general [...] Don’t want me to love you. Let’s be hard, separate men [...] you’re such a Kangaroo, wanting to carry mankind in your belly-pouch, cozy, with its head and long ears peeping out. You sort of figure yourself a Kangaroo of Judah, instead of a Lion of Judah: Jehovah with a great heavy tail and a belly-pouch. Let’s get off it, and be men, with the gods beyond us. I *don’t* want to be godlike, Kangaroo. I like to know the gods beyond me. Let’s start as men, with the great gods beyond us.<sup>58</sup>

<sup>50</sup>Lawrence (1923), pp 319, 327–328, 332.

<sup>51</sup>Kate Millett (1971 [1970], p 280–283) derides *Kangaroo* for its ‘heavy emphasis on masculine privilege, politics, and the public life, from which females, citizens or not, are jealously excluded’. I believe that an unbiased reading of Harriet’s role in the development of the ideas that are the novel’s real protagonists inflicts some serious nuances on this critical judgement.

<sup>52</sup>Manderson (2012a) pp 125-6.

<sup>53</sup>Lawrence (1923), p 322.

<sup>54</sup>Lawrence (1923), p 325.

<sup>55</sup>Lawrence (1923), p 326.

<sup>56</sup>Lawrence (1923), p 314.

<sup>57</sup>Lawrence (1923), p 330.

<sup>58</sup>Lawrence (1923), p 245.

Why did Lawrence turn his back on reactionary romanticism in this way? Manderson thinks that the answer lies in the novel itself. Mikhail Bakhtin's writings on the novel provide us with the necessary elements to understand Lawrence's ideological evolution through *Kangaroo*. Bakhtin highlights the novel as an inherently fragmentary and double-voiced genre. The most powerful feature which Bakhtin recognizes in the novel is its *heteroglossia* or polyphony, its characteristic multiplication of voices and perspectives. In speech, 'every word is directed toward an answer and cannot escape the profound influence of the answering word that it anticipates'.<sup>59</sup> The novel reproduces this aesthetical, as well as ethical, quality of speech.

Bakhtin defines the novel as 'a diversity of social speech types (sometimes even diversity of languages) and a diversity of individual voices, artistically organized'.<sup>60</sup> Its distinctive 'dialogic imagination' gives a particular voice to each of the characters and sets these voices *against* one another. The novel's multiple voices appear in many different mutual relations—of stylisation, parody, hidden polemic, and so on. Along these lines, the novel points not just to a mosaic of voices, but at the same time to their transformation under the communicative pressure of their contexts of utterance. This is what Bakhtin means when he speaks about the novel as a literary genre that is basically 'dialogized, permeated with laughter, irony, humor' and 'elements of self-parody', and also imbued with 'indeterminacy, a certain semantic open-endedness' and 'a living contact with unfinished, still-evolving and contemporary reality'.<sup>61</sup>

If we read *Kangaroo* from a Bakhtinian perspective, we will most probably conclude—as Manderson does—that Lawrence did not write *Kangaroo*, but *Kangaroo* rewrote Lawrence.<sup>62</sup> Bakhtin's claims are both echoed in D.H. Lawrence's own essays on the novel, and performed in his 'leadership novels'.<sup>63</sup> In his 'Study of Thomas Hardy', Lawrence contends that an authentic work of art 'must contain the essential criticism of the morality to which it adheres' in order to create 'the conflict necessary to every tragic conception'.<sup>64</sup> *Kangaroo* similarly refers to the 'laws of polarity', which are described as the movement between two flows, one sympathetic and loving, the other mighty and authoritarian. Lawrence writes that '[i]n the absolute triumph of either flow lies the immediate surety of [human] collapse'.<sup>65</sup>

The Great War, Manderson argues, brought on the crisis which stimulated Lawrence to work through the tensions between opposing principles that he refused to cap by a fruitless appeal to some ideal state of concord. *Kangaroo* embodies 'an earnest if perverse commitment: *not* to resolve its contradictions and tensions but to see in them its main character's essential activity'.<sup>66</sup> Polarity is neither synthesis nor harmony, but plain opposition between 'forces that cannot be compromised since we

<sup>59</sup>Bakhtin (1981 [1975]), p 280.

<sup>60</sup>Bakhtin (1981 [1975]), p 262.

<sup>61</sup>Bakhtin (1981 [1975]), p 7.

<sup>62</sup>Manderson (2012a), pp 90–111.

<sup>63</sup>Manderson (2012a), pp 142–144, 152; Hyde and Clark (1993–1994), pp 140–141.

<sup>64</sup>Lawrence (1985), p 89.

<sup>65</sup>Lawrence (1923), pp 354–355.

<sup>66</sup>Manderson (2012c), p 492.

are committed too much to *both*.<sup>67</sup> As Paul Eggert puts it, the literary methodology of polarity underscores the fragility, provisionality and temporariness of *every* textual medium and expresses an unremitting willingness to revise, rethink and renew our social conditioning, historical contextualisation, and epistemic and discursive formations.<sup>68</sup> It is Manderson's theoretical merit to have envisioned a method to examine and criticise legal discourses through Lawrence's polarity.

In sum, Lawrence believed that we should not try to eliminate or conciliate contradictory beliefs, arguments or expectations, but rather draw our strength from them. 'A man's soul is a perpetual call and answer', Lawrence writes.<sup>69</sup> Polarity is precisely the main tenet of the post-positivist conception of the rule of law that Manderson names, after *Kangaroo*, 'Thirroul of Law'. *Call and answer*: the rule of law consists in a public debate of (legal) reasons which acknowledges the unfeasibility of interpretative closure in face of the plurality and singularity of circumstances that characterise legal work. Manderson argues that the literary modernism of Bakhtin and Lawrence entails a crucial public dimension through which the pressure of conveying and justifying our judgements to others transforms our understanding of the rule of law into 'a set of ideas that institutionally protect the social and dialogic process of exposing and critiquing reasons for decision, rather than as a set of ideas that institutionally entrench the hierarchical or hieratical process of announcing them'.<sup>70</sup>

According to Manderson, Derrida makes a similar point when he addresses the unavoidable aporias that burden legal judgment: 'for a decision to be just and responsible, it must [...] be regulated and without regulation: it must conserve the law and also destroy or suspend it enough to have to reinvent it in each case, rejustify it, at least reinvent it in the reaffirmation and the new and free confirmation of its principle'.<sup>71</sup> In other words, legal judgment is permanently torn between two contradictory directions: on the one hand, the abstract rule; on the other hand, the uniqueness of the particular case that cannot be settled in advance. Legal judgment cannot choose 'between justice (infinite, incalculable, rebellious to rule and foreign to symmetry) and the exercise of justice as law or right, [...] calculable, a system of regulated and coded prescriptions'.<sup>72</sup> The endless cycle of tensions, oppositions and disagreements between prior rules and new circumstances render legal decision basically unstable and imperfect.

Manderson's approach to law and literature is deeply bound up in our present imperfection, our fragmentation and the imperfection and fragmentation of justice with us. Manderson opposes the configuration of 'Thirroul of Law' both against positivists' assertion of law's perfection and the romantics' of its perfectibility—the former 'a claim of purity centered on the past' and the second 'a dream of it focused on the future'.<sup>73</sup> The reconfiguration of the positivist rule of law into the

---

<sup>67</sup>Manderson (2012c), p 493.

<sup>68</sup>Eggert (1999).

<sup>69</sup>Lawrence (1923), p 314.

<sup>70</sup>Manderson (2012a), p 159.

<sup>71</sup>Manderson (2012a), p 166; Derrida (1990), p 961.

<sup>72</sup>Derrida (1990), p 959.

<sup>73</sup>Manderson (2012a), p 178.

post-positivist ‘Thirroul of Law’ has therefore, at least, three salient features. First, ‘the rule of law is not the outcome of a foundation, but a process of continually putting them [foundations] in question’. Second, ‘the rule of law is governed by reasons rather than a singular or categorical reason’. Third, ‘the rule of law does not present commandments that are handed down *to us*, but a discourse by which the law learns *from us*, paying attention to new circumstances and individual lives’.<sup>74</sup>

This way, ‘Thirroul of Law’ moves beyond romantic transcendence by acknowledging that we have not *lost* the foundations of law in the chasms of modernity, but have always *lacked* them.<sup>75</sup> Manderson concludes that ‘Thirroul of Law’ does not advance certainty, but enshrines uncertainty by acknowledging ‘trial and error’ as the legal method *par excellence*.<sup>76</sup> In this view, argument and doubt are not a mark of law’s failure but of its success. It seems to me, however, that the methodology of transparency, justification and response that is advocated by Manderson actually presupposes to a certain extent not only a liberal public sphere, but also the logical and linguistic certitude that positivism praises as modern law’s virtues. In order to prove this, we must follow D.H. Lawrence in his literary expedition to Mexico—the very *antipodes* of Australia. Just as Manderson frames *Kangaroo* in the cultural aftermath of the Great War, I will contextualise *The Plumed Serpent* in its own Mexican historical setting in order to disclose Lawrence’s views on a different model of modernity and their implications for our own understanding of law.

### Mexico, 1923–1925: looking into the abyss of sovereignty

Manderson claims that the jurisprudential methodology he develops in *Kangaroo Courts* is not only ‘about a book and how it still speaks to us’, but also ‘about a time and how it still resonates in us’.<sup>77</sup> What was ‘in the air’ in 1922—at the time Lawrence wrote *Kangaroo*—Manderson argues, ‘was modernity, modernism and the modern’.<sup>78</sup> Drawing on Manderson’s methodology, a reader of *The Plumed Serpent* should therefore ask *what was in the air* when Lawrence visited Mexico. The answer to this question is, as Manderson suggests, *modernity*. It was, however, a kind of modernity quite *different* from the one that Lawrence experienced either in Europe or Australia: it was a cynical, baroque and cold-hearted yet irrational way of being modern.

Lawrence drafted *The Plumed Serpent* during a visit to Chapala, Mexico, in 1923 and finished it during a stay in Oaxaca from 1924 to 1925. Even though Mexico is the scenario in which the action of *The Plumed Serpent* takes place, critics have frequently neglected to situate its narrative in a specifically Mexican context. L.D. Clark emphatically states that ‘[t]he political events recounted in *The Plumed Serpent* bear no more than a general resemblance to those taking place in Mexico in the twenties’.<sup>79</sup> John B. Vickery claims that ‘it is the book most commonly thought of as

<sup>74</sup>Manderson (2012a), pp 179–180.

<sup>75</sup>Manderson (2012a), pp 150–152.

<sup>76</sup>Manderson (2012), p 23; (2012c), p 504.

<sup>77</sup>Manderson (2012a), p 25.

<sup>78</sup>Manderson (2012a), p 26.

<sup>79</sup>Clark (1964), p 76.

“mythic” in the entire Lawrence canon’.<sup>80</sup> Peter Fjågesund insists that Lawrence places ‘almost exclusively European, or at least Western’ concerns at the centre of its narrative.<sup>81</sup>

Jeffrey Meyers imputes this intentional obliviousness either to the resistance of literary scholars ‘who know nothing of Mexican history’ to learn *something* about it; or to the surreptitious conversion of the ‘political realities and totalitarian ideology of the novel’ into ‘a more vague and acceptable mythology’ by Lawrence’s admirers. I think Meyers is a bit too harsh with his colleagues. Mexican history is really difficult to understand—even for Mexicans—and *The Plumed Serpent* is certainly not an easy and relaxing reading. Meyers, however, correctly asserts that ‘it is illuminating to study the novel in its historical context, for Lawrence was thoroughly familiar with the contemporary political situation in Mexico, and [...] it is precisely this montage of myth and *Realpolitik* that gives the book its unusual and disturbing qualities’.<sup>82</sup>

I do not intend to describe here, as Meyers does, the sheer historical facts that framed Lawrence’s stay in Mexico.<sup>83</sup> What I would like to accentuate instead is the *cultural context* in which Lawrence wrote *The Plumed Serpent*. Just as he did in Australia before, Lawrence showed an uncanny ability to channel onto his writing the land, the people, the language and the ways of life he witnessed in Mexico.<sup>84</sup> Willard Johnson (who is represented as Bud Villiers in the novel) reports that, during his stay in Chapala, Lawrence ‘read Mexican history and folklore and [...] *somehow got the spirit of the place*’.<sup>85</sup>

On 16 March 1925, a headline on the front page of *Excelsior*—a leading Mexican newspaper—confirmed Johnson’s view on Lawrence’s nexus with Mexico. The caption reads: ‘*D.H. Lawrence, el gran escritor Inglés, nos visita y nos comprende*’ [‘D.H. Lawrence, the great English writer, visits us and understands us’].<sup>86</sup> What is noteworthy about this comment is the contention that Lawrence actually *understands* Mexico and the Mexicans. The early reception of *The Plumed Serpent*—and Lawrence himself—in Mexico was significantly positive. Bernardo Ortiz de Montellano, for example, suggests that any educated reader should appreciate Lawrence’s poetical unveiling of ‘the hidden truth about Mexico and the Mexicans’ in the novel.<sup>87</sup> Antonio de Castro Leal concurs in the belief that Lawrence had achieved a deep understanding of Mexico’s reality and praises *The Plumed Serpent* as ‘a subtle travel notebook, a fictional and symbolic narrative’ and ‘a profession of faith’.<sup>88</sup> The exiled Spanish poet Antonio Sánchez Barbudo, in his review of *Mornings in Mexico* for the Mexican magazine *El Hijo Pródigo*, eulogised Lawrence as a ‘great traveler’

<sup>80</sup>Vickery (1972), p 505.

<sup>81</sup>Fjågesund (1991), p 137.

<sup>82</sup>Meyers (1974), p 56.

<sup>83</sup>For a brief yet comprehensive account of the Mexican Revolution, see Silva Herzog (1960a,b).

<sup>84</sup>Manderson (2012a), pp 55–56.

<sup>85</sup>Villiers (1930), p 428, emphasis added.

<sup>86</sup>Quoted in Odio (1999), p 165.

<sup>87</sup>Ortiz de Montellano (1934), pp 182–183.

<sup>88</sup>Castro Leal (1942), p 187.



who was able to look at Mexico with ‘ingenuousness’ and ‘purity’, thus yielding a ‘truthful’, ‘most vivid’ and ‘penetrating’ image of the country and its people that honestly regarded indigenous Mexicans as creatures who lived ‘in a different world’.<sup>89</sup> As late as 1959, Octavio Paz celebrated *The Plumed Serpent* as a flawless literary account of the cruelty and violence that permeate Mexican undomesticated landscapes.<sup>90</sup> To put it briefly, Mexican critics felt (at least before the consolidation of Mexican post-revolutionary nationalism and the rise of post-colonial studies) that Lawrence’s *upsetting fiction mirrored their own experience of the Mexican Revolution and its cultural, political and legal reverberations*.

Kate Leslie-Lawrence’s heroine in *The Plumed Serpent*—defines Mexico as an ‘oppressive’, ‘gruesome’, ‘cruel’, ‘down-dragging’ and ‘destructive’ country.<sup>91</sup> This was *indeed* a precise description of Mexico’s social, economic and political conditions between 1923 and 1925. Thirteen years of civil war had fragmented authority, subverted the state apparatus, wrecked the country and decimated its population. After an almost total military mobilisation of peasants and workers, the government had been overthrown several times. In 1917, the constitution was comprehensively rewritten. Railroads, bridges, mines, factories and *haciendas* alike were destroyed in the brutal struggle between antagonistic revolutionary factions. Whereas the 1910 census counted 15 million people in Mexico, the 1921 census counted only 14 million.<sup>92</sup> In other words, one out of eight Mexicans had been killed between 1910 and 1921.<sup>93</sup>

The bloodshed had not ended by the time Lawrence arrived to Mexico. Practically until the late 1930s Mexico was a tangible nightmare at whose heart laid the spectre of violent death both for Mexicans and foreigners. The travel-oriented literature about Mexico that was written by foreigners between 1920 and 1940 echoes these deeply inhospitable conditions.<sup>94</sup>

Lawrence was actually the first major figure to experience the horror of the Mexican Revolution and to write about it for the English-speaking public.<sup>95</sup> The savagery of Mexican ambience is exhaustively commented in Lawrence’s correspondence. As soon as he arrived in Mexico, he indignantly wrote to Knud Merrild on 21 April 1923 that to live ‘even one mile outside’ a ‘village or town’ was practically risking to be ‘robbed or murdered by roving bandits and scoundrels who still call them revolutionaries’.<sup>96</sup> On 27 June 1923 he warned Thomas Seltzer about the ‘disheartening’ possibility of ‘a Catholic-reactionary revolution due about

<sup>89</sup>Sánchez Barbudo (1943), pp 58–59.

<sup>90</sup>Paz (2007 [1959]), pp 16–18.

<sup>91</sup>Lawrence (2009 [1926]), pp 33, 42.

<sup>92</sup>Aguilar Camín and Meyer (1991), p 87.

<sup>93</sup>Zoraida Vázquez (1989), pp 700–701. Lawrence was aware of the revolutionary death toll and seemingly increased it for the sake of good fiction. A secondary character—young García—declares in *The Plumed Serpent* that ‘the last census of Porfirio Díaz gave seventeen million people’, while ‘the census of last year (circa 1923) gave only thirteen millions’. See Lawrence (2009 [1926]), p 54.

<sup>94</sup>Walker (1978), pp 18–26. See, for example, Porter (1964), p 138; Greene (2002 [1939]), p 47.

<sup>95</sup>Walker (1978), pp 26–27.

<sup>96</sup>Lawrence (1987), p 430.

September—which would mean bolshevist re-reaction in the spring’.<sup>97</sup> A few months later, on 19 November 1923, Lawrence wrote to Willard Johnson: ‘Everything a bit heavier. They expect more revolution—Calles and De la Huerta—probably a bad one. No business doing—and the common people a bit brutal’.<sup>98</sup> In a similar tone, tainted with racist remarks about the Mexican Indians, on 15 November 1924 he informed Middleton Murry that Mexico ‘is always unsettled’ and ‘everything is so shaky and really so confused’ partly because ‘[t]he Indians are queer little savages, and awful agitators’.<sup>99</sup>

Lawrence’s Mexican experience is one of tumultuous political volatility and absolute legal precariousness. Yet his account of singular atrocities is not quite as relevant as his literary reconstruction of the *cultural environment*; that is, the multiple and overlapping voices and discourses that made them possible. Lawrence understood the uniqueness of the revolutionary moment in Mexico and honestly depicted the appeal that gratuitous and unpunished violence has over individuals. Kangaroo and the ‘Diggers’ would have turned pale with envy at the sight of the unbound power concentrated in each of the Mexican struggling *caudillos*. The Mexican Revolution opened Lawrence’s eyes to the limitless sovereignty of the *great criminal* as both Walter Benjamin and Jacques Derrida have described it: not someone who has committed this or that specific crime for which one feels a secret admiration, but someone who, in defying the law, lays bare the violence of the juridical order itself.<sup>100</sup>

José Juan Tablada, a Mexican poet who abominated the revolution (and accused Lawrence of plagiarism),<sup>101</sup> cunningly wrote in his diary in the first days of 1920: ‘Many soldiers [...] ceased to be slaves [...] to become tyrants on their own’.<sup>102</sup> The revolution transformed the vicious whims of the *caudillos* into current law. A glimpse into the macabre stories collected by Martín Luis Guzmán, a privileged witness who worked as Francisco Villa’s—one of the fiercest and most popular revolutionary *caudillos*—private secretary, will indeed be very useful in order to imagine the outrageous situation that Lawrence faced in Mexico. In *El Águila y la Serpiente* (*The Eagle and the Serpent*), a fictionalised chronicle of the revolution that was first published in 1928, Guzmán excoriates the propensity of the revolutionary *caudillos* to pillage, rape, steal and murder while sarcastically designating their cruel arbitrariness as ‘revolutionary justice’.<sup>103</sup>

Yet the most dreadful incident described by Guzmán is situated at the margins between reality and legend: a condition, he says, that made it ‘worth of making History’. Guzmán refers that Villa regarded the henchmen of Pascual Orozco, a rival

<sup>97</sup>Lawrence (1987), pp 464–465.

<sup>98</sup>Lawrence (1987), pp 536–537.

<sup>99</sup>Lawrence (1989), pp 167–168.

<sup>100</sup>Benjamin (1991 [1921]); Derrida (1990), p 987.

<sup>101</sup>Tablada published in 1924 *La Resurrección de los Ídolos* (*The Resurrection of the Idols*), a ‘theosophical-psychoanalytical-intuitive’ *feuilleton* about the return of the Aztec gods to Mexico. This is the only likeness between Tablada’s fiction and *The Plumed Serpent*. See Tablada (2003 [1924]).

<sup>102</sup>Tablada (1992), p 148.

<sup>103</sup>Guzmán (2010 [1928]), pp 199–208, 214–226.

*caudillo*, as particularly odious traitors. In a battle involving both factions, Orozco's *Colorados* ('red men') were defeated and taken as prisoners by Villa's soldiers. Villa instructed Rodolfo Fierro—his most trusted lieutenant, also known as '*El Carnicero*' (*The Butcher*)—to execute the *Colorados* before nightfall. Fierro decided then to accomplish this order with ferocious creativity. He herded 300 prisoners into a cattle pen. At its far end was a high adobe wall. Fierro used the few yards that separated the cattle pen's gate from the wall as an improvised shooting gallery where the prisoners acted as moving targets. He fired at them while his orderly reloaded. The prisoners were released 10 at a time: anyone who could reach and climb the wall could go free. No prisoner was allowed to decline this deathly opportunity to escape: anyone who refused to run towards the wall was immediately shot. 'Come on, boys', Fierro called. 'I'm the only one shooting, and I'm a bad shot'. It was a lie. After two hours, Fierro succeeded in killing all the prisoners except one. Guzmán famously titled this ghastly episode as *La Fiesta de las Balas* (*Festival of the Bullets*).<sup>104</sup>

Fierro's deed illustrates the immense power displayed by the *caudillos* within their precarious yet absolute jurisdiction. The random violence of the revolution blurred the boundaries between animal and human—in Guzmán's story, the *Colorados* were prodded, contained and killed as cattle—and, at the same time, granted the *caudillos* semi-divine powers—Fierro literally *mastered* the life and death of 300 individuals in a single evening. Lawrence discussed hundreds of similar stories either with boastful revolutionaries, disheartened victims or fearful foreigners.<sup>105</sup> He actually endured the stories of the pointless murders of one of his acquaintances and a close friend in Mexico: respectively, the English novelist Wilfrid Ewart<sup>106</sup> and the American landlady Rosalie Evans.<sup>107</sup> Witter Bynner reports that, after learning about the fortuitous death of Ewart by a stray bullet during the wild celebrations of New Year's Eve, 1922, in Mexico City, Lawrence prompted a quick conclusion: 'it's an evil country down there'.<sup>108</sup>

The ceaseless account of revolutionary atrocities produced a deep impression on Lawrence, as it did on the female protagonist of *The Plumed Serpent*. In the novel, for example, after hearing about the brutal murder of the manager of one of the estates across the lake in Sayula, Kate feels that 'doom and horror' are written 'in the very sky'. Even though 'she herself had seen no horrors [...] And she had had some exquisite moments [in Mexico ...] she could not bear the unease, and the latest sense of horror'.<sup>109</sup>

The return of the bloodthirsty Aztec gods in *The Plumed Serpent* is not merely a fabrication of Lawrence's feverish fantasy. In Mexico, Lawrence walked among terrible demigods that pushed him to the verge of a Nietzschean moral panic: he

<sup>104</sup>Guzmán (2010 [1928]), pp 169–179.

<sup>105</sup>Bynner (1951), p 181. Regardless of Witter Bynner's testimony about Lawrence being 'haunted' by the tales of violence that circulated in Mexico, this I can affirm with certainty: my own grandparents possessed a rich collection of grim revolutionary anecdotes.

<sup>106</sup>González Rodríguez (2006), pp 9–42; Walker (1978), p 45.

<sup>107</sup>Walker (1978), p 57.

<sup>108</sup>Bynner (1951), p 17.

<sup>109</sup>Lawrence (2009 [1926]), p 90.

looked into the abyss of sovereignty, and the abyss looked back at him.<sup>110</sup> From a Derridean perspective we could say that Fierro's 'festival of bullets' effectively shows the inadequacy of theory and language to address so-called *human realities*. From a legal and political standpoint, we could also affirm that the limits between humans, animals and the gods are basically undecidable and porous, and that sovereignty emerges from this very undecidability and porosity.<sup>111</sup> Not all sovereigns, however, are the same: I bet that, if they had been given the choice, the 299 *Colorados* that were brought down by Fierro's bullets would have preferred to be judged for their actions under the objective rules and abstract reason of legal positivism.

Lawrence would probably have agreed with me. His friend Rosalie Evans was assassinated in cold blood precisely because she insisted in formally vindicating in Mexican courts and diplomatic forums her property over several *haciendas* against the will of the revolutionary *caudillos*.<sup>112</sup> Nonetheless, Lawrence was also interested in unravelling the mystery of Mexico's *heart of darkness*, to borrow Joseph Conrad's famous title. He thus went unashamed all the way through the attraction of the limitless power of the *caudillos*. Drawing from Manderson's methodology, I will hence follow Lawrence in this path by analysing and questioning the fragmentary and distinct voices that speak through the narrative fabric of *The Plumed Serpent*.

### Reptilian courts or, the land of absolute undecidability

Mexico inspired a new turn in Lawrence's polarities. *The Plumed Serpent* confronts its readers with the hesitations of a European middle-aged woman—that is, a 'civilised' individual—between the thrill of untrammelled and—what is probably more important—*remorseless* power, and the repulsion towards the terrifying violence that constitutes both its basis and its most probable outcome. The novel tells the story of Kate Leslie, the widow of an Irish patriot who visits Mexico with Owen Rhys, her American cousin. Mexico oppresses and alienates Kate: it makes her feel 'like a bird round whose body a snake has coiled itself'.<sup>113</sup> She constantly thinks of the country and its people with a mixture of racist contempt and compassion that is epitomised in her feelings toward *Quetzalcoatl*, the Mesoamerican deity of wind, light and wisdom whose name means 'feathered serpent'. Kate regards *Quetzalcoatl*, Mexico and the Mexicans alike as 'snakes coiled like excrement [...] fanged and feathered beyond all dreams of dread'.<sup>114</sup>

In other words, Kate believes that the heavy coils and the sharp fangs of *Quetzalcoatl* are too perceptible everywhere in Mexico. She is continuously aware of the looming presence of death in the Mexican landscapes. She intensely dislikes the Mexican Revolution's egalitarian rhetoric as well as the violence it precipitates. In Kate's view, even though the Mexicans foolishly believe that 'the revolutions have been their revolutions, and they had won them all', the truth is that 'it was the army

---

<sup>110</sup>Nietzsche (2002 [1886]), p 69.

<sup>111</sup>Derrida (2008).

<sup>112</sup>Rosas Robles (2010).

<sup>113</sup>Lawrence (2009 [1926]), p 63.

<sup>114</sup>Lawrence (2009 [1926]), p 70.

which had won all the revolutions'.<sup>115</sup> She also disapproves the loutish hatred that underlies the 'famous revolutions' that 'began with *Viva!* but ended always with *Muera!*'.

Kate believes that pre-Colombian Mexico 'had had an elaborate ritual of death'. By contrast, revolutionary Mexico transformed death into a 'ragged, squalid, [and] vulgar' event, 'without even the passion of its own mystery'. On the morning of her fortieth birthday, Kate wonders why she had come 'to this high plateau of death'.<sup>116</sup> This question, in one form or another, becomes the central strain of the entire novel. As the plot develops, a corollary question concerning Kate's future takes over: will she leave Mexico and abandon all it represents, or will she stay and submit to its unremitting violence? 'To Stay or Not to Stay' is actually the title of the fourth chapter.<sup>117</sup> Lawrence gradually conducts the reader towards an understanding of the profound meaning of Kate's Mexican experience by tracing this dilemma to its ultimate consequences.<sup>118</sup> On the one hand, Lawrence tells us, for a 40 year old woman, Europe represents 'the *consummatum est* of her own spirit'. On the other hand, the Mexican 'heavy continent of dark-souled death was more than she could bear'.<sup>119</sup> Death lay behind her in Europe and before her in Mexico. Graham Hough accurately describes Kate's state of mind in the novel as 'driven back and forth between two repulsions rather than drawn by contrary attractions'.<sup>120</sup>

Kate gets eventually involved in the *Quetzalcoatl movement*, a quasi-religious leadership cult started by two Mexicans of her acquaintance: Ramón Carrasco, a historian and archaeologist, and Cipriano Viedma, a general. Ramón and Cipriano intend to awaken the gods of the Aztec pantheon, including Quetzalcoatl and Huitzilopochtli—the second being the deity of war, sun and human sacrifice. Ramón, the movement's charismatic leader, ultimately becomes the Living Quetzalcoatl, whereas Cipriano incarnates Huitzilopochtli. Cipriano is a Mexican Indian, unemotional and quiet yet vitally alert. He is nothing but 'the inevitable Mexican General, fascinated by the opportunity for furthering his own personal ambition and imposing his own personal will'<sup>121</sup> whenever he is on his own. He repeatedly urges Ramón/Quetzalcoatl to consider various plans by which, backed by his army, both of them might assume control of Mexico. However, Ramón/Quetzalcoatl disclaims any interest in personal power and, under his influence, Cipriano becomes a divine creature, 'more than just a man'.<sup>122</sup> Kate ritually marries Cipriano/Huitzilopochtli and becomes herself in due course a goddess named Malintzi.<sup>123</sup>

---

<sup>115</sup>Lawrence (2009 [1926]), p 7.

<sup>116</sup>Lawrence (2009 [1926]), p 42

<sup>117</sup>Lawrence (2009 [1926]), pp 63–71.

<sup>118</sup>Walker (1978), pp 79–100.

<sup>119</sup>Lawrence (2009 [1926]), p 43.

<sup>120</sup>Hough (1956), p 124.

<sup>121</sup>Lawrence (2009 [1926]), p 229.

<sup>122</sup>Lawrence (2009 [1926]), p 336.

<sup>123</sup>It must be noted that *Malintzin* (with a final 'n'), known also as *La Malinche*, was not a goddess in the Aztec pantheon but Hernán Cortés' indigenous concubine, who played a major role in the Spanish conquest of Mexico.

Walter Benjamin's well-known distinction between 'divine' and 'mythic' forms of violence is certainly relevant here. Whereas mythical violence, says Benjamin, is law-making; divine violence is law-destroying. Mythical violence sets boundaries, creates guilt and retribution and is structured over threat; divine violence, on the contrary, destroys boundaries, demands expiation and plainly strikes those who challenge it. Mythical violence is mediated by law; divine violence is pure power and truthful sovereignty.<sup>124</sup> *The Plumed Serpent* delves into the dreadful accomplishments of those human beings who seize divine violence. At a first moment, Cipriano is just a public officer that stands 'for the law and the constitution'.<sup>125</sup> After his transformation into Huitzilopochtli, his feats transcend legal rules (i.e. the realms of mythical violence) and echo the unfathomable depths of divine violence. In Chapter 19 ('The Attack on Jamiltepec'), for example, the reader witnesses the attempted assassination of Ramón/Quetzalcoatl perpetrated by the Knights of Cortés, a Catholic organisation.<sup>126</sup> Later, during 'Huitzilopochtli's Night' (Chapter 23), the defeated assailants are accused of treason and pitilessly executed by Cipriano, who acknowledges both Ramón/Quetzalcoatl and himself as 'Lords of Life and Masters of Death'. His sovereignty knows no restrictions: 'Red Huitzilopochtli' is responsible for keeping 'day and night apart', that is, for separating 'cowards' and 'traitors' from 'brave' and 'true men'.<sup>127</sup>

The novel strongly suggests that the old sovereign gods—'those Aztec horrors' as Kate refers to them<sup>128</sup>—are steeped in blood, and that the only future this past will engender is one fraught with senseless violence and death. The estrangement with the Quetzalcoatl movement takes place in large part through the character of Kate, whose perspective is significantly ambivalent as she feels 'at once attracted and repelled' by it.<sup>129</sup> She is ambiguous, indecisive and unsteady: in sum, an authentic modernist narrator whose reflections Lawrence invites the reader to carefully distrust and scrutinise.<sup>130</sup>

Kate is 'shocked and depressed' by the ritual execution of the 'traitors'. She dreads that Ramón/Quetzalcoatl and Cipriano/Huitzilopochtli have elevated 'male significance' to a kind of 'demonism' that implies a continuous 'exertion of pure, awful will'. She holds a precarious fascination for these god-like men, but it remains tinged with fear and even 'revulsion'.<sup>131</sup> The pride and strength of the old gods seem to menace both her spirit and her womanhood. Thus, she finally decides to depart from Mexico once and for all, but she changes her mind at the last moment, after

<sup>124</sup>Benjamin (1991 [1921]), pp 199–203.

<sup>125</sup>Lawrence (2009 [1926]), p 72.

<sup>126</sup>In this part of the novel, the Catholic uprising known as *La Cristiada* (1926–1929) was uncannily prophesied by Lawrence. For a thorough account of the causes, circumstances and consequences of *La Cristiada*, see Meyer (1975).

<sup>127</sup>Lawrence (2009 [1926]), pp 343–351.

<sup>128</sup>Lawrence (2009 [1926]), p 53.

<sup>129</sup>Lawrence (2009 [1926]), p 109.

<sup>130</sup>Smith (2002 [1926]), p 16.

<sup>131</sup>Lawrence (2009 [1926]), p 351.

Cipriano reminds her that she *belongs* to him. ‘You won’t let me go!’, Kate pathetically replies.<sup>132</sup>

Kate’s alleged obedience to Cipriano’s will has been continually discussed and criticised as an expression of Lawrence’s desire to keep women under control.<sup>133</sup> It seems to me, however, that she is not as submissive as is commonly believed: if she stays in Mexico it is because she has *decided* to do so, even though she needs to *believe* that she has been *compelled* not to go.<sup>134</sup> Kate does not surrender herself completely to the Quetzalcoatl movement. She is aware of not being totally honest with Ramón and Cipriano: ‘What a fraud I am!’, she thinks, ‘I know all the time it is I who don’t altogether want them. I want myself to myself. But I can fool them so they shan’t find out’.<sup>135</sup> Significantly, Kate chooses to stay precisely because she does not want to return to England, where as a 40 year old woman, she will probably do no more than ‘sit in a London drawing-room, and add another to all the grimalkins’. Kate reckons that her ‘ego’, her ‘individuality’ and even her life ‘are not worth that ghastly price’.<sup>136</sup> She therefore sacrifices her distinctive personality because she wants to be ‘more than Kate’<sup>137</sup>: she prefers the hazardous excitement of being Malintzi in Mexico than the boring security of a lonely widow in Europe.

Lawrence ends the novel on an intensely pessimistic note, with death floating in the air. Ramón warns Kate about the fate of false gods: ‘they will murder you and violate you, for having worshiped you [...] Unless one gets one’s nobility from the gods and turns to the middle of the sky for one’s power, one will be murdered at last’.<sup>138</sup> The price of the transcendence achieved by the impersonators of the old gods consists in risking themselves to become victims of lethal and meaningless violence. This can hardly be considered an advertisement either for leadership or fascist politics. Both Somers’ internal dialogues in *Kangaroo* and Kate’s irresolute musings in *The Plumed Serpent* bring several problems associated with authoritarianism, irrationalism and violence to the foreground rather than advocating or quietly brushing them aside.<sup>139</sup>

Nonetheless, the state of affairs that Kate faces in Mexico is quite different from Somers’ findings in Australia: *Kangaroo* claimed to possess a privileged *insight* into justice, whereas Ramón and Cipriano thrive over the *uncertain* character of Quetzalcoatl. Kate recalls when she first learns about the sighting of the gods in Sayula that, in Nahuatl—the language of the Aztecs—*Quetzalcoatl* is a compound term: *quetzal* ‘is the name of a bird that lives high up in the mists of tropical mountains, and has very beautiful tail feathers’; and *coatl* is merely ‘a serpent’. Kate concludes that ‘[h]er Irish spirit was weary to death of definite meanings, and a God

<sup>132</sup>Lawrence (2009 [1926]), p 404.

<sup>133</sup>See, for example, Millett (1971 [1970]), pp 283–285.

<sup>134</sup>In the first version of the novel Kate is last seen packing for England. See Lawrence (1998 [1995]), pp 321–326.

<sup>135</sup>Lawrence (2009 [1926]), p 404.

<sup>136</sup>Lawrence (2009 [1926]), p 399.

<sup>137</sup>Lawrence (2009 [1926]), p 336.

<sup>138</sup>Lawrence (2009 [1926]), p 397.

<sup>139</sup>Smith (2002), p 21.

of one fixed purport' after pondering the 'confusion of contradictory gleams of meaning' in the name *Quetzalcoatl*. Gods, she thinks, 'should be iridescent, like the rainbow in the storm'.<sup>140</sup> Later, when Kate asks a German resident in Mexico what is 'the idea' that moves 'the Men of Quetzalcoatl', he replies: 'I couldn't say. Don't suppose they have any. But if they have, they won't let on to you'.<sup>141</sup> The amorphous nature of Quetzalcoatl entails blurriness rather than polarity. Quetzalcoatl announces and reflects at the same time the twisted logic of the Mexican Revolution that rendered 'liberty' into 'freedom to commit crime'.<sup>142</sup>

This is the key difference between the jurisprudential paradigms that respectively underlie *Kangaroo* and *The Plumed Serpent*. In Australia, Ben Cooley's desire of unrestricted domination within a cohesive community was undermined by the inherent contingency of the language that structures a tradition of well-established liberties and democratic institutions. In Mexico, the impossibility of attaining a basic consensus concerning the concepts and practices that ground fundamental political and legal institutions generated the void in which Cipriano/Huitzilopochtli could take hold of the power of gods and claim for himself the lordship of life and death.

The hazardous character that even today burdens Mexican legal and political institutions is deeply rooted in the historical processes that determined the Mexican Revolution, whose distinctive feature is the *absence* of intention, program or ideology.<sup>143</sup> The *success* of the Mexican Revolution was based on its emotive appeal and mass constituency, not on its internal intellectual coherence or originality. Francisco I. Madero, an aristocratic landowner and a convinced spiritist who had been instructed by 'spirits' to guide Mexico towards democracy,<sup>144</sup> launched the Mexican Revolution in October 1910 by drawing up the 'Plan de San Luis Potosí', a naïve manifesto that called for the institution of democracy through direct violent action against the dictatorship of Porfirio Díaz.<sup>145</sup> In May 1911 Díaz fled to France and Madero called for elections. After a landslide victory, Madero incongruously tried to implement a series of liberal and democratising reforms while conserving the dictatorship's army and most of its institutions. In February 1913, Madero was finally overthrown and murdered by a group of disaffected army officers.

Madero failed to carry out his elusive political program, but he successfully imploded the coercive mechanisms that structured the Díaz' dictatorship. Thousands of dispossessed peons, who had grown weary of their centennial poverty, chose to rise up in arms once they were freed from the dictatorship's shackles. As a result, the revolution continued through the mobilisation of masses without any clear direction or ideology. Other than achieving some sort of self-determinacy after the Díaz' dictatorship, the rebels had no particular ideological drive. Thus, after Madero was killed, none of the revolutionary factions was able to attribute a definite meaning to the revolution.

---

<sup>140</sup>Lawrence (2009 [1926]), p 51.

<sup>141</sup>Lawrence (2009 [1926]), p 92.

<sup>142</sup>Lawrence (2009 [1926]), p 32.

<sup>143</sup>Paz (1994 [1950]), pp 137 ff.

<sup>144</sup>Madero (2000).

<sup>145</sup>This document is reprinted in Silva Herzog (1960a), pp 133–142.



Madero's murder inaugurated *la bola*, a vernacular and idiosyncratic form of understanding the 'revolution'. This Mexican idiom would surely have amused Derrida as a delightful example of semantic undecidability. *Bola* can be translated as 'ball', 'tangle', 'brawl', 'spontaneous gathering of people' or 'lie'. The term, which was previously used as a synonym of *cuartelazo* (i. e. military uprising) during the nineteenth century, conveys the idea that the Mexican Revolution was a disorderly revolt lacking ideological coherence and a unified sense of purpose. In 1887, the Mexican novelist and political theorist Emilio Rabasa prophetically contrasted the concepts of 'revolution' and '*bola*' in the following way:

Whereas the revolution spreads from an idea, develops national passion, modifies institutions and demands the involvement of citizens, *la bola* does not demand or represent principles: it is born and it is solved in a short natural and moral period, and requires ignorance [...] revolution is born out of the world's progress, but *la bola* is born out of ignorance: it is the unavoidable punishment of backward peoples.<sup>146</sup>

Ramón Eduardo Ruiz correctly suggests that, from 1905 until 1924, Mexico underwent not a revolution, but a cataclysmic rebellion that basically involved fierce factional squabbles.<sup>147</sup> Each faction defined the revolution according to their own strategic immediate needs. Perhaps nobody has expressed the conceptual vacuum that underlies the Mexican Revolution as eloquently as Luis Cabrera, a Mexican lawyer who defined it in plain tautological terms: 'La Revolución es la Revolución' ('The Revolution is the Revolution').<sup>148</sup>

Lawrence envisaged the semantic (and ideological) undecidability in the Mexican Revolution as a condition for the instauration of an authoritarian regime whose early development he fictionalised through the bloodstained return of the Aztec gods. He proved to be a very keen prophet. The political and legal development of Mexico along the twentieth century is closely connected to the historical undecidability of the term 'revolution'. In 1929, Plutarco Elías Calles—whose term as president had just finished a few months before—fostered among the surviving *caudillos* the foundation of the Partido Nacional Revolucionario (National Revolutionary Party) (PNR), which is known today as Partido Revolucionario Institucional (Institutional Revolutionary Party) (PRI). Calles explicitly instructed the drafting committee of the PNR's foundational documents—headed by Basilio Vadillo and José Manuel Puig Casauranc—to summarise and amalgamate fascism, communism and the ideologies that informed the main American, English and French political parties in the program and bylaws of the new organisation.<sup>149</sup> Calles strategically sought to preserve the conceptual indeterminacy of the Mexican Revolution in the institutional charter of the PNR in order to achieve two goals: first, to discipline and unify the remaining *caudillos* without threatening their personal political interests by

<sup>146</sup>Rabasa (1888 [1887]), p 238.

<sup>147</sup>Ruiz (1984).

<sup>148</sup>Cabrera (1994 [1911]), pp 45–65.

<sup>149</sup>Segovia and Lajous (1978), pp 51–54. The drafts of both documents have been reprinted in Partido Revolucionario Institucional (1981), pp 56–86.

an ideological definition; and second, to impose a hybrid, pragmatic and adaptable governance pattern over the social chaos produced by the revolution.

On this historical basis, Giovanni Sartori characterised Mexico under the PNR/PMR/PRI<sup>150</sup> as a case of a pragmatic-hegemonic party—that is, a one-party political regime in which minor parties exist but do not matter, and the major party keeps its dominant position through its capacity to be more practical and operative than ideological.<sup>151</sup> The key pieces of this political system were basically two: the PRI and the President, who took over the leadership role of the *caudillos*. One party ruled everything and one man ruled that party by constantly defining and redefining the meaning of the Mexican Revolution and, consequently, the structure of the political and legal institutions whose legitimacy allegedly depended on their revolutionary origins and grounds. Calles, for example, was relatively radical in its initial stance towards the Church and the oil companies, but became more moderate, even conservative, with time. Calles' successor, Lázaro Cárdenas del Río, was intensely radical between 1936 and 1937, but shifted to the centre after 1938, seeking detente with the Church, the private sector and the United States. In each of these cases, contingent factors affected the ideological colouring of the 'official' readings of the Mexican Revolution.

The PRI monopolised not only the government, but also the *interpretation* of the Constitution during 71 years. The Mexican Constitution of 1917 was considered the main channel for the *legal performance* of the Mexican Revolution.<sup>152</sup> Accordingly, the Constitution was not conceived in functional terms, but rather as a substantive expression of the revolutionary 'ideals'. These 'ideals' remain undefined even today, so the Constitution was repeatedly amended according to the political preferences and strategic needs of the President. The contradictions between these reforms were forestalled by the argument that they were only expressing the adaptation of the supposedly unchanging revolutionary 'ideals' to the new times.<sup>153</sup> In this way, from 1929 until 2000 (the year the PRI's presidential candidate was defeated for the first time in history by the candidate of the conservative Partido Acción Nacional [National Action Party]), the Constitution was amended 142 times as the Mexican Revolution was successively defined as socialist, nationalist, liberal or *social-liberal* (whatever that means), among many other characterisations.<sup>154</sup>

Such is the political tragedy of Mexico that Lawrence foresaw with anguish and anger. In the short story titled 'The Mozo', Lawrence chastises the 'Aztec gods and goddesses' for breeding myths that are deprived of 'grace', 'charm' or 'poetry'.

<sup>150</sup>The party that was founded by Calles has changed its name three times: between 1938 and 1946, it was called Partido de la Revolución Mexicana (Party of the Mexican Revolution) (PRM).

<sup>151</sup>Sartori (1976), pp 232–234.

<sup>152</sup>Cossío (2001), p 101.

<sup>153</sup>Cossío (2001), p 102.

<sup>154</sup>From 1917 until 2013, the Constitution has been amended 206 times. An updated list of amendments can be consulted online at Cámara de Diputados, <http://www.diputados.gob.mx/LeyesBiblio/ref/cpeum>, 23 March 2013.

The petty gift that these deities offered to Mexico and its people was only ‘perpetual grudge, grudge, grudging, one god grudging another, the gods grudging men their existence, and men grudging the animals’.<sup>155</sup> He was right. Resentment and pain were the only legacy of the *caudillos*. The revolutionary bloodshed advanced no salvation at all: it was useless in the end. There was no ultimate rupture between the Díaz’ dictatorship and the PNR/PRM/PRI regime, but an appalling continuity in the affirmation of the state’s authority as a conceptually amorphous articulator of identity, economic development and social justice.<sup>156</sup>

A Mandersonian reading of *The Plumed Serpent* hence reveals—quite paradoxically—the limits of Manderson’s literary jurisprudence. ‘Thirroul of Law’ could not have outlasted the Mexican post-revolutionary atmosphere of untrammelled and normalised violence combined with absolute legal uncertainty. The endorsement of undecidability and ‘trial and error’ as legal methodologies has very different consequences in different contexts. Kangaroo’s desire for transcendence is different from Cipriano/Huitzilopochtli’s pragmatic lust for power. When Manderson writes that ‘there is nothing so beautiful [...] as a judge who changes his mind and says so’<sup>157</sup>, I believe he does not have in mind judges—or, as a matter of fact, any other public officials—that, for example, publicly redefine the term ‘democracy’ in order to prosecute those who make public expression of their religious creed, as happened in Mexico shortly after Lawrence visited the country.<sup>158</sup> In this case, the ‘error’ would totally subvert the ‘trial’: an authentic Mexican commonplace that fascinated and terrified Lawrence.

Discursive transparency is not enough to lay the foundations of the rule of law anytime and everywhere. Whereas Manderson, on the one hand, rightly points out that the contemporary critical discourses that have challenged the positivist model of the rule of law—for example, deconstructionism, feminism and post-colonialism—have evidenced that the recognition of a ‘hard core of [legal] settled meaning’<sup>159</sup> is nothing but a fiction and a (legal) fetish; *The Plumed Serpent*, on the other hand, illustrates how the idea of such hard core of objective meaning in the legal field is still a *necessary* fiction and a *convenient* (legal) fetish in case you are forced to face in a *reptilian court* the pretensions of limitless and divine sovereignty of the ancient Aztec gods.

The contingency and polarity of the rule of law cannot and should not be applied universally. ‘Thirroul of Law’ confidently presumes a basis of stable legality and a civil society where political civility and social commitment are taken for granted. Nonetheless, whenever these conditions are absent positivism is not a nightmare but a dignified dream of legal deliverance that provides individuals a minimum level of

---

<sup>155</sup>Lawrence (2010 [1927]), pp 55–56.

<sup>156</sup>Córdova (2011 [1973]).

<sup>157</sup>Manderson (2012a), p 171.

<sup>158</sup>In 1926, President Calles reformed the criminal code in order to criminalise the public expression of the Catholic religious rituals.

<sup>159</sup>Hart (1958), p 614.

certainty in face of the arbitrariness of untrammelled powers. Let us remember, for example, that positivism played a major role in undermining the legal and jurisprudential discourses that structured the dictatorship of Francisco Franco in Spain<sup>160</sup> or the *Junta* regime in Argentina.<sup>161</sup>

By considering a single crisis of modernity through a single work in Lawrence's canon, Manderson narrowed the scope of his call to rethink the rule of law to the singularity of the Australian postcolonial modernity where the positivist rule of law and the liberal public sphere were, since the time in which Lawrence wrote *Kangaroo*, ongoing—though imperfect—realities. We can conclude then that legal positivism can still be defined as an *unfinished historical project*—to borrow Jürgen Habermas' famous phrase<sup>162</sup>—depending on contexts that are determined altogether through social institutions and systems, social agents, and art and symbolic forms in general.

### Epilogue: the crises of modernities

Context *is* everything in critical legal theory. We must always keep in mind that a *positivist* rule of law constitutes a *sine qua non* condition for the theoretical construction of the *post-positivist* rule of law that Manderson pursues. The theses advanced by Manderson in the field of law and literature are nevertheless a very valuable contribution to the urgent task of rethinking the rule of law. Manderson has worthily reconfigured this field by acknowledging the complexity of the relationship between literary and cultural traditions and legal discourses. Narrative fictions are neither transparent representations of the world nor palatable suppliers of moral values. Both Manderson and D.H. Lawrence have opened the theoretical paths to constitute distinct narratives, aesthetic traditions, and mythologies in effective resources through which to engage in political action and legal critique. Perhaps Mexicans—as well as citizens from many other 'transitional' societies—may not benefit even nowadays from Manderson's exquisitely democratic post-positivist 'Thirroul of Law', but they may sensitively look into the aforementioned narratives, traditions and myths to find their own way towards improved forms of democratic participation and public commitment.

The contrast between the Australian and Mexican jurisprudential models that Lawrence developed through the practice of literature simply points to the introduction of a slight hue in Manderson's theory: modernity is not unique, and its crises are plural. In this sense, *modernities* entail several competing master narratives and cultural contextualisations that result in multiple legal crises. These varieties of narratives, contexts and crises do not simply coexist and challenge each other: they are actually entangled in various ways.<sup>163</sup> *Kangaroo* and *The Plumed Serpent* ultimately spell out not only the finitude of the horizons that frame our understanding of the world and ourselves, but also the potential connectivity

---

<sup>160</sup>Díaz (1975).

<sup>161</sup>Alchourrón and Bulygin (1975).

<sup>162</sup>Habermas (1981).

<sup>163</sup>See Therborn (2003).

between different modernities and their contextual forms of discourse, movements, conflicts and institutions.

### Acknowledgements

I want to express my gratitude to Ed Mussawir and the two anonymous reviewers of this essay. Their comments and remarks significantly contributed to improving my work.

### References

- Meyer H Abrams (1971) *Natural Supernaturalism: Tradition and Revolution in Romantic Literature*, W.W. Norton.
- Theodor Adorno and Max Horkheimer (2012 [1944]) *Dialektik der Aufklärung. Philosophische Fragmente*, Fischer.
- Carlos Alchuorrón and Eugenio Bulygin (1975) *Introducción a la Metodología de las Ciencias Jurídicas y Sociales*, Astrea.
- Héctor Aguilar Camín and Lorenzo Meyer (1991) *A la Sombra de la Revolución Mexicana: Un Ensayo de Historia Contemporánea de México, 1910–1989*, Cal y Arena.
- Mikhail Bakhtin (1981 [1975]) *The Dialogic Imagination: Four Essays*, M Holquist and C Emerson (trans), M Holquist (ed), University of Texas Press.
- Walter Benjamin (1991 [1921]) ‘Zur Kritik der Gewalt’, in R Tiedemann and H Schweppenhäuser (eds) *Gesammelte Schriften II–1*, Suhrkamp.
- Isaiah Berlin (1999) *The Roots of Romanticism*, H Hardy (ed), Princeton University Press.
- Guyora Binder and Robert Weisberg (2000) *Literary Criticisms of the Law*, Princeton University Press.
- Witter Bynner (1951) *Journey with Genius: Recollections and Reflections Concerning the D.H. Lawrences*, John Day.
- Luis Cabrera (1994 [1911]) ‘La Revolución es la Revolución’, in E Meyer (ed) *Revolución e Historia en la Obra de Luis Cabrera*, Fondo de Cultura Económica.
- Antonio Castro Leal (1942) ‘El México de David Herbert Lawrence’ 1 *Cuadernos Americanos* 181.
- LD Clark (1964) *Dark Night of the Body: D.H. Lawrence’s ‘The Plumed Serpent’*, University of Texas Press.
- Arnaldo Córdova (2011 [1973]) *La Ideología de la Revolución Mexicana: La Formación del Nuevo Régimen*, Era.
- José Ramón Cossío (2001) *Cambio Social y Cambio Jurídico*, Instituto Tecnológico Autónomo de México and Miguel Ángel Porrúa.
- Jacques Derrida (1990) ‘Force of Law: The “Mystical Foundation of Authority”’ 11 *Cardozo Law Review* 920.
- Jacques Derrida (2008) *La Bête et le Souverain I, 2001–2002*, M Lisse, M-L Mallet and G Michaud (eds), Galilée.
- Eliás Díaz (1975) *Estado de Derecho y Sociedad Democrática*, Edicusa.
- Paul Eggert (1999) ‘C.S. Pierce, D.H. Lawrence and Representation: Artistic Forms and Polarities’ 28 *D.H. Lawrence Review* 97.
- Peter Fjågesund (1991) *The Apocalyptic World of D.H. Lawrence*, Norwegian University Press.
- Michel Foucault (1994 [1984]) ‘Qu’est-ce que les Lumières?’, in D Defert and F Ewald (eds) *Dits et Écrits 1954–1988: 4, 1980–1988*, Gallimard.
- Lon Fuller (1969) *The Morality of Law*, Yale University Press.
- Sergio González Rodríguez (2006) *De Sangre y de Sol*, Sextopiso.
- Graham Greene (2002 [1939]) *The Lawless Roads*, Vintage.
- Allen Guttmann (1964) ‘D.H. Lawrence: The Politics of Irrationality’ 5 *Wisconsin Studies in Contemporary Literature* 151.
- Martín Luis Guzmán (2010 [1928]) *El Águila y la Serpiente*, in *Obras Completas I*, Fondo de Cultura Económica and Instituto Nacional de Estudios Históricos de las Revoluciones de México.
- Jürgen Habermas (1981) ‘Die Moderne—Ein Unvollendetes Projekt’, in *Kleine Politische Schriften I–IV*, Suhrkamp.

- Herbert LA Hart (1958) 'Positivism and the Separation of Law and Morals' 71 *Harvard Law Review* 593.
- Graham Hough (1956) *The Dark Sun: A Study of D.H. Lawrence*, Duckworth.
- Virginia Hyde and LD Clark (1993–1994) 'The Sense of an Ending in *The Plumed Serpent*' 25 *D.H. Lawrence Review* 140.
- James Joyce (1992 [1922]) *Ulysses*, Modern Library.
- Immanuel Kant (2008 [1784]) 'Beantwortung der Frage: Was ist Aufklärung?', in *Zum Ewigen Frieden und Andere Schriften*, Fischer.
- Nicola Lacey (2008) *Women, Crime, and Character: from Moll Flanders to Tess of the D'Urbervilles*, Oxford University Press.
- DH Lawrence (1963 [1922]) *Aaron's Rod*, William Heineman.
- DH Lawrence (1923) *Kangaroo*, Thomas Seltzer.
- DH Lawrence (1985) *Study of Thomas Hardy and Other Essays*, B Steele (ed), Cambridge University Press.
- DH Lawrence (1987) *The Letters of D.H. Lawrence IV: June 1921–March 1924*, W Roberts, JT Boulton and E Mansfield (eds), Cambridge University Press.
- DH Lawrence (1989) *The Letters of D.H. Lawrence V: March 1924–March 1927*, JT Boulton and L Vasey (eds), Cambridge University Press.
- DH Lawrence (1991) *The Letters of D.H. Lawrence VI: March 1927–November 1928*, JT Boulton, MH Boulton and G Lacy (eds), Cambridge University Press.
- DH Lawrence (1998 [1995]) *Quetzalcoatl*, LL Martz (ed), New Directions.
- DH Lawrence (2009 [1926]) *The Plumed Serpent*, Wordsworth Classics.
- DH Lawrence (2010 [1927]) 'The Mozo', in DH Lawrence, *Mornings in Mexico*, Tauris Parke.
- Francisco I Madero (2000) *Obras Completas VI: Cuadernos Espiritas, 1900–1908*, Alejandro Rosas (ed), Clio.
- Desmond Manderson (2011) 'Modernism and the Critique of Law and Literature' 35 *Australian Feminist Law Journal* 107.
- Desmond Manderson (2012a) *Kangaroo Courts and the Rule of Law: The Legacy of Modernism*, Routledge.
- Desmond Manderson (2012b) 'Mikhail Bakhtin and the Field of Law and Literature' 8 *Journal of Law, Culture and the Humanities* 1.
- Desmond Manderson (2012c) 'Modernism, Polarity, and the Rule of Law' 24 *Yale Journal of Law and Humanities* 475.
- Desmond Manderson (2012d) 'Between the Nihilism of the Young and the Positivism of the Old—Justice and the Novel in D.H. Lawrence' 6 *Law and the Humanities* 1.
- Jean Meyer (1975) *La Christiade: L'Église, l'État et le Peuple dans la Révolution Mexicaine (1926–1929)*, Payot.
- Jeffrey Meyers (1974) "'The Plumed Serpent" and the Mexican Revolution' 4 *Journal of Modern Literature* 55.
- Kate Millett (1971 [1970]) *Sexual Politics*, Rupert Hart-Davis.
- Montesquieu (1979 [1784]) *De l'Esprit des Lois*, Flammarion.
- Friedrich Nietzsche (2002 [1886]) *Beyond Good and Evil: Prelude to a Philosophy of the Future*, J Norman (trans), R-P Horstmann and J Norman (eds), Cambridge University Press.
- Martha Nussbaum (1995) *Poetic Justice: The Literary Imagination and the Public Life*, Beacon Press.
- Arnold Odio (1999) 'Lawrence Among the Mexicans', in T Iida (ed), *The Reception of D.H. Lawrence Around the World*, Kyushu University Press.
- Bernardo Ortiz de Montellano (1934) 'México en "La Serpiente Emplumada"' 12 *El Libro y el Pueblo* 180.
- Partido Revolucionario Institucional (1981) *Historia Documental del Partido de la Revolución I*, Instituto de Capacitación Política.
- Octavio Paz (1994 [1950]) *El Laberinto de la Soledad*, in O Paz (ed), *Obras Completas VIII: El Peregrino en su Patria: Historia y Política de México*, Círculo de Lectores and Fondo de Cultura Económica.
- Octavio Paz (2007 [1959]) 'Paisaje y Novela en México', in O Paz, *Corriente Alterna*, Siglo XXI Editores.
- Katherine A Porter (1964) 'Hacienda', in *Collected Stories*, Jonathan Cape.

- Richard Posner (1986) 'The Ethical Significance of Free Choice' 99 *Harvard Law Review* 1431.
- Emilio Rabasa (1888 [1887]) *La Bola*, 2nd edn, Tipografía de O.R. Spíndola y Compañía.
- Joseph Raz (1977) 'The Rule of Law and its Virtue' 93 *The Law Quarterly Review* 195.
- Alejandro Rosas Robles (2010) 'Rosalie Evans: "La Audaz Extranjera que Blande su Espada"' 144 *Letras Libres* 42.
- Ramón Eduardo Ruiz (1984) *México: La Gran Rebelión, 1905–1924*, Era.
- Antonio Sánchez Barbudo (1943) 'D.H. Lawrence, "Mañanas en México"' 1 *El Hijo Pródigo* 58.
- Giovanni Sartori (1976) *Parties and Party Systems: A Framework for Analysis*, Cambridge University Press.
- Rafael Segovia and Alejandra Lajous (1978) 'La Consolidación del Poder', in L Meyer, R Segovia and A Lajous (eds) *Historia de la Revolución Mexicana 1928–1934: Los Inicios de la Institucionalización*, El Colegio de México.
- Carl Schmitt (2011 [1919]) *Political Romanticism*, G Oakes (trans), Transaction.
- Carl Schmitt (1985 [1922]) *Political Theology: Four Chapters on the Concept of Sovereignty*, G Schwab (trans), MIT Press.
- Philip Sicker (1992) 'Lawrence's Auto Da Fe: The Grand Inquisitor in *The Plumed Serpent*' 29 *Comparative Literature Studies* 417.
- Jesús Silva Herzog (1960a) *Historia de la Revolución Mexicana I: Los Antecedentes y la Etapa Maderista*, Fondo de Cultura Económica.
- Jesús Silva Herzog (1960b) *Historia de la Revolución Mexicana II: La Etapa Constitucionalista y la Lucha de Facciones*, Fondo de Cultura Económica.
- Jad Smith (2002) 'Völkisch Organicism and the Use of Primitivism in Lawrence's *The Plumed Serpent*' 30 *D.H. Lawrence Review* 7.
- Boaventura de Sousa Santos (1995) *Toward a New Commonsense: Law, Science and Politics in the Paradigmatic Transition*, Routledge.
- José Juan Tablada (1992) *Obras IV: Diario (1900–1944)*, G Sheridan (ed), Universidad Nacional Autónoma de México.
- José Juan Tablada (2003 [1924]) *Obras VII: La Resurrección de los Ídolos: Novela Americana Inédita*, JE Serrato Córdova (ed), Universidad Nacional Autónoma de México.
- Jacob L Talmon (1960) *Political Messianism: The Romantic Phase*, Secker & Warburg.
- Göran Therborn (2003) 'Entangled Modernities' 6 *European Journal of Social Theory* 293.
- John Vickery (1972) "'The Plumed Serpent" and the Reviving God' 2 *Journal of Modern Literature* 505.
- Bud Villiers (1930) 'D.H. Lawrence in Mexico' 15 *Southwest Review* 425.
- Ronald G Walker (1978) *Infernal Paradise: Mexico and the Modern English Novel*, University of California Press.
- Ian Ward (2003) *Justice, Humanity and the New World Order*, Ashgate.
- Robin West (1985) 'Authority, Autonomy, and Choice: The Role of Consent in the Moral and Political Visions of Franz Kafka and Richard Posner' 99 *Harvard Law Review* 384.
- Robin West (1986) 'Submission, Choice and Ethics: A Rejoinder to Judge Posner' 99 *Harvard Law Review* 1449.
- Melanie Williams (2005) *Secrets and Laws: Collected Essays in Law, Lives, and Literature*, UCL Press.
- Raymond Williams (1968 [1958]) *Culture and Society 1780–1950*, Penguin.
- Raymond Williams (1988 [1976]) *Keywords: A Vocabulary of Culture and Society*, Fontana.
- Raymond Williams (2007 [1989]) *Politics of Modernism: Against the New Conformists*, Verso.
- Virginia Woolf (2005 [1927]) *Mrs Dalloway*, Harcourt.
- World Economic Forum (2012) *Global Risks 2012: Insight Report*, 7th edn, World Economic Forum.
- Josefina Zoraida Vázquez (1989) 'Antes y Después de la Revolución Mexicana', 55 *Revista Iberoamericana* 693.