

Futures of Law and Literature

A Preliminary Overview from a Culturalist Perspective

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DEMISE OR PROLIFERATION

Two meta-narratives concerning developments in Law and Literature currently prevail.¹ One suggests that the post-1970 movement that was spearheaded by reformist US American legal teachers such as J. B. White, Richard Weisberg, Robin West, and the moral philosopher Martha Nussbaum is no longer viable. Accordingly, the movement is adjudged to be politically and methodologically passé.² Further, a discourse is emerging within legal theory that says that since law once housed all of the disciplines currently used to interrogate it, it does not need literature (or anthropology or sociology for that matter) to reflect on its practice.³ The other narrative says that the historical and geographical moment that marked Law and Literature as US American has been replaced. “Law and Literature” has metamorphosed into a number of different interdisciplinary local and transnational ventures. Accordingly, a polysemic Law and Literature needs to develop a new form of self-reflection about its practice.

Reasons for the possible multiplication of the law and literature binary include the following. Firstly, the post-1970s renaissance of US American Law and Literature has been supplanted by an awareness of multiple pre-1970s histories, suggesting a number of more localized Law and Literatures rather than any universal one. Thus the charge voiced in the present author’s earlier manifesto

1 | My warmest thanks go to Daniel Hartley for his critical reading of an earlier version of this essay, to Jan Alber for advice on narratological issues, to the editors of this volume for their judicious interventions, and to Stefanie Rück for meticulous proofreading.

2 | This view was expounded most influentially by Julie Stone Peters 2005. Recently, Anna Schur has forcefully argued for the demise narrative, and the title of her review essay reverberates here: “Flourishing or Perishing? Law and Literature Airbrushed.” Cf. Schur 2014.

3 | Cf. Lavi 2011; Valverde 2014.

against the dominance of American modes of Law and Literature scholarship, wherever they were produced, has been answered.⁴ Or, more self-critically, the present author has come to recognize that polylingual and culturally myriad histories had been and are being articulated in localized Law and Literatures.

Secondly, an awareness has grown that the “Literature” part of the Law and Literature binary has changed due to a more general recognition of developments in critical theory and alterations in the manner in which one now deals with the literary in literary and cultural studies. Arguably, literature, and in particular the realist nineteenth-century novel, has been removed from its former place within Law and Literature scholarship as the locus of normative moral values, a standpoint from whence law could be critiqued. As postulated by Martha Nussbaum in one seminal description of the moral power of the realist novel, this genre is so important because

[t]he novel is a living form and in fact still the central morally serious yet popularly engaging fictional form of our culture. [...] In this way, the novel constructs a paradigm of a style of ethical reasoning that is context specific without being relativistic, in which we get potentially universalizable concrete prescriptions by bringing a general idea of human flourishing to bear on a concrete situation, which we are invited to enter through the imagination.⁵

While the approach to Law and Literature that understands the realist novel to be synecdochic of the literary remains widely practiced,⁶ it has also been frequently criticized for its parochialism. Historical and comparative scholarship on the interrelations between narratives of citizenship, ideas of sovereignty, and local literatures, for instance, has demonstrated that Law and Literature can be neither universalized nor viewed a-historically. Nor can either of its two components be treated as monoliths. Due to changes in technology, medial distribution, and user/viewer practices, the novel has been displaced as a locus of societal critique. The arena in which social-legal issues are most saliently debated and sedimented into aesthetic forms has in late industrial countries arguably become post-network television. As part of a larger development, the general supplanting of the novel by digital and multimodal medial forms and new technologies of transmission has forced Law and Literature to turn its at-

4 | Cf. Olson 2010 and 2012a.

5 | Nussbaum 1995: 6, 8. As can be traced in Nussbaum’s earlier *Love’s Knowledge: Essays on Philosophy and Literature* 1990, her sense of the ethical education that literature may offer rests on fellow Chicago scholar Wayne Booth’s ethical criticism, which conceives of the novel as a moral interlocutor or a friend. See in particular her overview of Booth’s work in “Reading for Life” in *Love’s Knowledge*.

6 | See Paul J. Heald’s defense of this type of Law and Literature in Heald (2009).

attention to a variety of fictional formats. Thus, as will be seen in the discussion of Law and Popular Culture, European preoccupations with and cultural anxieties about, for example, the legal recognition of gay marriage, intersexuality, and the plausibility of Sharia law's resolving familial conflicts find expression in newer medial forms.

As its title implies, this essay presents arguments for the second narrative and celebrates the multiple futurity of the Law and Literature movement. I programmatically write "futures" for two reasons. One, "futures" denotes a critical response to the thesis that Law and Literature is a dead horse. As this volume and similarly themed ones attest, the interdiscipline of Law and Literature has experienced a flourishing outside of the location of its North American re-awakening in the 1970s.⁷ Second, I use "futures" in the plural because, as the essays printed here document and this essay contends, rather than having died and gone somewhere else, Law and Literature is in the process of morphing into a variety of types of scholarship.

The word "preliminary" in the title references a necessary caveat to this overview, as the topics I take up here belong to a larger project of canvassing the field of scholarship with the aim of moving its interests forward.⁸ This essay is written from a "culturalist" perspective because, as I have argued previously, where we as researchers come from, including the legal systems and legal cultures in which we have been acculturated and the disciplinary foundations upon whose basis we later become members of institutions, determines the Law and Literature research questions we pose.⁹ My situation as an expatriate US American whose working languages are German and English limits and enables the research I pursue: I approach the question of the futures of Law and Literature as someone profoundly interested in comparatism and the particular histories of legal systems and the cultures and aesthetic codes with which they interact. Given the transitions of the current moment and the grappling of Continental European countries with internationalization, hybridization, and the jurisdiction of EU law and European Court decisions, I take a particular interest firstly in European questions. Secondly, for disciplinary and biographical reasons, I compare current European issues with conflicts in US American legal cultures. Finally, I am intrigued by the emergence of local Law and Literature scholarship in countries such as Nigeria and Tunisia, where such work may illuminate political struggles concerning conflicting notions of civil and cultural identity.

7 | I write "reawakening," because various Laws and Literatures were articulated long before the 1970s in North America.

8 | The following belongs to a book in progress to be called *Law's Pluralities: Futures of Law and Literature*.

9 | Cf. Olson/Kayman 2007 and Olson 2007, 2010, 2012a, 2012b, 2013a, 2014a.

This essay takes a culturalist perspective for a second reason – to acknowledge the pattern of varying critical commitments that typifies Law and Literature discourse, depending on whether researchers find their primary institutional home in law and legal studies or in literary and cultural studies. This is not to add another layer of bricks to the imaginary wall between Law and Literature but to take note of the complaints made by those working in language and literature departments that essays written by jurists are insufficiently critical and lacking in theoretical acuity.¹⁰ And it is to attend to the corresponding comments made by jurists that their counterparts in the humanities are naive about the practice of law and frequently misuse legal concepts and terminology.¹¹ As Paul Heald has written, since philology-based scholarship “is usually not normative” in terms of its recommendations for legal interpretation and judgment, “the legal profession seems to yawn” at it.¹² Thus I view it as important that this text is placed in dialogue with that of the practicing magistrate and legal theory scholar Jeanne Gaakeer, out of an interest in both dialogism and critical self-reflection.

This essay describes several possible paths towards non-exclusive forms of futurity. The first of these aims to re-envision Law and Literature as part of a larger range of scholarship, including Law and the Humanities, or Law and Narrative, or Law and Cultural Studies; here, I shall make an argument for explicating how Law and Literature is positioned in relation to other types of critically engaged, interdisciplinary types of legal studies, or other “Law and X(s).” A second direction of scholarship addresses visual and multimodal texts as well as the spatial and aesthetic qualities of law and thus departs from Law and Literature’s formerly exclusive focus on the narrative and rhetorical qualities of legal and literary texts. A third major innovation has produced work that addresses overlaps between the legal and the affective and takes an interest in the areas of emotive experience that state law so often fails openly to address. The essay will thus ask whether affect may in fact be replacing the literature half of the dyad of Law and Literature. Still a fourth area of newer scholarship comprises Law and Literature’s quite contradictory analyses of the effects of popular culture on law and socio-legal issues. Finally, a fifth area of intensified study entails an emphasis on specific localized cultural narratives of law and demonstrates the need for historically situated, comparative, and medially literate work. This essay concludes by briefly canvassing desiderata for present scholarship in an invitation to others to move Law and Literature forward.

10 | Cf. Stone Peters 2005; Porsdam 2009.

11 | Cf. Stern 2011; Gaakeer 2012, and representative of a type of dismissive scholarship Noll 2004.

12 | Heald 2009: 22.

I. THE TROUBLE WITH NAMES: FROM LAW AND LITERATURE TO LAW AND THE HUMANITIES...

In the now roughly forty years of Law and Literature's emergence as an object of interdisciplinary study and also of juridical practice, literature has served as that Other with which to think about and to query the law. Yet this Other has now been conceived of in a number of ways that may render passé, or at least marginal, what was traditionally viewed as the literary. What was once Law and Literature has now become, in practice, Law and Film, Law and Narrative, Law and Popular Culture, Law and Spatiality, and Law and Visuality, and Law and Aesthetics; thus the expansion of the concept of the literary, which the present author argued for in 2010 to include visual texts and pop cultural phenomena as well as media and spatial studies, has to a great extent been met.¹³ Further, the literature part of the dyad now comprises a variety of formerly neglected genres including science fiction, detective fiction, children's literature, and comics. Efforts to expand Law and Literature and render it a wider enterprise by renaming and re-conceptualizing the interdiscipline have been multiple. I name only some of the most prominent options in the following.

The aspiration to transform Law and Literature into Law and Humanities responds to the recognition of the current limits of the interdisciplinary field in its old-school conception. It reiterates a desire voiced in a great deal of foundational Law and Literature work: namely, to return law to its rightful home in the humanities for political, moral, and adjudicative reasons rather than regarding it as a social science or, as in critical legal studies, as a tool for critiquing the violence and pretensions of the law. In the United States, this represents a continued response to the Law and Economics movement. A Law and Humanities re-assignment of the field would, according to Helle Porsdam amongst others, allow researchers to expand the field to include questions of "history, arts, philosophy, religion, popular culture, film, television, and music" through a "cultural-historical" approach.¹⁴ Such an approach would account for the differences in how law functions in Europe's civil law, parliamentary democracies versus the United States. Further, the trend to call Law and Literature "Law and Humanities" plays on a historical argument that there was a time in which

13 | Cf. Olson 2010. One reviewer has responded to my repeated claim that the literary in Law and Literature needs to be expanded as follows: "I agree with your comment that the 'rhetorical, fictional move can be done through the filmic and televisual as well,' but that's precisely because neither 'rhetorical' nor 'fictional' implies the written word in the way that, etymologically and culturally, the word 'literature' does (from the Latin *littera*, 'letter'). [...] 'literature' implies specifically the medium of writing" (Hartley 2014). This is a legitimate point of critique that I shall take up in *Law's Pluralities*.

14 | Porsdam 2009: 9 and 166. Cf. also Sarat/Anderson/Frank 2010.

Law and Literature did not require different forms of explication or separate disciplines.¹⁵

Arguably, efforts to subsume Law and Literature in the Humanities are resisting a move that has been widespread within critical theory, which is to de-center the masculinist, rational Enlightenment human as the measure of all things, the center of subjectivity, and the locus of intention and intelligible expression, thus urging us to view humans as simply one form of materiality amongst others.¹⁶ The expansion of Law and Literature to Law and the Humanities in order to widen the scope of objects of analysis and include historical and interdisciplinary perspectives is laudable, yet the question remains as to whether this approach can wrestle with the hubris of humanism itself.

...OR TO LAW AND NARRATIVE

Another move to expand the purview of Law and Literature has been to re-invent it as Law and Narrative, thus taking the object of study to be law's narrative elements as opposed to either its literariness or a given literary text's reflections on legal issues. Attention to the narrative qualities of the legal remains the predominant approach to Law and Literature not only in the United States but also elsewhere. In what is frequently called "the narrative turn" in social science scholarship, the overriding assumption is that creating and interpreting narratives is universal; during the 1980s historians such as Hayden White, sociologists such as Richard Harvey Brown, and psychologists as well as economic theorists began to import insights from narratology into their respective disciplines.¹⁷ The postulation that narrative is a fundamental form of human cognition and sense making as well as identity creation is associated with the work of James Bruner and Michael Bamberg, amongst others, and has been followed up on in the experiments of cognitive psychologist Richard Gerrig and the work of the cognitive narratologists David Herman and Patrick Colm Hogan.¹⁸

Within Law and Literature scholarship, narrative studies have been employed to various ends, not least to uncover the sometimes hidden story-telling qualities of legal texts and hence, implicitly, their at least partial constructed-

15 | Valverde (2014) summarizes this position in "Between a Rock and a Hard Place: Legal Studies Beyond Both Disciplinarity and Interdisciplinarity" and cites in particular Lavi 2011. Cf. also Douzinas 2009.

16 | Cf. Barad 2003 and Herbrechter/Callus 2008: 1-35.

17 | For overviews, see Fludernik 2005; Nünning 2003; Fludernik/Olson 2011.

18 | Cf. Bruner 1991a and 1991b; Bamberg 2005: 213-237; Bamberg 2007: 165-174. Cf. also Gerrig 1993; Gerrig/Egidi 2003; Herman 2009, and Hogan 2003.

ness. This works to counteract the common image of law as based entirely on objective concepts and principles, abstracted rules of application, and facts. The majority of related work has focused on: one, the contest of counter narratives of which trials are comprised, including the generic formalities of the stories that legal actors resort to in collecting evidence or arguing for or against a judgment; two, the rhetorical qualities of law, including the narrative developments of individual legal concepts; three, alternative narratives and personal testimonies to those that are espoused and protected in state-made law as in claims to human rights; and, four, protocols of legal interpretation that invoke notions of purposiveness and intentionality.¹⁹ Still another type of narrative study concerns the common foundational narratives or myths upon which both legal systems and constitutions are based, about which more shall be said below. As Justin Richland writes: “I suggest that one way to understand the fecundity of legal narrative research is to ask about how narrative figures importantly in generating not just legal power, but also the legitimizing authority that undergirds that power.”²⁰ Another related point concerns law’s temporality as invested in narrative structures, its capacity not only to generate authority through the act of speaking judgment but to presage a more equitable social formation: “A *nomos*, as a world of law, entails the application of human will to an extant state of affairs as well as toward our visions of alternative futures.”²¹ Thus the Supreme Court’s decision in *Brown v. Board of Education* (1954) exemplarily rendered segregation in schools unconstitutional, thereby imagining a future in which the de facto practice of separating school children of different skin color would no longer take place.

A few conceptual problems beset the assumption of the universality of narrativity in law and thus the feasibility of moving from a Law and Literature to a Law and Narrative paradigm. The term “narrative” is often used in an undifferentiated fashion in work on the narrative properties of law to include a number of phenomena between which a narratologist might wish to differentiate as follows:

19 | Cf. Olson 2014a.

20 | Richland 2013: 218.

21 | Cover 1983: 9.

- "Narration" describes the act of relating.
- "Story" denotes what a jurist might call the "facts" or the known sequence of events.
- "Discourse," in turn, describes the form of the narrative, including the perspective from which the story is told, for example, the often non-chronological order in which events are told, and how directly or indirectly it is related. Discourse, or the form of the telling, is typically used in contradistinction to "story" (what happened).
- "Narratives" contain agents with human-like subjectivity, involve changes or a description of human-like experience, and take place in some identifiable space and time, whereas
- "narrativity" denotes the degree to which a text or object possesses qualities that elicit thinking structures that help to explain it as a narrative.²²
- Finally, "narrativization" describes the procedure in which a text is processed in someone's mind in response to its narrativity, or story-like qualities.²³

Any insistence on narrative as universal to legal texts belies the efforts of legal actors to occlude the narrativity of legal ordinances and judgments so as to enforce the authority of the legal action, which is concretized in written or spoken judgment. Narrative work on law thus needs to attend to the way in which prototypical narrative structures are implemented in legal texts and processes. Yet an exclusive focus on the narrative qualities of law and its supposed shared narrativity with literature entails an inattentiveness to the mediality and processuality of law. Thus, given the simultaneous move within expanded Law and Literature scholarship to address medial and visual texts, a one-sided emphasis on narrative appears limited.

...OR A CULTURAL STUDIES APPROACH TO LAW

The attentive reader will note the striking absence of another direction in which some Law and Literature scholars have headed, namely, to reconceive of the field as Law and Culture. Yet the ever-contested term "culture" suggests a monolithic and organic unity of practices and values that anthropologists have been at pains to question and critique. Within the limited space of this essay,

22 | Note that the definitions I offer here are not uncontested. Whereas I rely heavily on Marie-Laure Ryan's work for the definition of "narrativity" 2004, 2005, and 2006, David Herman distinguishes "scalar narrativity" from "narrativehood," the definite quality that "makes readers and listeners deem stories to be stories" (2002: 90-91).

23 | Cf. Fludernik 1996.

I wish to advocate for a broad-church cultural studies approach to law in order to avoid the frequent abuses of a monumentalized concept of culture to make generalizations about groups of people that reify social and power divisions.²⁴

In a recent explication of this approach by Sarah Know and Cristyn Davis, the authors state that

[t]he phrase Cultural Studies of Law suggests that the animating critical concerns of Cultural Studies over the last 20 years – that is, the symbolic, material, economic, and political practices and power relations that are inscribed in everyday life – should be brought to bear upon the assembly of practices, procedures, sites, interactions and agents.²⁵

Cultural studies of law have thus adopted legal anthropology's early recognition of non-state centered normativities as well as "the co-existence of different forms of law and justice."²⁶ Thus a cultural studies approach acknowledges discussions of legal pluralism and multiculturalism. It also reverberates with an earlier sociological tradition of reflecting on law as one form of socially binding obligation amongst others.²⁷ As I shall argue in the next section, it behooves us to pay close attention to other interdisciplinary legal studies methodologies and concepts in order to move Law and Literature forward.

The practice of a cultural analysis of law allows for an expanded sense of the literary that I – albeit controversially – have repeatedly argued should include the visual, the material, the spatial, and the popular. Further, it would treat both Law and Literature as culturally embedded practices that are mutable and dependent on local conditions and institutional forms. This echoes Rosemary Coombe's call in 2001 and again in 2005, not to "reify" law as an absolute quantity but to treat it as culture.²⁸ Arguments similar to Coombe's can be found in the work of Guyora Binder and Robert Weisberg, Paul Kahn, Paul Schiff Berman, Austin Sarat, Jonathan Simon, and Desmond Manderson, to name some of the most prominent Anglophone authors.

By emphasizing legal plurality, cultural studies and its attendant methodology, cultural analysis, provide a wider rubric for the enterprise of Law and Literature. Narrative and tropic analyses of the law find room within this framework, as do traditional studies of canonical literary texts and their interventions into issues of justice and injustice, nationhood, and sovereignty. Equally important, treating cultures as inherently diverse and as broad canvases of artifacts, prac-

24 | Cf. Abu-Lughod 1991.

25 | Knox/Davis 2013: 2.

26 | *Ibid.*: 4.

27 | For an overview in English see Gephart 2010, and in greater depth Gephart 2012.

28 | Coombe 2005: 36.

tices, and discourses, cultural studies also encompasses material, spatial, and visual-tactile manifestations of the legal. Finally, in its explicit dismantling of cultural hierarchical valuations of art, cultural studies of law also allow for the importance of popular culture in legal consciousness and legal culture.²⁹

Expanding Our Critical Vocabulary through the Insights of Other Gap Studies

To move the project of Law and Literature forward, researchers need to be more cognizant of work going on in Law and Anthropology, Law and Semiotics, and Law and Society, as well as Law and Culture scholarship. These interdisciplinary ventures function, like Law and Literature, to demonstrate the non-autonomy of law and legal processes from other aspects of social interaction and experience. They all concern what has been conceived of as the gap between an ideal of democratic and benevolent (state-centered) law and attendant civil democratic society and actual legal processes and practices, with their occasional promotions of various forms of hierarchically imposed injustice. Whatever its name, the Other to law in the “Law and X” denominator primarily deals with “the tension [...] between formal codes, legal rules, and courtroom procedures and the cultural codes, communal feelings, and social anxieties.”³⁰

By way of example of acknowledging insights from other areas of legal scholarship, in previous work I relied on the concept of “legal culture,” as introduced by the legal historian Lawrence Friedman, to describe the interactions between legal practitioners and other members of a society in relation to one another and to the larger social environment they inhabit.³¹ Friedman’s analysis of the dynamic relations that occur between institutions and actors and culture works against the tendency to treat culture as immutable. Nonetheless, his concept of legal culture suggests that such cultures represent unified wholes. As discussed above, the attribution of wholeness is simplistic and can be used to reaffirm existing social divisions by suggesting they are naturally given. As an alternative to Friedman’s model, one might turn instead to an earlier socio-legal conceptualization of the law as “living law” by the early nineteenth-century Austrian legal sociologist Eugen Ehrlich, implying the mutable, pluralistic, and embedded qualities of the legal.³² Ehrlich offers a quite early formulation of forms of obligation that are not created or policed by the state. Further, more recent socio-legal work has developed the concept of “legal con-

29 | For an overview, cf. Sarat/Simon 2003.

30 | Travis 2009: 347f.

31 | For this articulation of the concept, see Friedman 1969: 29-44.

32 | Cf. Ehrlich 1936, and for one further development of this concept Cotterrell 2008.

sciousness” and legal subjectivity to describe individuals’ relations to the legal worlds they inhabit.³³ These terms account for the individual and relational aspect of attitudes to law that may be based upon how privileged or disadvantaged a position a given individual or group has within an existing legal order. Hence concepts such as legal or normative orders that include transnational law, as in *lex mercatoria* (transnational commercial law) and “mobile law,” enable Law and Literature practitioners not only to trouble the assumption made in much Law and Literature scholarship that law means ‘state-made and state-centric law’ but also to think with greater subtlety about the interactions between law and other forms of normativity. This entails an embrace of legal pluralism, in the widest sense, and an engagement with forms of legal transfer.

II. VISUAL AND MATERIAL TURNS

In recognition of the relevance of images, symbols, and other types of cultural artifacts for the transportation and questioning of legal norms and normativities, newer, also in the sense of less traditional, Law and Literature focuses on the medial, visual, and multimodal. The movement has thus been from an exclusive preoccupation with linguistic texts to an increased attention to multimodal ones. This includes an attention to auditory, visual, and spatial properties and modes of perception and transmission as well as to physical texts. Increasingly, aesthetic and cultural interrogations of the law proceed via an emphasis on figuration and visualization and medium specificity rather than through the exclusive analysis of verbal discourse, including the comparison of interpretive strategies in legal and literary analysis. As Lief Dahlberg writes: “in order to properly understand law [...] one has to study the ways in which law as a societal institution has comprehended and constructed the human lifeworld, as this is manifested and sedimented in material and visual culture, in legal codes and in juridical praxes.”³⁴ Note the author’s focus on the visual and the material as sources of more immediate interactions with and mediations of the legal.

Several large-scale cultural narratives support the urgency of Law and Literature’s embracing the visual and the multimodal. One of these is the ‘pictorial turn,’ W. T. Mitchell’s suggestion that the visual has now displaced the preeminence of the linguistic as a form of cultural expression and communication.³⁵ The emphasis on visibility has methodological consequences: rhetorical and linguistic inquiries into Law and Literature have been supplemented by work that explores the interrelation of law and art, as in all of the creative arts; Law

33 | See amongst her other essays on this subject: Silbey 2005: 323-368.

34 | Dahlberg 2012: 4.

35 | Cf. Mitchell 1994.

and the Visual, and/or the Image, Law and the Emblem, Law and Architecture, and Law and the Sculptural.³⁶ While these recent efforts replace literary prose with visual and haptic media, music, or sculpture to either address the already mentioned gap between the ideal of law and its lived realities or to disclose what their authors charge is the hidden metaphoricality and aesthetics of law itself,³⁷ they do not espouse any unified notion of the visual.

Rather, two kinds of contrary arguments are made regarding visual art. The first stems from an idealist understanding of the aesthetic and visual as ontologically primary to and morally anterior to the legal. Thus in a plea for the importance of participatory experiences of seeing, Zenon Bańkowski and Maksymilian Del Mar write:

Our sensuous living encounter in the world and the workshop interactions allow the possibility of learning and allow ethics to enter the law and transform it. [...] We hope to have illustrated, at least by way of a glimpse, at how involvement in certain kinds of activities – in our case, involvement in both the appreciation and creation of imaginative works, based primarily on visual and movement arts – can assist persons in experiencing precisely both the passive and [active] aspects of vulnerability that we need to experience in order to breathe life into law, to keep it human.³⁸

My sense is that the idealization and femininization of the literary, which as I have posited previously has been characteristic of traditional Law and Literature scholarship, is often extended to the realm of the visual in Law and Art.³⁹ Emphasis is thereby laid on the greater immediacy of human interactions with the visual and/or artistic object or performance versus the far more mediated quality with which linguistic texts and utterances are understood.

A very different approach to Law and the Visual suggests that visual images are misleading, potentially seductive, and hence cause disruptions when adjudication occurs. A leader in the emerging field of visual persuasion in the law, Richard Sherwin, for instance, writes: “Diminished critical judgment invites enhanced visual credulity. The fact that so much of what we glean from visual images remains unconscious feeds the disinclination to object (or to suspend belief). Visual communication operates largely on the basis of associa-

36 | On emblems, see Campe 1999, Goodrich 2006, and Goodrich 2014. On Law and Art, see Ben-Dor 2011; on Law and Image: Douzinas/Nead 1999 and Joly/Vismann/Weitin 2007. On Law and Architecture, see the work of Piyel Haldar; and on Law and the Sculptural, Kayman 2012.

37 | Cf. Goodrich 1996: 112.

38 | Bańkowski/Del Mar 2011: 175-176.

39 | Cf. Olson 2012b.

tive logic.⁴⁰ In other words, the visual image's capacity to circumvent rational consciousness may cause misplaced judgments. In this case, images are considered to be more affectively resonant than words; they are experienced with greater immediacy than the linguistic and therefore elicit greater effect when they are processed unconsciously; and they are used to mediate and recall experiences. Similarly, the German legal scholar Volker Boehme-Neßler describes visual images' greater affective potential and power to convince as compared to words and hence their capacity to distort adjudication processes.⁴¹ Thus both scholars, amongst others, call for the necessity of teaching visual studies to enable legal actors to master methods of visual persuasion.⁴²

III. THE TURN TO PASSION: HAS LAW AND LITERATURE BECOME LAW AND AFFECT?

One of the most far-reaching changes within Law and Literature has been the move to an interest in affect. On a descriptive level, one witnesses articles in relevant journals with titles featuring words such as “suffering,” “emotion,” “madness,” and “resentment,” whereas in earlier Law and Literature scholarship, the typical title would have been some variation of “Law and Equity [or Justice] in Shakespeare’s *Measure for Measure*” or “...in Dickens’s *Bleak House*.” This substitution of “affect” for “justice” signals a larger, more widespread move within critical theory. It suggests that what was viewed as the relational justice offered by literary narrative is deemed a less seminal perspective for querying law than the affective.

A short history finds the beginnings of the affective turn in the 1990s and the re-invigorated reception of Spinoza and Bergson, as well as of Deleuze and Guattari. Thinkers such as Rosi Braidotti, Brian Massumi, and Sara Ahmed posited the priority of visceral experience, which occurs before affect is transformed into a subsidiary response and reflected on intentionally.⁴³ Quoting Anat Pick: “Embodiment [...] provides a critical space for thinking the human outside Cartesian abstractionism as rigorously material.”⁴⁴ One of a set of newer critical paradigms such as posthumanism and the new materiality, affect theory also functions to decenter the Enlightenment subject as the measure of all things. An experience of a common materiality and embodiment entails

40 | Sherwin 2012: 4.

41 | Boehme-Neßler 2010: 69-76.

42 | Cf. Sherwin 2014.

43 | For an overview, see Clough 2008. Seminal texts include Deleuze/Guattari 1987; Braidotti 1994; Massumi 1995, and Ahmed 2004.

44 | Pick 2011: 6.

a departure from logocentric forms of argumentation and analysis towards an interest in non-linear relatedness: a distinction is made between the cognitively referenced and framed experience of emotion, which is named as a secondary response, and the pre-verbal sensation of affect.

The reception of the affective turn in interdisciplinary legal studies has followed in part out of historical accounts of how common law came to recognize trauma as subject to juridical redress.⁴⁵ The acknowledgement of the suffering of the victims of violent crimes and of their families has altered the nature of sentencing. Further, making claims for human rights violations and the need to address these violations functions through the elicitation of shame in those who have allowed violations to occur. As Thomas Keenen writes:

It is now an unstated but I think pervasive axiom of the human rights movement that those agents whose behavior it wishes to affect – governments, armies, businesses, and militias – are exposed in some significant way to the force of public opinion, and that they are (physically or emotionally) structured like individuals in a strong social or cultural context that renders them vulnerable to feelings of dishonor, embarrassment, disgrace, or ignominy.⁴⁶

The recent interest in emotion and affect in an expanded sense of Law and Literature thus relates to the new focus on Human Rights, a topic that would deserve an essay in its own right and constitutes a major shift of interest since roughly 2000.

The general relationship between what I shall now loosely refer to as emotions and the law remains a matter of controversy. I write “emotions” because the distinction that affect scholars insist on between bodily experienced affect and cognitively processed emotion is not always upheld in applied legal scholarship. For scholars such as Robert Cover, Julia Shaw, and Panu Minkkinen, law’s pretensions to rationality mask its inherent violence.⁴⁷ This includes how arbiters make recourse to masculinist forms of argumentation to deny the socially-contingent nature of legal judgment or to admit that emotions always play a role in the law. For these scholars, affect has become the Other of law in that its non-linguistic and non-narrative qualities and its expression of experiences that are not named in conventional legal processes provide a place from which to critique and question the image of law as autonomous. The access to affect, understood in a positive sense, as a non-rational recognition of the other’s suffering, allows one to take responsibility for this suffering rather than

45 | Cf. Reichman 2009.

46 | Keenan 2004: 435-436.

47 | Cf. Cover 1986; Shaw 2014; Shaw/Shaw 2014; Minkkinen 2008, and Minkkinen 2007.

intellectualizing it. Affect has thus become the supplement to law in the Derridean sense.

For other moral and legal philosophers, by contrast, law's task is to overcome the violently emotional. Jeanne Gaakeer and Theodore Ziolkowski both trace the emergence of legal tribunals to the plot of Greek tragedies, and to the need to overcome an endless series of violent retributive acts.⁴⁸ Similarly, for Martha Nussbaum, negative emotions such as the disgust regularly expressed towards homosexuals appear to be "especially visceral" and can be controlled and overcome through the power of the moral imagination as well as through legal and constitutional advocacy.⁴⁹ Here, a more traditional image of law as mediating humans' worst passions is espoused.

Strengthening the move to affect has been the series of bloody ethnic conflicts and genocides that have occurred since the fall of the Berlin wall in 1989. Regular practices of maiming as in the Congo Wars or of instigating so-called rape camps as in the former Yugoslavia represent visceral reminders of the human capacity to perform acts of violence due, in part, to perceptions of bodily inscribed differences. These conflicts remind us of what Judith Butler has called the nexus between forms of representation, empathy, and the precariousness of life.⁵⁰ For members of late industrial societies, terrorist acts and violent counterterrorist security practices such as extrajudicial rendition and torture have been further reminders of corporal fragility. As Elaine Scarry, Costas Douzinas, and Giorgio Agamben have all argued, the body in pain is a silenced body in the sense that its citizenship, its individuality, and its humanity are erased.⁵¹ The tortured body is reduced to pre-linguistic utterances of pain or to silence in death. Since torture involves the obliteration of voice and the capacity to narrate one's experiences, work on Law and Affect also emphasizes silence. The recent investigation of the connections between quasi-legal defenses of torture and rendition take recourse to Foucault's concept of the biopolitical, with its contention that governance now concerns the protection of some bodies and forms of life and the destruction of others.⁵²

48 | Cf. Ziolkowski 1997 and Gaakeer 2009.

49 | Cf. Nussbaum 2010: 13.

50 | Cf. Butler 2006.

51 | Cf. Scarry 1985; Douzinas 2000; Agamben 1998.

52 | Cf. Foucault 2003.

IV. HAS LAW GONE POP? ON THE ALLEGED DELETERIOUS EFFECTS OF POPULAR CULTURE ON LEGAL PROCESS AND LEGAL CONSCIOUSNESS

As is frequently argued, individuals' impressions of law are primarily formed by popular cultural sources rather than through direct experiences of legal institutions and processes. This includes the mediation of spectacular trials, which, I believe, provide forums for debating larger social issues such as sexual violence in domestic settings, as in the former German-Swiss journalist Jörg Kachelmann's trial for rape (2010-2012), or the continued societal intolerance of non-ethnic Germans as in the NSU trial (2013-present) for the extreme-right wing murders of ten individuals and other terrorist attacks between 2000 and 2006, to name two local examples. Further, altered media conditions and products contribute to television's now much greater influence on everyday perceptions of the legal than the canonical nineteenth-century realist novel, the Shakespearean play, or the narrative poem that has been the traditional fare of Law and Literature scholarship. Further, the move from network to cable television and to downloading and streaming films and series as well as the development of diversified niche markets have changed media experiences more generally. Adopting a larger argument from cultural materialism, specifically from the foundational work of Raymond Williams, medial-technical changes not only reflect on but also contribute to alterations in larger structures of feeling regarding dominant, emergent, and residual cultural motifs and narratives. As Williams writes: "the formal innovation is a true and integral element of the [social and legal] changes themselves: an articulation, by technical discovery, of changes in consciousness which are themselves forms of consciousness of change."⁵³

Pop cultural representations of the legal can be derided as "Lexitainment," as Lawrence Friedman has argued, and as populist deformations and simplifications of the technicality of law.⁵⁴ Thus legal actors have not only had to become media specialists but also to mimic the habits of fictional legal actors in popular television and film.⁵⁵ Richard Sherwin, for instance, has argued to great effect in *When Law Goes Pop: The Vanishing Line between Law and Popular Culture* that the legal process is being perverted due to the domination of pop-cultural story telling techniques in the courtroom and the interference effects of pop-cultural representations on attitudes towards crime and wrongdoing. Subsequent to this damning account, Sherwin has argued for a much more nuanced view of the role of visual and moving images and indeed has

53 | Cf. Williams 1977 and 1981, see also Best 2012.

54 | Cf. Friedman 2000.

55 | Cf. Rath 2011.

championed popular culture and the law.⁵⁶ Yet at times Sherwin's writings can sound like an old-fashioned suspicion of imagery itself, as in Plato's *Republic*.

The supposed deformation of law through the effects of popular culture also extends to what is viewed as the Americanization or Hollywoodization of other legal cultures, as blockbuster representations of dramatized common-law US American courtrooms become templates for assumptions about how law functions. William MacNeil describes this phenomenon as a "new form of colonization."⁵⁷ The globalization of US American-based images, genres, and narratives of law might be considered the aesthetic counterpoint to the transnational spread of common-law-based commercial law into, for instance, civil law jurisdictions. The perception of the alleged distortive consequences of the popular mediation of law has to do with what is seen as the political and ideological ends to which media is used – for instance, to portray judges as 'soft' in order to gather popular support for more punitive penal policies or to portray criminals as belonging to ethnic minorities or as poor.⁵⁸

If one quite dystopian argument about Law and Popular Culture argues that the popular texts distort, seduce, and may be misused to ideologically unsavory ends, another quite opposed view – with a long history in media reception – holds that the democratizing aspect of popular media allows for greater participation.⁵⁹ This more affirmative approach to popular culture and the law, specifically to popular media and the law argues that socio-legal issues are most readily debated upon using the fictional platforms of television series and other popular images of law, including the massive reporting of and commentary on controversial trials. Here, one might mention the expansion of accessible forms of media production, the more affordable means with which individuals can create and promote digital texts, and the spaces of conversation and contestation that the Internet provides. Thus MacNeil writes in an affirmation of the jurisprudence that is allowed in popular culture that it

could and should play a signal part, indeed a profoundly democratizing role in the ongoing battles over the "politics of the law" and the law in politics. [...] by delivering jurisprudence [...] to the "masses," popular culture's *lex populi* holds out the prospect of effecting social change by soliciting broad comment and input into the juridico-political issues of our day.⁶⁰

56 | Cf. Sherwin 2004.

57 | MacNeil 2007: 5.

58 | Cf. Gries 2008.

59 | Cf. Kellner 2009 and Olson 2013b.

60 | MacNeil 2007: 157.

This is not to ignore the fact of media convergence and the increasing control of media sources and avenues of dissemination by fewer and fewer transnational corporations. Yet media pessimism also constitutes a form of cultural habitus and class defense, as in those historical criticisms of the supposedly seductive qualities of novels during the long eighteenth century, or warnings about the supposed dangers of TV in the twentieth century, or discussions of video game playing and violence in the present. When one comments, as was frequently done in the German context, that popular daytime judge shows are television for the underclasses,⁶¹ one reifies a division that has traditionally been made between 'high,' supposedly superior types of aesthetic products and those less valuable ones. Accordingly, a form of class policing is perpetuated. In the following, I wish to offer two exemplary comparative case studies as arguments for using *lex populi* to uncover differing legal-ideological projects.

Arguments for Comparative Work on *lex populi*: Richterin Barbara Salesch's and Judge Judy's Contrasting Legal-Ideological Projects

A comparison of the reality-imitative German judge show *Richterin Barbara Salesch*, meaning 'Judge Barbara Salesch' (1999-2012), with its US American predecessor *Judge Judy* (1996-present), demonstrates the cultural specificity with which genres are adapted to new settings to produce highly divergent interactions with their local legal cultures and individuated forms of legal consciousness.

Despite the copycat nature of the German series, the shows have differing effects. In both cases, a former woman judge arbitrates in a pseudo-'real' courtroom containing layperson complainants. Both shows might be criticized for betraying a class-reifying visual economy: in the proceedings of her daily televised small-claims courtroom, Judge Judy rails against the stupidity of her claimants, who for the overwhelming part have a lower educational status and less advantaged material status than she does. Similarly, the appearances of the working-class witnesses, claimants, and plaintiffs in Judge Salesch's fictionalized criminal court cohere with class stereotypes: women wear low-cut blouses and shirts, men are heavily tattooed.⁶² Yet a closer analysis reveals that *RBS* reproduces what I take to be quite specifically German values such as the social benefit to be accrued through the distribution of wealth and a wide-scale trust in the German legal system to resolve social conflicts and to reaffirm common social norms.⁶³ In a typical scenario, the often inarticulate, if person-

61 | Cf. Olson 2013a.

62 | Further, the series has been criticized for ethnicizing representations of characters who are not culturally German.

63 | Adapted from Olson 2013a. See also Hausmanninger 2002: 40-45.

ally sympathetic, working-class defendant is revealed through Judge Salesch's careful questioning to have been falsely accused of assault, rape, or murder by the materially better-off plaintiff, who turns out to be the morally defective perpetrator. Barbara Salesch's suggestion to false witnesses that they consider the long-term effects of their accusations acts as the *deus ex machina* that saves the day.

The cultural work that *Richterin Barbara Salesch* performs differs then quite radically from that of the neoliberal, individual blaming, and punitive messages transported by *Judge Judy*. This includes the cultivation of a *Schadenfreude* regarding the socially disempowered participants' inability to solve their personal problems and the authoritarian pronouncements by Judge Judy. Accordingly, the series promotes the idea that only (poor) fools require the state to resolve their domestic crises and that authoritarian despots will shame them publicly for their weaknesses. Competent individuals, such as Judge Judy and her putative viewers, the series suggests, are able to resolve their conflicts themselves.⁶⁴

Danni Lowinski and German Anxieties about Legal Pluralism

An analysis of the German comedic drama *Danni Lowinski* (2010-present) shows that the protagonist shares qualities with the eponymous heroine of the highly popular US American law film, *Erin Brockovich* (2000), and the TV series concerning a single woman lawyer *Ally McBeal* (1997-2002). The former is based on the story of a working-class woman without formal legal training who manages to perform the research and advocacy work necessary to win the largest anti-pollution direct-action lawsuit in history; *Ally McBeal* centers on a normatively attractive single woman lawyer's legal and romantic mishaps. Yet despite these generic similarities, *Danni Lowinski* can be read in terms of its particularly German socio-legal preoccupations.

Not unlike Erin, Danni's character presents a working-class upstart whose visual presentation includes supposedly class-distinct elements such as short skirts, wide belts, and tight, colorful blouses. For reasons of class-related prejudice, she is unable to get a job in a law firm other than as a secretary. In response, Danni sets up a table in a Cologne shopping center where she offers legal counsel at the cost of one Euro per minute. Subsequent episodes deal with current issues such as anxieties about the integration of Sharia family law in the German context, and the attribution of full rights to members of marriages between same-sex partners. Both topics are treated in the episode *Scheidung auf islamisch* (roughly, "Divorce à la Islam" (SE04E51). Here, good-hearted Danni demonstrates a pluralistic approach to adjudication by attempting to find a pragmatic manner in which to serve the dictates of Sharia law, while none-

64 | Cf. Kohm 2006: 693-725 and Oullette 2009: 223-242.

theless ending a divorce that the involved parties no longer wish for. Other episodes treat concerns about the lack of integration of ethnic Turks into mainstream German society or the continued problem of hostility towards foreigners (“Nazi” SEO3E36).

During a period in which both the homogeneity of German cultural identity and the preeminence of German law are being contested, the literary – for me, in this case the popular-fictional – provides an avenue for debating relevant socio-legal issues. As in the cited episodes of *Danni Lowinski*, popular media may provide an attempt to synthesize conflicting values and to suppress controversy. In a comparative vein, it will be very interesting to see whether the adaptation of the series for Dutch television (2013-present) will reflect on specifically local Dutch issues and to what degree these issues may differ from German ones.

V. CULTURAL NARRATIVES OF LAW – STORIES OF CITIZENSHIP, NATION, SOVEREIGNTY, AND EXCLUSION

Amongst the areas in which Law and Literature continues to make a significant impact in understanding the present is in uncovering those cultural narratives, genres, and tropes by and through which a group of people legitimize their claims to a given national identity. I write “understanding the present” because at the moment of writing, conflicts prevail concerning the development of new constitutions in Tunisia and Yemen, and perhaps also in Turkey, as well as in other countries. As has been pointed out repeatedly, constitutions and their preambles evidence a high level of narrativity, as they invoke a political collectivity that does not yet exist.⁶⁵ Here, narrative is not confined to the story-telling parameters of any one prose or legal text but is used in an expanded sense to denote historically specific cultural narratives. Further, these narratives are closely conjoined with the processes of becoming a nation and in creating a story as the basis of commonality that also functions to exclude those who do not belong to the imagined collective. As Raja Sakrani writes: “The identity function of law is thus linked to the birth of the nation state. This function is often underestimated in the functional catalog of law.”⁶⁶

Conflictual and emergent legal-national settings appear to be sites in which the conjunction of Law and Literature, meant here in the expanded sense to include the aesthetic and pop-cultural, provides a pertinent vehicle for consolidating identity: in the projection of nationalistic and/or collective cultural narratives the imagined union of the literary and legal story takes on particular

65 | Cf. von Arnould 2009: 13, Olson 2014a; Vorländer 2002.

66 | Sakrani 2014: 95.

significance. Thereby, the desired legal system and whatever is identified as the constitutive local literature or aesthetic may be used or abused to establish a form of identitarian collectivity and to further its emergence. The creation of this “imagined community,” with its projected notion of a language and legal order that is “*particular*” [emphasis in original] to a given geography, involves the exclusion of those who are perceived not to belong, as non-citizens, or non-members of a putative nation.⁶⁷ In this respect Law and Literature work has an inherently political intention to delineate what have been called “civic myths” by Brook Thomas or “validating narratives” by Hans Vorländer, upon which sovereignties are based. Such “de-historicized” narratives of legitimation work to create normative orders, such as those based on constitutions by creating transcendental “myths of origins” and by suggesting a continuity between the origin, for instance, of a nation and its present, thus lending it legitimacy.⁶⁸ Quoting Walter Benjamin in his “Theses on the Philosophy of History” from 1940: “Whoever has emerged victorious participates to this day in the triumphal procession in which the present rulers step over those who are lying prostrate. According to traditional practice, the spoils are carried along in the procession. They are called cultural treasures.”⁶⁹

The assertion of citizenship as expressed in literary and legal narratives, and most particularly in constitutions, is culturally and historically specific. This is not to assert any definitive concept of citizenship, whose various components are said to comprise one’s “legal status,” one’s rights and obligations on the basis of that status, and, more elusively, one’s “identity/solidarity” with the group with which one identifies oneself.⁷⁰ Law is always embedded in cultural practices that at least in part have a narrative component. Narratives and images of law then inform attitudes about legal systems and legal cultures, and these images and topoi are culturally specific. This is not to suggest that they are absolutely singular but to assert that their use or function within a given historical legal setting is particular.

67 | Cf. Anderson 2006: 43.

68 | I am summarizing Hans Vorländer and Gert Melville. The original reads: Geltungsgeschichten “liefern eine ‘enthistorisierte’ Eigengeschichte, bei der es näherhin auf zweierlei ankommt: zum einen darauf, die eigenen Anfänge so darzustellen, dass sie maßstabsetzend für alles Nachfolgende erscheinen: im gelungenen Fall generiert dies regelrechte ‘Gründungsmythen.’ Zum anderen kommt es darauf an, die Zeitspanne zwischen dem Beginn und der Gegenwart als eine ungebrochene Abfolge konkreter Einlösungsakte der primordialen Qualitäten vorzuführen, so zum Beispiel in Genealogien von Adelshäusern, die gerade dadurch ihre Institutionalität aufweisen wollen.” 2002: X. See also Vorländer 2002.

69 | Benjamin 1968: 256.

70 | Bosniak 2000: 455.

Thus I have repeatedly advocated for the enunciation of localized Law and Literatures that address linguistic particularities, the non-translatability and heterogeneity of cultures, and the various prescriptive uses towards which literature has been put in its differentiation from law. A localized Law and Literature scholarship can nonetheless recognize the globalized nature of the literary industry. Yet it need not look to the canon of Western Literature, which in US American and much Law and Literature modeled after it, comprises Greek tragedies, Shakespeare, Dickens, and Melville, and perhaps Kafka and Camus; instead, a localized Law and Literature might address its own literary field in interaction with its legal system, legal culture, and its citizens' various forms of legal consciousness. Furthermore, situated Law and Literature research can address current conflicts between local, traditional legal cultures and emerging ones created by the increasing hybridization of legal systems and the import of transnational forms of law, for instance, in trade agreements and through the recognition and enforcement of human rights.

Literature and art, as conveyers of cultural narratives or myths of citizenship, take on particular relevance during periods of social-legal contestation.⁷¹ When national identity or competing identities are articulated and juxtaposed, aesthetic artifacts and the imagined or actual particularities of a given legal system may both be used to bear witness to group identities. Where legal and governmental institutions do not ensure civility and rights as for African Americans before 1965, or in moments when different notions of civility pertain, as in the pre-Revolutionary German territories, cultural narratives and narratives of citizenship play particularly powerful roles. In these moments culturally specific research on common narremes and tropes in legal and aesthetic discourses and practices can open up the past.

Yet cultural narrative study is also helpful in highlighting tensions between competing legal systems, cultures, and consciousnesses in the present. Because we are in a period of consolidation and overlapping of legal systems, cultures, and languages, a differentiated culturalist and comparative approach to law is needed. To name current examples, both Britain and France have reacted quite strongly to the prospect of a common European civil code, a phenomenon that has been repeatedly compared to the Justinian *corpus iuris civilis*. Ralf Michaels describes French objections to the supposed threat to national culture that this 'foreign' EU law will have; these rhetorical tropes are reminiscent of nineteenth-century German debates about the negative effects of 'imported' French

71 | This assertion builds on comparative work being done on the Dutch Republic during the seventeenth century (by, for instance, Korsten 2009), on Germany in the *Vormärz* period (by Lieb 2013, amongst others) and on African American culture before the mid-twentieth century, and on Brazil in the present that I detail in the forthcoming *Law's Pluralities*.

law. Pointing out that “English opposition can easily (though perhaps falsely) be attributed to a clash of cultures or styles, in particular civil versus common law,”⁷² Michaels asserts that this cannot be the cause of French resistance to the proposed European code. Arguments are made that “the French code is the fruit of tradition, while a European code would represent a break with traditions.”⁷³ Further, the French Code Civil is presented as having introduced the concept of self-determined “sovereignty” versus the supposedly hegemonic tendencies of common European law.⁷⁴ Given France’s reduced influence within the EU, the patriotic defense of French law with recourse to arguments for its greater cultural authenticity manifests a defensive strategy.

Currently, “Law made in Germany” is espoused as the ideal law for solving international conflicts and for ensuring global competitiveness. As a recently published pamphlet by the Federal Ministry of Justice proclaims: “‘Made in Germany’ is not just a quality seal reserved for German cars or machinery, it is equally applicable to German law. Our laws protect private property and civil liberties, they guarantee social harmony and economic success.”⁷⁵ On the one hand, this propagation of the virtues of German law can be seen as an attempt to protect national interests and to offer a counterforce to what has been negatively viewed as the globalization of Anglo-American and, for instance, the importation of common law concepts of property into civil law jurisdictions. On the other hand, however, claims to the particular appropriateness and quality of a given legal system signal a nation’s and/or its people’s sense of defensiveness concerning their imagined hermetic legal identity. While there is nothing inherently reproachful about displaying a sense of pride about one’s legal system and culture, the above examples show that such pride may also serve as a vehicle for parochialism.

VI. DESIDERATA: TASKS FOR THE FUTURE

The Mirror Problem

A dilemma continues to beset Law and Literature work, including that of the present author, which is how to deal with realist aesthetic texts. Such texts appear to deny their quality as indirect mediations of experience, whether they are films, television series, or literary fictions. As the modernist author J. M. Coetzee has written, Robinson Crusoe’s relation of having found just three hats

72 | Cf. Michaels 2012.

73 | *Ibid.*: 10.

74 | *Ibid.*: 15.

75 | Leutheusser-Schnarrenberger 2012: 3.

and two shoes in the wreckage of the ship that brought him to the deserted island provides the reader of the novel with the necessary detail to understand the story to be ‘true,’ to be a mirror of reality.⁷⁶ Realist texts are employed in Law and Literature to illustrate a given social problem, most often an example of injustice that has been produced, abetted, and/or condoned by state law. Some examples of this might include the exposure of the inherent sexism of legal investigators in Susan Glaspell’s short story “A Jury of Her Peers” (1917), or the illustration of the toleration of murderous racism by legal actors and the court depicted in the Jim Crow South in Harper Lee’s novel *To Kill a Mockingbird* (1960) and its movie adaptation from 1962, to name two well-known examples from the US American context.

The traditional Law and Literature move would be to state that through the emotionally evocative means of narrative literature, the failings of law to ensure social justice are uncovered, and that the literary presents a necessary supplement to law. To a certain degree I have perpetuated this tendency in my discussion of *Danni Lowinski* as negotiating current German socio-legal anxieties and attempting through comedic means to resolve them. In the truncated reading offered here, questions of media specificity and, for instance, the series’ use of sound, *mise en scène*, cinematography, and lighting go missing. Problematically, the mediality, or literarity and fictionality of the text are suppressed when emphasis is laid on the social critique so transparently enacted by it.

Yet as critical theorists including but certainly not limited to Raymond Williams, Fredric Jameson, Michel Foucault, Nancy Armstrong, Douglas Kellner, Angela McRobbie, Chantal Mouffe, and Susan Sage Heinzelman agree, literary and aesthetic artifacts and forms are inherently political and may function to question and/or concretize the dominant social figurations out of whose setting they emerge. Form and its mediation of content, even when it is all but invisible, constitutes a type of agency, and the inextricable union of meaning and the means through which it is conveyed carry with them ideological implications. Aesthetic texts operate through mimetic techniques that either render mediation unseen or in which the form of the telling itself enacts critical contestation. For instance, when open discussion of counterterrorist measures such as the use of drones is curtailed in the current US American context due to a lack of accessible information,⁷⁷ then fictional vehicles such as *Homeland* (2011-present) function not only to provide information about this practice, accurate or not, but also through their formal qualities to reify insecurities regarding the perpetualness of terrorist threats.

76 | Cf. Coetzee 2004: 4.

77 | Cf. Melley 2012.

Thus Law and Literature practitioners need to continue troubling the image of the literary and the aesthetic as a (mere) mirror of the socio-legal, which underlies so much scholarship and reverberates in the frequent use of metaphors of reflection.⁷⁸ This entails denying any absolute separation between the spheres of the aesthetic and the socio-legal, while nonetheless also attending to the acute challenge to Law and Literature that has been presented by proponents of systems theory, who analyze the legal and the literary as partially institutionalized fields of activity that operate according to their own set of internal rules.⁷⁹

Enunciating Methods and Aims

Just as I have advocated for situated, comparative research that accounts for local conditions and historically embeds its questions and premises, so I would wish to call for an enunciation of what researchers wish to accomplish with Law and Literature research and suggest that this is anything but a unified project. Various types of Law and Literature research, like interdisciplinary legal projects more generally, have differing, sometimes conflicting aims. Again, there can be no one Law and Literature. For researchers based in Brazil the aim may be a political critique of the gap between existent legal structures and institutions and inequitable and discriminatory legal and social practices.⁸⁰ For researchers based in Continental Europe, one aim may include the practical desire to reproduce the conditions of scholarship and practice that prevail in North American law schools and, to a lesser degree, in Australian ones, where Law and Literature courses represent a regular part of Law School curricula. Another may be to provide culturalist explanations for the tensions that will inevitably arise when, as in the current moment, EU jurisdiction overlaps with national law, legal interpretive practices have become more hybridic, and Europe's populations are becoming more heterogeneous.

Currently, an expansion of traditional Law and Literature to include humanities research, narrative studies, cultural studies, and insights from other interdisciplinary legal studies is underway. If we accept that Law and Literature is a large-tent, pluralistic project, with a variety of divergent, local histories and various sets of aims, then room can be made for accommodating any number of methods. The previous pages have documented the emergence of visual, spatial, medial, and affect-oriented approaches to Law and Literature, as well as pop-cultural ones in what I am still, if controversially, referring to as Law

78 | Ziolkowski 1997 is a prominent example.

79 | Beyond Luhmann, the critical questioning of Law and Literature by systems theorists includes: Beebe 2010 and 2012; Grüttemeier 2007; Grüttemeier/Laros 2013.

80 | Cf. Lehnen 2013; Olson 2014b; Schmidt 2014.

and Literature. These newer methods continue to de-monumentalize the literary and to understand it more broadly as that which is framed as the fictive or aesthetic (to bring in yet another critical debate about fictionality). Another comparatist trajectory of Law and Literature research was shown to uncover overlaps between the aesthetic and the legal during periods in which groups have sought after rights to citizenship and sovereignty. Thereby moments of contestation are elucidated in which aesthetic texts act to create forms of civility not or not yet possible given current legal conditions.

All of the named trajectories of scholarship involve an expansion of the ethical-narrative methodological bias of classical Law and Literature scholarship, and I welcome this expansion. The words here are intended as an invitation to scholars younger than myself, also in the figurative sense, to continue to think the inter-discipline of Law and Literature forward.

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