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**A Reflection on *Palais de Justice: Nolite te bastardes carborundorum*<sup>1</sup>****Jeremy Pilcher****Birkbeck School of Law, University of London, London, U.K.**

The hall is immense. An anonymous figure slowly descends an imposing staircase that transects the imposing architectural space. The stationary view looks into an interior in which I have never stood. I imagine that this must be the Palais de Justice. Other expansive galleries are gazed upon. The windows there provide a diffuse light. Lamps are widely dispersed. People emerge into, and move purposefully through, sepulchral atriums as their footfalls reverberate away into the pervasive stillness. This vast edifice provokes me to seek a narrative that may account for such monumental spaces, which suggest a structure with substantial foundations.<sup>2</sup> I am incited to seek out the story of a courthouse erected in the middle of the nineteenth century for a newly independent Belgium. I find that this colossal building, situated above the historic centre of Brussels, is apparently known as “a monument to nineteenth-century eclecticism” and was built in a “Neo-Baroque style, with classical as well as ancient Near Eastern architectural details redolent of the world’s oldest known legal systems.”<sup>3</sup> This heterogeneity implies an effort to create a place in which lawyering is understood to deploy timeless and universal truths to solve the problems of humanity.<sup>4</sup> Yet the very proliferation of styles suggests to me anxiety resulting from the paradoxical need for the law to be “without history, genesis, or any possible derivation” as a basis for its claim to “categorical authority.”<sup>5</sup>

Legal gowns hanging in a line on a wall are echoed above by a row of images of, no doubt esteemed, men. I gather that statues of men of law from antiquity, including Demosthenes and Cicero, stand in the central portico.<sup>6</sup> According to Cicero, the best orator is one “whose speech instructs, delights and moves the minds of his audience.”<sup>7</sup> It is such men who have uttered the narratives that have guided “the process of understanding, applying and interpreting laws, for that which cannot contain any stories has to be mediated by them.”<sup>8</sup> The tales we tell, and those that are told about us, translate the relationship between our experiences of the world and how we are understood by others. It may be that “Stories and storytelling de-emphasize the logical and resurrect the emotive and intuitive”<sup>9</sup> but integrated

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<sup>1</sup> M. Atwood, *The Handmaid’s Tale* (Vintage, 1996), p. 101.

<sup>2</sup> J. Derrida, ‘Before the Law’, in D. Attridge (ed.), *Acts of Literature* (Routledge, 1992), p. 191; J. Derrida, ‘Passions: “An Oblique Offering”’ in T. Dutoit (ed.), *On the Name* (Stanford University Press, 1995); J. Derrida, ‘The Spatial Arts: An Interview with Jacques Derrida’, in P. Brunette and D. Wills (eds.), *Deconstruction and the Visual Arts: Art, Media, Architecture*, (CUP, 1994), p. 13.

<sup>3</sup> World Monuments Fund, ‘Brussels Palace of Justice’ <https://www.wmf.org/project/brussels-palace-justice> accessed 27 July 2018; UNESCO, ‘The Brussels Courthouse’ <http://whc.unesco.org/en/tentativelists/5357/> accessed 28 July 2018; C. Meeks, ‘Creative Eclecticism’, (1953) 12 (4) *Journal of the Society of Architectural Historians* 15.

<sup>4</sup> G.P. Lopez, ‘Lay Lawyering’ (1984-1985) 32 *UCLA L. Rev.* 1, p.2.

<sup>5</sup> J. Derrida, ‘Before the Law’, p. 191.

<sup>6</sup> World Monuments Fund, ‘Brussels Palace of Justice.’

<sup>7</sup> M. T. Cicero, ‘De Optimo Genere Oratorum’ in E.H. Warmington (ed.), *On Invention. The Best Kind of Orator. Topic*, (Harvard University Press, 1949), p. 357.

<sup>8</sup> C. Vismann, *Files: Law and Media Technology* (Stanford University Press, Stanford, 2008), p. 22.

<sup>9</sup> G. P. Lopez, ‘Lay Lawyering’ p.10.

within them are values and assumptions that reflect the shared and dominant standards of those by whom they are produced and circulated.<sup>10</sup> There is a compulsion in the iteration and re-iteration of persuasive narratives that constrains the contingency of the world as much as it brings about change.<sup>11</sup> It must not be forgotten: “There is at least one crucial difference between an event of law and an event of art, no matter how dramatic they both are: *a work of art cannot sentence to death*. A trial, unlike art, is grounded in the sanctioned legal violence it has the power (and sometimes the duty) to enact”.<sup>12</sup> Judges have the power within the law to determine how “super performative” legal force is used to fabricate the world.<sup>13</sup> Baroness Hale put it bluntly, when she described how as a judge of the Family Division of the High Court of England and Wales, “most of my time was spent oppressing women: specifically mothers”.<sup>14</sup>

The stories we tell through the law may implicitly, “acknowledge, perhaps to an uncomfortable degree that we can only aspire to be neutral, certain and in control”.<sup>15</sup> Yet this is typically disavowed as appeals are made to “natural law, self-evident truths, or God” in an effort to avoid the abyss underneath the foundation of all laws.<sup>16</sup> My experience of *Palais de Justice* is that it seeks to do more than solve, “the problem of ‘how to translate knowing into telling’ by employing forms of communication that mirror our way of knowing”.<sup>17</sup> A looming door dominates the screen. Other doors appear but this time with round portals of opaque glass through which jurists are glimpsed as “through a glass, darkly.”<sup>18</sup> In the movement from room to room the proceedings are inaudible.<sup>19</sup> Hands, hair, and faces illuminated obliquely by glancing light are regarded intently. Expressions appear pensive and eyes distant. Doors are not made open. There are no greetings. There is no acknowledgement of presence. This is a clandestine visitation. *Palais de Justice* surreptitiously moves me paratactically around the series of rooms and there seems to be “no place from which the entire architecture of barriers can be grasped, none that renders comprehensible the master plan that appears to control everything”.<sup>20</sup> It occurs to me no effort is made to provide a sense-making narrative and, in

<sup>10</sup> G.P. Lopez, ‘Lay Lawyering’; B. Wilson, ‘Will Women Judges Really Make a Difference?’ (1990) 28 (3) Osgoode Hall Law Journal 507, p. 510; J-F Lyotard, *The Differend: Phrases in Dispute* (University of Minnesota Press, 1983).

<sup>11</sup> S. Marks, ‘False Contingency’, (2009) 62 (1) *Current Legal Problems*, 1; J. Pilcher, ‘State Britain and the Art of (Im)proper Democratic Protest’, Law, Culture and Humanities, Pre-published January 1, 2016. DOI: 10.1177/1743872115625433.

<sup>12</sup> S. Felman, ‘A Ghost in the House of Justice: Death and the Language of the Law,’ A. Sarat and J. Simon (eds.) in *Cultural Analysis, Cultural Studies, and the Law*, (Duke University Press, 2003), p. 278 [italics in the original].

<sup>13</sup> J. S. Peters, ‘Legal Performance Good and Bad,’ (2008) 4 *Law, Culture and the Humanities* 179, p. 185.

<sup>14</sup> B. Hale and R. Hunter, ‘A Conversation with Baroness Hale,’ (2008) 16 *Feminist Legal Studies* 237, p.246; B. Hale ‘The View from Court 45’ (1999) 11 *Child and Family Law Quarterly*, 377, p.377.

<sup>15</sup> G.P. Lopez, ‘Lay Lawyering’, p. 10.

<sup>16</sup> W.W. Sokoloff, ‘Between Justice and Legality: Derrida on Decision’ (2005) 58 (2) *Political Research Quarterly* 341, p.343.

<sup>17</sup> G.P. Lopez, ‘Lay Lawyering’, p. 9.

<sup>18</sup> 1 Corinthians 13:12 (King James Version).

<sup>19</sup> *Audi alteram partem* (“let the other side be heard as well”) is regarded as fundamental to justice. C. Douzinas and R. Warrington in *Postmodern Jurisprudence: The Law of the Text in the Text of the Law* (Routledge, 1994), p. 176 propose that it “shows the law concerned to hear the concrete person who comes before it, rather than to calculate and adjudicate the general qualities and characteristics of the abstracted legal person.

<sup>20</sup> C. Vismann, *Files*, p. 18.

the process, the assertion of a dominant universal and ahistorical rationality articulated in the architecture of Palais de Justice is resisted.<sup>21</sup> The secretive gaze brings with it a proliferation of questions. I find myself speculating as to whether justice is, was, or will ever be, served in these places of judgement. *Palais de Justice* prefers not to answer me. I am incited to reflect on the bind in which judges are placed when deciding. The law applies to all and must not be enforced arbitrarily and yet the ways in which each case is different must be respected: “Each case is other, each decision is different and requires an absolutely unique interpretation, which no existing, coded rule can or ought to guarantee absolutely.”<sup>22</sup>

I am aware of a dull underlying roar that swells and diminishes over time. *Palais de Justice* resonates with the subdued sounds of the impersonal operations of a legal system. Encompassed within this insistent noise footfalls and the sounds of muscles acting and blood flowing resonate. In my virtual experience of the Palais de Justice I hear the sounds of bodies that are present in their absence. Yet, the frozen stone of this building is not there as a memorial to the convicted criminals who in medieval times, before the trial replaced the scaffold, were hanged on the hill on which stands the Palais de Justice.<sup>23</sup> Nor has it been erected as a symbol of the thousands of homes demolished in order to enable the construction of this edifice as a place for judges to mete out justice in the name of the equal and non-arbitrary enforcement of the law. The teletechnological experience of *Palais de Justice* impels me to look beyond a simplistic opposition between the living and the dead to the “ghost of the undecidable,”<sup>24</sup> which haunts every decision. Drucilla Cornell employs Derrida to make the point that, “if legal orders erase their mystical foundation of authority and masquerade as justice, they are ‘rotten.’ Regimes that conceal their origin in violence eliminate the basis for their own contestation.”<sup>25</sup> Palais de Justice is built on an iron frame that is now rusting.<sup>26</sup> The whole edifice, including the huge dome over the Salle des Pas Perdus, is rotting from within. But to be reminded of the frailty of the law should not be a concern for “One cannot love a monument, a work of architecture, an institution as such except in an experience itself precarious in its fragility: it hasn’t always been there, it will not always be there, it is finite.”<sup>27</sup> The finitude of the eclectic monumentality of the Palais de Justice is indicated by the scaffolding, erected around the immense building to protect the public from falling masonry, which is itself now rusty. Christopher Woodward observes that “When we contemplate ruins, we contemplate our own future” and when it comes to justice this should not be forgotten because, “justice is never present; it is always to come”.<sup>28</sup>

<sup>21</sup> R. West, ‘Law’s Emotions’, (2015) 19 (4) Richmond Journal of Law and the Public Interest 339, p. 340

<sup>22</sup> J. Derrida, ‘Force De Loi: Le “Fondement Mystique De L’Autorite”/ Force of Law: The “Mystical Foundation of Authority”’, (1989-1990) 11 Cardozo L. Rev. 920, p. 961.

<sup>23</sup> UNESCO, ‘The Brussels Courthouse’ <http://whc.unesco.org/en/tentativelists/5357/> accessed 28 July 2018; L. Farmer, ‘Secret Trials and Public Justice’ in A. Sarat, L. Douglas and M. Merrill Umphrey (eds.) *The Secrets of Law* (Stanford University Press, 2006).

<sup>24</sup> J. Derrida, ‘Force De Loi’, p. 963.

<sup>25</sup> W.W. Sokoloff, ‘Between Justice and Legality’, p. 343 citing D. Cornell, *The Philosophy of the Limit* (Routledge, 1992), p. 167 and see Derrida, ‘Force De Loi’, p. 999.

<sup>26</sup> This is translated as “Hall of Lost Footsteps”, World Monuments Fund, ‘Brussels Palace of Justice’

<sup>27</sup> J. Derrida, ‘Force De Loi’, p. 1009.

<sup>28</sup> C. Woodward, *In Ruins* (Chatto and Windus, 2001), p. 2; W.W. Sokoloff, ‘Between Justice and Legality’, p. 344.

In *Palais de Justice* no glimpse is to be had outside Palais de Justice. The judges, who emerge out of the stygian gloom of the interiors that are peered into, are women. I am reminded of Justice Shirley S. Abrahamson writing of the day in 1976 that an “improbability had become a reality: a woman was named to the formerly all-male Wisconsin Supreme Court”; and of Madame Justice Bertha Wilson’s recollection of her appointment to the Supreme Court of Canada in 1982; or of Baroness Hale of Richmond, who was the first woman to be appointed to a Lord of Appeal in Ordinary in 2004.<sup>29</sup> The binding rules and precedents of the law have led some to question whether “women judges simply become assimilated into the masculine legal culture.” But despite the constraints of the law, “this does not mean that the feminist judge is compelled, in Berns’s terms, to “become one with the law she speaks.”<sup>30</sup> Or, to put it another way, it is possible for the lawyer to act “within the code contrary to the code”. As Derrida describes, this involved Nelson Mandela recounting his “life in order to explain, or rather to justify, the transgression of a professional rule”.<sup>31</sup> Abrahamson proposes, when those who ask whether women judges will make a difference to justice, what they “are really asking [is] whether there is any special sensitivity that a person’s background might bring to the court”.<sup>32</sup> Whilst “we cannot not respond in a way that both reaffirms and transforms our heritage for the future-to-come” at the same time “there are forces that work against the inevitable – it is possible to deny this responsibility in one’s own actions or one can be denied that responsibility by others.”<sup>33</sup> For me, *Palais de Justice* is an invitation to reflect on the extent to which, in the future-to-come, the ways in which shared legal heritages may not only be reiterated but also transformed by “focusing on the realities of people’s lives rather than on narrow doctrinal issues”<sup>34</sup> in acknowledgement of the abyss that haunts the law’s claims to provide order in society.

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<sup>29</sup> S.S. Abrahamson, ‘The Woman has Robes: Four Questions’, (1984) 14 (3) Golden Gate University Law Review 489; B. Wilson, ‘Will Women Judges Really Make a Difference?’, p. 507; B. Hale and R. Hunter, ‘A Conversation with Baroness Hale’, p. 3

<sup>30</sup> R. Hunter, ‘Can *Feminist* Judges Make a Difference?’ (2008) 15 (1-2) International Journal of the Legal Profession 7, p. 22.

<sup>31</sup> J. Derrida, ‘Admiration of Nelson Mandela, or the Laws of Reflection’ (2014) 26 (1) Law & Literature 9, p. 24

<sup>32</sup> S.S. Abrahamson, ‘The Woman has Robes: Four Questions’, p.493

<sup>33</sup> R. Diprose, ‘Derrida and the Extraordinary Responsibility of Inheriting the Future-to-come’, (2006) 16 (3) Social Semiotics 435, p 441

<sup>34</sup> R. Hunter, ‘Can *Feminist* Judges Make a Difference?’, p. 12.