

## Jurisliterature and Its Discontents

Review of Peter Goodrich, *Advanced Introduction to Law and Literature*, (Cheltenham, UK: Edward Elgar Publishing, 2021), pp119, £15.95

A letter in *The Times* relates the time Member of Parliament Neil Marten was showing a group of his constituents round Westminster when they ran into Lord Chancellor Hailsham dressed in his full regalia. Lord Hailsham was surprised to see his colleague and shouted “Neil!” ‘So awesome was this spectacle,’ the correspondent writes, ‘that the constituents assumed it was an instruction and immediately fell to their knees.’<sup>1</sup>

The image of members of the public visiting the palace of Westminster and spontaneously prostrating themselves in the presence of the highest judge in the land is an example of the aesthetics and theatrics of law that would qualify for Peter Goodrich’s advanced and expansive ambit of the field of Law and Literature. It is hard to think of any other legal theorist, on either side of the Atlantic, who has managed, for several decades, to bring so much colour, wit, humour, poetry, and provocation, to a discipline that many, and not least Kafka, likened to chewing sawdust; worse still, sawdust that had already been chewed over by thousands of others before.

When I first encountered Goodrich’s work, in the early 1990s, I was indeed one of those Kafka misérables, dejected and despairing at the fate of English law students condemned to chewing pre-chewed saw-dust in the form of common law precedents with the occasional glimmer, if glimmer it could be called, of short excursions to Jurisprudence: only the canonical type of course, texts that had been blessed and sanctified by former holders of the Oxford Chair of Jurisprudence. That gave us HLA Hart, Ronald Dworkin and John Finnis, in that order, when

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<sup>1</sup> *The Times* 19 November 2020

we were not forced to chew centuries' old material from Kings' and Queens' Benches. The news that law could be studied and consumed through the prism of literature was greeted with such enthusiasm and relief that some, myself included, went overboard in adopting this exotic new discourse, yearning for the two disciplines to be wedded together in blissful unity in law, in love, in eternity. As Peter Goodrich argues at the start of his new book, such a marriage was not meant to be; the union soon descended to recriminations, rows, custody battles and divorce.

In retrospect, the signs that wedding law to another discipline would not cure law's malaises were already there for us to see: attempting to bring two disciplines together, just as the attempt to bring two human subjects together, runs the risk of each subject avoiding addressing their own problems and limitations in the hope of finding what they are missing in the other person. The happy union, therefore, can perpetuate rather than dissipate those problems; literature in this instance became saddled with the task of humanising, critiquing, even radicalising law (as early proponents of the Law and Literature enterprise variously claimed) while the problems in law continued unabated with legal discourse outside the academy merrily pursuing its good old ways. The hope that the other subject or discipline will make up for one's problems is therefore a fantasy that, as Lacan pointed out, is fraught with dangers for both the self and the other: our own limitations and difficulties are blamed or displaced onto another while, in persuading ourselves that the other 'has that which may complement us, we assure ourselves of being able to continue to misunderstand precisely what we lack.'<sup>2</sup>

Goodrich's new book wisely avoids the pitfalls of such a marriage of convenience by addressing the more enduring attraction and abiding symbiosis between law and literature: the two disciplines' love of, reliance on and constitution by words; and, as Goodrich expands in this book, law's reliance on images, sounds, archives, theatres and performances, amongst a

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<sup>2</sup> J Lacan *Four Fundamental Concepts of Psychoanalysis* (London: Penguin, 1994) p 133

rich array of law's varied material practices. This is not a thesis on Law *and* Literature, or on Law *in* Literature, or even on Law *of* Literature, to mention some of the coordinating conjunctions used to describe the proliferating affairs between the two disciplines. It is rather the persistent and unavoidable conjunction of Law *as* Literature: law's unavoidable and more or less successful immersion in the art and craft of word- as well as world-making. In this juncture, judges, lawyers, and legislators are held up to the exacting standards of literary critique and are found, sooner or later and more or less, wanting. It is therefore less the jurisprudence of Plato's *Republic*, who we recall infamously banished poets from his ideal state, and more the jurisprudence of Plato's *Laws* where the fair muses are called upon to aid in the making, composing and singing of just laws.

Jurisliterature, as Goodrich terms this genre, attends to the imaginative, literary, and aesthetic qualities of legal practices, its atmospheric and spatial occupations, its fictions and mutations; it is an aesthetic genre in its own right, a genre that is mobile, active, ever-expanding and anarchic. In the course of the book it includes cases varying from breach of contract in a tangled web of tactile, textile, and textual promises, stories of restrictive covenants on properties of an indeterminate number of storeys, coded judgements on plagiarism against the Da Vinci Code and lastly and incredibly sensitively, the trials and transformations of modernity's first trans lawyer, Judge Schreber. The result is an intoxicating mix of poetry and prose, law and performance, of images, emblems and artefacts.

For newcomers to Goodrich's work, this is legal writing but not as we know it. Literature and the aesthetic generally are not an added, let alone, optional extra to be married to the study of law but meet, invade and penetrate law on its own territory. Ovid meets Coke and the outcome is a metamorphosis. The 'sclerotic traditions of repetition and the pickle jar of precedent', 'lengthy, wearisome, boring and largely irrelevant'<sup>3</sup> citations are ostracised

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<sup>3</sup> P Goodrich *Advanced Introduction to Law and Literature* (Cheltenham: Elgar Publishing, 2021) p 58

while the reader is invited to attend to and celebrate the *point de capiton* of the judgment. This quilting point turns out to be a minute detail, an image or signifier that sets the pace for the judgment and triggers the outcome: a line from *King Lear*, the opening of *Pride and Prejudice*, an inverted Cicero. While many readers of legal texts might have missed these signs, through Goodrich's close readings, the clues spring up everywhere. The readings catch sounds and images, rites and symbols that slip past, however fleetingly, arrest them in their flight and tease their significance as they try to slip away unnoticed. Like a skilled detective of texts, Goodrich finds precisely those cuts, the stray word or line in the judgement that triggers a new direction and determines the outcome; and like any good detective story, the reader rejoices as if she had detected and excavated those signs herself.

The book suggests that jurisliterature is built precisely on these fundamental if unacknowledged details, it is those materials that form the building rocks, the *petres* or stonemasonry, of law-making and that matterphorise our experience in law. Rather than excising them from court and law school in an attempt to deny their founding force, jurisliterature makes the persuasive case for foregrounding their structural importance, for the 'visceral'<sup>4</sup> as a necessary part of law-making as texts conmingle with images in today's proliferating forms of communication. The result is a rich illustration of, and plea for, a transitional jurisprudence because 'the body, like the earth that produced it is ever mutating, transforming, moving.'<sup>5</sup> The pivotal role of these diverse and colourful signifiers is reaffirmed again and again in the readings: when law runs out, when there's no ratios and obiters left, judges reach to poetry and the image to fill the gap. When the right line is quoted, the apposite image is adduced, the decision is made, judgement is pronounced; though of course the decisiveness and finality introduced by the literary is the last ratio to be openly admitted.

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<sup>4</sup> Ibid, p 77

<sup>5</sup> Ibid, p 110

Goodrich's thesis also goes further; for Goodrich poetry and the aesthetic generally is the royal road not only to law but to good law and to the art of justice itself. He recovers and reminds us of another Plato, not the Plato of *The Republic* who would ban poets and their ilk from the ideal state but Plato of *The Laws* who exalts and recommends for protection the poetry *in law*. Bad law is cacophonous, weak, poor in rhetoric while good law, 'rhymes, sings, it is just.'<sup>6</sup> Just as image precedes thought, poetry precedes contract and points to an anterior form of social bond: 'long before the social contract there is the theory – mythology, theosophy, or fabulation – that is poetry.'<sup>7</sup> The hope is that a well-written law, a harmonious, elegant, aesthetically beautiful judgment will be at the same time just: 'The poet jurist seeks to fit judgment to circumstance and when these align justice is done.'<sup>8</sup>

If only it were that simple, Socrates might retort, interrogating Gorgias: you may be a good orator, you may convince juries and melt hearts but does that mean you speak the truth? Indeed, while focusing on the aesthetics of your prose and ensuring every signifier is perfectly apposite, you can run the risk of missing truth altogether, truth that is often hidden in the slips and mistakes, the parts of your speech where you are unguarded and let go of the wish to please, to impress, or to convince.

That leaves to my mind an unresolved tension in the book on the ambit of poetic law-making, which may reflect at heart the impossible gap between law and justice, between aesthetics and politics. The road from poetry to justice may be royal but how and how many are likely to find it? The book's path is strewn with the latest meme, image, tweet, it's what may be called politically correct but is it political and what politics does it propose? Is the new materialism it advocates materialist enough or does it hark back to some enchanted world

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<sup>6</sup> Ibid, p 6

<sup>7</sup> Ibid, p 5

<sup>8</sup> Ibid, p 22

where magic resides in all matter? If so, what chance is there for humans who are not wizards, or pataphysicians, to take part?

The long-term project of jurisliterature is ambitious and broad: to ‘render law aesthetically pleasing and ethically appropriate.’<sup>9</sup> The greater the aim, the more attentive to detail one needs to be and perhaps this is where the book’s strength lies: it doesn’t offer a political programme or policy proposals for overseeing the metamorphosis from Ovid to Judge Judge, or from Jane Austen to John Austin. Yet it does, through its own performance, show how to attend to the detail and uncover what orthodox jurisprudence has tried to hide for centuries: a glimpse of the sensory, the acoustic, the erotic, the non-virile, in short a glimpse into the madness and matter of law. The book guides the reader to becoming attentive to the marginal, the incidental, that helps take her closer to law’s vanishing points: ‘where law encounters what it cannot formulate and does not know.’<sup>10</sup>

It’s in these interstices that the appeal, and truth of the project can be glimpsed; poets are not making law, nor aiming to, and judges are not writing literature, nor aiming to. Judges strive to find justice within the law, and when poetry appears, however unobtrusively and fleetingly in the legal text, it signals a desire and a gesture for a bond beyond the law, beyond morality and into the sphere of ethics: for that which exceeds law and existing categories of what is permitted and what is prohibited and which redefines the boundaries of law itself. Goodrich seeks out precisely these often unnoticed and unconscious excesses in the material manifestations of the law and hones in on them mercilessly, sensitively, with wit, and abiding generosity. The hapless judge, the lawyer, the legislator and plaintiff are all welcomed and given their day in the text, with the reader invited to lend not just her mind but her eyes, her ears and all senses to the text. The result may not reach but tries to approximate truth and justice

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<sup>9</sup> Ibid, p 109

<sup>10</sup> Ibid, p 88

as well as something just as rare and precious; adopting and exceeding the medieval maxim *ubi amor ibi oculos*, the project confirms that where the senses are, there is love.