



BIROn - Birkbeck Institutional Research Online

Fitzpatrick, Peter (2001) Law like poetry – Burnt Norton. *Liverpool Law Review: A Journal of Contemporary Legal and Social Policy* 23 (3), pp. 285-288. ISSN 0144-932X.

Downloaded from: <https://eprints.bbk.ac.uk/id/eprint/485/>

Usage Guidelines:

Please refer to usage guidelines at <https://eprints.bbk.ac.uk/policies.html> or alternatively contact lib-eprints@bbk.ac.uk.

**Birkbeck ePrints: an open access repository of the
research output of Birkbeck College**

<http://eprints.bbk.ac.uk>

Fitzpatrick, Peter (2001). Law like poetry –
Burnt Norton. *Liverpool Law Review: A Journal
of Contemporary Legal and Social Policy* **23**
(3) 285-288.

This is an author-produced version of a paper published in *Liverpool Law Review: A Journal of Contemporary Legal and Social Policy* (ISSN 0144-932X). This version has been peer-reviewed but does not include the final publisher proof corrections, published layout or pagination.

All articles available through Birkbeck ePrints are protected by intellectual property law, including copyright law. Any use made of the contents should comply with the relevant law. The original publication is available at www.springerlink.com

Citation for this version:

Fitzpatrick, Peter (2001). Law like poetry – Burnt Norton. *London: Birkbeck ePrints*. Available at: <http://eprints.bbk.ac.uk/archive/00000485>

Citation for the publisher's version:

Fitzpatrick, Peter (2001). Law like poetry – Burnt Norton. *Liverpool Law Review: A Journal of Contemporary Legal and Social Policy* **23** (3) 285-288.

<http://eprints.bbk.ac.uk>

Contact Birkbeck ePrints at lib-eprints@bbk.ac.uk

- Poetry
- Article
- Law like Poetry – Burnt Norton
- Peter Fitzpatrick
- Anniversary Professor of Law, Birkbeck, University of London
- School of Law, Birkbeck, Malet Street, London WC1E 7HX. Tel: (0)20 7067

2405/(0)1227 710554, Fax: (0)20 7631 6506, Email:

peter.fitzpatrick@clickvision.co.uk

LAW LIKE POETRY – BURNT NORTON

The heretical impulse surging out of my deftly allocated text draws poetry and law into a correspondence – the text being T.S. Eliot’s “Burnt Norton,” the first of the *Four Quartets*.¹ I will occasionally trespass on the others: “East Coker,” “The Dry Salvages” and “Little Gidding.”

The comparison is usually, of course, to the opposite effect. Poetry opposes law as imagined worlds oppose what is “real,” as the possible opposes the actual and established.² Poetry, says Auden, “makes nothing happen.”³ In the Sufi tradition, poetry counters the legalist turn in “official” Islam.⁴ And there is, perpetually, Plato with his supposed hostility to the poet – the poet who confounds the laws by calling everything into question, by making “the words of poetry similar to whatever he [the poet] happens to be or regards virtue or wickedness.”⁵ Yet there are ponderable voices to the contrary. Laws in many cultures are put poetically, and for Shelley “poets are the unacknowledged legislators of the world.”⁶

Nuancing that opposition now, by way of Goodrich’s leavening sources in “Rhetoric and Somatics,” matters become more promisingly mixed.⁷ Here we find law indeed separate from and opposing the poetic but suffering in the separation. Such law is somehow deracinated, corrupted, less than it properly is. If, then, poetry is so generative and integrally sustaining of law, the two cannot be simply opposed. Freud

sets their relation when he sees the originating of law and of society being “achieved in his imagination” by “the first epic poet,” and thence embedded in the poetic truth of the founding myth the poet invents.⁸ Like all good myths of origin, this one continuously trajects, providing the protean origin of who or what we are now, and in this way it remains with-in the law it originates. And yet this is not solely a matter of a primal poetic creating law. Law, in Freud’s telling of the myth, is like poetry in being “before” the origin, in *making* that origin possible.⁹

With a certain thumping emphasis now, we could agree perversely with Auden that “poetry makes nothing happen” – agree that what poetry, along with law, *makes happen* is nothing. The *prima materia* which poetry and law work on is this “airy nothing.”¹⁰ “Nothingness is the creator of the world in man... .”¹¹ In poetry, as in law, the existent and the inexorable are outflanked and, coming from the nothingness beyond them, newness is made manifest.

Yet the word of poetry and of law is held to, and it is in this quality of holding that the word is commonly seen as law. It is something of this same quality that informs the taking of *The Four Quartets* to be the most law-like of Eliot’s poems, with its infused sense of precision, with its erecting of some protective “enchainment of past and future” (p.192): “And every phrase/And sentence that is right (where every word is at home...)” (p.221).

Yet what is thus captured “for the time being” cannot be enduringly held as the same, not only because of the ravaging future and its tearing apart of “inveterate

scars” (p.191), of what is healed and hardened into establishment, but also because of the insistence in the “always present” of “what might have been” (p.190), and the insistence of a past that is never past – “the recurrent end of the unending” (p.216). Then: “Words strain,/Crack and sometimes break, under the burden,/...Decay with imprecision, will not stay in place...” (p.194). Thence, “every attempt” at using words “is a wholly new start, and a different kind of failure” (p.202). And so, the comparison waiting, for Derrida it is the “failure” of law, something “rotten” in it, which impels its going beyond, impels its responsiveness and “giving” to the insatiable demand of that “justice” which is ever beyond.¹² Plangently, law leaps towards and retreats from illimitable possibility in the partial success, but inextricable failure, of its “doing” justice. This, for Derrida again, is law as “fiction”, ever supervening on law’s own positivist pretension.¹³

Perhaps, then, law is most like poetry in this utter responsiveness. The poet, says Rilke, is “he or she who is ready for everything.”¹⁴ The poet’s strength is the lack of strength, and the lack in strength:

Spender told Auden he wondered whether he, Spender, ought to write prose. But Auden put his foot down. ‘You must write nothing but poetry, we do not want to lose you for poetry.’ ‘But do you really think I’m any good?’ gulped Spender. ‘Of course,’ Auden frigidly replied. ‘But why?’ ‘Because you are so infinitely capable of being humiliated. Art is born of humiliation.’¹⁵

“Humility is endless,” adds Eliot (p.199). Yet if “this brings forth possibilities that are entirely other,” a completeness of response to alterity becomes entirely self-annihilating, death; but what is involved also is the subordination of this death to possibility realized.¹⁶

What position, then, may poetry and law take in-between realization and responsiveness? We are left “with the intolerable wrestle/With words and meanings” (p.198). There is no abiding stay. “I can only say, *there* we have been: but I cannot say where” (p.191). Yet, my final “yet,” there is a stillness.

At the still point of the turning world. Neither flesh nor

fleshless;

Neither from nor towards; at the still point, there the dance

is,

But neither arrest nor movement. And do not call it fixity...(p.191)

Words can reach the stillness “only by the form, the pattern” (p.194), and “the detail of the pattern is movement” (p.195). Pattern or form can only *be* itself in a movement through and beyond itself, a denial of itself – “the pattern is new in every moment” (p.199). Movement, movement in space and time, can only *be* itself in a pattern or form through and beyond itself, and this also in denial of itself – “caught in the form of limitation” (p.195).

In order to possess what you do not possess

You must go by the way of dispossession. (p. 201)¹⁷

¹ T.S. Eliot, *Collected Poems 1909-1962* (London: Faber, 1974), pp. 189-223.

Bracketed page numbers in the text refer to this work.

² Cf. M. Aristodemou, *Law & Literature: Journeys from Her to Eternity* (Oxford: Oxford University Press, 2000), pp. 18-19, 180; and see e.g. C. Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. G. Schwab (Cambridge MA: MIT Press, 1985), p. 35.

³ W. H. Auden, "In Memory of W.B. Yeats" in *Selected Poems* (London: Faber, 1979), p. 82.

⁴ A. Schimmel, *The Triumphal Sun: A Study of the Works of Jalaloodinn Rumi* (Albany: State University of New York Press, 1993). I am grateful to Tayyab Mahmud for this reference.

⁵ Plato, *The Laws of Plato*, trans. T.L. Pangle (New York: Basic Books, 1980), para. 656c.

⁶ P.B. Shelley, *A Defence of Poetry* (Boston and London: D.C. Heath & Company, 1911), p.58. Louise Fraser Mooney unerringly provided the source.

⁷ P. Goodrich, "Rhetoric and Somatics: Training the Body to do the Work of Law", *Law.Text.Culture* 5/3 (2001), pp. 241-70.

⁸ S. Freud, *Group Psychology and the Analysis of the Ego*, trans. J. Strachey, in *Civilization, Society and Religion* (London: Penguin, 1985), p. 169. Cf. Auden *supra*, n.3, p.92, "In memory of Sigmund Freud":

...he merely told

The unhappy Present to recite the Past

Like a poetry lesson... .

⁹ P. Fitzpatrick, *Modernism and the Grounds of Law* (Cambridge: Cambridge University Press, 2001), chapter 1.

¹⁰ Shakespeare, *A Midsummer Night's Dream*, V:1.

¹¹ M. Blanchot, "Literature & the Right to Death", trans. L. Davis, *The Station Hill Blanchot Reader: Fiction & Literary Essays* (Station Hill: Barrytown, 1999), pp. 359-99. At this point there should be "read" in Celan's "Psalm": *Paul Celan: Poems*, trans. M. Hamburger (New York: Persea Books, 1980), p. 143.

¹² J. Derrida, "Force of Law: The 'Mystical Foundations of Authority'", trans. M. Quaintance, in D. Cornell *et al.* (eds), *Deconstruction and the Possibility of Justice* (New York: Routledge, 1992), pp. 3-67 at 28.

¹³ . *Supra*, n. 12, p.12.

¹⁴ See J. Fenton, *The Strength of Poetry* (Oxford: Oxford University Press, 2001), p.248.

¹⁵ *Supra* n.14, p.209.

¹⁶ M. Blanchot, *The Infinite Conversation*, trans. S. Hanson (Minneapolis: University of Minnesota Press, 1993), p. xii, and generally Blanchot *supra*, n. 11.

¹⁷ In my engagement here, there is no following-through to Eliot's culminations in love and Incarnation: *supra* n.1, pp. 195 and 213.