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(eds.)

The Letter of the Law: Literature, Justice and the Other

Introduction: the Other as the (Purloined) Letter of the Law

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In the last few decades, the intersections between literature and law have expanded their field of study across the disciplines of legal studies and the humanities, encompassing interdisciplinary perspectives far beyond their initial confinement in “law faculties,” as Anthony Julius noted in 1999 (xvii). Representations of the institutions and mechanisms of the law in literature have been given significant attention in important studies featuring readings that set in dialogue legal and literary discourses. The study of how literary modes figure in legal texts coincided with the study of literary texts concerned with law and justice, while the cultural and social spaces where law and language meet and overlap, especially given new understandings of textuality since the emergence of deconstruction and new historicism, have become increasingly important in attempts to forge new judicial tools. This is why legal scholars like J. Allen Smith and Brook Thomas spoke, respectively, of “The Coming Renaissance in Law and Literature” and “the Law and Literature Revival” in the latter half of the twentieth century.

Probing precisely this literary dimension of the law, *The Letter of the Law: Literature, Justice and the Other* articulates the imperative need to reconfigure issues of justice as always-already intertwined with the Other. We take this concept to mean not only the aforementioned relationship of literature and law as each others’ Other; not only the Other in the traditional connotation of the marginalised, the oppressed, the subaltern, the minorities as represented (by literature) before the law, but also how this interdisciplinary friction ultimately reveals law as Other to the law: the immanent demand for justice, the spirit of the law, always struggling with, always being deferred through, textuality, context, signification, the practice and the letter of the law. As Daniel Simon put it in his “Editor’s Note” in the *World Literature Today* issue dedicated to “law-inspired literature,” “[i]n extremis, literature not only interrogates the law on its own grounds but questions the law’s very ability to adjudicate morality, or prosecute its absence” (3).

Although the question of Otherness has been central in psychoanalytic, gender and post-colonial theory, as well as in literary and cultural studies, it has not been systematically brought in the field of law and literature. In the third edition of *Law and Literature* in 1998, for example, where Richard Posner posits “the ubiquity of law as a theme of literature” (3), the cultural forms and experiences

of Otherness in “oppositionist legal storytelling” are mentioned only in passing, and there mostly as “whiny and self-pitying” (349) texts of low quality (357, 371). Yet recently Costas Douzinas, in his genealogical return to the fate of the word “humanities,” connects “the nexus of law and justice” to the question of Otherness (61), while Peter Goodrich speaks of justice in terms that are strikingly resonant with the conceptualisation of alterity, a justice that “is indeed often defined by reference to what it is not, its lack, the instance of injustice but then an ambiguous prefix has already complicated the plurality of definitions beyond any easy etymological or legislative redemption” (188).

This collection thus emerges in response to the crucial issues of justice and alterity that so far have been rather overlooked in the existing bibliography on Law and Literature, and we hope that in the wake of this volume, alterity may too figure among the “areas of inquiry for law and humanities” (Sarat, Anderson and Frank 19). Originating in the conference of the Hellenic Association for the Study of English, *The Letter of Law: Law Matters in Language and Literature*, that was held in Athens in April 2011, the contributions in this volume offer renewed insights into the intermittently uncertain, unstated or contested disjunction and/or convergence between various understandings of the essence and practice of the law. As the contemporary global world poses the imperative to address and redress the co-articulation of law and justice and as the authority and legitimacy of the law is bound up with questions of ethics, the present probe into the question of Otherness offers new ground on which to think not only re-configurations of the field but also the historically or culturally purloined spaces in-between. In the words of Douzinas:

Legal justice is only one limited facet of justice. It misfires and decays if it stays on its own, unaccompanied by the wider conception that has inspired European critical legal theory. This is a justice that operates in relationship to the other as a singular, unique, finite being with concrete personality traits, character attributes, and physical characteristics. This finite person puts me in touch with infinite otherness. (61)

Combining legal, literary, as well as political and theoretical questions, and ranging from legal issues in the early modern period to critical explorations of law/s, justice and textuality in contemporary culture, the volume encompasses essays on history, poetry, drama, novels, philosophy, film and legal practice. Through attentive readings on the mediation of Otherness in law and literature, as well as the otherness *of* both law and literature, the volume’s contributors reflect on how legal, literary and theoretical discourses construct, repress, legitimise, but also enable the Other. This book responds to the continuing call for mapping unexplored and/or neglected areas in the complex intersections between human experience, justice, and the law, and how literature is a ground on

which to shape a critical awareness of the historical and cultural forms, uses and transgressions of both the spirit and the letter of law.

In Part I, THE -OTHER BEFORE THE LAW, contributions explore how the socially excluded are silenced or subjugated by the national policies or institutions implementing the law, emphasising that the question of justice is always already the question of the Other. The reflection on otherness and justice begins in sixteenth-century England with two essays examining on the one hand William Harrison's *Description of England* and on the other Edmund Spenser's *The Faerie Queene*; it continues with a reading of eighteenth-century American drama, namely Judith S. Murray's *The Traveller Returned*, and then moves on to Charles Dickens' *Bleak House* and the injustices of Victorian England; finally it concludes with a rhetorical analysis of contemporary U.S. drug laws, exposing their construction of an addicted underclass. Arranged chronologically, the essays show the development of the relation between law and power/knowledge, focusing on the criminalisation of the Other in different historical and political contexts. Whether early modern or modern, the texts under investigation are acutely aware of those social groups positioned as the marginalised and unwanted Other, unfairly treated due to their class, ethnicity, poverty or illness. Thus, both literary and legal narratives interpreted in this section construct, control or even oppress the Other, revealing broader concerns about the social and political order and national identity. At the same time, the enquiry of the Other's presence in these narratives complicates the question of justice in the history of law.

In "Outlaw or Above the Law? Legal Issues in William Harrison's *Description of England*," Kinga Földváy reveals how legality in early modern England often fails to confront social inequalities thus casting the underprivileged in the position of Other to the law. Although Harrison, a clergyman, claims to be no authority on legal matters, he devotes an entire chapter to the laws of England, which includes the description of the outdated practice of Ordalian law. Földváy argues that Harrison's emphasis on law and his "unprofessional but passionately personal view" indirectly expose the plight of the poor, the outcast and the needy in Elizabethan England. She connects Harrison's reference to Ordalian law with the continued usage of ordeals in witchcraft trials, whose frequency may be attributed to the rising number of the poor throughout the sixteenth century. Similarly, his rhetoric concerning the criminalisation and severe punishment of the poor corresponds to the Puritan attitude towards charity, based on a strict distinction between the deserving and undeserving poor. Földváy stresses Harrison's loyalty to the administration and to the interests of the ruling classes, yet she also discerns the anxieties underlying his narrative, connecting the legal issues of his era to questions of national and religious identity and fears about social unrest.

Whereas Harrison is concerned with the law and the poor in sixteenth-century England, Spenser ponders on the connection between law and justice in England's first colony, Ireland. Karin Boklund-Lagopoulou's "Law, Justice and Poetry in Faerie Land" revisits Spenser's construction of Ireland as a site of savage alterity where the English law needs to be enforced even in ways that transcend lawfulness, and shows how this law-enforcement is legitimised by a suspect conflation of law and justice. Reading Book Five of Edmund Spenser's *The Faerie Queene*, the "Legend of Justice," in parallel with his *View of the Present State of Ireland*, Boklund-Lagopoulou reveals the centrality of the issue of law to Spenser's position and argues that the Elizabethan author, hardly impartial having worked for Lord Grey, the Deputy governor of Ireland, distinguishes between the rule of law and the imposition of justice. Spenser's allegory in the "Legend of Justice" shows the need to suspend law in order to secure justice, aiming at "a narrative resolution to this logical contradiction." Seen through the perspective of law and justice, Book V of *The Faerie Queene* unveils the relation between Spenser's colonialist discourse and his poetry.

Moving from colonial Ireland to post-revolutionary America, the next essay of this part similarly addresses the ethnic Other within the legal discourses defining nationality, here after colonial rule. In "Legal Exclusion vs. Republican Inclusion in Judith S. Murray's *The Traveller Returned* (1796)," Zoe Detsi examines how popular theatre in late eighteenth-century America reproduces, and is often complicit with, the legal discourse that excludes immigrants and other aliens from citizenship. Interpreting a play by the first American-born woman playwright, Detsi on the one hand shows how the theatre may serve as a vehicle to promote or challenge legislative ideologies, while on the other interrogates the nascent American national identity. Murray's play explores an interesting paradox: how the strict legislation generated by the post-revolutionary American government out of fear of social disruption and political division was nevertheless based on the rhetoric of republicanism celebrating liberty, progress, and equal rights for all. Detsi argues that the representation of the ethnic characters in *The Traveller Returned* reveals "the major contradiction in the democratic political thought of the new nation between the impulse to create the image of an egalitarian social order and the strong tendency to maintain political control through a restrictive definition of American nationality."

Another contradiction between law and justice is found in Victorian England, where corrupt institutions like the Court of Chancery, represented in Dickens's *Bleak House*, obstruct the course of justice, often destroying the lives of the citizens in their charge. In "Sovereign Law and Bare Life in Bleak House," Nic Panagopoulos relies on Agamben's theory of the sovereign law to analyse Dickens's critique of the way in which the Victorian body politic casts out bare

life, as the Chancery employs the sovereign exception, “a state of lawful lawlessness,” in a way similar to that of Spenser’s Britain in Boklund’s essay: to exercise its authority and serve its interests, giving “to monied might the means abundantly of wearying out the right” (*BH* 15). The author contends that Dickens’s novel enacts the collision between law as a socially regulating mechanism and the issue of justice; instead of supporting the poor and needy, equity in the form of Chancery disciplines, marginalises and destroys the least guilty characters of the novel, the *homini sacri*. As pure form without content, the law in *Bleak House* transforms bare life into death, perverting the notion of justice.

In the final essay of this part, “The Remedy of Law,” Sheila Teahan returns to the United States to contemplate the complex relation between *lex* and *lexis* through the paradox of the *pharmakon* signifying both poison and cure. Teahan relies on Derrida’s work on the *pharmakon*, presented in his 1989 essay “The Rhetoric of Drugs,” to argue that the rhetoric surrounding substance abuse-related criminal offences in contemporary U.S. as well as the legal remedies proposed “replicate the abyssal logic of the *pharmakon*.” In a discourse strongly reminiscent of Michel Foucault’s seminal joining of surveillance, punishment, cure and Othering in *Discipline and Punish*, she analyses the ambivalence that informs rhetorical strategies nation-wide in the medico-legal discourse of addiction, conflating punishment and cure, illness and guilt, subject and subjection, to conclude that the remedy of the law stigmatises the drug or alcohol abuser in both class and gender terms. Thus an abject addicted underclass is forcibly created whose rights are waived by the very law that purportedly protects their welfare.

While essays in the first part of the book approach alterity as occupying a space in-between institutionalised law and difficult issues of justice, the essays in Part II, *DOING GENDER JUSTICE*, focus on gender and performativity as concepts that both reinforce and criticise constructions of Otherness. As Jeffrey Spear’s essay shows, questions of the law engendering gender or vice-versa have a long and thorny history and can perhaps be traced to the origin of law itself. Through an exploration of the gendered subject-object positions of women before the law, and of how cultural values and legal discourses regarding women clash with, or reinforce subjection to the implementation of the law, essays in this part resume and expand “the interaction between feminism and law and literature” that in the late 1990s had seemed “at best, hesitant, tentative,” as Michael Thomson had noted (219).

Ava Baron’s “Happy Ending for Women Workers or Tragedy for the Workplace? Cultural and Legal Narratives of Sexual Harassment in the United States,” approaches the difficult issue of sexual harassment as a site of tension between the distinct rhetorical spaces of popular narratives and legal discourse.

Through a wide-ranging juxtaposition of narratives on a complex issue that bespeaks the ongoing Othering of women and has fuelled courtroom battles ever since the latter half of the twentieth century, Baron's research reveals how culturally-informed textuality becomes a (per)formative element in courtroom decisions even more than the question of justice does. Cultural narratives inscribe on the workplace a pseudo-history of either the law saving "damsels in distress" or, alternatively, allowing women to bully innocent "boys" over "natural" horseplay; these interpretations, in turn, infuse legal attitudes, resulting in confusion over the legal definitions and limits of harassment that, ironically, the law was set to clarify in the first place.

A similar irony evident in the law's treatment of the feminine as Other and the Other as feminine—according to the paradigm delineated by Edward Said in his *Orientalism* (187)—is chronicled in Jeffrey Spear's "Was She This Name? Law, Literature and the 'Devadasi'." Spear's text is a timely contribution to current research on the legal systems of the Empire, and the problematic of translation that Robert Young has also recently explored: Spear's text reveals how law "was foundational to the ideology and practice of colonial rule" (Young 84). Spear discusses the Indian temple dancers, the devadasis, as identities that could not be accommodated by the mechanisms of naming in the British colonial legal system in India. By both ignoring the Indian temple dancer tradition and forcing upon those dancers sexist and classist assumptions derived largely from Orientalist narratives of the era (in an interchange much akin to that which Baron describes), British colonialist law became a self-fulfilling, performative prophecy: the legally-sanctioned degradation of the devadasi status to that of a prostitute and the subsequent depriving of those women's traditional means of support turned many of them to prostitutes indeed and drove this thriving strand of Indian tradition practically to extinction. Spear's survey unfolds all the interwoven strands of colonialist bias to reveal how British law created that which it punished, or, rather, how it functioned in ruinous blindness to the precariousness of its own textualised and textualising nature.

It would be a mistake, however, to see Otherness as inevitably passive and victimised, without self-expression or retaliation capacities; Helen Nicholson and Christina Dokou explore the emergence of strategies, both fictional and real-life, that subvert their legally and socially prescribed roles and show how women often use parodying performances of femininity or masculinity to fight the law's gender bias in the courtroom. In "Courtroom Dramas: the Legal Performances of Georgina Weldon," Nicholson chronicles the deftness with which Victorian actress and human rights advocate Georgina Wilson playfully merged humorous stage and courtroom performances, not only to save herself from imprisonment under sexist statutes but to draw attention to her public crusade

against social gendered injustices as well. It is a performance all the more stunning for both its being a historical incident and an astute deconstruction of the performative nature of law and gender long before Judith Butler's or Jacques Derrida's discourses on the subject.

In "Courtroom Humor, Performative Justice: The Case of Harper Lee vs. Fannie Flagg," Dokou showcases a paradigm of how the underprivileged may disrupt the prescriptive and normative processes of the attribution of justice in the courtroom by manipulating the performative element in jurisprudence. In her contrastive analysis of *To Kill a Mockingbird* and *Fried Green Tomatoes at the Whistle Stop Café*, Dokou aptly demonstrates how the use of humour in the novels' courtroom scenes successfully upsets both the law's gender and race biases and at the same time questions the law's blind spot for rogue elements in courtroom performativity, a blindness borne out of a false, as it turns out, self-image of the law as based on immanent values and edicts. Thus through the fictional analysis Dokou also points to the corresponding blind spot in theoretical considerations of the relationship of law to fiction, taking as a case in point Derrida's "The Force of Law" in juxtaposition with pop culture examples more sensitive to the carnivalesque, polyglossic element in courtroom practices.

Given the complexity of practices involving the law, fiction, and gender, the attempts of women to defend their case against the patriarchal precedent do not always lead to clear-cut verdicts. This final cautionary point about Other strategies is here broached through Maria Vara's account of "The function of 'Victim Precipitation' in Anti-detective Fiction by Women." Her examination of how feminist authors like Muriel Spark and Diane Johnson overturn clichés about female victims by having those victims orchestrate and precipitate the crimes against them lays bare the treacherous ground of such strategies by showing how female agency does not necessarily disconnect femininity from stereotypical victimhood. The suggestion of victim complicity additionally runs the risk of leading towards a condition of double victimisation, i.e. blaming the woman for provoking or even wanting the man's criminal deed. Once more, it is not the deed itself, but the semantic context within which the action is weighed and judged, and in which the Other is ever *a priori* guilty until "proven" guilty.

The exploration of the question of the colonial, racial, gendered Other in interconnected cultural formations and experiences of (sub)alterity, marginality, abjection, or exclusion is followed by contributions that return to deconstruction, namely to the thought of Jacques Derrida, and lastly, by critical explorations of how legal practice conceptualises the irreducible difference of the literary text. In part III, TEXTUALITY AND LAW, Yannis Stamos's, Elina Staikou's and Shela Sheikh's essays revisit Derrida's thought through an exploration of the right(s) and the responsibility of literature and the law. Their distinct investiga-

tions centre on the ethics of deconstruction: in dialogue with Derrida's reflections on literature and the law, they probe the singularity and "the (im)possibility of a universality," as Staikou puts it, of law and democracy. Developing the significance of *response* that underpins Derrida's writings, they also respond to, as Peter Goodrich put it, "to the call of the other, in terms of an ethics of responsibility that took into account the uncertain process of deciding as well as the impossibility of doing justice in the full in any given case" (204).

Yannis Stamos in "Literature Before the Law: Derrida on the Democratic 'Right to Say Everything,'" investigates the contiguity between the law of literature and the genesis of the law and attempts to link them both to Derrida's notion of a democracy-to-come. Stamos, through Derrida, reflects on the conditions of literature and democracy, and how "a right to say" and "the right to fiction and to the secret" emerge as a requisite for the constitution of both. As he puts it, "it is necessary to think and treat together the historicity of the literary institution and the historicity of democracy, and to link both of them to a certain historicity of law." In an attentive reading of Derrida's writings, Stamos probes how the transgressiveness of literature is integral to its law, and how this is implicated in Derrida's reflection of how literature appears *before* the law. Stamos, as Elina Staikou does in her reading of Derrida together with Blanchot, dwells on the importance of suspension—not "of reference," but rather a suspension of a determinate meaning.

In resonance with Stamos's analysis of how literature's transgressiveness performs its law, Staikou offers a reading of the workings of the law through Melville and Blanchot. Addressing the complex working of the law in Melville's "Bartleby the Scrivener" and Maurice Blanchot's "The Madness of the Day," in "Burning Dead Letters: Bartleby, Law and Literature in the Nuclear Age," Staikou asks questions about one's response to the call of the law, and to "the movement of veiling and unveiling so exemplarily staged in these two short stories and the (counter-)law of literature commanding and commanded by this movement." Staikou posits the necessity of thinking concurrently through the "game of hide-and-seek" and of "seduction," between the need for the law and the need for a "response," or "right," before the laws of polity and language.

Shela Sheikh cogently addresses the issue of a response, as well as the *aporia* of justice and resistance before the law of the Other in "Responding: Bartleby—Derrida: Literature, Law and Responsibility." Sheikh reflects on Bartleby's "infamous response," the ubiquitous "I would prefer not to," in order to revisit readings that posit Bartleby's utterance as paradigmatic of "a passive resistance." In dialogue with Derrida's writings wherever references to Melville's tales appear, Sheikh considers the condition of responsibility towards the singu-

larity of the Other that Douzinas posits as the fundamental requisite of justice and sees Bartleby's response as "implicit across Derrida's oeuvre."

While Stamos, Staikou and Sheikh rethink law and literature as spaces of alterity and put forward that democracy and responsibility necessitate thinking concurrently through literature and the law, Cláudia Trabuco and Anna-Maria Piskopani approach the *aporias* of the law in the context of legal practice, namely as regards the need to demarcate and define the attributes of literature. Addressing questions of textuality and the still controversial issue of literature as a juridically-defined commodity, Trabuco and Piskopani examine instances where literary theory is employed in legal contexts. They offer informed insights into the troubling separation and reciprocity between legal and literary theory, a separation considered "a precondition to the application of literary theory to legal interpretation" (Binder 65).

In "*Qu'est-ce qu'un auteur? Authorship, Originality and the Work of Vergílio Ferreira*," Trabuco discusses how the status of the author and the literary work figure in legal definitions of originality, arguing that legal and literary discourses are incommensurable when it comes to the very definition of what is to be identified as a literary work. Vergílio Ferreira's reflections constitute a point of departure for a reflection on how copyright law and legal practice conceptualise and describe the idea and the value of authorship and originality. Trabuco frames her discussion of the interconnected notions of authorship, creativity and originality with an incisive critical perspective on the distinct traditions of U.S. Law and the continental tradition of Civil Law, and aptly traces the definitional problems that arise after the dissemination of the poststructuralist critique of the idea of the author.

Following Trabuco's exploration of how the question of authorship is often at odds with copyright laws, in "Reality-Flirting Literature as an *Aliud* in Defamation and Privacy Law," Piskopani probes an equally uncertain ground in her discussion of how different legal systems judge a literary work that has (allegedly) transcribed the lives of real persons, as the effect on these lives becomes the locus of legal disputes. Piskopani explains the court's reasoning and the rhetorical, pragmatic, and conceptual underpinnings of the appropriation of concepts from the field of philosophy and literary theory within legal practice. Piskopani approaches the tenuous boundary between fact and fiction, and the tension arising between defamation claims and the protection of the freedom of expression.

In concluding his foreword to the recent volume *Reading the Legal Case: Cross-Currents between Law and the Humanities*, the Honourable Justice Bokhary, Permanent Judge of the Court of Final Appeal, Hong Kong, returned to the relation between law and literature by stressing how both draw their content and indeed their existence from lived life:

whether we are interpreting legislation, developing the common law or expounding the constitution, we do so in the context of—and for the purpose of—how people live their lives. To my understanding at least, that is also the context from which literature draws its raw material, into which it sends forth its finished products and within which it exercises its influence. (qtd. in Wan xii)

The authors of the present volume take up the challenge implicit in the above statement, engage with the complex intersections between theorisations of the law, literature, and legal practice, and seem to propose an ethics and a textuality that keeps signalling the imperative for the law's responsiveness—albeit yet an impossible one—to the dynamics of culture and lived life. Kieran Dolin in the conclusion to his *Critical Introduction to Law and Literature*, returns to this impossibility: he mentions an incident of a bullied student who served a sentence for having written a “creative writing assignment in which [he] wrote that he ‘made preparations for bombing his school’”; as prominent writers came to the student's defense, the incident, Dolin goes on, evolved into a paradigm of “how writing may occupy a contested territory, how it may be subject to the jurisdiction of both literature and law” (207). Their interrelatedness being the unquestionable premise, could we then see in literature a remedy for the law, to remember Teahan's discussion, or a further complication?

The question of Otherness, who and how each time becomes and is constructed as Other to/by the Law, indeed points to a fundamental disjunction yet also invites a re-envisioning of a *response-able* justice and jurisprudence as always intertwined with the Other: as Douzinas puts it in his forward to this volume, “we can never know where full justice lies.”

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