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Abstract	<p>As a normative discipline, law defines its territory according to simple categories which establish absolute principles purporting to offer a single truth as to what is just and unjust, right and wrong, good and bad. In addition, linguistic and extragrammatic devices such as synecdoche, metonymy, rhythm and metaphor serve a referential function with which to penetrate the collective consciousness. The core assumptions derived from the implementation of socio-linguistic mechanisms transform the nature of legal analysis and are embedded within a diverse interplay of meanings. Aesthetic imaginings are evidenced to underpin and sustain 'law's symbolic processes and doctrines, institutions and ideas; that is, a realm of limitless fantasy, of free-flowing nomological desire, fixed around, and fixated upon controlling images that condense its central juridical concepts'; as the 'jurists follow their own poetic and aesthetic criteria, their own spectral laws' (MacNeil in <i>Novel judgments: legal theory as fiction</i>. Routledge, Oxford, p 9, 2012; Goodrich in <i>Legal emblems and the art of law: obiter depicta as the vision of governance</i>. Cambridge University Press, Cambridge, p 155, 2013). Yet still, founded on the negation of its own history, legal practice maintains that juridical arguments comprise only dialectical reasoning about objectively determined concepts: 'law is a literature which denies its literary qualities. It is a play of words which asserts an absolute seriousness; it is a genre of rhetoric which represses its moments of invention or fiction... it is procedure based upon analogy, metaphor and repetition [that] lays claim to being a cold or disembodied prose' (Goodrich <i>Law in the courts of love: literature and other minor jurisprudences</i>. Routledge, Oxford, p 112, 1996). This article will explore the continuing commitment of modern legal practice to particular aesthetic values and how these are crucially implicated in a variety of legal competencies including the formation of key legal concepts and general intellectual activity.</p>	
Keywords (separated by '-')	Law - Aesthetics - Imagination - Metaphor - Narrative - Legal truths	
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3 **Aesthetics of Law and Literary License: An Anatomy**
4 **of the Legal Imagination**

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9 categories which establish absolute principles purporting to offer a single truth as to
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32 competencies including the formation of key legal concepts and general intellectual
 33 activity.

36 **Keywords** Law · Aesthetics · Imagination · Metaphor · Narrative · Legal truths
 38

39 Introduction

40 The practice of law and legal scholarship is constituted by a diverse range of social
 41 practices which distinguish law as a socially significant and analytically valuable
 42 category of signification. A repertoire of visual codes and systems of classification
 43 supplement the sophisticated array of texts and discursive practices, based on
 44 previous texts, which are deeply inscribed in the legal landscape of institutions,
 45 performances and tradition. Close examination of legal practice reveals a set of
 46 profoundly aesthetic characteristics, specifically literary tropes, which are habitually
 47 associated with authority and reason. There are clear connections to aesthetic
 48 matters, for instance, obscenity laws, municipal aesthetic regulations, copyright,
 49 environmental law, the representation of rights and issues of textual interpretation.
 50 Aesthetic dimensions are also claimed to lie at the very heart of law and justice, to
 51 the extent that legal discourse is asserted to be ‘fundamentally governed by rhetoric,
 52 metaphor, form, images, and symbols [which] can illuminate both the meaning and
 53 force of law’ (Manderson 2000: ix). As well as being portrayed as a form of
 54 literature, ‘the debates among major jurisprudential traditions can be viewed as
 55 aesthetic contrasts among competing narrative methods and visions, and some
 56 debates *within* major jurisprudential traditions can be viewed as contrasting
 57 aesthetic mixtures of vision and method within major narrative categories’ (West
 58 1985: 204).

59 The cognitive processes that govern our thoughts and actions are not purely
 60 matters of the intellect; as aesthetic concepts they structure experience, shape
 61 perception and mediate our relationships with others by constituting reality. In
 62 support of this thesis, a growing body of scientific evidence from cognitive
 63 psychology and neurobiology has recently proposed that aesthetic forms of knowing
 64 precede other forms and, significantly, influence how they function (Damasio 2000).
 65 As Early Modern playwright, essayist and literary critic Ben Jonson observed some
 66 400 years ago: ‘Without Art, Nature can ne’er be perfect; and without Nature, Art
 67 can claim no being’, in other words art both produces and refines the natural order
 68 (1906: 127). Although aesthetics is commonly thought of as art, the beautiful and
 69 taste, American Pragmatist John Dewey described the aesthetic as extending to
 70 ‘everyday experience’ and as having a close connection to morality. He emphasised
 71 the ... ‘continuity between the refined and intensified forms of experience that are
 72 works of art and the everyday events, doings, sufferings that are universally
 73 recognized to constitute experience’ (Dewey 1980: 3). In a late essay, *On a Newly*
 74 *Arisen Superior Tone in Philosophy*, Immanuel Kant acknowledged the usefulness
 75 of an aesthetic methodology which was receptive to the form and imagery of legal
 76 concepts, but warned against ‘the possibility of the presentation of the supersens-
 77 ible’ and more specifically, the ‘aesthetic manner of personifying the moral law as



78 a 'veiled Isis' or veiled goddess, as he considered it to be beyond figuration (1993:
79 71). Although, against Kant's admonition, it could be argued that the demand made
80 upon us by the moral law (because it is unavailable to the senses) is always
81 understood analogically, via the veil of personification; having first begun by careful
82 consideration of the bare concept. Pierre Schlag further maintains that: 'Law is an
83 aesthetic enterprise. Before the ethical dreams and political ambitions of law can
84 even be articulated, let alone realized... aesthetics have already shaped the medium
85 within which those projects will have to do their work' (Schlag 2002: 1049).

86 As advocate, negotiator, legislator and judge, a lawyer is already a writer and
87 orator and, as such, legal aesthetics naturally comprise a core element of the
88 anatomy of the legal imagination. As Robin West observes, 'modern legal theorists
89 persistently employ narrative plots at strategic points in their arguments' (1985:
90 145–146). In offering what is their perceived simplification of reality, judges are
91 also given to literary abstractions or flights of fancy. For example, in *Tomlinson v*
92 *Congleton Borough Council* [2003] UKHL 47—a landmark case concerning the tort
93 of negligence and occupiers' liability in which the claimant was seriously injured
94 after diving into shallow water where swimming was expressly forbidden—Lord
95 Hoffman took issue with the trope, 'a siren call strong enough to turn stout men's
96 minds', from an earlier judgment by Lord Walker. This instance of simple
97 analogical reasoning generated a conceptual metaphor that facilitated further
98 complex analogical reasoning from Lord Hoffman in his response to, what he
99 considered to be, 'gross hyperbole':

100 'The trouble with the island of the Sirens was not the state of the premises. It
101 was that the Sirens held mariners spellbound until they died of hunger. The
102 beach, give or take a fringe of human bones, was an ordinary Mediterranean
103 beach. If Odysseus had gone ashore and accidentally drowned himself having
104 a swim, Penelope would have had no action against the Sirens for luring him
105 there with their songs. Likewise in this case, the water was perfectly safe for
106 all normal activities' (para. 38).

107 *Tomlinson v Congleton Borough Council* is widely regarded as one of the first
108 attempts to halt the development of a US-style compensation culture in the UK, and
109 the application of various literary devices—such as the powerful metaphoric image
110 of the Council 'luring people into a deathtrap'—carried considerable ideological
111 weight. The influence on law of stylistic techniques that occur in literature, for
112 example, whether at the phonetic level (as alliteration and rhyme), the grammatical
113 level (as inversion and ellipsis), or the semantic level (as metaphor, irony) cannot be
114 understated, particularly in their potential for ideological distortion. Far from being
115 merely embellishment or decoration, therefore, it is proposed that the subtle
116 application of an aesthetic methodology—augmented by imagistic language and
117 literary devices—continues to be fundamental to the formation of legal principle,
118 key concepts and judgment, without which law would lose much of its persuasive
119 force.

120 **Law as an Aesthetic Enterprise**

121 The aesthetic is an essential component, the raw material, of human experience and
 122 although subjective and beyond the remit of formal concepts or universal standards,
 123 aesthetic expression represents a form of interaction between individuals and the
 124 precognitive world of idiosyncratic established meaning. Through our senses we
 125 encounter the world as alternately beautiful and grotesque, alluring and repellent.
 126 The communicative power of this sensory information allows for richer intellectual
 127 and emotional engagement with objects and concepts as they are in lived reality,
 128 according to their sensible essence. We become more conscious of a multiplicity of
 129 dissident perspectives and sensuous content from which to inform both our
 130 individual life choices and capacity for moral judgment. This proposition can be
 131 understood in semiotic terms on the basis that individuals respond to a diverse range
 132 of images and experiences which resonate with a personal or shared history of
 133 particular cultural traditions and practices. Our sensate relation to this network of
 134 symbols and metaphors constitutes a productive force which, in relation to the legal
 135 community, contributes to the formation of legal principle and judgment.

136 Whilst aesthetics is considered by legal practitioners to be extraneous to morality
 137 and ethics in the formulation of law, the narrative form and figuration can obscure
 138 an underlying structure of oppression as well as nurture a real sense of unity and
 139 common purpose. The creation of a link between ‘justice and beauty’ is argued to
 140 arise from the ‘enriching asymmetry of [the] encounter’ between law and aesthetics;
 141 however, this encounter could just as easily produce an unjust or ugly connection
 142 (Ben-Dor 2011: 1). For example, the aesthetic fabrication of legal truths such as
 143 ‘equality of all before the law’—with the promise of impartiality portrayed as the
 144 blindfolded Roman Goddess Justitia holding a set of scales and an unsheathed
 145 sword—appeals to an innate desire for justice as fair, swift and final. The allegorical
 146 personification of ‘justice for all’ gives shape and form to abstract notions of
 147 fairness and equality in law-making and adjudication and, importantly, appeals to a
 148 call for social justice and the basic human need to belong to a community of
 149 equivalent others, which in turn nurtures a culture of compliance (Shaw 2013: 119).
 150 To maintain the illusion of communal cohesion under the law also requires a
 151 sophisticated process of rhetorical dissimulation, which makes it possible to mask
 152 the exacting and coercive ideological standards which, in reality, locate the subject
 153 outside the law within the context of an exclusionary and socio-symbolic schema.

154 Through various speech acts and experiences, the cultural constituents of legal
 155 identity are signalled aesthetically in the sense that a feeling for law, particularly
 156 law as justice, arises from within the context of the imagination; a capacity shared
 157 by all human beings in ordinary life. Austin Sarat and Clifford Gertz refer to,
 158 respectively, ‘the imaginative life of the law and the way law lives in our
 159 imagination’, and that ‘here, there and everywhere [law] is part of a distinctive
 160 manner of imagining the real’ (2011: 2; 1983: 184). Whilst relying predominantly
 161 on denotative interpretations of law, legal practitioners, particularly members of the
 162 judiciary, have habitually employed imaginative literary devices to exploit and
 163 manipulate the latent potential of figurative language. The cognitive function of

164 metaphor, for example, is to create an opportunity for modifying the conceptual
 165 frameworks used in sense-making. Metaphors such as ‘the floodgates’ produce a
 166 special effect by conveying connotative meaning which enriches the text and
 167 renders meaning more precise and determinate. Equally, picture language has the
 168 ability to easily communicate ideological propositions which support the values
 169 shared by the legal community and, being semiotically-loaded and subject to
 170 aesthetic interpretation, it has the capacity to elicit a cohesive sense of belonging
 171 and, significantly, legitimise the authority of law. Estranged from material life and
 172 set over against it as a commanding force; of the law, political state and other
 173 institutions of control alike, Herbert Marcuse asserted that ‘every structure of
 174 domination has its own aesthetics’ (1991: 65).

175 As an important component of law’s aesthetic armoury, metaphor melds intellect
 176 and world, sign and object, cognition and appearance in an illusion of unity, because
 177 while constructing likenesses between categories it can just as readily dissolve
 178 difference. Consequently, distinct classes identified by, for example, race, gender
 179 and sexuality, may be excluded; just as one of law’s most enduring legal fictions, the
 180 suspiciously masculine ‘reasonable person’ standard, for many years embodied a
 181 gendered interpretation of reasonableness—leading to a famous parody in A.P.
 182 Herbert’s fictional case of *Fardell v. Potts: The Myth of the Reasonable Man*, first
 183 published in *Punch*, 9 July 1924 (1979: 1–6). The aesthetic function of metaphor
 184 means it also has the capacity to facilitate a positive transformation of the emotional
 185 framework of institutional processes; however, to place the phenomena of language
 186 within their proper context requires lawyers to develop their imaginative capacities:
 187 Consequently the activities which make up the professional life of the lawyer and
 188 judge ‘constitute an enterprise of the imagination, an enterprise whose central
 189 performance is the claim of meaning against the odds: the translation of the
 190 imagination into reality by the power of language’ (White 1973: 758). Legal
 191 discourse comprises many different voices, from the legal specialist and expert
 192 witness to the layman as jury member and claimant. The divergence between
 193 ordinary speech and legalese, as well as between the world of words and mute world
 194 of inexpressible thoughts, feelings and experience require a good lawyer to be an
 195 artist in translation. Although is not always possible to resolve such tensions, they
 196 merit a response which is more than a simple ‘matter of logic, or ends-means
 197 rationality, or conceptual analysis, but requires an art, an art of language and
 198 judgment’ (White 2012: 7).

199 Between blackletter law and the unwritten discourse which surrounds it, a legal
 200 text can never be understood as a simple or complete representation of its contents.
 201 Interpreting the law as text and speech requires not only acts of inference,
 202 association and recollection, but also the imagination (Goodrich 1996: 107). The
 203 soundest interpretation of a rule or legal concept would, therefore, demand a
 204 combination of both creative legal and literary energies. Historically, this was
 205 widely-recognised as ‘lawyers were ministers and maestros of culture... [their]
 206 broad cultural responsibilities and literary impulses were the same’, and so it would
 207 not have been unusual to treat a legal authority as literary text and the product of an
 208 imaginative, inventive and even artistic, legal mind (Weisberg 1989: 9, 10). For that
 209 reason, a critical reading of law would have begun with a careful analysis of its



210 images, figures and other forms of poetic substitution. Irony, caricature, metaphor
 211 and allegory or ‘false semblant’ were fundamental concepts of 16th and 17th
 212 century court culture and the skilful deployment of figurative language was likened,
 213 by Elizabethan lawyer and alleged author of the anonymously published 1589 *Arte*
 214 *of English Poesie* George Puttenham, to the art of duplicity. He used the classical
 215 maxim, *Qui nescit dissimulare nescit regnare* (who knows not how to dissemble,
 216 knows not how to rule) to suggest that all successful sovereign authorities engage in
 217 the habit of dissimulation; implying that the mystic foundation of law’s authority
 218 may be little more than trickery, lies and deception (Puttenham 1936: 197).

219 Ostensibly modelled on the world of experience, the production of imagistic
 220 language by lawyers continues to be an issue of primary significance as it offers a
 221 variety of semantic and semiotic possibilities for elucidating complex legal
 222 formulae and authenticating contentious legal values and beliefs. As well as
 223 foregrounding elements of connotative meaning via text and speech, the conscious
 224 application of linguistic and figurative devices to insinuate aspects of meaning
 225 constitutes a powerful emotive force. Without borrowing or stealing from the
 226 armoury of aesthetic concepts to support the formation of legal rules and principles,
 227 law would lose most of its persuasive impact; as the constant fabrication of a variety
 228 of aesthetic expressions, mythologies, fantasies and mystical discourse enables the
 229 construction of both social values and legal dogma.

230 Legal Aesthetics and Culture: The Metaphorical Masks of Law

231 A significant part of our vocabulary originates from metaphor. Even the Latin term
 232 for ‘tongue’, *lingua* (originally, ‘that which is produced with the tongue’) was used
 233 figuratively for ‘language’, deriving the terms ‘linguist’ and ‘linguistics’. The
 234 English language is replete with faded metaphors, for instance, ‘the eye of the
 235 storm’, ‘headland’ and ‘coalface’; and the legal profession has supplied everyday
 236 speech with many examples, such as to ‘plead poverty’, ‘standing’, ‘last resort’,
 237 ‘swear by’, ‘benefit of the doubt’ or ‘fruit of the poisonous tree’. Metaphor not only
 238 performs an aesthetic function, it has an important epistemic role in facilitating the
 239 generation of knowledge about the world. According to George Lakoff and Mark
 240 Johnson, in *Metaphors We Live By*, they comprise a significant part of our
 241 conceptual system by critically informing how we understand and organise reality
 242 (1999: 3). Since ancient times, metaphor has been understood as the transference of
 243 concept-categories from the literal to the figurative; where the properties of a word
 244 or phrase comprising the source (e.g., shark) are transferred to an event, individual
 245 or object comprising the target (e.g., lawyer), where the source and target are not
 246 directly associated. In one of Aristotle’s main works on aesthetics, the *Poetics*,
 247 metaphor is defined generically as ‘the application of a word that belongs to another
 248 thing’; a rhetorical figure in which a name is reassigned to something else (1995:
 249 21.7). Metaphorical language was customarily recognised as an important tool of
 250 subtle persuasion, with which it was possible to move the audience from one locus
 251 of thought to another.

252 Metaphor remains a pervasive feature of language just as persuasive language is
 253 a quintessential characteristic and instrument of legal practice. It is the most
 254 important of rhetorical tropes and the principal figure in poetic works where the
 255 imagination is creatively employed in describing the subject in terms of something
 256 it is not. Understood as a disarticulation, it constructs a novel perspective by
 257 transposing meaning between two semantic spheres without losing the original
 258 connotation, causing an endless movement of meanings across numerous fields. For
 259 the modern lawyer, the influence of metaphors, myths and symbols in their
 260 deliberations has been described as unavoidable, as 'metaphor and narrative act as
 261 ideological baggage carriers that transport messages without conscious discussion'
 262 because 'meaning is constructed, and metaphor and narrative are the frameworks of
 263 its construction' (Berger 2009: 262–266). As Lon Fuller stated almost ninety years
 264 ago, '[m]etaphor is the traditional device of persuasion. Eliminate metaphor from
 265 the law and you have reduced its power to convince and convert' (1930: 380).

266 According to eighteenth century jurist and political philosopher Giambattista
 267 Vico, metaphor preceded denotative language as early humankind communicated
 268 via images transposed into expression. Long-established figures of speech such as
 269 'the mouth of the river', 'heart of gold' and 'the mind's eye' were used to recall
 270 familiar images, meaning an image could be produced effortlessly without having to
 271 be chosen or willed by the recipient. Such metaphors, deriving from a pre-discursive
 272 level of existence relating to the body and characteristics of the human face, were
 273 claimed to be able to provide a 'quasi-bodily externalisation' which in turn made
 274 discourse appear (Riceour 1979: 142). Not easily dismissed as mere literary
 275 embellishment, metaphor forms a significant role in how we think and communi-
 276 cate. Our ordinary conceptual system is essentially metaphoric in nature. As Albert
 277 Camus wrote in his *Notebooks* of 1935–1942, 'feelings and images multiply a
 278 philosophy by ten. ... People can only think in images. If you want to be a
 279 philosopher, write novels' (1998: 10, 210). Franz Kafka's *The Metamorphosis*,
 280 George Orwell's *Animal Farm* and *Nineteen Eighty Four* famously illustrate the
 281 proficient use of extended metaphor to satirise, respectively, the fragile nature of
 282 identity and human relationships; Stalinist Russia and the rise of totalitarianism; and
 283 a dystopian society where totalitarianism had taken over. Metaphor is cognitively
 284 important, it allows us to draw comparisons and amplify a certain aspect of a
 285 particular thing, and 'brings something before the eyes' (Aristotle 1959: 3.10.6).
 286 The deployment of metaphorical 'masks of law' (such as in establishing 'legal
 287 personality') also enables the construction of legal identity by obscuring the true self
 288 and replacing the authentic individual with an idealized representation. The creation
 289 of masks not only produces a sense of alienation in the victim but has important
 290 implications in terms of the 'plot and significance of the masquerade' (Noonan:
 291 2002: 24).

292 Much of English law is replete with lyrical and mythic imagery which resonates
 293 from ancient times to modern life. Ernst Kantorowicz's *The King's Two Bodies*
 294 traces the assumption of theological metaphors by English common lawyers for
 295 secular political ends; in particular the ecclesiastical body of the Church and the
 296 incarnated body of Christ. He explores the influence of medieval thought and
 297 political theology in constructing a metaphysical image of the monarch, and begins



298 with an analysis of the early use of metaphor by lawyers from the 1571 Reports of
 299 Edmund Plowden. Plowden's Reports were written as part of a legal dispute
 300 concerning the right of a king to own land privately, as a person and not as a
 301 monarch, in relation to inheritance; so that property could be passed to their
 302 descendants and removed from the administration and control of the Crown.
 303 Lawyers used the metaphor of the king's two bodies in order to fathom the paradox
 304 that whilst individual monarchs expired, the Crown survived. Plowden concluded
 305 that even though the king's body natural and body politic are distinct, he was
 306 incapable of possessing a private identity as the sovereign body is not separable
 307 neither could it be divested:

308 For the King has in him two Bodies, viz., a Body natural, and a Body politic.
 309 His Body natural (if it be considered in itself) is a Body mortal, subject to all
 310 Infirmities that come by Nature or Accident, to the Imbecility of Infancy or old
 311 Age, and to the like Defects that happen to the natural Bodies of other People.
 312 But his Body politic is a Body that cannot be seen or handled, consisting of
 313 Policy and Government, and constituted for the Direction of the People, and
 314 the Management of the public weal... So [the King] has a Body natural,
 315 adorned and invested with the Estate and Dignity royal; and he has not a Body
 316 natural distinct and divided by itself from the Office and Dignity royal, but a
 317 Body natural and a Body politic together indivisible (Kantorowicz 1957: 7–9).

318 The lawyers for the Crown equated the idea of the state with a perpetual
 319 corporation insisting that the body politic transferred to the body natural of the
 320 succeeding monarch at the time of death. Although the metaphor of the state as a
 321 human body or corporation was advanced by leading jurists such as Plowden and
 322 later by Edward Coke, an influential Huguenot treatise from 1579 *Vindiciae Contra*
 323 *Tyrannos* argued that it was the people and not the king that constituted a perpetual
 324 corporate body. Yet the allure of the monarchical body metaphor prevailed against
 325 more abstract and complex ways of imagining the state. Once the appropriation of a
 326 forceful metaphor has successfully established a foundational myth, such as the
 327 'myth of the state' and the fiction of the royal body, the initial image of the actual
 328 monarch recedes, is displaced and assumes a malleable fictional character.

329 Even though aesthetics is capable of elucidating a particular fact or difficult legal
 330 concept, it is vulnerable to the prevalence of the irrational influences of myth
 331 because 'it is beyond the power of philosophy to destroy the political myths. A myth
 332 is in a sense invulnerable. It is impervious to rational arguments; it cannot be refuted
 333 by syllogisms. But philosophy can do us another important service. It can make us
 334 understand the adversary' (Cassirer 1946: 296). Beginning his critique with
 335 Shakespeare's *Richard II* and Dante's *Divine Comedy*, Kantorowicz presents an
 336 illuminating account of how a literary fiction neatly segues into legal fiction. The
 337 legal fictionalisation of the Crown, explored in relation to the medieval metaphor of
 338 the king's two bodies, not only had an obfuscatory effect where real power was
 339 conflated with symbolic power; it also exposed a gendered hierarchy of values.

340 The gendered construction of sovereignty was illustrated in the case of reigning
 341 monarch Queen Elizabeth I, who wished to lease the Duchy of Lancaster.
 342 Masculinity was the norm for monarchy until the succession of Queen Elizabeth I to

343 the throne in the sixteenth century, and she was always described as a king and
 344 never a queen. In an era where women were expected to be unsullied, submissive
 345 and held no regular positions of authority in the church or state, the anomalous
 346 nature of female sovereignty meant that a queen would be treated as a king and be
 347 expected to exhibit fitting attitudes in her performance of kingly duties. Elizabeth I
 348 accepted the metaphorical endorsement of misogyny, customarily referring to
 349 herself as 'king'. In a famous speech to her troops in 1588 at Tilbury prior to an
 350 invasion of the Spanish Armada she declared, 'I know I have the body of a weak and
 351 feeble woman, but I have the heart and stomach of a king, and of a king of England
 352 too... [that]any prince of Europe should dare to invade the borders of my realm; to
 353 which, rather than any dishonour shall grow by me, I myself will take up arms, I
 354 myself will be your general, judge, and rewarder of every one of your virtues in the
 355 field' (Neale 1990: 302). As well as displaying her mastery of persuasive rhetoric,
 356 by first appealing to the commonly held view of female feebleness Elizabeth was
 357 then free to continue with bold masculine pronouncements using the metaphors of
 358 heart and stomach, symbols of courage and loyalty, which demonstrated her
 359 commitment to traditionally male virtues. Nevertheless, such was the power of the
 360 prevailing masculine monarchical metaphor that Elizabeth felt the need to renounce
 361 her female body by choosing, shortly after her coronation, to remain unmarried; and
 362 thus ensured she would always remain 'king' and never be diminished to merely the
 363 wife of a king.

364 Legal texts offer many examples of aesthetic contrivances in a variety of forms,
 365 and illustrate the necessity of fictive idealisations in order to support the illusion of
 366 law's self-legitimation. In discussing the practice of judges 'finding' the law as
 367 more akin to 'creating' the law, Jeremy Bentham famously alluded to the creation of
 368 useful fictions, by the priest and lawyer alike, as a 'coin of necessity' (1977: 119).
 369 Undoubtedly, figurative language performs an important function, without which
 370 many of law's abstract formulations would be impossible. For example, far from
 371 being mere decoration, metaphor is one of the principal methodological devices for
 372 constructing legal principle and a necessary tool in the critique of legal theory. To
 373 misquote the famous speech of Viscount Sankey, Lord Chancellor in the House of
 374 Lords appeal case of *Woolmington v Director of Public Prosecutions* [1935] AC
 375 462, at 481 (HL), if there is throughout the 'web' of the English law 'one golden
 376 thread' that is inseverable, it is that the law has since the beginning of legal memory
 377 formed a distinctive literary genre within which metaphoric imagery continues to
 378 infuse and inspire the legal imagination.

379 Law as a Metaphoric Language

380 The metaphor is a significant symbolic medium in the legal process, expressing
 381 itself in legitimating rituals, traditions and in figurative language underpinning
 382 fundamental legal principles and concepts, yet there is no unified approach to the
 383 non-literal use of language in law. From the moral purity metaphor of 'clean hands'
 384 in the equitable maxims of the Court of Chancery, a court of 'conscience'; and
 385 William Blackstone's four volumes of the *Commentaries on the Laws of England*



386 which were accused of ‘enliven[ing] the common law with metaphors and allusions’
 387 (Bentham 1977); to the figure of Lady Justice, linguistic and imagistic devices are
 388 omnipresent features of the lexicon of law and constitute the legal imagination. The
 389 image of Roman icon of justice, Justitia, exemplifies the connotative force of legal
 390 metaphor in the paradox of privileging feminine reason and judgment in the female
 391 face of justice, whilst simultaneously repressing the political rights of women by
 392 denying them legal personality, inheritance rights and public office until relatively
 393 recently. This obvious irony was effectively subsumed under the overwhelming
 394 performative force of the imagistic metaphor. The addition of a blindfold is a further
 395 ironic gesture, since Justitia’s eyes are concealed from view and her vision
 396 impaired. Consequently, we are forced to question this representation of justice as
 397 equating to either impartiality or arbitrariness, due to an obscured view of the whole
 398 picture and a lack of foresight. For Goodrich, the particular choice of metaphor is
 399 not innocent: ‘the blindfold on the face of justice seems plausibly to have also
 400 benefitted men through the limitation, mutilation... or sensory deprivation of
 401 women. In a secondary sense, the blindness of justice can be taken to represent the
 402 peculiar folly of common law in its dependence upon the blind reason of precedent
 403 and the unseeing eye of an aural or auricular tradition’ (1993: 296).

404 As psychological mechanisms, metaphor and irony have attracted criticism from
 405 scholars of linguistics due to their equivocal nature and lack of specificity in the
 406 communicative process. While aesthetic expression is subjective and beyond the
 407 remit of any settled formal concepts or universal standards, it can nevertheless be
 408 understood to represent a form of interaction between individuals and the
 409 precognitive world of established meaning. Imagistic and linguistic metaphors are
 410 not only related to rhetorical effect, they comprise significant conceptual devices in
 411 law, as they have the capacity to repudiate truth-conditional semantics by resisting
 412 the imposition of any clear, unambiguous or settled propositional outcome.
 413 Although capable of eliciting a diverse range of alternative deductions based on
 414 connectives such as ‘if’, ‘and’, ‘or’, and ‘not’, metaphors have the capacity to reveal
 415 the basis for concept formulation and move from implication or inference, guided
 416 by relevance considerations, to an explicit level of meaning. Encompassing both a
 417 functional and artistic role, as well as providing beauty in form, metaphor plays a
 418 key role in foregrounding elements of connotative meaning in the text. Although
 419 legal knowledge is predicated on objective standards, absolute facts and realities, an
 420 aesthetic appropriation enables the sacralisation of legal norms. Sacralisation itself
 421 makes the reinterpretation and critique of normative standards more difficult in
 422 practical terms, and helps to reinforce the mythologies which lend law its awesome
 423 power. Much more than a stylistic figurative device; by acting as a semantic
 424 signifier, metaphors produce the literal manifestation of figurative meaning in their
 425 transformation of symbols into legal truths. Having internalised the symbolic
 426 idealised nature of their origins, these legal truths are then able to mask their
 427 normative origins whilst exerting enormous influence in the formation of popular
 428 opinion and social values.

429 It is perhaps unsurprising that the judiciary is often of mixed opinion on the
 430 application of literary language and, especially metaphors; since they perform a
 431 substantial intellectual function while deviating from the typical doctrinal

432 exposition and analysis of 'black letter law'. In *Designers Guild Ltd. v Russell*
 433 *Williams (Textiles) Ltd.* [2000] 1 WLR 2416 at 2423 Lord Hoffman was
 434 commended for his apt reference to 'copyright law protect[ing] foxes better than
 435 hedgehogs' by Lord Fysh, who approved of this 'sibylline observation'. The
 436 metaphor comes from Isaiah Berlin's essay *The Hedgehog and the Fox*, and
 437 elaboration of the ancient Greek poet Archilochus' proposition, 'The fox knows
 438 many things, but the hedgehog knows one big thing'. Hoffman alluded to the ability
 439 of copyright law to offer better protection for a detailed basic idea (fox) as opposed
 440 to an indeterminate, simple and abstract idea (hedgehog), since the former was
 441 likely to indicate originality and constitute substance. Although for some it is a
 442 source of irritation and bewilderment, many have admired the easy elegance and
 443 versatility of this novel legal metaphor; it has been cited and analysed by several
 444 intellectual property lawyers and legal scholars since its first use. Conversely, in an
 445 ironic application of the metaphors of slavery and liberation, Justice Benjamin
 446 Cardozo famously warned, in the case of *Berkley v Third Avenue Railway Company*,
 447 244 NY 84 (1926) at 94, 'Metaphors are to be narrowly watched, for starting as
 448 devices to liberate thought, they end often by enslaving it'.

449 Social reality is constructed from the relationships and communications of
 450 many different forms, ideas, oneself and other selves, and expressive language is
 451 capable of imbuing any act or phenomenon with a multiplicity of meanings or a
 452 single signification. The elucidation of an abstract principle of legal reasoning in
 453 denying an equitable remedy to a person who does not present themselves to the
 454 court with 'clean hands', for example, is instantly familiar because it uses an
 455 image which is evocative and commonplace in human experience. Figurative
 456 language not only has the capacity to shape to a complex thought but it can render
 457 that thought possible.

458 The imaginative impulse and instrumental nature of the law are forever
 459 intimately connected, and neither one has the capacity to maintain order and
 460 stability or fully represent the dynamism of the law independently of the other. As
 461 Goodrich suggests, 'law speaks in the mode of repetition; it is dogma and so
 462 speaks in the manner of dream, through symbols, allegories, metaphors and other
 463 species of irony and dissimulation' (1996: 143). Legal doctrine is unable to supply
 464 definitive answers and certainties; rather, it generates more questions and
 465 uncertainties. As law originates from and is an expression of broader social and
 466 political relations, it constantly reinvents itself by means of a series of settled
 467 linguistically encoded preferences; creating the rules which in turn determine
 468 law's authority and serve to presuppose and validate the conditions of those
 469 preferences. Since narrative and counter-narrative, heroes and villains, categories
 470 of judgment, crimes and punishments are all produced by the creative use of the
 471 legal language; constant vigilance is required as to how metaphors are formed and
 472 the circumstances of their implementation to ensure their associations are always
 473 legitimate and constructive.



474 **Legal Truths, Moral Metaphors and Moral Panic**

475 Metaphors are commonly taken for granted and treated as expressions of literal
 476 truth. They have a compelling representational function, standing in for or
 477 substituting the very things they merely symbolise. As metaphoric speech deviates
 478 from the ordinary use of language and is capable of expressing higher order values,
 479 Aristotle cautioned that a sense of appropriateness for the occasion, audience and
 480 situation was necessary; adding that ‘the greatest thing by far is to be a master of
 481 metaphor. It is the one thing that cannot be learnt from others; and it is also a sign of
 482 genius, since a good metaphor implies an intuitive perception of the similarity in
 483 dissimilars’ (1995: 23.5). In pursuit of a ‘good’ or appropriate metaphor, it is
 484 therefore incumbent on lawmakers to carefully consider how a particular
 485 representation may communicate ideological bias; as it is likely, if not inevitable,
 486 that the use of figurative language will result in some degree of moral ambiguity
 487 when implemented by ruling authorities such as law and government.

488 The associative, expressive, attitudinal or evaluative meanings transmitted by
 489 metaphor necessarily serve as an essential part of an underlying, invisible organising
 490 principle; namely, a connotative order of signification. This wider referential order
 491 also comprises legal fictions and facilitates the construction of ‘myths’, in the sense
 492 of the legal culture’s conceptualisation of abstract ideas and principles which appeal
 493 to an aestheticised ideal of community. Most laws are not articulated in explicit
 494 form nor are they reflected upon by the general populace; rather legal dogma
 495 operates invisibly in the community, being uncritically accepted and shared by
 496 others as practical or self-evident common sense. The engendering of social feeling
 497 and a sense of partnership with others, when far from being partners or equals,
 498 elicits a compliant self-conscious sociability which appears to legitimate, by failing
 499 to interrogate, law’s truth claims. Foucault describes ‘regimes of truth’ in which
 500 reality is constructed, historically and politically, according to the singular vision of
 501 powerful institutions of civil society which control and monitor the production of
 502 discourse (1980: 131). The individual is reconstituted in relation to a particular
 503 prevailing cultural or political ideology, within which language constructs and
 504 contextualises the social subject. Structures of power such as law and the state set
 505 out what is true and false, the means by which each is authorised, how truth is
 506 acquired and the status of those determining what counts as true; and it becomes
 507 impossible to be defined outside of these discursive formulations (Shaw & Shaw
 508 2016: 33, 34). In this way, law’s narratives of truth are manufactured via language,
 509 with the corollary that language is the site of struggle and resistance in which the
 510 control of meaning is the winner’s prize.

511 Ian Ward presents an eloquent argument for the inherent textuality of the law,
 512 using the example of terror and ‘terrorism’, explaining how the use of figurative
 513 allusion, hyperbole and metaphor is fundamental to constructing the ‘terrorist’, in
 514 *Law, Text, Terror* (2009). It is suggested that the cultural embeddedness of terrorism
 515 can only be properly understood within the context of various aesthetic expressions,
 516 mythologies, fantasies and mystical discourses (Shaw 2013: 128–129). While public
 517 safety and crime prevention are legitimate aims, the implantation of Kafkaesque

518 cybersecurity mechanisms supported by sweeping suspicion-less surveillance and
 519 monitoring (along with the bulk interception of electric communications) is driven
 520 primarily by the concerns of government operating in an often-exaggerated and
 521 orchestrated ‘climate of fear’, rather than as a response to the actual experience or
 522 corresponding incidence of crime (Munster 2011: 4; Shaw & Shaw 2015: 239).
 523 Meanwhile, the economic capital accumulated by the knowledge industry facilitates
 524 the manipulation of reality and privileging of particular interests, which has an
 525 adverse effect on employment policies, health and welfare standards, and the social
 526 stability of ordinary citizens.

527 As revealed by Edward Snowden in 2013, the nefarious obsessive information-
 528 gathering activities of a variety of public and private agencies are typically beyond
 529 the reaches of law and regulation. Yet people overlook the profound societal
 530 implications of the corporatisation of political power and intrusive legislation such
 531 as the Data Retention and Investigatory Powers Act (DRIPA) 2014, the recently
 532 amended Computer Misuse Act (CMA) 1990 by the Serious Crime Act (SCA) 2015
 533 and so-called snoopers’ charter, the Investigatory Powers Act (IPA) 2016. Perhaps,
 534 in part, acting on a utopian longing for genuine community and social solidarity,
 535 they continue to collude in invading their own privacy by sharing their most
 536 intimate thoughts and secrets with strangers on social media; in the expectation that
 537 an appeal to the ‘right to be forgotten’ law, established by the European Court of
 538 Justice in 2014 (*Google Spain SL, Google Inc. v Agencia Española de Protección de*
 539 *Datos, Mario Costeja González* [2014] Case C-131/12) will prompt the ‘Court of
 540 Google’ to delete any web links bearing personal remarks of a derogatory nature
 541 (Shaw 2015b: 247). New technologies—and the interests of those who ‘own’,
 542 legitimise and control these vast networks of information—are deeply embedded
 543 into what Christian Fuchs defines as ‘structures of domination’ which act as far-
 544 reaching structures of social control (2008: 114). It is, therefore, unnecessary to
 545 coerce the collective will into compliance, as people passively accept particular
 546 ideological conceptions validated by the instruments of legal authority. Slavoj Žižek
 547 suggests in *Welcome to the Desert of the Real* that the terms designated to
 548 fundamental concepts such as democracy and freedom, human rights and, more
 549 recently, the war on terror have been co-opted by law and mask their origins. These
 550 ‘false terms’ only serve to mystify our ‘perception of the situation instead of
 551 allowing us to think it. In this precise sense our “freedoms” themselves serve to
 552 mask and sustain our deeper unfreedom’ (Žižek 2002: 2). Accordingly, the
 553 fabrication of such reality-framing untruths or partial truths, and their being passed
 554 off as law’s narratives of truth, means we lack the language to articulate our
 555 ‘unfreedom’. Aided by a subtle utilisation of interpretative framing language, such
 556 as ‘military force’ and ‘war’, it has been possible to create bias in favour of
 557 evermore draconian and intrusive laws on terror; and consequently the lives of
 558 individuals continue to be transformed by those agencies with power.

559 Whilst conceding the right of private organisations and governments to monitor
 560 and hack at will, in relation to the activities of non-state sanctioned computer
 561 hacking, law relies on the metaphors of disease (e.g., virus, quarantine and
 562 inoculation) and criminal activity (e.g., theft, burglary and trespass) to justify a
 563 range of harsh punishments. Even though theft, burglary and trespass have an

564 'ordinary' meaning in the material world and are subject to a clear, albeit broad
 565 interpretation in English law; applied to the abstract realm of cyberspace, they are
 566 often given a wider interpretation to justify harsher treatment than their more
 567 measurable physical equivalent. Under the CMA 1990, for example, computer
 568 trespass is regarded as a more serious offence than actual trespass and carries a
 569 broader range of sanctions. By the metaphorical association of all hackers with
 570 infection and robbery, even inconsequential or ill-judged actions are routinely
 571 transformed into pathological and predatory behaviour which demonises the
 572 perpetrator, and legitimates a control ethos in law-making. Moreover, in relation to
 573 the 'war on terror', framing expansive and invasive legislation on the premise that
 574 electronic communication is the principal means of orchestrating acts of terror is a
 575 *non sequitur* as, after all, Attila the Hun, Adolf Hitler, the Vikings and other
 576 terrorising aggressors managed to communicate efficiently before the World Wide
 577 Web. This assault on our freedom of expression is, therefore, referred to by Ian
 578 Ward as a 'juristic black hole', and he further claims that the objective of the real
 579 'war' is to 'control our thoughts', constrain our expression and crush our sense of
 580 humanity' (Ward, 2009: 179). While global terrorism is an ongoing problem, it is
 581 evident that the use of military, crime and health metaphors in the media and
 582 political discourse only serve to foster the endless fear of terrorism which in turn
 583 legitimates more legal intervention.

584 Moral panic is engendered when a hyper-mediated representation of an act or
 585 event enables the fabrication of a 'spectacle' which galvanises public opinion
 586 (Debord 1994: 12). The culturally encoded imagistic representation creates
 587 widespread concern, while the news media acts as a proxy for public opinion and
 588 further legitimates the imposition of oppressive legislative reforms (Baudrillard
 589 1995). In response to ubiquitous calls for greater security in the 'combating' the
 590 'war on terror', mass routine surveillance and categories of exclusion—referred to
 591 by Giorgio Agamben as *homo sacer*—have been imposed on particular societal
 592 groups, which have impacted on everyday life. By separating the 'accursed'
 593 individual or 'bare life' from the rest of humanity (via emergency legislation,
 594 rendition and detention camps) entire categories of people have been relocated
 595 outside the protection of law. This permanent state of exception is said by Agamben
 596 to comprise 'a *factio iuris* par excellence which claims to maintain the law in its very
 597 suspension', but instead yields a violence that has 'shed every relation to law'
 598 (2005: 59). That is not to say there is no threat of violence in society but, as Ian
 599 Ward articulates in *Law, Text, Terror*, the counter-terrorist rhetoric, urging 'trust' in
 600 the government to deflect the 'threat' of acts of terror, elicits more fear than the
 601 terrifying acts of violence themselves (2009: 36–37). As Lord Hoffmann stated in
 602 the Belmarsh Prison case, *A and others v Secretary of State for the Home*
 603 *Department* [2004] UKHL 56 at 97, the word 'life' as in 'threat to the life of the
 604 nation' is to be understood only in a metaphorical sense, because 'the life [or spirit]
 605 of the nation is not coterminous with the [actual] lives of its people. The nation, its
 606 institutions and values, endure through generations'.

607 While non-legal judgments describe the world of reality or what *is*, legal
 608 judgments deal with the prescriptive ethical realm of what *ought* to be; from which
 609 moral judgments fall into two distinct categories, namely, prescribing what *ought to*



610 *be* done prior to an action and what *ought to have been* done after the fact.
 611 Metaphors are often used to ascribe morally evaluative descriptions of individuals
 612 and groups; their words, actions, inaction, intentions, motivation, personality traits
 613 and imputed predisposition are attributed a moral value and gauged against an
 614 objective standard of ‘good’ behaviour. Ascriptive characteristics such as race,
 615 ethnicity, religion and social class are often associated with typical behaviour or
 616 attributes which can be used to stigmatise and exclude someone from being treated
 617 as a member of society, and disqualify them from an entitlement to basic justice
 618 (Shaw 2015a: 95). Attendant figuration such as scum and dirt induce associated
 619 feelings of disgust and revulsion; for example, the metaphor of filth has functioned
 620 as a powerful determinant of criminal justice policies. Law commonly responds to
 621 the threat and incidence of actual or environmental filth or pollution in three
 622 different ways, either by tolerance, prevention or avoidance; however, because ‘a
 623 polluting person is always in the wrong’, the perception of criminals as vermin (both
 624 contaminated and contagious) has prompted the implementation of various pollution
 625 avoidance measures such as segregation and a tendency to detain and incarcerate
 626 offenders in dirty, fetid pest holes (Douglas 1988: 113). Equating wrongdoers with
 627 filth hides their humanity and encourages the perception of them as objects and less
 628 than human.

629 In relation to aspects of human subjectivity and notions of social and cultural
 630 value, there is to date a rich critical history that tackles the legal, ethical and
 631 political significance of the vocabulary of waste, degradation, disgust and abjection.
 632 In the nineteenth century, for example, many cases relating to pollution, under the
 633 common law of nuisance, treated the foul odours and noxious gases emanating from
 634 a neighbouring farmyard, factory or city streets strewn with horse manure as a
 635 physical invasion of person and property. The nuisance or inappropriateness of the
 636 polluting agent depended on the relation of ‘substance’ to ‘space’, constituting a
 637 social construction of stink and filth which founded the legal doctrine. Norbert Elias
 638 explored the evolving concepts of cleanliness and disgust in relation to the
 639 ‘civilizing process’, in his eponymous monograph (2000). The management of dirt
 640 and smell was not only a breeding ground for modern environmental rules but also
 641 of more general *them* (the polluters) and *us* (the good citizens) politics of the
 642 modern state.

643 Aesthetics often functions as the minor premise underpinning social syllogisms
 644 embedded in discourses of legal justification. The metaphors of pollution and
 645 disease are influential rhetorical devices which shape social values, legitimate
 646 draconian laws and create moral panic when used to signify violation, perversion
 647 and the corruption of moral standards. For Lakoff and Johnson, the main issue is
 648 ‘...not the truth or falsity of a metaphor but the perceptions and inferences that
 649 follow from it and the actions that are sanctioned by it’ (1980: 157). Not only ought
 650 ‘our legislatures and public officials be less inclined to exploit the fears of citizens’,
 651 but the symbolic foundations of attitudes towards immigration and AIDS, as the
 652 ‘gay plague’ for example, need to be recognized for their role in manipulating social
 653 consciousness (Murphy 2012: 228).



654 **Law, Affective Rhetoric and *Licentia Poetica***

655 Language is the primary medium through which humans are able to shape, transmit
 656 and cultivate particular thoughts, values and actions; it enables the realisation of
 657 consensus and community, and allows for the persuasion of the individual and
 658 motivation of the collective will to action. While the cultural embeddedness of
 659 aesthetic forms which rely on narrative and imagery (such as poetry, visual arts and
 660 of course literature) has been well-documented, the aesthetic rudiments of law and
 661 justice are often neglected; yet law is also an embedded cultural medium of
 662 expressive form. Just as the aesthetic dimension is the necessary precondition of the
 663 political; literary stratagems, rhetorical figuration and aesthetic appeal are essential
 664 features of legal argument. In Ancient Greece storytelling was the primary method
 665 of imparting law from one generation to the next and was touted as the primary skill
 666 of lawyers, who were also expected to be excellent orators. The tradition of *ars iuris*
 667 required an aptitude for rhetoric, abstract juristic thought, dialectical thought and the
 668 art of conversation; as the earliest laws and customs were founded on myths,
 669 legends and stories. Myths were often used because of their ability for telling a tale
 670 with moral import to a diverse audience and, as a cloistered profession, the
 671 legitimisation of legal authority was premised on the sacral myth of perfect speech.

672 Quintilian, in his AD 95 *Institutio Oratoria*, juxtaposed the art of law with the art
 673 of persuasion, deducing sophistry to be a necessary prerequisite to legal science as
 674 ‘rhetoric precedes justice’ (II.17.25–26). Aided by the employment of figurative
 675 language and tropes as a natural extension to any literal meaning, Quintilian
 676 espoused the view that skilful oration uniquely enables the connection between idea
 677 and image after which the next consideration is the intended audience of
 678 participants, in other words ‘know your listener’ (IV.2.121). He continued, ‘as
 679 soon as we have acquired the smoothness of structure and rhythm... we must
 680 proceed to lend brilliance to our style by frequent embellishments both of thought
 681 and words... with a view to making our audience regard the... [case] which we
 682 amplify, as being as important as speech can make it’ (IX.1.26–28). Style was
 683 viewed not merely as ancillary to legal argument, rather the particular choice of
 684 rhetorical technique, metaphor and other literary devices were forms of expression
 685 chosen to support specific content and a precise objective.

686 For classical Greek lawyers, expression and textual meaning were indivisible and
 687 together considered to have the capacity to induce a *vehemens applicatio mentis ad*
 688 *aliquid*; acting as a motivating force on the sensory and cognitive faculties of the
 689 receptive legal subject. Even now the performance of law can be compared to the
 690 performance of literary works in that both seek to resonate with lived experience
 691 within the practical realm of human affairs, also each assumes an uncontested
 692 hierarchy of social relations and aspires to a form of transcendence. A lawyer
 693 recounts and reimagines the experience of their client in the courtroom, retelling
 694 their stories of disappointment, frustration and mistreatment much like the actor
 695 who brings the author’s script to life. Although one performance is an imaginatively
 696 dramatized narrative construction of experience in the form of a story and the other
 697 elaborates on fixed legal concepts and formula, both exhibit analytical and

698 theoretical skill and each require an imaginative representation and rely on
 699 persuasive flourishes of clever rhetoric. Later works on legal interpretation and legal
 700 reasoning such as Stephanus de Federicis' *De interpretatione legum* (1495) readily
 701 acknowledges their indebtedness to literary technique and rhetorical theory,
 702 especially in respect of the ancient *status legales* where, for example, there was a
 703 conflict between the letter and spirit of the law (Hohmann 2000: 230). Lawyers
 704 were, at that time, considered to be the most literate members of lay society and
 705 among its most active in public affairs, and emphasis was placed on eloquence in
 706 public oratory with the ideal of combining eloquence with civic and moral virtues.

707 While a mastery of the rhetorical art of affective speech and skilful use of
 708 language continue to be important accomplishments, modern lawyers have been less
 709 keen to acknowledge the influence of symbols, rituals and representations on the
 710 development of legal principles and legal discourse. Since legal truths are founded
 711 on certainty and exactness, admitting the use of images and tropes—characterised
 712 by ambiguity and fluidity—would militate against law's avowed orderliness,
 713 uniformity and predictability. In the tradition of Plato and Kant, poetic virtuosit-
 714 ies and aesthetics are thought to diminish in people the need for law and, importantly,
 715 ought to be separated from rhetoric and the normative. This is because although
 716 moral inclinations can be stimulated by lyrical persuasion, aesthetic forms are
 717 viewed by their detractors as deficient in their ability to impart intellectual virtues
 718 **AQ2** which are deemed necessary for an authentic inquiry into law. Plato hated the
 719 theatre for this reason, and sought to censor poetic expression because '...it makes
 720 its insolent way into laws and government, until in the end it overthrows everything,
 721 public and private' (1987: 424). The banishment of the imitative poets from his
 722 ideal state is, however, generally considered to be one of Plato's most loathed ideas
 723 (Popper 2003). In common with Plato, Kant distinguished rhetoric from poetic or
 724 imagistic language. He believed 'the poet's promise [to be] a modest one... the use
 725 of play to provide food for the understanding, and the giving of life to its concepts
 726 by means of the imagination' whereas 'the orator gives something which he does
 727 not promise, namely, an entertaining play of the imagination... [thus] he fails to
 728 come up to his promise... which is his avowed business, namely, the engagement of
 729 the understanding to some end' (1952: 184). While, if modest and honest, the poet is
 730 considered to perform more than he promises, Kant disparages the deployment of
 731 aesthetically enhanced rhetoric. He refers to 'the art of transacting a serious business
 732 of the understanding as if it were a free play of the imagination'—an act of frivolity
 733 which detracts from and demeans its object—and accordingly judges the orator to
 734 be deficient in 'performing less than promised' (Kant 1952: 185).

735 Contemporary critics of the law and literature movement have similarly claimed
 736 that, in transforming or misshaping legal principle by appealing to aesthetic
 737 ornamentation and distracting the mind by emotion, the lawyer is removed from
 738 their proper purpose in service to the purely mechanical business of textual
 739 transcription. The appropriation of literary techniques for legal analysis has even
 740 been argued to be 'a dangerous occupation' (Posner 1988: 17). As Costas Douzinas
 741 and Lynda Nead observe, '[m]odern law is born in its separation from aesthetic
 742 considerations and the aspirations of literature and art, and a wall is built between
 743 the two sides. ...Art is assigned to imagination, creativity and playfulness, law to



744 control, discipline and sobriety' (1999: 3). Accordingly, the legal community prefer
 745 to assert their objective detachment, insisting that law simply reproduces objects
 746 mimetically, as they are: To acknowledge the explicit borrowing of literary
 747 techniques would be tantamount to admitting to the practice of a swindler's art.
 748 However, in *Law and Aesthetics* Adam Geary argues that law is accountable only to
 749 its own internal formalistic criteria, and performs 'a kind of confidence trick ...the
 750 system manufactures its own conditions of legitimacy and then attempts to legislate
 751 them as a priori universals that have a legitimizing effect through their appeal to
 752 reason' (2001: 4). Law impels compliance by justifying spurious or contentious
 753 edicts as 'properly construed' via an 'appropriate' process for representing the will
 754 of society; and yet despite all protestations to the contrary, its representations are
 755 often inescapably figurative rather than mimetic.

756 As a social phenomenon, law cannot maintain a separate discourse and rely
 757 solely on internal definitions and coherence. It is not an autonomous enterprise;
 758 legal issues and disputes arise from the circumstances of human life. Also a
 759 corollary of the narrativity and literariness of law is its dependence on a range of
 760 other expressive disciplines. Similarly, within this context, aesthetic expression does
 761 not exist as a separate entity, additional or peripheral to law, neither does it
 762 assume a privileged position in relation to law; rather both are intertwined to the
 763 extent that neither can be fully appreciated without taking into account the
 764 possibility of the other. Like art, law can be a vehicle for oppression or a means of
 765 emancipation, as it reimagines the world by producing a cornucopia of images
 766 which demand interpretation and classification. Given that law is argued to have
 767 become a literature that suppresses its literary character, persuasive arguments
 768 exposing and defending an often problematic legal aesthetic have been advanced by
 769 a variety of international legal scholars. Peter Goodrich, for example, explores the
 770 imagistic representation of law and governance in the public realm via legal
 771 emblems which convey the subtly-coded hierarchies of power, origins and symbolic
 772 authority of law in *Legal Emblems and the Art of Law* (2013). In *Songs without*
 773 *Music: Aesthetic Dimensions of Law and Justice* (2000), Desmond Manderson
 774 repudiates the claim that law is a purely rational and barren construct, frozen in
 775 antiquity. He uses music as a paradigm to describe it more accurately as a cultural
 776 form in which legal meaning is enriched through rhetoric and metaphors, form,
 777 images and symbols. In *Empty Justice: One Hundred Years of Law, Literature, and*
 778 *Philosophy* (2002) Melanie Williams investigates the intersection of narrativity and
 779 legal normativity. Maria Aristodemou, in *Law and Literature: Journeys from Her to*
 780 *Eternity* (2001) highlights the similarities between literary and legal discourses by
 781 presenting law as a form of literature and literature as a form of law; and explores
 782 the law-making qualities of fiction to explore the fiction-making qualities of law. In
 783 *Memory, Imagination, Justice* (2009), David Gurnham exemplifies the use of
 784 literary metaphor, analogy and hidden subtext to signal the absence, force or
 785 vulnerability of justice; and in a collection of essays edited by Oren Ben-Dor, *Law*
 786 *and Art* (2011), law, justice, ethics and aesthetics are shown to be deeply implicated
 787 in each other.

788 **Conclusion**

789 In spite of the abundance of symbols and figurative devices that classify and
 790 communicate law, legal practice continues to privilege the intellect, reason and use
 791 of abstract language whilst simultaneously repudiating its aesthetic, literary and
 792 metaphoric attributes. By interpreting a text or utterance as if it were purely a series
 793 of logical propositions, the symbolic significance of legal proclamations is
 794 understated if not overlooked. The violent separation of law from its literary
 795 qualities comprises not only a rebuttal of the literary soul of law; it also frustrates
 796 the imagination of alternative laws which may emerge from the interplay between
 797 aesthetics and morality. Moreover, in their resolve to be anti-aesthetic and so avoid
 798 an excess of meaning, the legal community appears to fetishise the literal, the truth
 799 of absolute fact and reality. Consequently, the persistent denial of the use and
 800 influence of literary tropes in legal discourse has the effect of denying the possibility
 801 of critique about the construction of what is, for example, just, principled or
 802 reasoned: Whereas ‘observing the aesthetic factors operating in an area purportedly
 803 purified of such an influence can help widen appreciation of the importance of
 804 aesthetics in everyday concepts such as reason’ (Butler 2003: 216).

805 By constituting and being supported by state authority, legal institutions have the
 806 power to stipulate what is real in the world; determining the parameters of what is
 807 true or false, good or bad and right or wrong. They create categories of crime and
 808 punishment within which to attribute blame and innocence against a set of
 809 incentives and disincentives intended to shape the conduct of individuals. Whilst
 810 judges privilege particular sources of law above others and offer a plurality of
 811 interrelated reasons, including morally valid reasons, for following precedent or
 812 applying the norms of the legislature, the core meaning of settled legal rules and
 813 principles along with the norms governing their use do not readily admit of
 814 alternatives. In its imposition of legal truths, law not only has the power to
 815 manipulate, dictate and constrain how individuals live their lives, it also acts on the
 816 imagination by prescribing the manner in which the world must be seen and
 817 understand, as through the ‘eyes of law’. These formative narratives of truth are a
 818 potent stratagem for establishing the legitimacy of legal hierarchies and maintaining
 819 structures of power, as well as having the effect of stymieing public debate and
 820 functioning as a vehicle of oppression (Shaw 2013: 111).

821 The monopoly of formal legal knowledge as truth, against other forms of
 822 knowledge and truths or realities, constitutes a negation of difference which calls for
 823 an ‘ethics of alterity’ in order to challenge all efforts to ‘reduce the other to self’
 824 (Douzinas & Warrington 1994: 167). For Goodrich, the demand for ethics can only
 825 be satisfied by recognising the ‘other scenes of law’ as potential sites of resistance
 826 which oppose how and what law traditionally represents:

827 The other scenes of law – its images, its figures, its architecture, its rites,
 828 myths, and other emotions – are potentially the economies of resistance to law.
 829 They evidence... the possibilities of a jurisprudence of difference, and
 830 specifically a genealogy of other forms of law, of plural jurisdictions and



831 distinctive subjectivities, of other genders, ethnicities, and classes of legality
832 and writing (1995: 15).

833 This ‘discourse of the other’ stands in opposition to the aestheticisation of
834 oppression; against the framing of bad laws supported by subtly coded language,
835 imagistic references and metaphors which serve to mask inhumanity. As maintained
836 by South African artist Kendell Geers—in his provocative 1995 text-based work
837 ‘By Any Means Necessary’ reproduced as an epilogue in *Law and Art*—‘Art, like its
838 mentors law and religion, constitutes by definition the only legal form of moral
839 transgression’ (Ben-Dor 2011: 305). Geers’ entreaty to substitute desirable images
840 with images that are difficult to confront—or injustices that remain ignored—is a
841 reminder of the fine line between aesthetics, politics and law. Similarly, for Jack
842 Halberstam, the imaginative capacities are a necessary condition of hope; ‘[w]e
843 have to be able to imagine violence, and our violence needs to be imaginable
844 because the power of fantasy is not to represent but to destabilize the real’ (2001:
845 263). By becoming attuned to the operation of aesthetics in constructing law’s
846 mythologies, we are better able to envisage a wider discourse of alterity and ethical
847 judgment and, in turn, pursue and reimagine other, more authentic and inclusive,
848 stories for law.
849

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