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As a distinct interdisciplinary field ‘Law and Literature’ is still in the making. It is of course true that since the early 1970s – it was by then that the idea of taking a closer look at the bridge linking legal and literary texts started gaining ground in the academic world – a large number of contributions have transformed Law and Literature from a marginal research movement into a promising discipline. Yet one has the impression that Law and Literature is still on the way to defining its research area. The questions that persist are, what is the intersection between law and literature, and which strategies should we follow to make the investigation of the claimed link between fiction writers and law-makers fruitful for a deeper understanding of legal practices?

Books on Law and Literature are expected to shed some light on that question, if they wish to be rewarding to their readers. In this respect David Gurnham’s *Memory, Imagination, Justice: Intersections of Law and Literature* is a particularly gratifying book.

Gurnham suggests that what makes the legal and the literary discourse relevant to each other is primarily the fact that they both engage with moral issues, namely with people’s moral concerns in highly controversial settings. Furthermore, he claims that the two discourses are similar at a deeper level. In their effort to suggest a way out from crucial dilemmas, human conflicts and suffering, they articulate conceptions of justice through recourse to the same human faculties, memory and imagination. This idea offers the common thread that holds the eight chapters of the book together; the intersection between law and literature is due to the fact that they both put forward narratives of justice (p. 8) by exploiting the inspiring potential of memory and imagination (p. 1).

It is actually to such an innovative depiction of the relation between law and literature that the book owes its originality. Gurnham neither repeats commonalities about the central role of interpretation in law and literature, nor recycles fair but old remarks about the use of rhetorical and literary devices in legal texts. He puts aside ‘safe’ hypotheses that have already been broadly discussed and does not hesitate to test himself with controversial issues. Indeed, the view that memory and imagination are sources of inspiration for
the scheme of justice put forward by positive law may attract doubt. Yet Gurnham’s
defence of his view, based as it is on concrete examples carefully chosen from the vast
body of classical literature as well as from the open-ended agenda of diachronic legal pu-
zles and attempted answers, promises to make even suspicious critics of non-mainstream
approaches to the law interested in the book and less sceptical towards Law and
Literature.

Gurnham does not suggest that either literature or law are by definition keen on recon-
sidering questions of justice by making an appeal to memory or imagination. Instead, he
implies that his fresh account of the intersection between law and literature finds its finest
application in particular legal areas as well as in certain works of classic literature. As for
law, he turns to sensitive cases, where the link between the normative content of legal
rules and people’s moral beliefs on the issues law purports to regulate is close and
dynamic. The closeness of the link refers to the fact that what law requires from peo-
ple in such cases affects the inner core of their ethical identity, a side of their moral
self that they doubt if they should trust the law to govern. The dynamic aspect emerges
when, due to the close link between law’s content and people’s moral views, people
expect law to respect, if not to reflect, moral certainties that are widespread among
them. In such cases law’s moral authority does not remain unchallenged. It finds itself
under pressure to dynamically interact with people’s account of moral taboos and
ideals by honouring or preserving them through legal rules that inevitably have a cer-
tain moralizing flavour.

Gurnham turns primarily to legal puzzles that trace the relationship either between
criminal law and moral wrongs or between human rights law and bioethics. The emo-
tional (Chapter 1) and the moral (Chapter 2) aspects of provoked killing, the debate on
cri mes of violence against children (Chapter 4) and indecency laws relating to childhood
(Chapter 5) or even embryo research and genetic enhancement (Chapters 7 and 8) are
some of the well-debated topics that attract Gurnham’s attention.

Yet law is only the first of the two branches of Gurnham’s bi-disciplinary research.
The second is literature. And although Gurnham is not a literary theorist, he ensures that
his two areas of interest are equally represented in the book. No matter the fact that he
discusses works reflecting a variety of styles, literary eras and cultural traditions, his
choices are not random. What he focuses on is literature as a narrative that fosters in aes-
thetic terms the taboos and ideals of the society it reflects.

Gurnham has chosen texts from rather transitional times, when art struggles to capture
the aura of social changes that affect the collective unconscious and make society recon-
sider its monolithic certainties. Shakespeare’s Hamlet and Euripides’ Electra (Chapters 1
and 2) dramatize succession myths and consider illegitimate successions to the throne
through the angle of the embittered offspring of the legitimate king. Charles Perrault’s
and Brothers Grimm’s fairytales narrate folk myths in a way that makes them reflect bour-
goese sensibilities (p. 94). Kafka’s and Huxley’s imagination (Chapters 3 and 7) illustrate
the anxiety of our times, when the broad use of machines raises fears of a future instru-
mentalization, even of humans themselves. The texts put their characters and the reader
into dilemmas. The solutions to the dilemmas seem to lie in the reconsideration of the past
that lets us draw lessons for a wiser future. In such cases both nostalgia and hope are put
together to enable the construction of a coherent narrative of justice.
Both the legal questions and the literary works discussed in the book are exemplary instantiations of what makes Gurnham’s approach particular – that is, his reading of both law and literature as narratives. Gurnham suggests that law and literature share in common an ethical endeavour: to address moral dilemmas not just through practical reasoning, but also through the emotive faculties that memory and imagination stem from, a creative nostalgia for moral solutions that proved trustworthy in the past and a wishful expectation for their use as means of defence against the uncertainty of the future. But as already suggested, the question an original contribution to the field of law and literature is expected to address has two aspects. The detection of the meeting point of legal and literary discourse is one of the two; the other is the inquiry into the ways in which such an interdisciplinary approach can improve our understanding of legal practice. Gurnham has indeed new things to say about that too.

The trouble is that memory and imagination have not yet secured a leading place in the formal conceptual framework within which practising lawyers theorize about their field. In drawing its self-portrait, law is not keen on acknowledging its debt to the emotive faculties Gurnham’s analysis points to. Yet the distance that Gurnham keeps from the moral reflexes of practitioners allows him to use his understanding of legal memory and imagination as a new analytical tool for a moderately critical reading of law. His conception of law as a cultural narrative makes Gurnham treat the dogmatic aspect of legal discourse with a refreshing scepticism. Such scepticism invites legal officials and practising lawyers to rediscover the social awareness and moral creativity that their role involves.

But how can a moderate distrust of law’s promise to appeal exclusively to reason when tackling our bedevilling moral dilemmas, be rewarding in terms of legal practice? The book does not leave the question unanswered. It is by breeding suspicions towards unnecessary idealizations of law that we shed new light on the controversial issues with which legislators and judges engage. Legal answers to moral dilemmas are not exclusively dictated by reason, Gurnham suggests. Law often finds a way out from tantalizing moral dilemmas by making an appeal to taboos and socially constructed idealizations.

Gurnham suggests that legal answers to controversial issues are often instances of taboos and ideals, instances of conventional patterns that crystallize the normative incentives of collective memory and imagination. Taboos are social prohibitions that keep persons considered as sacred out of the vicious circle of violence. Ideals perform their normative role by canalizing social behaviour towards a future utopia that escapes the plagues of violence and revenge. Gurnham illustrates his views with numerous examples. Child pornography, for instance, offers him a platform to discuss the moral manifestations of taboos about childhood sexuality (p. 123). Furthermore, he takes the widespread distrust of genetic enhancement not only as an expression of respect for human dignity, but also as a symptom of anxiety towards the challenges to taboos about the sacrosanct aspect of the physical body and corporal integrity that biotechnology brings with it (pp. 163–166).

Gurnham’s book sharpens our awareness that legal norms often reflect socially constructed images of sublimity, atrocity, innocence and guilt. It does not undermine the jurist’s dream of a fair degree of distinctiveness of law from conventional morality. It just suggests that law is inevitably intertwined with it. And this is of interest not only to legal
theorists investigating the relation between law and morals, but also to practitioners encountering moral dilemmas that everyday legal practice is rich in. In that respect, *Memory, Imagination, Justice: Intersections of Law and Literature* is a rewarding read. As well as taking a further step on the path of the open-ended relation between law and literature, the book also invites us to cast fresh eyes upon the moral controversies on which law is destined to have the last word.

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‘Judgement’, according to Alan Norrie, ‘involves placing oneself in the position of the other and committing to advice relating to [the other’s] concrete singularity. Judgement is assertoric rather than categorical or hypothetical’ (p. 221). That view is not without surface problems. One may wonder whether ‘categorical’ condemnation is precluded for Soviet purges and gulags, Pol Pot’s killing fields, the trans-Atlantic slave trade, Mao’s Great Leap Forward, Hutus upon Tutsis, *Dred Scott*, or Auschwitz. Yet Norrie aims to navigate between the Scylla of moral absolutism contained in the categorical judgement, and the Charybdis of the tentative, relativist, hypothetical judgement. He peers beneath the contradictions inevitably entailed by traditional ethical and legalist discourses.

*Dialectic and Difference* explores the philosophy of Roy Bhaskar, particularly as set forth in such works as Bhaskar’s *Dialectic: The Pulse of Freedom* (1993) or *Plato etc.* (1994). Bhaskar is a difficult writer, but has maintained a loyal following. His ideas have become central to the school of thought known as critical realism. Although Norrie explores Bhaskar in the context of contemporary ethical thought, his aim is not to stake out a distinct position, so much as to expand on Bhaskar’s core ideas. Norrie locates the Scylla of the categorical judgement in a Western tradition that Bhaskar traces back to Parmenides and Plato. It is they, Bhaskar claims, who place Western thought on its path towards an impoverished concept of being. Our dearth of constructive concepts of absence, negativity and non-being has diminished our capacity for both ontological and ethical reason. It forever generates contradictions characteristic of Western rationalist ethics. Empiricism divorces justice from ontology; Bhaskar claims to reunite them. That project recalls Heidegger’s challenge to ‘*Sein als Anwesenheit*’ (‘being as presence’) (Heidegger, 1979: 25), but Bhaskar and Norrie will seek a different ontology and ethics. Meanwhile, the Charybdis of the contingent hypothetical judgement has its own long history, which Bhaskar and Norrie trace from Heraclitus’ ‘everything is in flux’ through to the post-modern theories of Derrida and Deleuze.

Bhaskar’s prime target is Hegel. Hegel’s dialectic proceeds through the triad of identity, negativity and totality. The final term yields a closed system, famously culminating in the ‘end of history’. That dialectic straitjackets the concepts subjected to it,