DESERT ISLAND DISKS: TEN REVERIES ON INTER-DISCIPLINARY PEDAGOGY IN LAW

Desmond Manderson

Abstract

In this essay Professor Manderson defends the use of inter-disciplinary methodologies in teaching law. Focusing in particular on images and texts of no more than a page's length, the essay insists that a whole curriculum could be devised around these pictures, sounds, and stories. Yet legal teaching, reflecting the character of legal texts in general, has been relentlessly long-winded and linear. They direct us to one conclusion to the exclusion of all others; they close options rather than open them. This is no way to learn: it is untrue; it is tedious; it excludes us from ourselves participating in learning. Other forms of expression have more to say and say it differently. A picture for example has a density to it in its depiction of the relationship of ideas and forces which can be both easy to take in and complex to decipher. Its ability to communicate paradoxical, ambiguous, or double-edged thought repays continuing reflection. Other forms of expression welcome our thinking instead of merely forcing us to submit to its logic. We are embodied beings not logicians. Words are often such abstract ghostly emanations. The physicality of sound or vision draws out memories and associations which each observer inimitable divergent paths to interpretation. The reciprocity thus forged between writer and reader, teacher and student, is a grossly under exploited pedagogic resource that provides to all parties an unparalleled richness and discursive power.

Going ashore

Come a stove boat and a stove body when they will, for stave my soul, Jove himself cannot.
---Herman Melville, *Moby Dick*, chapter 7.

We had been sailing peacefully for many a day and had even begun resenting the boredom. That might have tempted fate. Never wake a sleeping baby or a sleeping ocean. But the storm sprung up and soon threatened to shiver us all from garboard to crown's nest. In my haste I managed to snatch up a few manuscripts that lay near to hand and clutching them before me like a life-vest I surrendered myself to the tender caresses of the waves. Paper floats and so did I.

I woke, a new Crusoe on some uncharted isle. I was alone and yet I found nothing but law all around me. On the one hand I found myself interpellated sharply by laws of which I had previously only intimations – the law of hunger and the laws of nature governed my days; the laws of fear and desire consumed our nights. On the other hand the meagre trove of papers I had rescued spoke to me of nothing but law. Psychosis then and metempsychosis made me a juridical subject. It was just as Freud said: the *absence* of authority subjugates us to it; this absence creates guilt, memory, repetition, and re-invention.

It is not surprising that I should find my sodden salvage law-riddled; I still have a calling though no-one now on whom to inflict it. Yet not one of my texts was much more than a page long and not one was conventionally legal.

For practical purposes I did not choose but; I chose depth. When we talk about law we tend to talk at length: a case might be one hundred pages long; a textbook a thousand, and two thousand, more. Law continues to write as if like the Victorians it's being paid by the word or as if the fear of letting a word in edgeways would undo it utterly. If such had been my burden I would not have floated to safety! I would have sunk to the bottom with a library for my tome-stone. The glorious length of the law is an inducement to sinking but an impediment to thinking. What we need if we are to stay afloat and yet make sense of the world is to say as much as we can as compactly as we can.

It is not just a question of weight but of life. To look for ideas of justice in a courtroom is like looking for health in a morgue. In short: a legal brief is neither. Law is a social fact and it is past time we learnt to talk about it using the whole chocolate language of our social world – art, poetry, children's books, movies, newspapers, the lot. These are the symbols we live with and swim in and which constitute and interpret and reflect and murder and mourn what we are so pleased to call the law.

If I was going to face with equanimity a life with such scant resources to enliven me, each leaf had to be capable of bearing multiple and contradictory thoughts. Yet words and legal words in particular are tyrannically linear. They direct us to one conclusion to the exclusion of all others; they close options rather than open them. This is no way to learn: it is untrue; it is tedious; it excludes us from ourselves participating in learning. Other forms of expression have more to say and say it differently. A picture for example has a density to it in its depiction of the *relationship* of ideas and forces which can be both easy to take in and complex to decipher. Its ability to communicate paradoxical, ambiguous, or double-edged thought repays continuing reflection – and the opportunity to reflect was one thing that I now had in abundance. Other forms of expression welcome our thinking instead of merely forcing us to submit to its logic. We are embodied beings not logicians. Words are often such abstract ghostly emanations. The physicality of sound or vision draws out memories and associations which each observer inimitable divergent paths to interpretation. The reciprocity thus forged between writer and reader, teacher and student, adds to the richness and power of the conversation that ensues.

Since I needed a lifetime's worth of exploration in a collection as light as a pilgrim's shell I had to look beyond my lawbooks to things which would tell not one story but many. So I floated to a new world bearing with me four pictures, of a sort; three poems, of a sort; two pieces of music. Nine things only I rescued from the wreckage and one more I have added since my arrival. With this Decameron I could recreate a whole *nomos* and teach a whole priestley curriculum under the searing sun.

The birth and origin of law

Let us start at the very beginning. What makes something legal? What are the particular elements that distinguish the characteristic shape and feeling of law in this society, and how do they relate to each other? Our first step is surely to try and observe law, to see its form and its temperament, as we would make out the outline of an island approached from afar.

'Before the Law', by Franz Kafka

For: Introduction to Law; Jurisprudence; Administrative Law; Sociology of Law; Criminal Law and Procedure; Law, Lawyers and Justice; Law and Literature

Franz Kafka
Before the Law

Before the law sits a gatekeeper. To this gatekeeper comes a man from the country who asks to gain entry into the law. But the gatekeeper says that he cannot grant him entry at the moment. The man thinks about it and then asks if he will be allowed to come in later on. "It is possible," says the gatekeeper, "but not now." At the moment the gate to the law stands open, as always, and the gatekeeper walks to the side, so the man bends over in order to see through the gate into the inside. When the gatekeeper notices that, he laughs and says: "If it tempts you so much, try it in spite of my prohibition. But take note: I am powerful. And I am only the most lowly gatekeeper. But from room to room stand gatekeepers, each more powerful than the other. I can't endure even one glimpse of the third." The man from the country has not expected such difficulties: the law should always be accessible for everyone, he thinks, but as he now looks more closely at the gatekeeper in his fur coat, at his large pointed nose and his long, thin, black Tartar's beard, he decides that it would be better to wait until he gets permission to go inside. The gatekeeper gives him a stool and allows him to sit down at the side in front of the gate. There he sits for days and years. He makes many attempts to be let in, and he wears the gatekeeper out with his requests. The gatekeeper often interrogates him briefly, questioning him about his homeland and many other things, but they are indifferent questions, the kind great men put, and at the end he always tells him once more that he cannot let him inside yet. The man, who has equipped himself with many things for his journey, spends everything, no matter how valuable, to win over the gatekeeper. The latter takes it all but, as he does so, says, "I am taking this only so that you do not think you have failed to do anything." During the many years the man observes the gatekeeper almost continuously. He forgets the other gatekeepers, and this one seems to him the only obstacle for entry into the law. He curses the unlucky circumstance, in the first years thoughtlessly and out loud, later, as he grows old, he still mumbles to himself. He becomes childish and, since in the long years studying the gatekeeper he has come to know the fleas in his fur collar, he even asks the fleas to help him persuade the gatekeeper. Finally his eyesight grows weak, and he does not know whether things are really darker around him or whether his eyes are merely deceiving him. But he recognizes now in the darkness an illumination which breaks inextinguishably out of the gateway to the law. Now he no longer has much time to live. Before his death he gathers in his head all his experiences of the entire time up into one question which he has not yet put to the gatekeeper. He waves to him, since he can no longer lift up his stiffening body. The gatekeeper has to bend way down to him, for the great difference has changed things to the disadvantage of the man. "What do you still want to know, then?" asks the gatekeeper. "You are insatiable." "Everyone strives after the law," says the man, "so how is that in these many years no one except me has requested entry?" The gatekeeper sees that the man is already dying and, in order to reach his diminishing sense of hearing, he shouts at him, "Here no one else can gain entry, since this entrance was assigned only to you. I'm going now to close it."

If I only had one page to think about law – and so perhaps there are others on other islands less fortunate than me, or perhaps more so – this is the one I would choose. This tiny parable, in which not a word is wasted, is law and literature's most prized possession and keeps in business a dozen glossators at any one time. It is a parable of law – about power and violence, our submission before authority. It is a portrayal of hierarchy, which constantly deflects authority to some other and more distant, radiant, and terrifying source. It is a prophecy of the triumph of modern bureaucracy where minor gatekeepers wield absolute power in the protection of an authority with which neither they nor we will ever come face to face: the social security officer, the immigration official, the bank manager, and millions like them who worry obsessively about the completion of formalities while they make you wait; who will cancel your pension for failing to attend an interview though you were having an epileptic seizure in the waiting room at the time. It is a caution about the purpose of law, which becomes here "the guarding and nothing but the guarding", empty of justice but fanatically protective of its emptiness, so that in the end the waiting room of justice, and the subservience and fear it produces becomes law's greatest achievement.

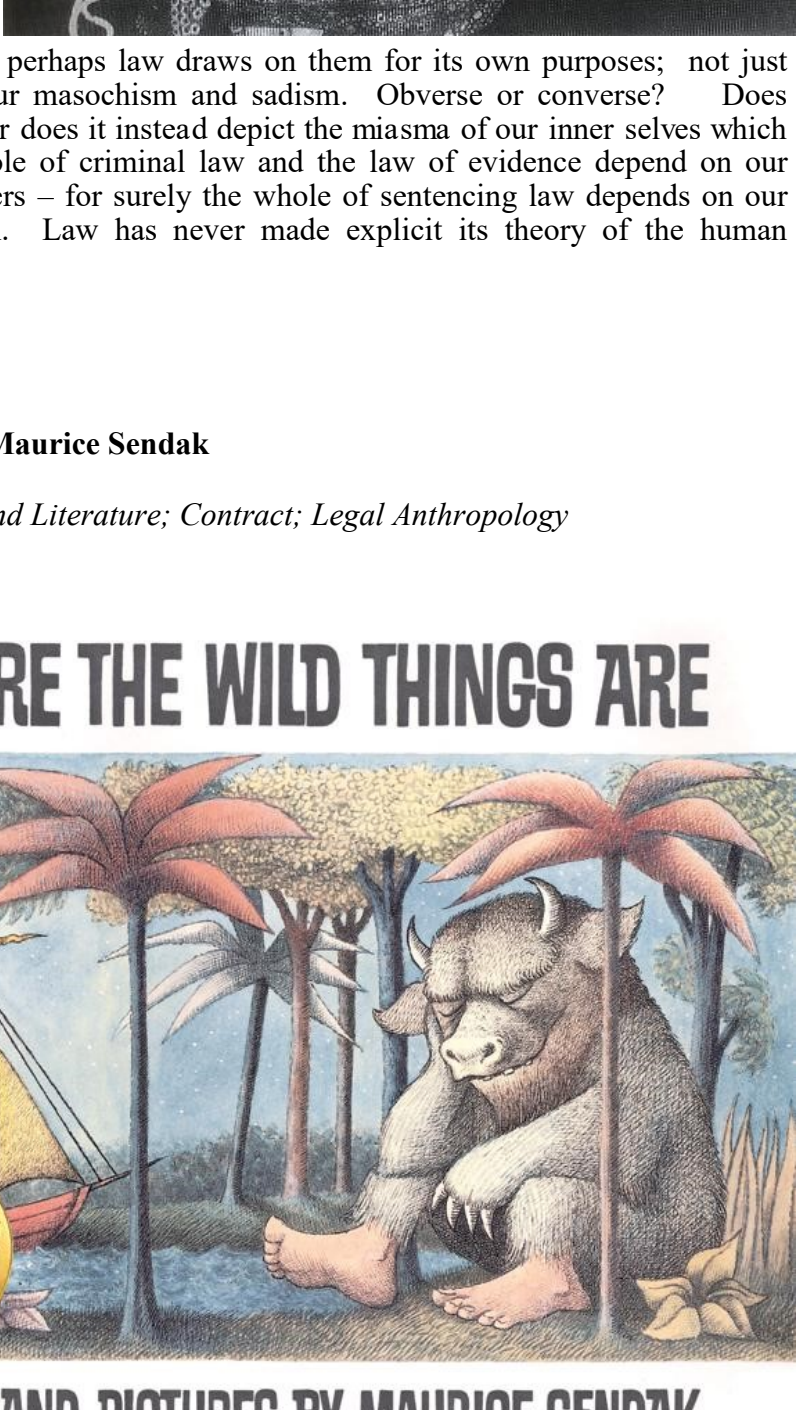
But it is also about the man from the country. As we talk about law as a system or a structure, with the excited confidence of insiders, we should never forget that this *system*, to those who are caught within it against their will, most often feels like a nightmare, its logic indistinguishable from a nightmare's relentless *il*logic. Law's subjects too often feel like law's victims; and their experience ought not to be ignored – it goes by the name of the *Kafkaesque.*

Yet perhaps we are acceding to the countryman's proferred victim-hood too readily. Does he not prohibit himself from entering or from leaving? He is like a child whose parents extend their discipline not by saying yes or no to her requests but only ever 'we'll see'. Is it that he would never be admitted to the law and he destroyed himself by refusing to abandon hope? Or is it rather that he was looking always for law as an object external to him, capable of answering his questions if only ever he reached it? Law was for this man a *noun,* a thing he didn't have but needed. Instead, he might perhaps have realized that law was already all around him and in him, a verb not a noun, controlling and modifying him, structuring his expectations and his responses. After all, when we say 'before the law,' what do we mean? Temporally, it means prior to the law; spatially, subject to the law; and politically, protecting the law. And these two men, then, the gatekeeper and the countryman, find themselves in a stand-off in which *neither* can see the law while both are ignorant of it yet already subject to it. In the "illumination which breaks inextinguishably out of the gateway to the law" we might take from the countryman's experience that though we cannot ever reach the radiance of justice, we should not wait to try. And that the law which is the instrument of this striving, while it might seem well guarded, nevertheless exists only in the manifestations and responses of our own lives.

At the same time Kafka's parable is about law itself not just in its institutional guise and its authoritarian mode and not even just as a structure of rules. Isn't the common law a series of doors in which interpretation takes place in the absence of a settled meaning, always hoping to reveal the presence of a certain justice that it never finds? Isn't literature? Isn't language? While we might think of these traditions (law, literature, language) as being general and "accessible to everyone", they are articulable only through singular, unique, and therefore every-changing instances. "This entrance was only for you," said the gatekeeper, and we might paint the story as a cruel joke that life – or law – or art – has played on the countryman. But we might also see it as an urgent entreaty to see the general in the particular, the abstract in the daily; to write not theses but stories, and to care less about abstractions than about individual lives. Though the countryman's story is perhaps still a tragedy, it is no longer cruel or bereft of meaning.

Jurisprudence, by Gustav Klimt

For: Jurisprudence; Criminal Law; Criminal Procedure; Criminology; Law and Psychology; Evidence

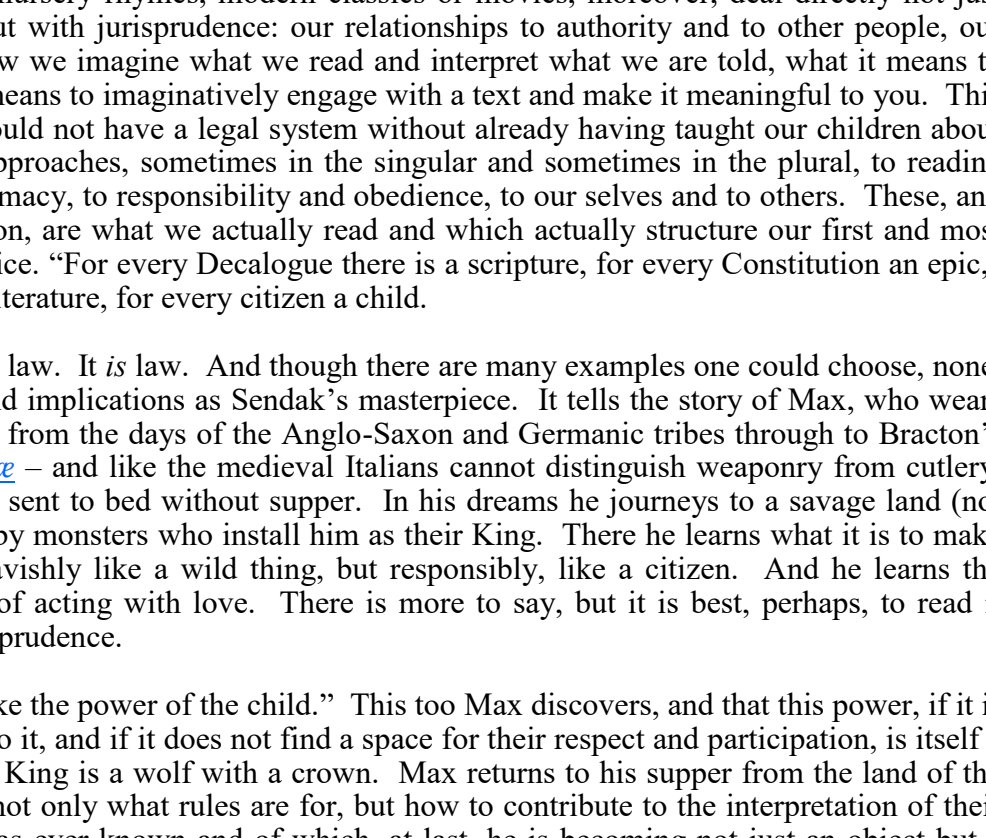


What a primal scene this is. Composed as a mural for Vienna University together with companion pieces for the Faculties of Medicine and Philosophy, they caused such an outcry that they were never installed, never again exhibited, and finally burned by the Nazis in 1944. Like law itself, and like justice, only a pale reproduction of the original remains. But this shadow reminds of us not only of the weakness of human beings, our temptations and guilty conscience and fear of retribution but similarly the weakness and guilty conscience of law. Law preys upon sin and guilt and vengeance just as it promises justice and progress and civilization. But Klimt appears to take a dim view of law's Enlightenment faith in progress. It was the same with all the 'faculty paintings' and accounts for their scandal. For Philosophy, the artist depicts not knowledge but ignorance. For Medicine, not healing but sickness. For Jurisprudence, not justice but evil. We see here the ineliminable miasma against which these disciplines struggle and cannot vanquish. What is medicine without sickness? Law without wickedness? They are not just implacable foes but complicit and necessary.

Perhaps these abject forces are not only carefully regulated (which means, preserved) by their faculties; perhaps law draws on them for its own purposes; not just repressing but playing upon our guilt, our desires, our masochism and sadism. Obverse or converse? Does *Jurisprudence* depict the origin of law or its failure? Or does it instead depict the miasma of our inner selves which law ignores, in a certain temper – for surely the whole of criminal law and the law of evidence depend on our capacity for *rational* choice – and relies upon, at others – for surely the whole of sentencing law depends on our capacity for fear, shame, retribution and subjugation. Law has never made explicit its theory of the human psychology and perhaps this is why.

Where the Wild Things Are, story and pictures by Maurice Sendak

For: Family Law; Legal Ethics; Jurisprudence; Law and Literature; Contract; Legal Anthropology



When we want to know the origin of law we ask anthropologists and theologians and sociologists and legal theorists and criminologists and psychologists and Constitutional lawyers and civil lawyers and common lawyers and criminal lawyers. They talk about savages and primitive societies and myths of origin and states of nature and *grundnorms* and they refer us to Hobbes and Hart and Kelsen and Rousseau and Freud and King Rex and 1066 and the Magna Carta and 1776 and Declarations of Independence. But why oh why do we never ask the one group we know re-enacts the emergence of law? I mean our children. Children's literature teaches and entertains, but it does something more; it constitutes them as legal subjects. Through its narrative form, it does so not by 'laying down the law' like a rule but by inciting in them a desire to be a certain kind of person. That is the real power of stories; they do not tell us what to do, externally, but transform who we are, internally. And the most powerful, or perhaps the most complex and ambiguous, or perhaps again the most flexible, of these stories become myths – a vibrating string which sets in motion a hundred harmonic frequencies whose connections have been built up over many generations. Myth is just this: the *fusion* of literature and law.

Certain children's stories, fairy tales, nursery rhymes, modern classics or movies, moreover, deal directly not just with growing up and being human, but with jurisprudence: our relationships to authority and to other people, our responses to rules and instructions, how we imagine what we read and interpret what we are told, what it means to obey and to think for oneself, what it means to imaginatively engage with a text and make it meaningful to you. This is the clay and bedrock of law. We could not have a legal system without already having taught our children about all these things – about our cultural approaches, sometimes in the singular and sometimes in the plural, to reading and interpreting, to authority and legitimacy, to responsibility and obedience, to our selves and to others. These, and not the Magna Carta or the Constitution, are what we actually read and which actually structure our first and most important grounding in law and in justice. "For every Decalogue there is a scripture, for every Constitution an epic," wrote Robert Cover. For every law a literature, for every citizen a child.

Such a children's book is not about the law. It *is* law. And though there are many examples one could choose, none, I think, is so rich with these themes and implications as Sendak's masterpiece. It tells the story of Max, who wears the wolf-suit – a symbol of the outlaw from the days of the Anglo-Saxon and Germanic tribes through to Bracton's *De Legibus Et Consuetudinibus Angliæ* – and like the medieval Italians cannot distinguish weaponry from cutlery. So he breaks his mother's rules and is sent to bed without supper. In his dreams he journeys to a savage land (not unlike my own Pacific isle) inhabited by monsters who install him as their King. There he learns what it is to make laws, and how to follow them not slavishly like a wild thing, but responsibly, like a citizen. And he learns the importance of living with others and of acting with love. There is more to say, but it is best, perhaps, to read it yourself and to see the force of its jurisprudence.

Heraclitus said, "the kingly power is like the power of the child." This too Max discovers, and that this power, if it is unconnected to those who are subject to it, and if it does not find a space for their respect and participation, is itself a lonely and meaningless endeavour. A King is a wolf with a crown. Max returns to his supper from the land of the wild things, better able to understand not only what rules are for, but how to contribute to the interpretation of their meaning within the only country he has ever known and of which, at last, he is becoming not just an object but a subject – his family.

There are many possible dimensions to this story. Perhaps the supper that awaits Max on his return has also been transformed from mere food to satisfy him to a symbol of a love that he shares. Or perhaps this food represents the exchange in return for whose nourishment Max promises to be obedient. The latter view is individualistic and sees community as founded on the mutual self-interest of contract. The former is collective and sees it based in the altruism of ethics. Open itself to different interpretations, *Where the Wild Things Are* suggests something of the recursive paradox of the birth and origin of law. Like any text, legal or fictional, how we read Max's story depends on who we are and on the stories, long ago, *we* read.

The growth and transformation of law

What is a ghost? Stephen said with tingling energy. One who has faded into impalpability through death, through absence, through change of manners ---James Joyce, *Ulysses.*

How then are we to speak about the law? How can we recognize a rule, a principle, or an argument? What does it mean to interpret or 'apply' a text, taking account of what and within what limits? Let us begin to think about law not just as an object to observe but as a language with its own dynamic and movement in which to participate. Let us find a stick and write an SOS in the sand.

My Favorite Things, performed by the John Coltrane Quartet

For: Introduction to Law; Statutory Interpretation; Torts; Contract; Obligations

What *is* interpretation? Is it obedience to a text or fidelity to an insight? Can the author or legislator control the contexts in which interpretation will take place and perhaps the changes of fortune? In what ways do iterations and reiterations of words or principles betray its original truth, and yet discover it? These questions are central to the methodology and normative vision of the common law but they admit of no easy answer, no bright lines. But without an understanding of the *relationship* between text and context, not simply hierarchical but dialogic, the common law's ability to keep foraging its memory for past cases that illuminate a constantly changing world, and its insistence that it is both genuinely responding to that world and genuinely respecting that past, will never be understood. That backwards-and-forwards movement is the essence of responsibility, and the opposite of stasis.

I know of no better way of thinking about these issues than by listening to *My Favorite Things*. Even its author is surely open to question. Richard Rodgers would probably neither like nor recognize his original tune in Coltrane's reworking of it. Perhaps, therefore, Coltrane is a judicial activist, making it up as he goes along with barely a fig-leaf of citation to disguise his invention. Or perhaps he has unearthed a truth that lay buried all along in that banal original. For jazz, interpretation is not the opposite of innovation but its form, just as tradition is not the opposite of individualism but its voice. So too for law. What is Coltrane doing here? Is it betrayal or translation? One thing for sure. The dialogue between present and past – between the original text and the multiple variants to which we are forced by the plenitude and diversity of life's challenges to respond – does not just go one way. Once we have heard Coltrane, the Sound of Music will never be the same again. We live our life through a rear-view mirror, never knowing what we meant and where we have been until after it has happened.

Requiem Mass (Introitus and Kyrie), by Wolfgang Amadeus Mozart, performed by the English Baroque Soloists and the Monteverdi Choir conducted by John Eliot Gardiner

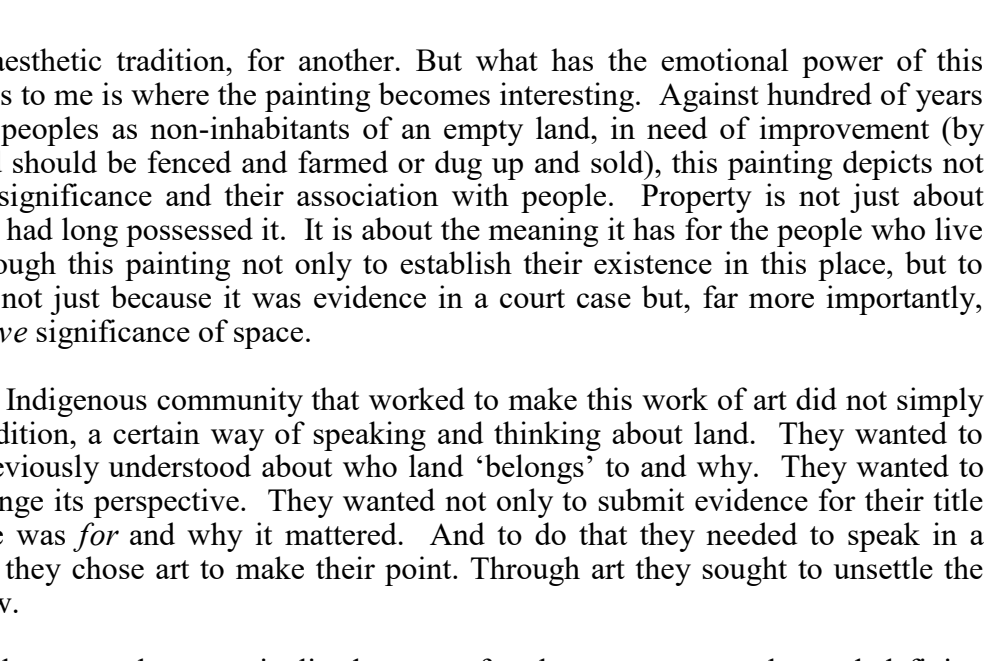
For: Wills and Succession; Trusts; Intellectual Property; Evidence; Legal History

Here is a piece about death, written by the dying. It too raises questions of authorship and interpretation. But it also reminds us that the development of the idea of textual obedience as a mark of respect for individual genius, and of the exact replication of an original as a mark of its legitimacy, was part of a widespread social change that took place in elite Western culture only 200 years ago. Our modern approach to law and texts, along with the very idea of intellectual property, was only one symptom of this wider phenomenon. So the fetish in law and music alike for textual conformity, 'black letter law', 'original intent' Constitutionalism, 'original instruments' performances, judicial neutrality, performers' technique, is not an ancient practice but a very modern aesthetic. Tradition, in short, is a modern invention. In other cultures – indigenous cultures, or Talmudic tradition, for example – and other musical forms – baroque music, or folk music, or Greek tragedy – the relationship between performer and author, production and reproduction, is understood very differently. Of this cultural shift, Mozart stands on the cusp; he was astute enough to recognize and promote his individual authority and with it, his market brand, during his life; yet like all of us he was untimely ripped from life while the Requiem was barely half-written – and it was completed by other hands.

The fraught relationship between text and truth runs like a live wire through English jurisprudence. It is centred on the agon of institutions and death, parents' wills and wilful children. And so perhaps it is worth noting that Mozart's Requiem, his last will and testament, his dying declaration, was composed the same year that the rule against hearsay was changed to allow the dying declaration of a victim to be entered as evidence in court *post mortem*. How can we speak after our death or in our absence? To what extent and why? This seems to me central to the problematic of law, for if we were always present or never died or if time stood still we would have no need of it at all.

Ngurrara Canvas II

For: Property; Aboriginal Law; Evidence; Intellectual Property



This stunning image shows us an Indigenous man dancing on a vast painting. Perhaps we might guess that the painting is a map, a depiction of his island home, or at least part of it. But the painting was itself of enormous legal significance, entered into evidence as proof of his communities' depth of attachment to the land over which they claimed title. And the painting worked – it was not just art but a *legal* document, proof of title. But what did it prove? Knowledge, perhaps, of land, for one thing. A heightened appreciation of an ancient and living aesthetic tradition, for another. But what has the emotional power of this painting to do with a legal tribunal? This to me is where the painting becomes interesting. Against hundred of years of legal blindness that saw Indigenous peoples as non-inhabitants of an empty land, in need of improvement (by which was normally meant that the land should be fenced and farmed or dug up and sold), this painting depicts not just objects in the landscape but their significance and their association with people. Property is not just about knowledge of the land as proof that they had long possessed it. It is about the meaning it has for the people who live there. The Ngurrara people sought through this painting not only to establish their existence in this place, but to justify it. The art they created is legal not just because it was evidence in a court case but, far more importantly, because it makes a claim for the *normative* significance of space.

So there is something radical here. The Indigenous community that worked to make this work of art did not simply want to participate in Western legal tradition, a certain way of speaking and thinking about land. They wanted to transform it, to say more than it had previously understood about who land 'belongs' to and why. They wanted to contaminate the legal discourse and change its perspective. They wanted not only to submit evidence for their title claim, but to change what the evidence was *for* and *why* it mattered. And to do that they needed to speak in a different language. This might be why they chose art to make their point. Through art they sought to unsettle the circular hermeneutics of the common law.

Can it be done? Can Indigenous people – or other marginalized groups for that matter – go beyond defining themselves in the legal or political categories given to them by the dominant culture, and instead change those definitions or priorities themselves? Or are they destined always to speak in the language and with the arguments of others? Does art or music help us hear a language we do not speak; or must we always interpret it back into what we already know? Is this a painting or a map or a Constitution or a treaty?

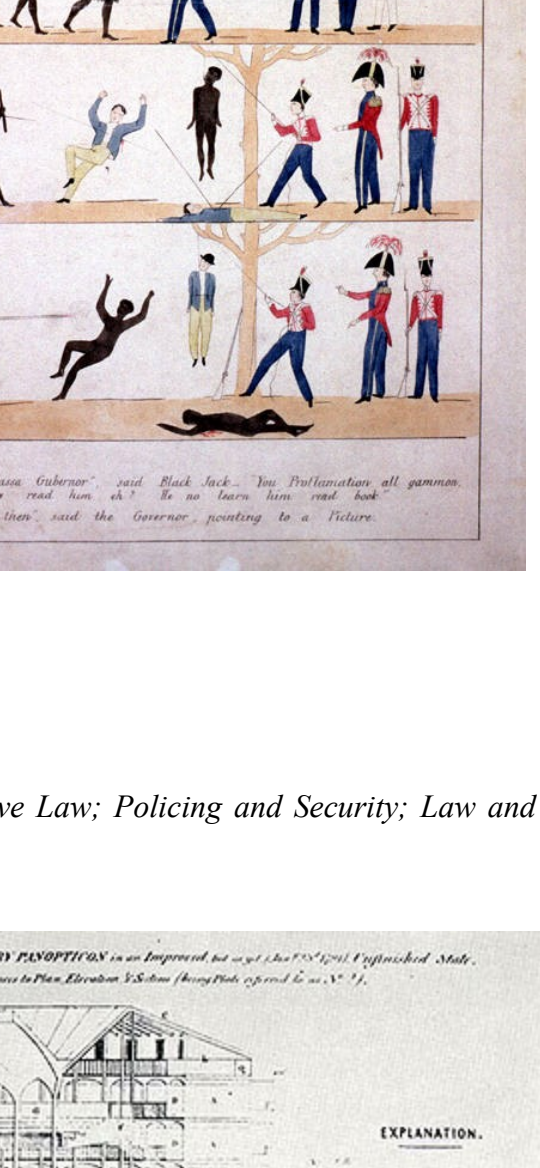
The death and ends of law

Why did we become blind, I don't know, perhaps one day we'll find out. Do you want me to tell you what I think, Yes, do, I don't think we did go blind, I think we are blind, Blind but seeing, Blind people who can see, but do not see.
---Jose Saramago, *Blindness.*

We must also ask of law not just what and how but *why*. Why do we obey the law? What is justice, and to what extent is it related to law – either law in general, or a law or laws in particular? When we speak about law's end, perhaps we are thinking about how law dies, its perversions and corruption, but perhaps also we are thinking about its purposes and goals. The end of something is both its pathology and its teleology, its death and its afterlife. By asking these questions we can move beyond those who merely observe the law, and beyond those who merely comply with or ignore the law, and join those who critique, evaluate it and even strive to improve upon it.

Governor Davey's Proclamation

For: Introduction to Law; Constitutional Law; Jurisprudence; Property; Aboriginal Law; Post-colonial law; Feminist Legal Theory; Critical Race Theory.

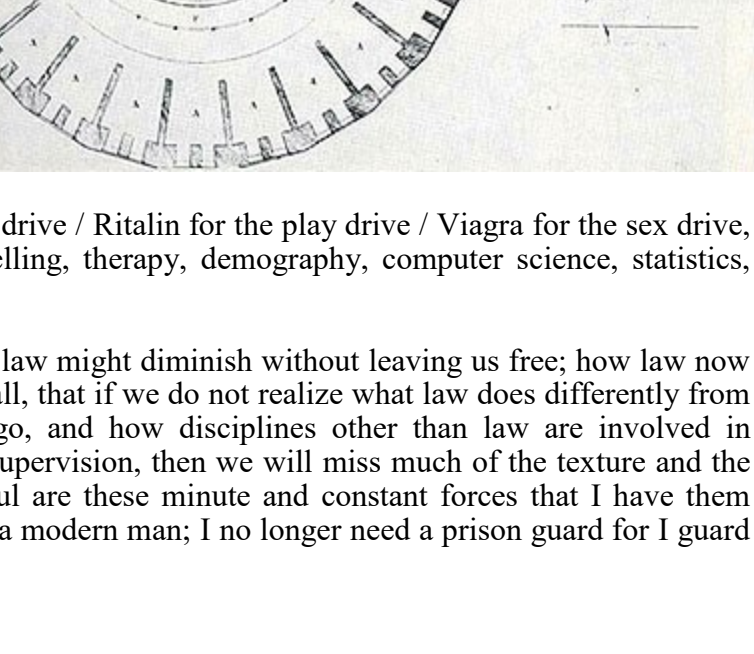


Here is a painting that is truly a legal document; a law that is also a painting. It is an icon of Australian history, and one of the British Empire's most elegant articulations of the virtues of the rule of law. But it was published (its own lying text to the contrary) by Governor Arthur in 1830 in Tasmania, at one of the darkest moments of Australia's legal history, just as the government attempted to round up the whole Indigenous population of the island and corral them like so much cattle. Does this cartoon announce the promise of the rule of law or its postponement? – does it justify British justice or reveal it to be a fraud? And what of the equality – the identity – the artist represents between races and cultures: when should the law respect our sameness and when should it cherish our difference each from each?

For all its naïvety, the artist shows here a capacity to learn and think about others that later scholars and later lawyers did not match: he consciously sought to adapt what he had learnt about indigenous bark paintings in his effort to communicate across a linguistic and cultural abyss. Is this communication, appropriation, or theft? What the illustrator meant and what the picture says might be two quite different things, as we would expect from a work of art. And that in itself is surely a lesson in the perils of good intentions from which we have much to learn as we reflect on law's consistent regulative hubris—in relation to Indigenous peoples, and far more broadly.

Panopticon, after Jeremy Bentham

For: Criminal Law; Penology; Legal History; Labour Law; Administrative Law; Policing and Security; Law and Technology; Social Security Law



Foucault built the whole of *Surveiller et Punir* on this image. It describes in one frame the way in which modern law seeks to instil discipline into the modern subject: an eye that surveys everything – a subject which, under the ever-present but uncertain possibility of scrutiny, learns to regulate itself – a power which illuminates society while it lurks in the dark like a security camera, or an intelligence operative, or data collection. This regulatory excess might be said to reach into every corner of our most private lives, constantly defining 'normality' wherever it looks, measuring us against it and finding us wanting. "Is it surprising," asks Foucault, "that prisons resemble factories, schools, barracks, hospitals, which all resemble prisons?" Continuous assessment, benchmarks quotas and production goals, monthly check-ups, genetic screening, therapy sessions, CC-TV, Muzak and product placement, parole, internet surveillance, security hot-lines, Oprah, Dr Phil and Big Brother, coffee for the drive to work / Zoloft for the death drive / Ritalin for the play drive / Viagra for the sex drive, dole diaries and welfare quarantine, social work, counselling, therapy, demography, computer science, statistics, genomics.

Here then is a way of observing how the violent power of law might diminish without leaving us free; how law now operates differently rather than absolutely. And above all, that if we do not realize what law does differently from the days in which it either locked you up or let you go, and how disciplines other than law are involved in transforming us through daily projects of regulation and supervision, then we will miss much of the texture and the interstitial exercise of power in modern life. So powerful are these minute and constant forces that I have them watching and modifying me even on my desert isle. I am a modern man; I no longer need a prison guard for I guard myself more and better than they.

'Law, Like Love', by W.H. Auden

For: Introduction to Law; Jurisprudence; Environmental Law; Constitutional Law; Law and Psychology

Law, Like Love

Law, say the gardeners, is the sun,
Law is the one
All gardeners obey
To-morrow, yesterday, to-day.

Law is the wisdom of the old,
The impotent grandfathers feebly scold;
The grandchildren put out a treble tongue,
Law is the senses of the young.

Law, says the priest with a priestly look,
Expounding to an unpriestly people,
Law is the words in my priestly book,
Law is my pulpit and my steeple.

Law, says the judge as he looks down his nose,
Speaking clearly and most severely,
Law is as I've told you before,
Law is as you know I suppose,
Law is but let me explain it once more,
Law is The Law.

Yet law-abiding scholars write:
Law is neither wrong nor right,
Law is only crimes
Punished by places and by times,
Law is the clothes men wear
Anytime, anywhere,
Law is Good morning and Good night.

Others say, Law is our Fate;
Others say, Law is our State;
Others say, others say
Law is no more,
Law has gone away.

And always the loud angry crowd,
Very angry and very loud,
Law is We,
And always the soft idiot softly Me.

If we, dear, know we know no more
Than they about the Law,
If I no more than you
Know what we should and should not do
Except that all agree
Gladly or miserably
That the Law is
And that all know this
If therefore thinking it absurd
To identify Law with some other word,
Unlike so many men
I cannot say Law is again,

No more than they can we suppress
The universal wish to guess
Or slip out of our own position
Into an unconcerned condition.
Although I can at least confine
Your vanity and mine
To stating timidly
A timid similarity,
We shall boast anyway:
Like love I say.

Like love we don't know where or why,
Like love we can't compel or fly,
Like love we often weep,
Like love we seldom keep.

WH Auden

Although I leave this poem almost to last it surfaced first from my subconscious when I surfaced on my desert isle. The poem is a thicket of connections and associations. It demands that we take seriously the many different contexts in which we speak of law, and why and how. It demands that we take seriously the purposes, often conflicting, and the desires, often inchoate, of law. Law has about it something eternal, and yet something contingent; it works on the mind and the spirit and it operates through the body. It is judgment and authority but it speaks to something deeper and better than that. It is the struggle between the "the very angry and very loud, Law is We" that declares a Constitution, a unity, a community interest, a war - and "always the soft idiot softly Me" which silently resists. It is all these things and more, and if we start to think about how these things are all connected in our imagination, we will start to see why law means more to us than some convenient regulatory structure; and why it is more than a game we learn to play so cleverly.

Yet the poem really takes off when suddenly the poet moves from what law is to what law is like. It is only as metaphor – indeed, as poetry, as art, as literature, as music – that we can glimpse the nature of law, recognize the feeling it summons up in us, and why it matters so much as an aspiration no matter how short we fall. Because I am often insistent on painting law in sombre hues, I *need* this poem to redeem its beauty and its value to us: law… like love I say.

Like love we don't know where or why,
Like love we can't compel or fly,
Like love we often weep,
Like love we seldom keep.

Law like love, I would add, is only truly born of responsibility, and that means we never cease to embrace it while cold-eyed we seek to understand our failures. Shall we teach law, like love, I ask? But how would we learn either? I have learnt more about them both on this isle of mine, but only because I miss them so. I am love-lorn and law-lorn; perhaps legal education is not so very different after all.

Beached

'All those folks are saying, "It was plague. We've had the plague here." You'd almost think they expected to be given medals for it. But what does that mean – "plague." Just life, no more than that.
---Albert Camus, *The Plague.*

My Island Home

Although this time at least I have learnt from being here, and from sitting on my beach and watching the sun go up and the sun go down. If that is not poetry and art and music, I don't know what is. The great water stretches out on every side. It changes colour hourly. It is silent and restless. Lest we forget – that law *matters* because of death and time and our care for others. Like architecture or language, it is part of the work of cultures which seeks to reach across time, and beyond life, to preserve something like a message in a bottle. Yet law's fatal mistake, over and over again, is to lose its humility. Faced with this blue-green eternity, I am made humble every day. Lest we forget – that we are not the measure of all things. That reality has a force which we cannot legislate or legislate away. Lest we forget – that we are all carried out into the deep. I dream of escape, of swimming or floating or rafting away. And I dream of staying, of building monuments and religions and civilizations. But in the end we can't stay and we can't escape. So here I sit silent and restless.