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## Introduction

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## Introduction

### **Abstract**

When we were asked by Desmond Manderson, the Managing Editor of *Law/Text/Culture*, to edit this special edition of *Law/Text/Culture* we tried to find scholars working in North America -- established and new alike - - who were either doing particularly interesting interdisciplinary work in law and the humanities or who were interested in essaying this kind of work for the first time. We looked for scholars situated both inside and outside the legal academy, and above all for people who were interested in working across different genres and modes of texts and at the same time exploring issues that implicate law in/and culture. The group of articles and essays we collected demonstrate both a wide range of innovative scholarship and a central concern with using interdisciplinary methodology to engage critically with law's cultural forms, investments, and manifestations.

## Introduction

Penny Pether and Austin Sarat

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The group of articles and essays we collected demonstrate both a wide range of innovative scholarship and a central concern with using interdisciplinary methodology to engage critically with law's cultural forms, investments, and manifestations.

Some writers use Foucauldian theory as their starting-point: Joan Dayan's "Cruel and Unusual: Parsing the Meaning of Punishment" engages with contemporary carceral practices in exploring the "Civil Death" that so sharply marks the U.S. law of crime and punishment. Julie Spanbauer's "Scarlett O'Hara as Feminist: The Contradictory, Normalizing Force of Law and Culture" does feminist work in the Heilbrun/Resnik tradition at the intersection of law and literature and law and popular culture. And yet Dayan and Spanbauer have a method in common: each shows how cultural stories, cultural practices, replicate themselves "chunk by chunk", as Terry Threadgold puts it, across time, Dayan tracing the carceral practices she criticizes to the slave law history of the United States and showing how "the shifting identity of the slave could be reborn in the body of the prisoner", Spanbauer undertaking an examination of the complex relationships between law and popular cultural stories about women at the time of the novel's action, during the lifetime of its author, and in contemporary settings in which the novel is read.

As these scholars write across history, so another group of contributors track law's movement across geographical and cultural space. David Delaney's powerful critical geographical interdisciplinary engagement with law in "Semantic Ecology and Lexical Violence: Nature at the Limits of Law" explores the law's production of "nature", essaying a particularly forceful critique of Justice Antonin Scalia's opinion in *Sweet Home*. The influential law and health care policy scholar Bryan Liang teamed with A.C. Liang, a Berkeley-trained sociolinguist, to bring critical linguistic scholarship to bear in a critique of the U.S. evidentiary rule on dying declarations, exposing the Anglocentric and Christian cultural assumptions that underpin it in "Lies on the Lips: Dying Declarations, Western Legal Bias, and Unreliability as Reported Speech". Ann Kibbey's "The Semiotics of Photographic Evidence" takes a lead from Barthes and uses the filmic text *Before the Rain*, both an exploration of the atrocities of the wars in the former Yugoslavia and a critique of the United Nations, as a means of interrogating another aspect of the law of evidence: this time photographic evidence. Louis Wolcher's philosophical essay, "Language as Mimesis" draws like Bryan and Anita Liang's critique of evidence law on theories of language and on non-Western perspectives, here those generated by aesthetics; like Kibbey, he engages with problems of filmic representation. Wolcher's project, however, is radically different: he makes a complex argument against "petrifying the world of becoming", asserting that "the law of becoming, taken as a characterization of the manner in which beings are, sweeps everything within its scope, language included."

Mark Sanders' "Interdisciplinarity as Reading: Truth Commission Journal and Notes", like Kibbey's essay, deals with the representation of atrocity in its aftermath. Sanders' piece, like Wolcher's (although this is their only commonality) is an exploration in genre; in turn it seeks to break ground by theorizing both interdisciplinarity and its ethics. One of his starting-points in this theoretical project is Peter Goodrich's work on interdisciplinary interventions in law. Goodrich, too, is represented in this issue, and likewise engages theory and praxis. His "Rhetoric and Somatics: Training the Body to do the Work of Law" is an extension of his early work on legal rhetoric in the direction of his more recent writing on the laws of love. Exploring the ways in which the practices of learning and reading and speaking and embodying the law "confine... the body so as to constrain the... soul," Goodrich reads Abraham Fraunce's *Lawiers Logike* "against the grain" as a subversive critique of the law's conventional training of the body in the "somatic techniques of rote learning" and "the violence of legal textuality and the

compulsion or somatics of interpretation." Goodrich makes an argument for a return to the teachings of rhetoric as a means to enable the development of what Fraunce calls the "euphantasiste" lawyer, produced by an alternative to the present modes of training the body "to do the work of law": one which seeks rather "through scholarship and pedagogy to align the text of law with the eloquence of disciplines that address the care of the soul."

While friendship is an underpinning ethic of Goodrich's essay, it is at the center of Adam Thurschwell's "Friendship, Tradition, Democracy: Two Readings of Aristotle". Likewise, both meditate on poetry and its relationship with law and with politics. Taking up Derrida's lead, Thurschwell argues that Anthony Kronman's work fails in its attempt "to enlist Aristotle...to restore the legal profession to its assertedly traditional status as a noble calling that has a legitimate claim to political leadership in our democracy." He outlines an ethical-political philosophy that takes place at the intersection of Levinasian ethics and Kantian liberalism. Thurschwell's project is a radical one, and like many of the writers represented in this volume, his use of theory is directed squarely at praxis that might give rise to "the possibility of justice." He argues that the liberal, traditionalist anxiety about modernity's impact on law, which characterizes the American legal academy, might productively graft on itself a Levinasian ethics to achieve a democratic politics characterized by "ethical singularity and responsibility", a politics of "hope and faith." As Thurschwell makes the case for a transformative democratic politics, L.H. LaRue, in "Discovering a Judicial Story", makes the case for a transformative judicial practice. This piece, considerably more allusive than Thurschwell's, essays a close reading of Justice Stevens' majority opinion in *U.S. Term Limits, Inc. v. Thornton* as a means to demonstrate how surface and hidden stories can be read in Supreme Court opinions; LaRue then gestures towards the possibilities offered up by such a reading practice.

In "Admitting the Stranger: The Rule of Law, the Ethics of Medical Hospitality and the Borders of Governmental Imagination in Nineteenth-Century France", Sylvia Schafer also begins with Levinas, using her examination of the laws of medical hospitality in mid-nineteenth century France as "a compelling instance of a governmental struggle with hospitality that should be of broad interest to those concerned with the discourse and comportment of modern democracies as they face the suffering of all those officially classified as 'outsiders'." Drawing on the work of Marianne Constable, she makes a powerful case for the present utility of enquiries "staged in the past": they give us "opportunities to estrange ourselves from naturalized ways of talking and thinking about a given issue, and so, perhaps, begin to imagine otherwise." Susan Sage Heinzelman takes a radically different approach than Kronman's to the "problem of the lawyer." Her "Riding Backward: Desire and Law" argues that in the period culminating in the early nineteenth century there was a "changing representation of 'the law', that corresponded with "the intensification of commercial enterprises, assisted by the power of the printing press," which in turn demanded "a more stable and centralized judicial system." Her article traverses fiction, caricature, and a self-help manual for women, *A Treatise of Feme Covert: Or, The Lady's Law* (1732), concluding that the eighteenth century in England saw a transformation from the representation of law as "popular, custom-based, identified with the lower social orders and therefore dangerous, and marked as female," to one that was "elite, statute-based, identified with upper social orders and therefore stable, and marked as male", a transformation in which literature, like law, participated.

If Adam Thurschwell looks to Levinas and Derrida to argue for a politics of hope, Daria Rothmayr's "Left(Over) Rights" situates itself squarely in the North American critical legal tradition, tracing the history of critical race theory work in law in the U.S and re-reading Duncan Kennedy's return in *A Critique of Adjudication* to the debate over rights and "rights-talk" that had split Critical Race and Critical Legal Studies scholars. While Kennedy's conclusion was to advocate "a 'post-rights' approach of tactical transgression", Rothmayr makes the claim that, despite the criticisms of Kennedy and other Critical Legal Studies scholars, rights talk might have both rhetorical and strategic uses for communities of color, and might also be used, following Kennedy, as "a way of subverting conventional rationalist assumptions about the relationship between race and law."

In closing this introduction to the special North American Edition of *Law/Text/Culture*, we wish to thank Eleanor Lee, a second-year JD student at American University's Washington College of Law, for her invaluable assistance with the editorial aspects of this project.