Chapter 12

Reading slowly
The law of literature and the literature of law

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To fill a Gap
Insert the Thing that caused it –
Block it up
With Other – and ’twill yawn the more –
(Emily Dickinson 1999: 290 [647])

Reversals

As for law and literature, there are doubtless differences to be observed – the bailiff does not usually come to the door armed with a poem – but here my impelling concern will be with similarity. Not, or not just, the similarity usually found in the combining of law and literature, where each at times can instance the other. And not even, or not just, the similarity that comes from an epochal sameness that the contents of law and literature may come to share (Reichman 2009). Rather, the focus will be on a constituent correspondence between law and literature. That prospectus goes against several grains where law is starkly set against the dangerously unbound creativity, fictive quality, and evanescence of literature – a contrast often instanced in Plato’s uneasy aversion to poetry (1993: ch. 13 [Book X]). Instead, it is this very creativity or fictive quality, so my argument runs, that law and literature share. There could, then, in this chapter be a sustaining affinity with ‘the more radical teachings of the law and literature school, towards an understanding that one can read law as literature and literature as law’ (Tuitt 2004: 78; see, for example, Heinzelman 2010: 104–14).

The strain on originality is lessened further in companionable claims made by archons of my argument. Taking only a few of these claims for now, Derrida would see law as ‘fictional’, as ‘artifice’ (2002a: 240). Likewise, he finds that ‘narrativity and fiction’ are at ‘the very core of legal thought’ (1992: 190). And for Nancy the law comes to be ‘modeled or sculpted (fictum) in terms of right’, and thence ‘[j]urisdiction is or makes
juris-fiction’ (2003: 157). As the conveniently stark notion of the legal fiction would suggest, law can hardly be outdone in making similar claims for itself. To take an instance from a period of Roman law, for some claims it was the case that one had to be a Roman citizen, but eventually for this purpose foreigners were simply deemed citizens while ‘the letter of the law’ remained unchanged (Maine 1931: 21–2). The law in its very stability, in its posited, its ‘positive’ quality, is fictional.

A precarious originality may emerge when considering, by way of literature, what this fictive quality of law may be. As the legal fiction would intimate, law fuses its seeming stability, its determinate ‘order’, with a receptive creativity. The very rule of law fitfully characterizing modernity, while elevated in its endowment of stability and predictability, must also respond as ‘newness enters the world’ (Rushdie 1991: 394, for the phrase). Otherwise, the law would cease to rule a situation changing inexorably around it. And with modern law, a resolution or determination of this divide cannot be sought by reference to transcendent determination.

This allusive introduction – ‘some familiar strokes and faint designations’, to anticipate Tristram Shandy (Sterne 1967: 94) – can at best evoke the challenge of saying what the fictive quality of law is. The difficulty is compounded when that quality has in some way to be experienced or worked. Yet some grasp of it may be derived from showing it to be integral to modern politico-legal formation and in discerning what disasters would ensue if it were absent.

**Literature I**

Spender told Auden he wondered whether he, Spender, ought to write prose. But Auden put his foot down. ‘You must write nothing but poetry, we do not want to lose you for poetry.’ ‘But do you really think I am any good?’ gulped Spender. ‘Of course,’ Auden frigidly replied. ‘But why?’ ‘Because you are so infinitely capable of being humiliated. Art is born out of humiliation.’

(Fenton 2001: 209)

And as the Eliot of ‘Burnt Norton’ would confirm: ‘Humility is endless’ (1974: 199). Or, in Nancy’s terms, poetry involves ‘an effacement’, a withdrawal (1993: 308–9). All of which can be put more affirmatively. The poet, says Rilke, is ‘he or she who is ready for everything’ (see Fenton 2001: 248). And even submerged within a grim modernity, Pessoa/Caeiro would still want to be ‘everyone and everywhere’ (1998: 90). Or there is Muriel Spark’s exuberant ‘everything happens to an artist’ (2007: 87). In a somewhat more muted vein, Conrad extends the imperative to fiction specifically – fiction that
demands from the writer a spirit of scrupulous abnegation. The only legitimate basis of creative work lies in the courageous recognition of all the irreconcilable antagonisms that make our life so enigmatic, so burdensome, so fascinating, so dangerous – so full of hope.

(see Miller 2009: 48)

This resonates readily with Keats’s ‘negative capability’, a ‘quality’ found ‘when a man is capable of being in uncertainties, mysteries, doubts, without any irritable reaching after fact and reason’; and despite naming the capability as ‘negative’, for Keats this was a positive ‘quality’ that ‘went to form a Man of Achievement, especially in literature’ (1947: 72). And if that is all starting to smack too much of the evanescent, there is the palpable corrective of that undoubted ‘man of achievement’ Tristram Shandy (Sterne 1967). If one were to rely on his title, Sterne is going to reveal the life and opinions of Tristram Shandy, Gentleman, but the novel tells us little of either explicitly. Yet devotees of the novel do feel they know Tristram Shandy, know him as a totally engaging character and narrator. The genius of Sterne gives us Tristram Shandy in person, as it were, through the narrator’s receptive regard for other characters. Even with its notorious playing with possibility, its shifts in subject, in tone, time, and place, Tristram Shandy is a work which either as a whole or through its particulars has a felt and formed quality.

Yet for all the force of literary formation, there remains still an insistence of the negative. A much-noted concentration of the case is Auden’s ‘poetry makes nothing happen’ (1979: 82). His meaning is rather more pointed than the one usually extracted from this line. It is not that nothing ever happens as a result of poetry. Quite the contrary. If one looks at where Auden says this, the tender yet monumental ‘In memory of W. B. Yeats’, we find him calling on poetry to make much happen. What Auden means with ‘poetry makes nothing happen’ is that it brings nothingness into happening. In the same poem he describes poetry as ‘[a] way of happening, a mouth’ (ibid.: 82). Or as Blanchot puts it even more expansively, ‘Nothingness is the creator of the world in man’ (1999: 398–9). Or we have nothing as our ‘flowering’ in Celan’s ‘Psalm’ (2002: 153). (The evocation of nothing can make the academic feel the need of copious reference.)

Literature II

This is yet a ‘positive emptiness’ (Raine 2005: 34). For Blanchot, it is an ‘opening’ to what is beyond, to alterity and possibility, to ‘what is when there is no more world’, or ‘to what would be if there were no world’, to the ‘void’ (1999: 388). But this void is of the kind encountered by Blanchot’s protagonist in The Madness of the Day for whom it was ‘disappointing’,
a void which inexorably becomes a presence and protean: ‘one realizes the void, one creates a work’ (1981: 8; 1999: 395). Between the realized and the unrealizable, between the appropriated and that which is still ‘ours for being nobody’s’, there is a ‘shifting’, a ‘passing’, a ‘movement’ impelled by ‘a marvellous force’ which is the impossibility of the movement being otherwise (Blanchot 1988: 43; 1999: 363–5, 369, 387–9). This is an activity always situated, an emplaced ‘affirmation’, ‘an operation’ that cannot be separated ‘from its results’ (Blanchot 1999: 365, 397). Literature for Blanchot, then, is a work like any other – he instances building a stove – even if it is such ‘to an outstanding degree’ (1999: 371).

Admittedly, a work of literature can assume a stove-like solidity: witness the tenacity of literary forms and genres – a tenacity that spectacular deviations serve to confirm rather than confound. Yet, Kermode would add, ‘we should expect only the most trivial work to conform to pre-existent types’ (1967: 24; cf. Plato 1970: 91–2 [656–7]). And could any work thoroughly subordinated to some imperative be called literature? Such a question could be provoked by, say, ‘literature’ written with the overriding instrumental aim of promoting some cause. Pushing the point to an extreme, the insistently literary has found itself set against totalitarian regimes, regimes that characteristically seek to appropriate the aesthetic.

This resistance to containment emanates intrinsically from the literary work, and not just from ‘its measurelessness … hidden within the work’ (Blanchot 1982: 171), but also in the very modes that would delimit it. ‘We cannot, of course, be denied an end; it is one of the great charms of books’, pronounces Kermode, ‘that they have to end’, only then to go on and charm forth this conclusion: literary ‘[e]nds are ends only when they … frankly transfigure the events in which they are immanent’ (1967: 23, 175). The delimiting yet generative force of ending, of completion, is poignantly evoked in Auerbach’s epilogue to Mimesis (1968), where he apologizes at length for the deficiencies of the book brought about by his writing it in Istanbul, where he was an exile from Nazi Germany and where his access to apt scholarly sources was limited:

[I]t is quite possible that the book owes its existence to just this lack of a rich and specialized library. If it had been possible for me to acquaint myself with all the work that has been done on so many subjects, I might never have reached the point of writing.

(1968: 557)

The epigraph to this great work is Marvell’s opening line ‘Had we but world enough and time…’

To take for now just one further generative limit of the work, one that perhaps focuses most canonical constriction, in asking, ‘What is an author?’ Foucault distances himself from those who would pronounce the
author dead, and he does so by advancing the author as a ‘necessary and constraining figure’ (1988: 209). This comes from the same Foucault who charged, in *The Archaeology of Knowledge*: ‘Do not ask who I am and do not ask me to remain the same: leave it to our bureaucrats and our police to see that our papers are in order. At least spare me their morality when we write’ (1974: 17). Yet in this work we find also a similar and quite explicit alternation in Foucault’s regard for the author’s oeuvre, an alternation between its multiple diffusions and its being a set construction (ibid.: 23–5). And both dimensions are somewhat accommodated in Foucault’s once proposing a law that would break up the oeuvre and counter the ‘grotesque’ uniformity that consolidates in reading several of an author’s books (1989: 315). This law would ‘prohibit the use of the author’s name more than once, with the additional right to anonymity and the use of pseudonyms, in order that each book might be read for itself’ (ibid.: 315). That would, supposedly, enable the work to be read in the way of the ‘first book that one writes’, a book that is read ‘because one is not known, because people don’t know who we are, and it is read in disorder and confusion’ (ibid.: 315). Yet familiarity does not necessarily breed uniformity, grotesque or otherwise. A spectacular instance of ambivalent effect is offered with the ‘books’ of the Abrahamic religions managing to generate both mass uniformity and conflicted diversity, and both at the same time. The formative force of the reader starts to come into contention.

**Reading**

…you read me, and I write you. *Somewhere*, this takes place.

(Nancy 2008: 51, emphasis in original)

The fragile author has been conspicuously beleaguered by varieties of reader response theory, a theory that would consign the work to effective existence only as read – as a ‘performance’ by the reader (Blanchot 1999: 364; and see Kivy 2006). The work comes to existence only as it goes forth ‘to find the reader’ (Auerbach 1968: 557). Yet there is still something that has to be brought to an end and assume some determinate existence, something which is then impelled searchingly into the world. The work, it may readily be granted, cannot exist apart from the practical infinity of its readership, yet the work does not simply dissipate in relation to its readers but remains a focus for the diversity of responses to it. Your reading and my reading will be different, but in some sense we read the same thing. Still, the work now in the world cannot exist apart from the relation to its readers. That relation, in turn, will generate an endless variety of determinate existences of the work, concentrations of professional regard for example. Yet the work is not, or not just, enclosed in any particular reading, but remains a continually formative opening onto what lies
beyond its realizations (Blanchot 1981: 16; 1999: 365–6). In always extending receptively beyond any determinate realization in its reading, the work does not become simply evanescent but continues also to assert an existence that stills the importunate world and makes for some contained determinacy, transient as that will be in turn.

Reading, then, comes to have the same constituent dimensions as the ‘original’ author. ‘What does it matter that there was one to write and another to read?’, asks Le Clézio: ‘In the last resort, in the very last resort, they are one and the same’ (2008: 3). In reading, with Alberto Manguel, ‘we are transformed: reader into writer into reader’ (2010: 181). And for Blanchot, the work ‘reveals itself within’ some such ‘shared existence’ (1999: 365). Or in terms of Shandean ‘just boundaries of decorum and good breeding’:

The truest respect which you can pay to the reader’s understanding, is to halve this matter amicably, and leave him something to imagine, in his terms, as well as yourself.

For my own part, I am eternally paying him compliments of this kind, and do all that lies in my power to keep his imagination as busy as my own.

(Sterne 1967: 127)

Indeed, the work may go into the world carrying a large expectation of the reader’s creativity. So, it could be spare, ‘minimal’, in its content. Or the work could leave it to the reader to make connections between its different parts or perspectives. And the imperative of interpretation can be heightened by incompleteness. Apparently the earliest written version of both the Koran and the Hebrew scriptures ‘lacked vowels; the words aided recitation but weren’t definitive. No doubt later clerics, in choosing which vowel to put in the blank, occasionally found themselves with real semantic leeway’ (Wright 2009: 373). All of which slants matters towards the reader’s rendering the work determinate. Such decisiveness is gently confronted by Nietzsche’s injunction to read slowly, and indeed to write slowly – an injunction to counter ‘an age of “work”, that is to say, of hurry, of indecent and perspiring haste, which wants to “get everything done” at once’, an injunction ‘to read slowly, deeply, looking cautiously before and aft, with reservations, with doors left open, with delicate eyes and fingers’ (Nietzsche 1982: 5; see Goodrich 2005: 189–97). The slower the reading, the greater the receptiveness to the work. Not that this receptiveness can encompass the work. By itself it would generate nothing but dissipation, and necessary as such ‘indecisiveness’ is (see Nietzsche 1968: 169–70 [52]), the receptive alone cannot encompass anything. ‘In any case’, the reader’s absorptive ability is limited, even as the possible readings of the work are limitless. A reading, as Nietzsche would also have it, can only
ever be ‘approximate’, and we must thence ‘invent’ it – ‘people are much more artistic than they think’ (2002: 81–2 [192]). Like the author, and recalling Auerbach’s exilic genius, in the limiting the reader creates. A summary statement of the case: in his panegyric On Reading, Proust demotes his hero Ruskin to the extent of rejecting his advocacy of subservience to the author, along with Ruskin’s assuming the ‘continually open’ in reading (1984: 23, 25). While embracing a profound responsiveness in reading, Proust would affirm that we ‘remain ... on our own’, that we make the reading – ‘create it for ourselves’ (ibid.: 26, 30). The panegyric thence becomes one to reading as self-forming. No less than the author (see Clarkson 2009: ch. 5), the reader’s going to the work is to a finding of self. The reader does not bring to the work only an already shaped layering of self, some template of truth.

In sum, and in writing/reading, we are left with ‘this strange institution called literature’ (Derrida 1992: 36), an institution whose work must be delimited and illimitable, determinate and indeterminate, and both at the same time. Perhaps, then, an affinity with the resolving law may help us engage with these seeming contraries.

The law of literature

...sense the solving emptiness
That lies just under all we do,
And for a second get it whole...

(Larkin 1964: 33)

Summarizing with distressing brevity much of the argument so far, Derrida finds that this same strange institution ‘allows one to say everything, in every way. The space of literature is not only that of an instituted fiction but also a fictive institution which in principle allows one to say everything’ (1992: 36 – his emphasis). He then somewhat abruptly introduces the law, the law as delimiting, and does so by way of a contrast with ‘[t]he law of literature [which] tends, in principle, to defy or to lift the law’, only to add immediately that the law of literature ‘allows one to think the essence of the law in the experience of this “everything to say” ’ (ibid.: 36).

Affinities loom, and these are soon amplified. In the same volume, Derrida comes to consider ‘the law of genre’ (1992: 221). The genre-marker of a literary work will identify with the work yet also be set apart in identifying it:

[T]his singular topos places within and without the work, along its boundary, an inclusion and exclusion with regard to genre in general, as to an identifiable class in general. It gathers together the corpus and, at the same time, in the same blinking of an eye, keeps it from
closing, from identifying itself with itself. This axiom of non-closure or non-fulfillment enfolds within itself the condition for the possibility and the impossibility of taxonomy. This inclusion and this exclusion do not remain exterior to one another; they do not exclude each other. But neither are they immanent or identical to each other. They are neither one nor two. They form what I shall call the genre-clause, a clause stating at once the juridical utterance, the designation that makes precedent and law-text, but also the closure, the closing that excludes itself from what it includes (one could also speak, without winking, of a floodgate [écluse] of genre).

(1992: 230–1, emphasis in original)

The wink could be taken as mischievous. In English, but not French, legal argumentation, the image of the floodgate is often invoked as a caution against change – change that could, by opening the floodgates, be overwhelming. Yet it is in both a containing and an uncontained opening, as well as in the generative ‘contamination’ between the two, that the floodgate becomes a figure not only of genre but also of the law. There is both a dimension of containing division and one of uncontained combining, and inseparably, which means there may be too much fixity and division in the floodgate metaphor since these two dimensions combine repeatedly in both literary and legal invention. A better, if less enjoyable, translation could have been a canal lock. When considering legal invention in the next section of this chapter, I will return to Derrida’s compressed elegance here. As a prelude to that return, the law of literature will first be somewhat refined.

There is an initial difficulty. Given the seeming irresolution of the conundrum just outlined – the ‘genre clause’, in sum, being ‘neither one nor two’ – how can there be a cohering literature that can be given or give law? We have seen already that literature rejects instrumental containment, and likewise Derrida would want it to be free from coherence in terms of ‘thematism, sociologism, historicism, psychologism’ (1981: 70). Literature, we have seen also, rejects any ultimate containment. Hence, to counter a common instance, the novel as genre cannot simply be a product of the emergence of ‘bourgeois society’, strong as its connections to that emergence may have been (cf. Said 1993: 84, 92–3). Indeed, the novel has provided the paradigm of a literary modernism. Whence, as Kundera has it, ‘the author was no longer content with a mere “story” but opened windows onto the world that stretched all around’ (2008: 153). Or, more engagingly, if still too simply in its contrast with the pre-modern: ‘A magic curtain, woven of legends, hung before the world. Cervantes sent Don Quixote journeying and tore through the curtain. The world opened before the knight errant in all the comical nakedness of its prose’ (ibid.: 2008: 92). The related and standard point is that Cervantes introduces a
modernist individualism, a questioning of everything, including the genre doing the questioning. Yet this is an individualism of connectedness, of relation – something attested in the disasters of Quixote’s blinkered adherence to outmoded codes and perceptions. It is in modernity, as Nancy has it, that literature would ‘seem devoted to communicate the common and to offer itself thus as its own space, as the in and the between of the common’ (1992: 386, emphasis in original).

Still, the unencompassed world, the uncontainable, without more, lacks the concentrated efficacy to give law, and law in its commonality. Yet further, there were and are ‘laws and conventions which fixed what we call literature in modernity’ (Derrida 1992: 40). What happens, then, is that literature ‘plays the law’, and in so doing takes on a ‘power to produce performatively the statements of the law’ (ibid.: 216). So, what is ‘proper’ to, say, literary form is a matter of ‘law’ – ‘the legislative, form-grounding aspect’ of literature, even as the law of literature is ‘inexhaustible’ (Heidegger 1991: 130–1, 212). The literary–legal determination will straddle, in Derrida’s terms, ‘both sides of the line’, the line that will separate the form from ‘its’ alterity, holding both all the while in a generative relation (1992: 216; 2002a: 269–70). Such separation and such holding require of literature, then, that it be an ‘institution’, one ‘with authorization to say everything’ (Derrida 1992: 36–7).

With this authorization, literature ‘finds itself’ far from being confined to giving formed law to itself. The inevitable next sentence has to be Shelley’s: ‘poets are the unacknowledged legislators of the world’ (1911: 58). In a like exaltation, literature is directed by Heidegger ‘to prepare and ground standards and laws for historical, intellectual existence’ (1991: 92). An instance may prove more pointed. Each of the tragic plays surviving from ancient Athens ‘was originally written for a single performance in a competition at the Great Dionysia, a festival to the god Dionysus’ (Goldhill 2007: 120). The festival was ‘truly a civic event’ in which the tragedies were to promote normative imperatives of political and social order (ibid.: 123). Yet this was decidedly not narrowly didactic ‘political theatre’. Rather, conformity was mocked and debate was generated with a ‘political seriousness’ that would, in Goldhill’s estimation, challenge a modern ‘sense of political order’ (ibid.: 123–4).

Law

But neither arrest nor movement. And do not call it fixity…

(Eliot 1974: 191)

At the outset, archons of my argument summarily inverted the story so far when they invoked law as literature, as with Nancy’s ‘juris-fiction’ (2003: 157) and Derrida’s finding that ‘narrativity and fiction’ occupied ‘the very
core of legal thought’ (1992: 190). Coming to the crux, the engagement so far with literature as law now informs the concern with law as literature, and the object of the exercise at last emerges – finding what literature, or the literary, tells us about law. In the previous section, Derrida encapsulated the comparison in an elegant topos of ‘the genre-clause’, an ordering category of literature which he endowed with ‘juridical’ content (1992: 231). Aptly enough, there is a mirroring passage in Derrida’s ‘Force of law’ (2002a: 257). That passage comes as a culmination of Derrida’s account of justice and law and of the distinction, and ‘lack’ of distinction, between them. Before we come to this passage and its pivotal part in my argument, something needs to be said about this distinction.

In ‘Force of law’, Derrida would want to ‘make explicit or perhaps produce a difficult and unstable distinction between justice and droit, between justice (infinite, incalculable, rebellious to rule and foreign to its symmetry)’ on the one side and, on the other, ‘the exercise of justice as law or right, legitimacy or legality, a … calculable apparatus…, a system of regulated and coded prescriptions’ (2002a: 250). This justice for Derrida imports an unlimited responsiveness to the other, an ‘other’ that extends to an illimitable, an uncontained alterity or otherness. This unlimited responsiveness of justice, its being ready for anything, is impossible ‘in itself’, always beyond attainment. To be made possible, become existent and take on operative force, justice must be ‘cut’ into, limited, and thence in a sense denied (ibid.: 252). For Derrida, the decision creating law cuts into and enacts justice, even while denying justice as illimitably responsive. In this, ‘law is the element of calculation’ (ibid.: 244). Law, in the legal decision, can never be ‘presently and fully just’ (ibid.: 252).

Yet if law is necessary for justice, justice for Derrida is also necessary for law. Law ‘itself’ must ever inchoately respond to an unattainable justice, to a justice that ‘exceeds law but at the same time motivates movement, history, and becoming of juridical rationality’ (2002a: 252; 2005: 150). In rendering justice, making it possible, law must somehow extend beyond justice and bring it to bear. In all, although ‘justice exceeds law and calculation’, calculable law has also to be conceived as ‘exceeding’ justice, and ‘one must [il faut] negotiate the relation between the calculable and the incalculable’ (ibid.: 257, emphasis in original). Snatching a segue, I must now focus on the imperative quality of this process and then on the negotiated quality of its outcome.

Derrida’s enigmatic genre-clause provided an instance of the ‘marking’ of the literary by way of combining its constituent dimensions – combining the determinate gathering ‘together [of] the corpus’ with a holding of it open, responsive, to alterity, a keeping of ‘it from closing, from identifying itself with itself’ (1992: 231). And there is a simultaneity to this combining. It happens ‘at the same time, in the same blinking of an eye’ (ibid.: 231). Likewise with law: it is a calculable determinacy, yet this determinacy
must be held in a ‘suspense’ allowing law to empty itself of existing content, respond to alterity, and do so utterly (Derrida 2002a: 269). This constituent combining becomes a ‘moment of law’, a moment instanced in the legal decision, a moment which ‘takes place and never takes place in presence’ (ibid.: 269–70, emphasis in original). Reversing this perspective through the lens of responsiveness to what is ever beyond, we may, with Blanchot, ‘grant that law is obsessed with exteriority, by that which beleaguer it and from which it separates via the very separation that institutes it as form, in the very movement by which it formulates this exteriority as law’ (1993: 434).

The combinatory force of these dimensions and of the ‘presence’ and ‘form’ that this force generates can all be sensed by posing its absence. This is a sense in which the existence of each dimension becomes a condition of the existence of the other. If the holding open to alterity were simply receptive beyond any determinacy, it could not be realized. And for the determinate dimension to stand alone, it would have to be a fixed and total comprehension. The truth of such a comprehension would for Nancy be ‘the truth of death’, death as terminal (1991: 12). The like inexorability would attend the putative containing of some determinate part immune to the formative force of ‘exteriority’ since a totalized comprehension would be needed both to hold the part in an unyielding stasis and to predetermine its relation or possible relation to everything else (cf. Derrida 1979: 125). The inability of either dimension to subsist without the other is underscored by the simultaneity touched on a short while ago – the simultaneity of constituent dimensions of both the genre-clause and ‘the moment of law’. There is ‘no time’ in which either can exist apart from the other.

Matters obviously are becoming too resolved for a Derridean reading. There has to be some failure in the imperative that combines dimensions, preferably a failure in which that imperative is reversed, a failure producing a counter-imperative in which the dimensions ‘must’ not be combined. And such there is. With the genre-clause, for instance, the dimensions can be neither ‘immanent to’ nor ‘identical to each other’ (Derrida 1992: 231). Nor can their mutual involvement be simply in part – a compromise or trade-off of some kind. The separation must be complete. Still, ‘one must . . . negotiate the relation between’, in effect, law and justice (Derrida 2002a: 257, emphasis in original). The composition of that negotiation begins to look crucial. It does raise a further and telling dissonance.

Derrida often directed us to negotiate, négocier, comparable divides. On one such occasion in an interview with Nancy, and to the latter’s evident surprise, after emphasizing his use of négocier Derrida proceeds to render it in terms of ‘une transaction’, to render it as something that operates as a compromise, as a mutual accommodation and transformation (Derrida and Nancy 2004: 179–80). Some reassurance to the contrary could have
been got from Derrida’s having said elsewhere that ‘[t]here is negotiation when there are two incompatible imperatives that appear to be incompatible but are equally imperative. One does not negotiate between exchangeable and negotiable things’ (2002b: 13). The imperatives in contention here have already been visited. The determinate cannot simply compromise with the openness and hold something of itself back ‘in part’ – still ‘identifying itself with itself’ (Derrida 1992: 231) – since that holding would have to be, as we have just seen, a totalized stasis. Neither can the openness compromise with the determinate since it cannot be delimited or contained either in part or at all. As with Auden’s ‘poetry makes nothing happen’ (1979: 82), in the sense of bringing nothing into happening, making law happen involves its responsive reaching to ‘nonlaw’ (Derrida 2002a: 269), to the ‘exteriority’ with which, Blanchot again, law is necessarily ‘obsessed’ as ‘it formulates this exteriority as law’ (1993: 434).  

For Blanchot, then, the exteriority becomes law – it is becoming to law and law is what it becomes. This may seem at odds with Derrida’s distinguishing law as calculable from an incalculable justice, yet as he is a professed follower of Blanchot, we may also expect him to see matters otherwise. And Derrida does also see law as inclusive of justice even as it ‘cuts’ into and denies justice. Two varieties of law can be involved here. One is a ‘law of originary sociability’, a law of the law in which there is an indwelling of alterity and which is generative of and ‘prior to all determined law, . . . but not prior to law in general’ (1997: 231, emphasis in original). This paves the way for a corresponding distinction between ‘law’ and ‘laws’ – ‘law above the laws’ (Derrida 2000: 79). And that brings matters full circle, since such ‘law’ is unconditional, ever beyond and impelling of the conditioned ‘laws’. Indeed, Derrida (1987) also wrote in a sustained way of ‘law’ as combining what became in ‘Force of law’ a differential law and justice. In sum, and returning to the terms of ‘Force of law’, law and justice, now as constituent dimensions of law in its amplitude, have to combine yet remain distinct and uncompromised by each other. They are ‘undissociable . . . in their very heterogeneity’ (Derrida 2002a: 257).

Law thence is doubly aporetic. There is, in terms of a Greek derivation of aporia, no road, no already assured passage, between law’s separate dimensions, as well as no such passage between the separation of the dimensions and their inseparate combining. As Derrida has it, no enduring resolution can ‘come to pass’ (1993: 25). And even as there must, ‘this il faut’ again, be a combining, that is not ‘reducible to the application and deployment of a program’ (Derrida 2002a: 257; 2005: 145). Law is held ‘in suspense’ (Derrida 2002a: 269). It can have no set content of its own. As Cixous would confirm, it ‘has no material inside’ (1991: 18). It can, says Derrida, have no history of its own, nor any self-encompassed origin (1992: 191). This imperative, this particular ‘must’, ensues if law is ‘[t]o be
invested with its categorical authority’ (ibid.: 191), an authority which, adds Blanchot, is ‘an empty authority’, but an authority nonetheless (1992: 24).

Like the crowded ‘void’ encountered in Blanchot’s *Madness of the Day* (1981: 8), this is a ‘positive emptiness’ akin to that involved in literary creation (Raine 2005: 34, for the phrase). More to the point, for Derrida the aporia is not classically confined to an irreducible opposition. It is generative. Reverting again to the terms of his ‘Force of law’, the ‘order’ generated as law ‘does not properly belong either to justice or to law. It only belongs to either realm by exceeding each one in the direction of the other’ (2002a: 257, emphasis in original). The exceeding leaves the ‘calculable’ law and ‘incalculable’ justice autonomous, yet ‘at the same time’ integrally related through an ‘order’ orienting each in the direction of and beyond the other (see also Derrida 2000: 79, 81).

Yet ‘order’ would indicate something resolved, even a ranking between them. The inevitable problem becomes how anything that must be constitutively and illimitably open could ever be resolved or ranked. The aporetic linking to the determinate will not suffice because the openness must not only be related to the determinate but also remain uncompromisingly apart from it. Nor can resolution or ranking be sought elsewhere. The openness and illimitability ‘in’ and as law frees law from any possibility of anterior or exterior determination – from ‘any possible derivation’, as Derrida put it (1992: 191). And, the companionate Blanchot would add, law ‘affirms itself as law and without reference to anything higher: to it alone pure transcendence’ (1992: 25).

Yet if law is ‘[t]o be invested’ with the autonomous ‘categorical authority’ endowed by its openness (Derrida 1992: 191), it must have a posited efficacy. It must be able to give itself the law, ‘affirm ... itself as law and without reference to anything higher’ and, Blanchot would continue, ‘[t]his is why it does not authorize any question about it or beyond it’ (1992: 25). Law, then, must share literature’s constituent aversion to instrumentalism, to an end that would precede any beginning. The type of political trial where the outcome is predetermined provides a pointed instance. Characteristically, it is seen as ‘political’ and not ‘legal’ exactly because the result is fixed, in two senses of the word, beforehand. And as with literature, the instrumentalism to be resisted would extend to any attempt to render law in terms of ‘thematism, sociologism, historicism, psychologism’ (Derrida 1981: 70).

So, like that law we encountered when literature ‘plays the law’, the law takes on a ‘power to produce performatively the statements of the law’ (Derrida 1992: 216). Law’s self-affirmation in this could also be seen as akin to Derrida’s ‘law’ of the archive (1995), a law which inheres in the political ‘privilege’ endowed on the archons, on the keepers of the archive, giving them ‘the right to make or to represent the law’ (ibid.:
The keepers of the law gather ‘the corpus’ together in a creative and in-forming responsiveness to ‘its’ exteriority (cf. Derrida 1992: 231). For Nancy, then, this ‘corpus’ is the ‘space of the law’, and as such it is neither chaos nor organism: it doesn’t fall in between the two, but lies somewhere else. It’s prose from a different space, not abyssal, systematic, grounded or ungrounded…. The corpus obeys a law that passes from case to case, a discrete continuity of rules and exceptions, of demands and derogations. Jurisdiction consists less in enunciating the absolute of the Law, or in unfolding its reasons, than in saying what the law can be here, there, now, in this case, in this place.

(2008: 53, emphasis in original)

And, again, ‘[jurisdiction is or makes juris-fiction’ (Nancy 2003: 157). The creative and formative reading of the law, like that writer–reader fusion we delved into earlier, is not confined to some authority apart from us, to those archons more prosaically known as officials, for example. The ‘juridical’, as Derrida notes, is ‘grounded on the sovereignty of the subject, that is, the intentional auto-determination of the conscious self’ (2002c: xix).

Further reading

Reading being an ever self-subverting activity, my reading of works to do with reading compounds the subversion. And so we come to another variation on the end, the engaging ‘weariness’ in the chapter that ends Ecclesiastes: ‘of making many books there is no end’ (12:12). Returning to Kermode’s ‘sense of an ending’ (1967), with his guiding instance of Apocalypse or the Revelation of St John the Divine, the end is a beginning: all things are made new (21:5). This sense of an ending accompanies rather than counters the imperative which has it that ‘one cannot, of course, be denied an end’ (Kermode 1967: 23). The end, in and as the act of literary and legal creation, is terminal, but only and ever ‘for the time being’. Yet matters, inevitably, are more mixed. Apocalypse concludes with a malediction against adding to it (22:18).

The ‘one’ who cannot be denied an end, the ‘one’ who ‘must … calculate, negotiate the relation between the calculable and the incalculable’ (Derrida 2002a: 257, emphasis in original), this one is a finite, singular, political being subsisting in the history implied by this chapter, a history inseparable from the coming to law through literature which it attempted. This history has its own complicit relation to the type of scriptural completeness, the last word, claimed for Apocalypse, but it also imports a rejection of transcendent resolution and advances an ultimate reliance of the political on ‘the sovereignty of the subject, that is, the intentional
auto-determination of the conscious self’ (Derrida 2002c: xix). The archons of my argument do not engage in extensive histories but resort rather to telling evocations. Derrida, for instance, would take ‘the French Declaration of the Rights of Man’ as obliging ‘one … to reinterpret the very foundations of law such as they had previously been calculated or delimited’ (2002a: 257). This obligation he would extend to various ‘emancipatory battles’ once won or still envisaged (ibid.: 257–8). And while the outcome of these battles will provide some sense of an ending necessary for ‘one … to reinterpret the very foundations of law’, Derrida would find, aptly enough, that the generative force of emancipation lies in the movement ever beyond the determinacy of the ‘calculated or delimited’ (2002b: 35–6). With studied irony, he also finds this force to be ‘a weakness’, weak in its being uncontainable and evanescent (ibid.: 35). That weakness, brought to the ever-present incipience of being otherwise, is a transformative strength capable of being the ‘strongest’ (ibid.: 35). Something of the sense and efficacy of that force was found in Nietzsche’s ‘slow reading’ with the attuned responsiveness it called for (1982: 5). In conversation with his ‘stillest hour’, Nietzsche’s Zarathustra protests that he lacks ‘the lion’s voice for all commanding’, only to be countered by the response, a response ‘like a whispering’: ‘thoughts that come on the feet of doves steer the world’ (Nietzsche 2006: 116–17).

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Notes

1 The mosaic quality sometimes attributed to ‘Indigenous’ literature would be an instance (see, for example, Arguedas 1978).
2 Authorial challenges to comprehension can sharply inhibit the reach of the reader. Few could have the linguistic range to accommodate Amitav Ghosh’s *Sea of Poppies* (2008), for instance.
3 Here and in later references Heidegger is reflecting Nietzsche. The concern is with ‘art’, but in a sense that includes literature.
4 The divide here is taken from Derrida’s engagement with the ‘genre clause’ in the midst of the last section. In this present setting the divide is brought forward, as it were, to fit the further elaboration of it that has just been offered in relation to the law ‘in’ literature as well as to the constituent connection between law and justice.
5 I am grateful to Pablo Ghetti for the reference. See also the use of ‘compromises’ in Derrida (1988: 266–7).

6 Notes being an apt repository for temptations too big for the text, there is some resonance here with the sensed distinction Wallace Stevens offers in ‘The snow man’ between ‘[n]othing that is not there and the nothing that is’ (2006: 9).

7 Second part ‘The stillest hour’. My thanks to Johan van der Walt for placing it in this context.

References


