

Questioning the Sense of an Interconnection: Law and Literature from its Origins until Today

Desmond Manderson

(by Angela Condello)

Il professor Desmond Manderson insegna presso la Australian National University di Canberra. È un punto di riferimento a livello internazionale per gli studi interdisciplinari sul diritto, in particolare per quanto riguarda il rapporto fra diritto e scienze umane. Il suo lavoro è considerato tra i fondamentali approcci interdisciplinari alla questione della normatività giuridica. Manderson ha sviluppato, negli anni, un metodo che integra dispositivi tipici di più campi disciplinari, offrendo a generazioni studiosi la possibilità di leggere criticamente il funzionamento del sistema giuridico, il rapporto tra diritto e giustizia, e l'impatto della regolazione giuridica sulla vita di ogni giorno. In particolare, il suo approccio problematizza temi come l'autorità e la legittimità; la relazione tra giustizia, diritto ed etica; lo scarto tra regola, interpretazione e giudizio. Inoltre, Manderson ha prodotto una significativa espansione dell'oggetto di studio del campo denominato *law and literature* e, più in generale, *law and humanities* – aprendolo alla musica, alle arti figurative e alla cultura pop: queste aperture hanno ampliato in modo rilevante il dibattito sulla funzione sociale del diritto e hanno messo in questione il problema fondamentale di ogni sistema giuridico: la realizzazione della giustizia. Tra gli autori e i temi delle sue ricerche, vanno menzionati certamente Bachtin e Bourdieu, la storia del diritto e il cosiddetto “modernismo” letterario e giuridico del primo Novecento (specialmente D.H. Lawrence e Carl Schmitt); si è inoltre occupato della natura tragica e necessaria dello stato di diritto e della rappresentazione artistica delle molte forme della giustizia (e anche dell'ingiustizia), sia in luoghi ufficiali dell'amministrazione giudiziaria – ha lavorato sulla Corte Suprema messicana – che sotto forma di *street art*. La sua produzione è vasta e conta numerosi saggi, libri, e altrettante lezioni e seminari in molti Atenei in tutto il mondo. In tutto il suo percorso Manderson ha tenuto vivo, facendone anzi un suo tratto caratterizzante, il dialogo con studiosi di altre discipline, tra cui in particolare la letteratura di lingua inglese, la filosofia, la storia, la geografia e l'antropologia.

(Angela Condello, dicembre 2019)

Angela Condello: *(Almost) fifty years after its origin, how has L&L scholarship evolved and what impact can it have today, respectively, on legal and literary scholarship? What is the «political» meaning of such an interdisciplinary effort?*

Desmond Manderson: Over the past fifty years, law and literature has evolved from a relatively recondite interest in literary texts to a broad interdisciplinary project which seeks to use humanities scholarship – not just in literary studies, but in and about art, music, history and philosophy – to inform our understanding of legal issues in the contemporary world. Increasingly scholars in law and humanities draw on these cultural resources to provide novel insights through which to understand legal ideas, critiques and experiences. The interdisciplinary endeavour unlocks new perspectives and creativity in how we talk about and understand law and justice.

But increasingly, this aesthetic commitment has been accompanied by a strong interest in theoretical frameworks, likewise drawn from the humanities, whether in terms of literary theory, social theory, critical theory, post-colonial studies, or continental philosophy. These humanities-based theoretical perspectives provide the bridge that links the singular insights of the humanities to broader social questions of law and justice. To me, there is a fundamental distinction between humanities-based approaches to law and that of the social sciences. Humanities scholarship, in law, in literature, or elsewhere, tends to pay attention to individual objects of attention, be they paintings, narratives, novels, artefacts, buildings, or persons, where the social sciences are more interested in patterns of behaviour across populations.

Increasingly then I see law and the humanities as connected to the field of aesthetics and politics, which has also undergone an explosion of interest in the past decade or so, for example in the work of Judith Butler, Giorgio Agamben, Jacques Rancière, Mieke Bal, and others. In all this work there is a strong belief that it is through aesthetic forms, disciplines and genres that our cultures and politics are both articulated and challenged. Particularly in the current moment, orthodox conceptual epistemologies, whether we are talking about political liberalisms, economic rationalisms, or legal theories of social justice and human rights narrowly conceived, seem incapable of grasping the discursive crisis of our predicament. Still, less do they seem capable of finding new ways of imagining and instigating the future. For that, we need new vocabularies of law and social justice, and new communicative forms. That is precisely where the connection between law and aesthetics is both illuminating and promising. And it is why law and humanities has so much to say that is critical for the future not just of social and economic justice, but of the world.

From a methodological point of view, what will be needed is a much greater level of interdisciplinary vigour and rigour. Interdisciplinarity is

not, of course, an excuse for a hasty dilettantism. It needs to be a deep engagement with multiple disciplines. I mean, we must not just borrow the methods or insights from one discipline (e.g. literature) and deploy them, like intellectual paratroopers, in another (e.g. law). We must really strive to bring the two ways of understanding objects of inquiry together in a way that is capable of touching and transforming both. In my most recent work on law, time, and the visual arts, my goal was not just to convince legal writers of the importance of the history of art to the development and critique of modern law. I was equally determined to convince art historians of the critical importance of the legal concepts and norms at stake in our visual histories.

This is particularly apparent to me in the work of contemporary indigenous artists in Australia, for example. It seems to me that questions of legal power, legal history, and legal justice have been an absolutely central question for many major indigenous artists; likewise it seems to me indisputable that questions about law and justice for indigenous peoples are being confronted more bravely, more directly, and more coherently in the arts than in the discourse of politics or law itself – *much* more, by and large. To suggest that art and literature are somehow parasitic on concepts of law and justice or narratives of colonial history constructed elsewhere, and of which the art and the literature is merely a reflection or an illustration – this would be a grave error.

A.C.: *The journal «Allegoria» has started – around 10 years ago – a debate about literary Modernism. You have written about Modernism and the Rule of Law. Why can Modernism be important for legal theory and, according to you, for literary theory?*

D.M.: The modernist moment, broadly speaking encompassing cultural and political history in the late nineteenth and early twentieth centuries, was precisely a crisis in the relation between reasons, representation, and progress. On the one hand, it shows very clearly the connection between aesthetic transformation, for example in modernist poetry, art, literature or architecture, and political transformation, for example in the movements of “reactionary modernism” that turned their back on 19th-century liberalism, including in the anti-liberal legal thought of Carl Schmitt and others. On the other hand, modernist aesthetic does not just illuminate for us just what was at stake – conceptually, psychologically, even ontologically – in the abandonment of a certain objectivist realism and normativity. It also offers a variety of imaginative paths of critique and transformation, some of which have been explored and some of which remain open as tantalising and as yet unrealised possibilities. The crisis of modernism at the end of World War I was indeed the crucible of our contemporary moment – a moment in which our

current discursive and political crisis – a lack of trust, the subjectivity of truth, the yearning for some transcendent solution – seem to have been foreshadowed. And this modernist history also demonstrates for us, very clearly, that the way to respond to a crisis in political confidence and political imagination is not by ignoring modernism’s critique of realism, of rationality, and of representation, but precisely by engaging with it more fully. We must go *through* the problems of modernism to find new solutions more responsive to the conditions of the modern world, and not simply pretend they do not exist.

Desmond
Manderson

A.C.: *How do law and literature reflect, or depict, or inform, the psychic life of individuals? What is their “normative” impact on interior life?*

D.M.: I think you are right to suggest that the literary and the legal are mutually connected in the psychic life of individuals. I think, with Robert Cover, that we only ever understand the force and drive of norms through narratives and through our own relationship to those narratives. At the same time, the normative voice is itself personified – in Althusser’s policeman, or Marin’s “portrait of the king”, or Freud’s father figure. These are not just “figures of speech”; they are images, figures in the fullest possible sense of the word. And these figures – we might speak of the imaginary à la Castoriadis or, with Bottici, the “imaginal” of politics or justice – do not simply populate or inhabit the legal field: they form the internal structure of our own relationship to value, ideals and ideologies.

This is one way in which I think the question of images, in particular, is of fundamental contemporary significance. That is why, in my own case, most of my recent work has focused more on the visual arts than literature. Our world is consumed by images, by these powerful affective fragments of consciousness, these visual floating signifiers – “the unconscious optics” as Benjamin said. They are the means by which we come to understand our place in the world, its problems, and frame our response to it, be that a form of accommodation, resistance, or repression. Images are increasingly the mode through which we make sense of the world, and our place in it: a queue of lorries near Calais, or a boy on a beach in Turkey, or a blazing bushfire in Australia, or a demonstrator fleeing from the police at a subway station in Hong Kong, or a polar bear trapped on a floating floe off the coast of Canada; the list is almost endless. Nothing could be more important in constituting our own daily emotional lives, and in framing the terms and conditions of our response to it. In this sense, it seems to me that law and literature – in this broader sense and with the particular emphasis on images that I have included here – not only provide a critical bridge between normative ideas and discourses, on the one hand, and our own individual (and collective) psycho-social makeup, on the other. They are *inseparable* from one another. They could

not exist without each other. Law, literature and the arts, for all intents and purposes, amount to the same thing.

A.C.: *Do you think law and literature as a field has “had its day”? If not, why or how is it still relevant to contemporary scholarship in law?*

D.M.: Well, I think what I have said above largely answers that question. I don't think of law and literature as separate from the broader vision and approaches of law and the humanities; from that point of view, I think many of us move between literary texts, visual artefacts, and historical resources as counterpoints to our engagement in theoretical work in the humanities on the one hand, and issues in contemporary law and politics on the other. What is characteristic throughout this work is the triple interest in theoretical frameworks, legal and social justice, and cultural representations. What I think is also characteristic is a commitment to explaining and understanding what I would like to call the object of inquiry – be it a text, an image, or a social issue – rather than to a particular theoretical modality in particular. Work in law and humanities is theoretically eclectic in this sense, I think. Scholars might be Derrideans one day, Foucauldians the next, and Freudians a third. In each case, it is the object of inquiry that drives and incites the theoretical framework best able to enrich our understanding of it, rather than the other way around. This reflects, I think, a profound and probably emotional and psychological commitment to exploring the embodied cultural experience of the world, rather than to any abstract model of it. That commitment sits at the very origin of the law and humanities movement and indeed, before that, of law and literature too.

That all makes law and literature, and more broadly law and the humanities, sound a little elite, a little too niche. I don't think it's like that at all. We are facing critical problems that are of existential importance for the survival of the species and (much more importantly) for the planetary ecosystems which we risk destroying. I do not think there is anything particularly controversial about that – I am referring to global inequality, violence and exploitation, environmental catastrophe. I am talking about the Ponzi scheme of late capitalism. We are also facing critical problems in the systems and institutions through which we thought, in the recent past, were capable of dealing with and responding to our political and social problems. Hah! How naïve we were back in the 20th century. Media, politics, law, and the public sphere appear to be increasingly corrupted, and prove themselves on a daily basis incapable of addressing the urgent crises we face in these and other areas. We need then specific tools that can help us understand the forces that have led our societies to this point; a point, I think it is fair to say, very close to that of no return. And further, we need specific tools that can provide new ways of building coalitions of

responsibility capable of constituting new public spheres, generating new collective commitments both within and between nation states, and imagining new and transformative approaches to overcoming these problems. Problems which, as I have said, have both a substantive and a systemic or institutional dimension.

In short, what is needed is ways of thinking about the world that connect political and social critique to visions of the future. In making those connections, cultural resources and aesthetic forms will be crucial – crucial to how they are, following Elaine Scarry, “made up” but equally crucial to how they are “made real”: given an emotional existence that breathes life and meaning into them. I am suggesting that what we face at the moment is the greatest challenge in the history of our species’ stewardship of the planet. It requires an outpouring of critical insight into the origin and contours of our current predicament. It also requires a commitment to normative ideals related to justice, equality, and sustainability. And it will require imagination – poetry, narrative vision, aesthetic force – if these critiques and commitments are to be carried into a public sphere that has been systematically unravelled under the auspices of neoliberalism and yet – to quote Carol Gilligan – must be, can only be, “rewoven with its own thread”.

To be honest, I don’t think anything *other* than law and the humanities is up to this task, combining as it does in equal parts critique, commitment, and imagination; respectful as it is to the poetry and experiences of all individual lives; forging as it does real connections between past and future, and between individual experience and social change.

From a political or social point of view, what is needed is not just scholarship that is more politically engaged, but scholarship that is politically active. Our creative energies should be directed to political and aesthetic action as well as to scholarly work. For if, as I have said here, law is essentially aesthetic and political then, equally, aesthetics and politics are realms of law-making. That is certainly Rancière’s point. If we don’t get involved in these ways, as best we can, as most imaginatively and energetically as we can – then who will? And if not now, when? The days of law and literature might be numbered, as you suggest. But all our days are numbered: is this not more evident than ever? And does this not make the task before us, its urgency and its necessity, all the more apparent to all of us?