Literary (In)Justice
An Interview With Melanie Williams

By the Editors of Interstitial Journal

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One of your primary research areas is law and literature. In fact, your book "Empty Justice" has become a seminal work in the field, particularly for scholars studying the intersection of narrativity and legal normativity. For those who may not know, how did the field of law and literature develop, and how does it speak to the the ethical foundations of legal infrastructure?

I cannot claim to be one of the founding scholars in law and literature—for an explanation of how law and literature as a 'movement' arose, there are accounts of this to be found, particularly in relation to the American scene—with Benjamin Cardozo, for example, making explicit acknowledgement of writers as fundamental sources of understanding in law and implicitly of law itself. More recently, James Boyd White in the 1970's in recognizing the link between the worlds of law and of literature both as a source of analogous narrative models and in the shared investment in critical, deconstructive processes. Later commentary has recognized law and literature as just one aspect of the larger 'critical legal studies' movement, claiming the political agenda of exposing the impossibility of neutrality and law as essentially political. However, I feel rather resistant to the categorizing tendency—of sourcing a 'history' or a 'movement' or even a 'discipline' of law and literature. For example, a number of scholars and commentators suggest that law is divisible into two main categories (students are always quoting this in essays)—'law as literature' and 'law in literature'. In my view, this is misleading. To be sure, law can be understood as 'literature'—depending upon how one defines the word literature—and thus can be subject to literary critical processes as a source of insights. Equally, a number of law and literature studies may reflect upon texts which demonstrate the presence of law in literature—Dickens and Shakespeare are frequently cited as prime examples, with Shakespeare the source of so many famous sayings as well as plots concerning the world of law. Reflecting upon his early experiences, from child of a bankrupt family to court reporter, Dickens devised plots dealing overtly with legal themes, from the Court of Chancery, to the Hulks, to burglary, kidnapping, theft, and murder.

Yet, if one recognizes the breadth of literature providing commentary upon moral crises, the category of literature capable of speaking to issues in law widens, beyond the overtly 'technical' or doctrinal questions addressed by some texts. And if one 'pans out' still further and recognizes all writing as a symptom and evidence of perspectives upon human existence itself (affected by historical, political, cultural, and geographical location)—just as all law is a symptom and evidence of such perspectives, one can begin to see the potential for cross-fertilization between the disciplines. That is not to say that 'everything' is profoundly and instantly relevant to everything else, but it is a recognition that, just as literature is a human production, an artefact, so too is the law. Yes, they have different purposes and institutional, as well as theoretical, affiliations and investments; ultimately however both are a source of insight into the very odd creature that is the human being and the very odd state that is human existence.

Your question—'how does literature speak to the ethical foundations of legal infrastructure'? is difficult to answer simply (we would perhaps need to have an extensive discussion of what might be meant by 'speak', of 'ethical foundations', and 'legal infrastructure'). A short and direct answer to the approximate links in the question: literature tends to remind us that the human psyche and the associated crises are infinitely variable and complex; though the law must attempt to create benchmarks for conduct, these have been subject to alteration as society gains greater insight into human frailties. Though located in the realm of 'fiction' and imagination—of that which is not 'real', literature may contribute to debates upon such phenomena, providing pieces of the jigsaw in understanding ourselves in a different from, though in ways as profound as the more scientifically propounded disciplines of, say, philosophy or neuroscience. Of course the law has difficulty enough admitting the hypotheses of philosophy and even the findings of neuroscience; rightly, the law must proceed upon the basis of carefully substantiated evidence. Nevertheless, there are some aspects of humanity and existence which remain resistant to purely evidential substantiation, reflecting instead matters of spirit, of virtue, even of faith.

In "Empty Justice," you consider feminist critiques of dominant epistemological paradigms alongisde jurisprudential problems. In many places around the world, traditional feminist concerns have gained traction because of modern challenges to women's rights, from questions of equal pay to reproductive rights to the prevention of domestic violence. What does feminist theory illuminate about the creation and function of jurisprudential texts? Moreover, how might feminist readings of justice and legal procedures augment anti-essentialist theses put forward by gender studies, in which gender is seen as fluid and dynamic?

Gender is a very difficult matter to negotiate. As a lover of literature, I want to endorse the protection of freedom of expression to the utmost. However, there is much, even in 'great' literature, that speaks of and perhaps entrenches misogynistic attitudes. Regarding arguments about 'equality—as to pay, work conditions, and so on

—equal treatment for like work should be really clear. Reproductive rights, to contraception and to access to abortion, are much more vulnerable to power struggles and become tragically hijacked by religious and ideological powers and belief systems in which there is poor appreciation of the fact that women—and all persons—are persons first, gendered persons second. The vulnerability of such issues to reactionary politics means that feminist and gender-sensitive readings will always be needed to challenge and re-balance inherent prejudices, and these have potential value in relation to broader theories of justice—with how persons from different groups and experiences may contribute to ideas of community, rehabilitation, and change.

More and more, textuality is being divested of its link to the literary canon, with new 'texts'—films, television shows, art, everyday forms of signification—being subjected to the same modes of critical analysis that have been used to problematize traditional literature. How might your ideas about law and literature be applied to nontraditional texts? Given their influence on the production of culture, what impact do representations of law in new media have upon popular imaginations of justice and jurisprudence, as well as role of law in resolving social conflict?

My tendency to respond to literary sources flows from a love of the written word—the 'poetics' of the text, as well as its capacity for giving expression to complex thoughts and connections, particularly where the writer seems committed to communicating deep 'truths' or sensibilities about the world and existence. However, I am also extremely interested in other art forms and media, recognizing that different forms offer different perspectives and insights. I recognize that film, art, and other forms can provide powerful creative understandings, as well as an opportunity to re-interpret and challenge ideas, and that sometimes the use of the visual and/or aural speaks to different forms of awareness or levels of consciousness. Film, for example, is also more readily accessible to mass audiences and can therefore provide a powerful platform in communicating issues—think of films such as *Silkwood* or *Black Gold*. Mass communication systems, including Youtube and the various forms of social media have been hugely influential in recent political crises and have great power to do good as well as evil—the potential for the dissemination of propaganda of all forms is vast. Of course, all forms of expression, including the textual, can be of poor quality, sensationalist without thought, or destructive. At one level, I feel these tendencies need to be guarded against, as 'shallow' understandings of issues—for example, portrayals of vigilantism as a form of justice, of violence as satisfaction of an appetite for vengeance, or satisfaction of an appetite for just that, violence. At another level, such developments are interesting evidence of human appetites and interests—however prurient—and tell us more about what it means to be human—everything is an 'anthropological artefact' and as such, of interest to philosophy and legal philosophy in mapping our understanding of existence and social order. I have in the past written about the book and film *Crash* [J.G. Ballard] and the Peckinpah film *Straw Dogs* and would certainly be interested in looking further at film; the semiotic significance of the combinations of speech, images, and sound is extremely interesting.

You've also elaborated upon the correlation, or lack thereof, between medical and legal doctrines, arguing that professional psychiatry and jurisprudence subsume individual narratives within totalizing discourses. What consequences does this tension have for individuals subject to the the nexus of medicine and law, as well as the capacity of law to establish boundaries of behavioral normalcy and aberrancy?

It is simply troubling to consider the relative primitiveness of knowledge of the psyche and the extent to which the law has deferred to this source of information as definitive. I have written about this in a number of places. Years ago I came across (and wrote about) three 'nullity suit' cases from the late 1800s in England where husbands were seeking annulment of their marriages on grounds that their wives had been insane at the time of marriage and therefore had not had the capacity to undertake the marriage contract. Some of the comments provided by doctors and psychiatrists in these cases were quite shocking. Even in cases today, the assertions made by medical experts can be quite patently questionable, yet are relied upon. I have written about this recently in an article in *Current Legal Problems 2009* called "A Normal Man…Hardly Exists" (which is a quote from Dostoyevsky's *Crime and Punishment*), looking at the narrative constructions of law and the relative standing of various sources of psychiatric and psychological expertise. For example, I mention in that article that forensic psychiatry is of necessity somewhat embattled because at is nosological and taxonomic boundaries lie the big questions of human existence—of the relationship between mind and brain, of the meaning of mental disorder, of the relationship between good and evil, capacity and madness. The sciences of the psyche hold countless philosophical mysteries, buried in the assertions of their 'master narratives'. Thus, forensic psychiatry claims a dramatic territory of Shakespearean proportions, of privileged access to the inner truths of the mind, of absolutes of sanity and madness, good and evil, and rallies such pronouncements to a legal process dispensing a practical day's work.

I mention some recent cases in that article, cases in which it seems the psychiatric judgements were of doubtful standing. I do not have an 'answer' to this problem—we are forced to rely upon whatever levels of information are available to us—but it is deeply troubling to reflect upon the phenomenon and overall leads me to conclude that the law should have a greater sense of humankind as 'frail' rather than 'evil'; there should be much greater focus upon rehabilitative support, rather than crude punishment.

In a similar vein, we've seen psychiatry used in the context of modern warfare as a tool for circumscribing threatening populations. For example, Iraqi prisoners at Abu Ghraib and Guantanamo Bay detainees have reportedly been subject to various forms psychological torture, while the diagnostic methods of psychiatry are becoming increasingly common in profiling terror suspects. In what ways are legal-medicinal discourses reflected in modern identity politics, especially with regard to the formation of new laws brought about by twenty-first century security concerns?

Of course, there is a long tradition of subjecting persons with politically inconvenient views to 'psychiatric' analyses, diagnoses, and treatment—think of the suffragettes or of those jurisdictions in which conscientious objectors were treated as 'mental' cases. It is a great irony of human existence that 'our' beliefs are 'sane', whilst those of others are 'mad'—as my Cornish father used to say, quoting an old Cornish saying, 'The whole world is mad 'cept thee and me, and thee's a bit cracked'! Personally, I find the judgements of medicine, law, and society particularly disturbing in relation to religious belief, which has been given the status of a form of rational knowledge and authority out of proportion to its evidential and philosophical robustness. And religion is often the source of extremist and immovable views on 'both' sides of any debate, to be treated with caution as a source of reasons for action, yet it is given a special status in society, whilst the political views of individuals, views that may be founded upon a reasonable perception of injustice, are treated as irrational or outrageous. Power is central to such debates—religious as well as political and monetary power drives many of the policy decisions in the world. Political history provides a number of examples of situations and events in which persons were at the time treated as 'terrorists' or extremists, where in the light of later information and wisdom these have been the brave at the forefront of enlightened change. Medico-legal professionals should be extremely wary of the ethical failures presented by the possible use of their knowledge and status for political ends.

Two issues central to many modern legal issues are integrity and dignity: integrity in the sense of a people's belief in the equal application of the laws under which they exist and dignity in the sense that justice will fairly respect everyone's personhood. While much of your work has focused on the nexus of literary narration and jurisprudence, how has your research helped you think through the role of self-narration in situating oneself in relation to legal institutions and their communal purposes?

I suppose all writers, thinkers, and artists are working through their own scripts and internal questions in coming to terms with existence, and in that sense my work must be a reflection of perennial concerns with the world and my own experience of it—so there is a concentration upon feminist and existential difficulties. At the same time, my love of certain texts and writers reflects a respect for the profound wisdoms to be mined in these works of art, and the work of 'self narration' or 'self construction' is an on-going one that for me personally derives benefit from these sources and has led me to formulate a relation to legal ideas that is I believe of a particularly humanistic turn.

Finally, scholars of comparative world literature often talk about their subject as a network or relationship of texts, authors, and critics existing above and beyond the act of translation. Within the discipline of law, on the other hand, the international sphere is largely governed by global institutions—for example, the United Nations, International Criminal Court, or World Trade Organization—that work to universalize legal norms, so that translation of law from one place to another becomes a

fundamental institutional task. Could the relational principles of world literature help to reorient international law toward greater pluralism and inclusivity? If so, how?

I believe literature has the power to connect persons from diverse cultures and belief systems—the combination of art and thought is a potent one. It is also the case that whereas legal institutions have derived many of their values from religious first principles, such value systems are no longer of universal validity and the diversity of beliefs and values must be accommodated, whilst at the same time holding to some 'central' or core values. What is the most credible source of such values? It cannot be 'world literature', as literature has a multitude of purposes, meanings, and genres. It would be impossible to identify a 'unifying' status acceptable to all; that is the role of world politics. However, literature and art has a role to play in these greater political debates, teasing out new perspectives and insights. The more open we are to the range of cultural sources in the world, the more we can both interrogate and accommodate our own visions with those of others.