
The Changing Parameters of Legal Practice

A Review of Andreas Philippopoulos-Mihalopoulos (ed.), *Routledge Handbook of Law and Theory*, Routledge, 2018. 535 pp. £175.00 (HB). ISBN: 978-1-138-95646-9

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The vitality of the university law school is a condition of its relation to the varied and expanding sites in which law is practised, and not of its relation to other disciplines within the academy. The fruits of the law school's increasing levels of interdisciplinary engagements must be endowed upon the legal arena, first and foremost, and not form part of a gift of exchange within the academy. The law school is the teacher of law's violence, and, so tasked, will always struggle to propel "...its theory...outside its disciplinary boundaries and be read, thought and actively used by other disciplines" (Philippopoulos-Mihalopoulos, 2018: p. 4). If, as Bottomley and Moore argue, a principal objective of the theoretical turn in legal scholarship was for law schools to "...identify themselves with the wider enterprise of academic scholarship" (2018: p. 507), then that objective must be rethought, and, instead, theory must be used so that law schools can (re)establish their credentials within the field of legal practice. There is a dangerous core that must always lie at the heart of legal scholarship, and its existence accounts for its lack of influence, relatively speaking, over other academic disciplines.

Although Loizidou is alone in explicitly conjuring up the possibility that the academy "...may not need law in forming an understanding of our social and political relations" (2018: p. 258), all twenty-four authors of the essays of which the *Routledge Handbook of Law and Theory* is comprised are prepared to write in such a way as to make law potentially vulnerable as an academic

discipline, with all the consequences which such an “ethical act” (Aristodemou, 2018: p. 361); a “...leap into the unknown, without guarantees...” (Aristodemou, 2018: p. 361) may entail - for “...acknowledging the non-uniqueness of law places legal scholars in a dilemma...” (Cloatre and Cowan, 2018: p. 446). The collection’s editor will be rightly proud of these “...trial[s] of judgement, of personal exposure and risk-taking” (Philippopoulos-Mihalopoulos, 2018: p. 478).

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The *Routledge Handbook of Law and Theory* offers new conceptions and vocabularies of legal practices, and it is these which form the focus of this review. “[T]oo often when addressing the use of theory of/in/for law, the issue of (which) ‘kind’ becomes dominant, and the question of ‘need’ assumed rather than addressed” (Bottomley and Moore, 2018: p. 497). The wider academy, undoubtedly, will be enriched by the theorising of legal scholars, but it does not “need” it. The field of legal practice is, in contrast, desperately in need of new thinking about what law is, who/what are its subjects/objects, and what modes of intervention will bring about just ends; no more so than now when “[m]ost of everyday law practices involve...trying to avoid its most important practice, that of the trial” (Loizidou, 2018: p. 246).

If it is a new set of theories that the field of legal practice needs, it is also these very theories that have made it *now* possible for the law school to ensure that its theories will operate forcibly and effectively within the legal practice arena. With theory came a necessary fracturing of the uneven, and always uneasy, partnership between law schools and the legal profession over the provision of legal education to aspiring lawyers - which in turn determines the parameters of legal practice. Law schools have come *closer to the law* as they have moved further away from the legal profession, and, “...trained in law ...but still ...sufficiently distant to the legal object of their study to take a stranger’s viewpoint” (Kang, 2018: p. 459) are now freer to “...question anew - to theorise again - what law does and how it is experienced in our global times” (Eslava, 2018: p. 15).

Any new conception of legal practice must decenter the legislature, judges, barristers and solicitors as the primary agents of change, for it is their dominating presence which prevents us from noticing potentially transformative movements within the legal landscape - ensuring instead that “...movement in law...is...rendered as a destination or conclusion...” (Barr, 2018: p. 133). However, it is not merely *particular* human actors that are conventionally seen to be operating on the legal arena who we must now “provincialise” (Mawani, 2018: p. 284) in the hope of “...encountering new dynamics of justice-making” (Gear, 2018: 298). “[l]egal scholars need to think more broadly about...[w]ho inhabits the lawful world? To ‘humans’ we could add non-human animals...as well as imaginary beings...ghosts...the dead...geological features...and forces ...” (Otomo, 2018: p. 322). In a not dissimilar vein, Eslava identifies the place of law as “...a site plagued with erratic, mysterious behaviours” (2018: p. 40). It is vital that “these inhabitants of law ...never...far beneath the surface...” (Otomo, 2018: p. 322), are constantly uncovered by legal scholars, for “[i]n the service of managing life, law annihilates liveliness” (Tomlins , 2018: p. 365). Acknowledging the law’s ‘uncanny’ side may be one way to disrupt the “...sense of the calm upon which law is based...” (Wall, 2018: p. 224) , so that current and future legal agents are no longer “...numbed to the quasi-legal forms which precedes one’s thinking about law” (Wall, 2018: p. 224).

The legal world which so far has been reduced “...to speech, text and language...” (Pavani, 2018: p. 162); to “ ...stagnant institutions, mundane rules and ethereal authorities...” (Barr, 2018: p. 146), could encounter other sources of productive disruption, for example, by means of “...conceptual and methodological tools...to advance a multispecies critique of the global present” (Mawani, 2018: p. 291. See also Gear, 2018: p. 298 who speaks in terms of a “multiverse”), or “... if we follow things as well as people...if we pay attention to the agentic potential of matter... and not merely conscious human behaviour” (Grabham, 2018: p. 94). Such a following may indeed be a

return to an earlier stage in the operation of law - when law was once fully immersed in “...the world and its various materialisations...” (Pottage, 2018: p. 411).

In relation to all of these actual and potential agents of law and legal practice, we must constantly pose “...the question...how these come to be regarded...as relevant to law and how they come to be spelled out in legal language - which of these matters come to matter legally and which don’t” (Kang, 2018: p. 462). The point of an expanded conception of law and its agents is not just “...about a renewed attention to things. Focusing critically on materiality also enables the re-thinking of other concepts or processes of significance to, and in, law, layering complexities upon the apparently mundane” (Cloatre and Cowan, 2018: p. 437). In short, those engaged in the field of law (whether as scholars or practitioners) must be open to encountering hitherto unknown ‘matter’, and must be prepared to accommodate the idea that they operate in never to be completely knowable realms - where, among other factors, the “...porosity of the boundary between people and things...” (Tomlins, 2018: p. 373), and the knowledge that all human bodies are in some way “augmented” by technologies as well as ideologies (de Sutter, 2018: p. 272) structures the ways of doing law. Without “...a conceptual and methodological orientation that foregrounds human-nonhuman relations and the juridical line that divides them in the first place” (Mawani, 2018: p. 282), “...it becomes increasingly difficult to imagine alternate legal futures” (Barr, 2018: p. 146). Pavanani sums up what the foregoing critical interventions will achieve; they will “...dig a void within law...reorienting law towards a world *not for law*, that is towards the very event of its encounter with a non-juridifiable world from which law is inextricable nonetheless” (2018: p. 164).

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This collection of essays refuses to accord priority to courts, law firms and law centres as the proper/authentic sites of legal practice. More expansively, they encourage the reader to see that “...the functions of law, to adjudicate in conflicts, to judge and to decide, are not the exclusive province of the legal profession...” (Martel, 2018: p. 400). Thus, the authors resolutely and

skillfully “...move beyond the terrain of legal institutions and into the messy spaces of the everyday where...legalities and non-legalities take hold” (Cloatre and Cowan, 2018: p. 438-9). Indeed, law can no longer be seen to be practiced in *any* confined space, for such would confound the more radical conceptions of legal practice in which, for example, “...walking is a legal practice. As legal subjects...we are inescapably attached to law...this attachment heightens ...through the body, and specifically, the feet. If we want to notice the perpetual motion of law’s movements, then, one place to pay attention to is our footprints” (Barr, 2018: p. 145). Butler advances a conception of laws that are “ ...materially carried by bodies as they engage in the practices of everyday life” (2018: p. 64). Above all, those engaged with the law must be attentive to the way the law, by means of electronic monitoring devices and other emergent technologies, bears upon the bodies of those individuals assigned “ ...to a space of violence, constant suspicion and pre-crime, embodying a threat that must be pre-emptively stopped and punished” (Keenan, 2018: p. 83). For Keenan, the urgent need is for the racial violence of law to be located and exposed in the places in which “...all non-white subjects...are liable to be spatialised as aliens, taking a space of exclusion and vulnerability with them wherever they go” (2018: p. 85).

In what Philippopoulos-Mihalopoulos conceptualises as the ‘lawscape’, “...namely, the tautology between law and matter...” (2018: p. 477), the most natural and routinised of practices can become transformative legal practices. Thus, not only ‘walking’ but also ‘touching’ is a means of “doing law” (Milovanovic, 2018: p. 203) in the sense of “...being in tune, that is, in resonance...” (Milovanovic, 2018: p. 203) with those liable to be rendered as “disembodied subjects” (Milovanovic, 2018: p. 206) by conventional legal practices and practitioners.

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Aspects of the transformative legal practices outlined in the foregoing may well have been imagined in earlier philosophical texts. Martel finds that many resonate with Walter Benjamin’s notion of “nonviolence” as connoting a pure means of resolving conflicts, as opposed to the violence of legal means. Posing the question “ [w]hat does law become ...when it is divorced

from its own ends, from what passes for truth and justice? Is there anything that remains of such law and, if so, what effect does it still have on the human community that is connected to it/” (Martel, 2018: p. 388), he contemplates - albeit with some difficulty - “..the idea of a law whose authority comes only from the way it is practised, that has no recourse to ancient precedent or a future justice, and which eschews the violence of projection or phantasm...” (Martel, 2018: p. 389). For Masciandaro such a state is is not beyond reach; for “... in the sensing of all law there remains the sense, precisely through the very fact that law is being sensed, of something beyond law that will never be grasped as law...” (2018: p. 188). A sign of the emergence of that something beyond law may be that we no longer preoccupy ourselves with “...individual transgressions of the law, forgetting the absolute transgression that sets up the law itself” (Aristodemou, 2018: p. 359).

Various other of the collections’ contributors strive to express the contours of this transformative phase to come; one which sees the overcoming of law’s “...implied claim that it alone can access the truth and repair harms...excluding other genres and representational practices in responding to violence” (van Rijswijk, 2018: p. 330). Finchett-Maddock asserts that there is an “*a-legal vacuum*” (2018: p. 117) which will “...make way for contingency and uncertainty, in which justice can be...performed” (Finchett-Maddock, 2018: p. 117). In similar terms, Grabham urges new thinking that “...tries not to presume, in advance, what is law and what is non-law, aiming to displace such a distinction whenever possible” (2018: p. 100). The performance of justice is evidenced in the very opposite of law’s customary closures; in “...a denial of completeness, and an embracement of becoming” (Finchett-Maddock, 2018, p. 124).

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Underlying each of the contributions is the one assuredly “supradisciplinary” (Philippopoulos-Mihalopoulos, 2018: p. 3 & 5) question to which legal scholars always return; and that is the question of the relation between law and justice. And, whilst de Sutter appears to make

little distinction between the violence of law and the violence of a justice that is “...not some higher moral instance ‘judging’ what was happening in the world, but a worldly being itself, with its own urges and desires...” (2018, p. 266), the other essays may be read as attempts, in various ways, at “...reconnecting law *and* justice” (Milovanovic, 2018: p. 217).

When, in 1990, a well-known non-lawyer (Jacques Derrida) argued that a deconstructive critique is the necessary condition of justice, he found no fault with the theory and practice of the law school in regards to such critique. Indeed, commenting on Derrida’s “Force of Law: The ‘Mystical Foundations of Authority’”, Petra Gehring suggests that, for Derrida, “...deconstructive ...questioning...is...more at home in law schools...than in philosophy departments and much more than in the literature department” (2009: p. 127). The major failure of legal scholarship is its focus “...almost entirely on the human as the agent of history...” (Mawani, 2018: p. 286), but in this respect all academic disciplines have failed also. If there is any basis to Gehring’s suggestions as to where the uniqueness of the law school lies, that should be sufficient to secure its standing within the wider academy - for justice *is* deconstruction.

Reference

Gehring, Petra “The Jurisprudence of the ‘Force of Law.’” in *Derrida and Law*, Pierre Legrand (ed.), Aldershot: Ashgate, 2009.