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Book Review

Jeanne Gaakeer. *Judging from Experience. Law, Praxis, Humanities*. Edinburgh Critical Studies in Law, Literature and the Humanities, Edinburgh University Press, Edinburgh, 2019, 320 pp., £ 75.00, hardback.

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The main purpose of Jeanne Gaakeer's book is to promote the value of the interrelationship between law and literature, stating that this "symbiosis" can contribute to a judge's practical wisdom. The author argues that the Law and Literature movement offers ample methodological opportunities to reinvigorate legal pedagogical methods. The hermeneutical process of reading a juridical document is a mode of enquiry into textual matters and human actions, as well as a way of connecting facts and norm.

In her own approach to the re-examination of the birth of the relationship between the two disciplines, Gaakeer broadens what has been claimed so far: she stresses the aspect of narrative in law, the topic of empathy, and the cognitive turn. At the end of the book she addresses the technological/biotechnological perspective, especially considering how "new technologies affect the constitution of the human self" (11).

In her discussion of the narrative shift, Gaakeer remarks that legal texts must focus not only on rationality, but also on imagination. However, if jurists may fabulate, judges must be able to value actual facts in order to restructure the chain of circumstances. Therefore, a judge is subject to the principle "*audi et alteram partem*."

The study of law is different from academic legal scholarship. In fact, glosses and interpretations followed the creation of laws as attempts at their systemization. Gaakeer observes that the scholastic method of debate was based on rhetoric and its structure: from "*disputatio*" through "*opponens*" and "*respondens*" to "*sententia*." These practices are the foundations of the contemporary interdisciplinary relationship between law and literature. In common law, law became a cultural rather than a technical exercise, thus inscribing law within humanism and transforming the jurist into a "*literatus*." Indeed, the narrative paradigm of scrutinizing fact and fiction characterizes a lawyer's strategy. Language conditions our being in the world, precisely because law is not predetermined, but made from case to case. Gaakeer stresses the discursive aspect of law, and rightly so.

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In law, the interpretive perspective is very much to the fore: glosses actually became independent texts, thus marking the birth of jurisprudence as an academic legal discipline, distinct from the practice of doing law. The ancient Midrash is a case in point: it grew out of a series of documents based on the interpretation of the Bible as a literary text, which also set the example for the interpretation of the texts themselves.

Phronesis (a type of wisdom relevant to practical action) is the book 's focal point. In the wake of Paul Ricoeur, Gaakeer links metaphor and imagination in judicial *phronesis*. As a well-established practice, the use of metaphor is to connect overlapping disciplines thanks to a metaphorical game of mirrors. In fact, the etymology of the word "metaphor" stems from "meta-phérein," to take something out of its original field and transfer it into another (Aristotle offered a theory of this process in his *Poetics* and in *The Art of Rhetoric*, when he discussed the basic characteristics of poetry). The new concept, derived from antiquity, widens the thematic fields involved. The metaphorical process has the power to redefine reality from a new perspective. Thus, law (which in itself is also rooted in metaphors), being creatively conceived through new images, at the same time stresses what it is and what it is not, expanding its capacity for visualization.

In her analysis of *phronesis*, Gaakeer also connects correct judgment to Aristotle's concept of *aequitas*. To judge rightly means to judge equitably. But judging also entails the capacity to narrate, and narratology requires an interpretive framework. Narrativity implies a clash between facticity and normativity. Does law need a narratology of its own, separate from that of literature? Gaakeer advocates an interdisciplinary research in "law and narratology concerning topics like narrative rationality, emplotment, and narrative glue in their interconnection with regard to legal practice" (271). Our way of making sense of things implies also cultural knowledge: in its turn, culture implies ideology. Such a stand can be understood in the Arnoldian sense of the cultured person being the true apostle of light, or in T. S. Eliot's sense of culture being in the hands of the elite; it can be set against civilization or popularized (from high to low culture). Law partakes of all these different characteristics. These approaches are further complicated by the contemporary visual turn through the influence of mass media: therefore, we can speak of visuality or mediality of law.

How can emotion be part of the judicial position? We should distinguish between sympathy and empathy, especially on the judge's part. Sympathy is "feeling with" while empathy means "feeling for." The difficulty of the judge is: how far can she be involved or should she distance herself from the case to be judged? Empathy is relevant for law, so that we can speak of different forms of

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empathy: allocentric, projective or normative, all of which connected to emotions. Being a judge herself, Gaakeer is profoundly aware of the fine line between being involved and remaining objectively detached from the case to be judged. In other words, the judge must juggle respect for the law with humane participation. This is where literature becomes particularly useful: it tells us how to empathize with human lives and choices.

One of the many examples Gaakeer quotes to emphasize her point is Ian McEwan's novel *The Children Act* where a female judge is torn between her private family problems and her judgment as a judge. She cannot keep her emotional involvement at bay, which, at the end, brings her deep regret and the feeling of having failed at her duty. Gaakeer specifically speaks of "the normative issue of emotion in judicial decision making" (329): judgment can greatly benefit from literature and narratology whenever empathy, emotion and legal professionality are interwined. It is a way for judges to attain self-knowledge.

The last part of the book is devoted to the analysis of the influence of modern technology on law precisely because modern technology challenges selfhood and legal personhood. If we accept the concept that the Self develops its identity within a relational structure, can we say that in a technological environment the Self can constitute its identity through a relational structure? (341) What is "persona" in our technological era and "what if code, in whatever guise, takes over the human?" (344) The question is a central one in posthuman and transhuman studies, focusing on the relation between personhood as artificiality and personhood as personality and authenticity. We are aware that modern technologies are being used in forensic investigation, hence enhancing its possibilities. Therefore, it is undisputed that law is affected by technology. What is impaired is also the sovereignty of the human will, bringing law to doubt about the definition of man: What is man? The legal narrative of the subject comes to the fore.

The last part of the book also touches upon the latest philosophical trends, which, stemming from Heidegger's "The Question concerning technology," debate the distinction between *techné* and technology and its impact on humanism/posthumanism. Gaakeer focuses especially on the use of technology in forensic investigation, which implies the juridical invasion of the body. Her question is how law itself is affected by technology: "Can democracy in its current forms survive genetic engineering?" (350) She focuses her attention on problems inherent in being a person practicing law, on the quest for self-knowledge, on the law's invasion of the body, through, for example, the use of fingerprint techniques and DNA.

Her final question is "Have we by now reached the edges of the juridical as we know it?" (353). Technological applications to forensic investigation risk

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compromising traditionally respected legal values. We must return to a re-examination of man as a moral being, to a discussion of morality. A moral perspective is required.

This fascinating volume begins with a sort of state of the art in the law and literature debate, moving on to innovative perspectives involving the all-pervading influence of technology in all fields of knowledge: all issues examined underscore the constant moral quest of its author. Being a judge, Gaakeer interrogates herself on how to judge equitably, placing herself between empathy and objectivity, respect for the human being and the use of the latest investigative tools, the world and the rule of law, rigor and flexibility. The book reveals how deeply the author feels her responsibility toward the human beings she judges and how conscientiously she challenges herself, looking into literature for ways of solving her moral dilemmas, based on her own experience.

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