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Review of Greta Olson's From Law and Literature to Legality and Affect

And a Question and Answer Exchange with Greta Olson

ANDREW MAJESKE, GRETA OLSON

Editorial Note: The following review of Greta Olson's new book, *From Law and Literature to Legality and Affect*, originally appeared in early October 2022 as an NASJ Occasional Paper in anticipation of the book's launch on October 10, 2022.

Book Review

Harnessing Hate

The Turn to Passion in Law and Literature

Greta Olson's remarkable book *From Law and Literature to Legality and Affect* (Oxford University Press 2022) reinvigorates the discipline of law and literature by re-envisioning it—indeed by transforming it altogether. While Olson maintains that this new discipline should continue to be called "Law and Literature" for "historical and institutional" reasons, the title will apply to a greatly expanded subject matter, develop new models and methods for analysis, and deploy those models for different purposes (19). For the sake of clarity, I will italicize Olson's *law and literature* to distinguish it from the traditional sort.

Olson situates her *law and literature* not just in respect to traditional scholarship in the field, but also in relation to scholarship in the many derivative offshoots such as law and humanities, law and narrative, law and human rights, and law and culture. While Olson describes her project as emanating from a "cultural studies framework," she distinguishes *law and literature* from law and culture by noting that the latter tends to "rest on a notion of 'culture' as monolithic and static" (45, 47).

Olson's *law and literature* in contrast is constantly shifting, engaging an ever transforming "model of overlapping, dissonant, and fractured cultures of legality that contain conflicting legal practices and also varying attitudes towards the law" (184). Olson's conception of "legality" advances far beyond a traditional understanding of law as "state-made ordinances and laws," to a subjective understanding of "what people perceive to be binding norms," a category which would include people's "impassioned feelings about their legal environments" and indeed "whatever people believe to be lawful" (6). Olson characterizes these impassioned feelings as *Rechtsgefühle*, in a nod to Rudolf von Jhering, but also uses the cognate "legality." The "law" in *law and literature* is to be understood as overlapping with the meaning Olson assigns to legality. For clarity's sake, the word *legality* as defined by Olson, will also be italicized.

It is difficult to capture in this brief space, except by analogy, the radicality of Olson's shift in perspective respecting law and what she terms *legality*. Olson's conception of law and *legality* superficially resembles the expansive ancient Western conception of law as forbidding that which it does not permit. Law in such a system was coextensive with the traditional operations and practices of the society—with the "way" of the culture. For instance, Socrates could be prosecuted for impiety if he did not believe in the same gods that Athenians generally believed in. To put this into terms more relatable to Olson's text, the law in such systems was what the people in those systems passionately felt to be the law. This resemblance highlights the very sharp contrast Olson's conception of law and *legality* has to the conventional contemporary view of law, which conforms to the principle that the law originates from the state and permits all that it does not explicitly forbid.

The "literature" in law and literature will also be transformed to mean "affect," by which Olson essentially means people's "impassioned feelings" about their contextual *legality* (5-6). Olson takes pains to clarify that affect is to be distinguished from mere emotion in that affect applies to visceral feeling, to embodied states of intensity—that is, to preverbal reactive and reflexive states unmediated

by consciousness. Olson develops this meaning over the course of her third and most challenging chapter, which is entitled "The Turn to Passion in Law and Literature" (96). Olson's book appears to stem more or less directly from her prior work exploring the sudden rise of the "lexeme 'affect'" in many areas of scholarship, especially critical theory (97).

The implications of Olson's expansive recharacterization of what constitutes "literature" are far reaching, and the challenge Olson throws down will need to be taken up by those who wish to preserve a more traditional understanding of what constitutes literary texts. Olson's challenge, which emphatically deemphasizes the cultural significance of all written texts, and not just those that are considered to be literary masterworks, constitutes a new and dangerous front in the rearguard battle already being waged by the humanities in academia, and it would appear to be a challenge that needs to be directly engaged if these disciplines are to survive, much less thrive.

In her earlier work on the "lexeme affect" Olson remarked on "affect theory's (existential) threat to traditional Law and Literature scholarship" (99). The key problem, according to Olson, is that affect "counters the history of (narratively constituted) Western individualism" since "affect is not the property of a given individual" (99). Therefore affect "constitutes a move away from a humanist-inspired notion of a moral subject…" (99). But a move towards what precisely?

In a turn of phrase reminiscent of Olson's performative presentation style, which I have had the privilege to experience on several occasions, she opposes affect to the traditional view that "law functions to tame bad-ass passion and thus block it from breaking ever badder" (103). (Olson periodically intersperses colloquialisms of this sort to great effect/affect.) Rather than "taming bad-ass passion," Olson's *law and literature* seeks to redeem bad-ass passions such as hate, provided they can be harnessed towards progressive, inclusionist ends. This is evident nowhere more than in the curious structure she has fashioned for her book.

Olson's book pushes beyond the conventional boundaries of academic analysis (in law and literature) when she pursues the "pluralization" of the field to a number of other "law and" offshoots, including those in which "texts" to be studied "seriously" include popular television legal dramas. Here it become evident that her book is no run-of-the-mill critical theory text. Olson's analysis of reality TV courtroom shows such as *Judge Judy* and *Richterin Barbara Salesch*, graffiti art such as the Aylan Kurdi murals in Frankfurt, and the alt-right music video *Im Namen des Volkes*, leave no doubt that her text is anything but conventional (81-95, 115-124,

169-176). At telling moments, her mode of address also intentionally ruptures the impartiality of academic convention, mobilizing the affective intensity of her visceral reaction to the exclusionary, xenophobic media she elsewhere analyzes with restraint (176).

> I started and ended this book with the analyses of texts that I hate, the "Rapefugees Not Welcome" logo in the Introduction, and the rap In the Name of the People at the end of Chapter IV. (177)
>
> I hate these texts because they are highly resonant and also effective in the forms of vitriol they elicit. I use the affectively loaded and decidedly un-academic word "hate" because I believe that texts such as "Rapefugees Not Welcome" and In the Name of the People demand our critical attention as (*Law and Literature*) practitioners.... (177)

Olson emphatically concludes:

> I hate these texts because of the xenophobic and anti-democratic sentiments behind them. (177)

A motivating factor behind Olson's turn to affect is an acute awareness of its power. The analytical techniques and methods she proposes are designed to identify how affect is produced by a text (of whatever sort) by breaking the text down into its internal, its external (contextual), and its interactive pieces. She then analyzes how the pieces fit together. Olson's overarching purposes is to discover what factors or combinations of factors make the media under scrutiny so affectively compelling. The unstated but clear implication is that such research will help to reveal how best to counter and thereby weaken reactionary messaging, as well as to provide progressives with the tools to enhance the power of their own messaging:

> As a practice, Law and Literature can unpack non-fictional articulations of legality such as the logo "Rapefugees Not Welcome" that I hate so much. (178)
>
> [W]e are living in a moment in which much political exchange is carried out affectively....
>
> The rise of affective politics represents a departure from the universe of rational communicative exchange leading to mutually agreed upon communal actions....
>
> Antagonistic politics play out powerfully in populist arguments for excluding others. These politics are also expressed in the "affective publics" that come into being through heated social-media exchanges. Expressions of affect in social media often move people far more forcefully to political action than do more analytical, historically grounded, and contextualized descriptions and debates. (179)
>
> [R]esearchers [ulitizing *law and literature* techniques and methods of analysis] can discover how it is that instances of popular legality such as those conveyed by legal television actually work. (189)

In brief, Olson not only subjects affective messaging to analysis but employs it herself both to transform law and literature into something more useful, and in order to ensure that the discipline becomes politically relevant. In the end, Olson concludes by reverting to the reserve that characterizes the balance of her book and the genre in which she has located it. Her actual concluding paragraph is a model of understatement regarding the ambitious goals that animate her project.

> This book has argued that the political thrust of [*Law and Literature*] scholarship needs to be made tangible to its practitioners so as to unpack the nexus between popular legality and affect that determines our present. [*Law and Literature's*] politics resides in its potential to critique and usefully comment on cultures of legality. This form of embodied political practice, intervention, and analysis is the path to future [*Law and Literature*] work. (190)

It is evident that Olson's interpretation of the turn to affect, and the harnessing of her own hate for the reactionary texts she analyzes, signal for her both an end to the reign of enlightenment rationalism, as well as to the various humanisms with which it is associated. If political power is the fundamental unit of analysis in the humanities and the goal of analysis, those who wish to defend rationalism and humanism will need to mobilize with a counterforce capable of contending with the formidable animating power of this impassioned intensity. Olson's book challenges the defenders of the old order to confront the reality that the fear of violent death in an imagined state of nature, the bedrock beneath enlightenment rationalism, no longer appears capable of constraining violent emotions.

Question and Answer Exchange with Greta Olson

Introduction

Greta Olson (**GO**) kindly agreed to respond to a series of questions generated through my encounter with her new book. Some of these questions are straightforward, while others are intended to investigate the edges and the center of her project; that is, they reflect my impressions and express my hopes and fears about where her project comes from, where it is headed, and what its purpose is now. The latter questions are in their nature provocative, and I anticipated and encouraged frank pushback. As you will see, I have not been disappointed in my expectation. I hope you enjoy reading this frank exchange!

Figure 1: Greta Olson

The photograph above was taken by Salar Baygan for a project on celebrating white hair initiated by Andrea Leicher, Oliver Metzler, and Nicolai Tilov.

The Exchange

Andrew Majeske **(AM)**: In light of your efforts to "[a]ddress the many elements of covert and unfriendly fictionality within legal texts," including opinions written by US Supreme Court Justice Samuel Alito, would you be willing to apply the analytical techniques and methodologies featured in your new book to Samuel Alito's majority opinion in *Dobbs*?

GO: First, and in all brevity, new work on fictionality suggests that it is a rhetorical mode that can be chosen in all kinds of discourse, also in visual and multi-medial expressions, to signal that what the speaker/enunciator/narrator/communicator is articulating is not in a strict sense referentially and denotationally true but rather coheres with larger non-denotational truths. Covert fictionality occurs when one fails to signal that one is switching to this mode of communicating "imaginedness," and one omits signaling in order to be rhetorically convincing.

The first and most striking case of fictionality is Alito's citing a history of Constitutional opinion about pregnancy that is myopic and cruel in its active refusal to acknowledge that the result of the opinion will impart pain and suffering on all those people who can become pregnant. He nevertheless frames this history as entirely neutral, objective, self-evidently true and non-punitive. Alito appeals to a "mystical foundation of authority" in his channeling of medieval law, including unwritten sources. My phrasing deliberately draws on Derrida's remarks on how law legitimizes itself. Alito appeals to this mystical history to assert that the protection of the "fetal life" which the opinion invents, has always been intrinsic to the Anglo-American legal tradition. This "felt" foundation lies so far in the past, as the opinion asserts, that it cannot be located and is hence eternally valid. The distant and irretrievable past takes on a mystical quality and is naturalized as timeless and universal. This is Originalism gone wild.

Hans Vorländer, a German political scientist, argues that such appeals to eternal time in what he calls "validity narratives" are intrinsic to the constitutional cultures that grow around them. Again, an imagined authority is projected on the basis of a story about a constitution that began in the distant past and will carry on into perpetuity. The first instance of covert fictionality would be the assertion of the supposed timelessness of the majority's interpretation of the US Constitution and its coherency with the past rather than its break with actual legal traditions such as *stare decisis* and judicial restraint.

A second point is the emotionality of the decision, its repeated use and citation of words such as "egregiously wrong" and other phrases from the Mississippi state legislature brief it is based on, such as, "protecting the life of the unborn" and preventing the performance of the "barbaric" dilation and evacuation procedure for "nontherapeutic or elective reasons." These are moral phrases and assertions of a normative universal injustice. They are meant to be felt, as is the rehabilitation of the archaic "quickening," which Alito defines in a footnote as follows:

> The exact meaning of "quickening" is subject to some debate. Compare Brief for Scholars of Jurisprudence as *Amici Curiae* 12–14, and n. 32 (emphasis deleted) ("'a quick child'" meant simply a "live" child, and under the era's outdated knowledge of embryology, a fetus was thought to become "quick" at around the sixth week of pregnancy), with Brief for American Historical Association et al. as *Amici Curiae* 6, n. 2 ("quick" and "quickening" consistently meant "the woman's perception of fetal movement"). We need not wade into this debate. First, it suffices for present purposes to show that abortion was criminal by *at least* the 16th or 18th week of pregnancy. Second, as we will show, during the relevant period—*i.e.*, the period surrounding the enactment of the Fourteenth Amendment—the quickening distinction was abandoned as States criminalized abortion at all stages of pregnancy. (*Dobbs*, majority opinion 16, footnote 24).

This relativizing of the earlier definition of quickening as the "first felt movement of the fetus" on page 16 suggests that abortion is always a crime. Moving away from the idea of quickening as occurring when the person carrying the pregnancy feels the fetus move, the footnote asserts that quickening occurs whenever the law says it does and has nothing to do with the perceptions of the expecting person: "at around the sixth week of pregnancy" or "at all stages of pregnancy."

A third point is the misappropriation of legal history. I look to Sara M. Butler's discussion of medieval law and abortion and to Alito's selective choice of sources to justify his interpretation of thirteenth-century English law on "quickening" and his fictitious narrative of "a continuous line of prosecution relating to abortion," in the sense that we understand the word "abortion" now. Butler shows that our understanding of abortion, the chosen end of a pregnancy by a pregnant person, was not known to legal theorists of the time, who were more concerned about bodily harm done to pregnant women that could result in their deaths as well as the loss of the fetus (Butler, "Alito's leaked Draft Majority Opinion and the Medieval History of Abortion," blog 13 May 2022). The misappropriation of history extends to his understanding of "quickening," a non-medical and antiquated term, which is again highly effective in its affective connotations. The anachronistic quality of Alito's decision and its reference to a past in which women did not have any legally recognized personhood has been pointed out by Saturday Night Live and by Anita Bernstein for Slate and countless others.

Finally, and this is the one that hurts the most, Alito's opinion asserts that *Dobbs* functions similarly to *Brown v. Board of Education* (1954) to correct a terrible judicial wrong, a wrong so great that *stare decisis* has again to be overridden. *Brown* overturned the 1896 *Plessy v. Ferguson*'s decision's enforcement of the hideously racist "separate but equal" doctrine. For this reason, *Brown* is so often

cited as a case of jurisgenesis because it was a case of the judiciary ushering in a more enlightened, less discriminatory future United States. *Brown* was also a unanimous decision, based on many, many individual previous court cases and several studies demonstrating how segregated schools enforced systemic discrimination and furthered internalized racism.

The supposition in Alito's opinion is that by overturning *Roe v. Wade* (1973) and *Planned Parenthood v. Casey* (1992), *Dobbs v. Jackson Women's Health Organization* (2022) functions similarly to correct a historical wrong based on systemic bias and the protection of the interests of the privileged majority. S*tare decisis* can be overridden, the opinion asserts, as does Kavanaugh's concurring opinion, when constitutionally incorrect rulings of the past are so heinous and patently wrong that they have to be amended. I think the implicit comparison is really that what Alito refers to as "fetal personhood" has been treated as unjustly and as systemically unfairly as were Black persons before *Brown*, when legalized segregation was in place. Implicitly, the hypothetical fetal person has suffered under a state of quasi-Jim Crow since *Roe*.

What this analogy erases from the historical record is that forced pregnancy and forced birth are forms of chattelism that Black feminists have been calling out since the time of Harriet Jacobs and Sojourner Truth—two women who experienced enslavement and the sexual coercion that was endemic to slavery. According to *Dobbs*, the pregnant person's body is adjudged to be the possession of the fetus which cannot survive outside of that body, yet whose personhood is determined by the Supreme Court to be more valuable than the person who enables it to live. In prescribing forced birth, as the decision does, Alito and the majority solidify the legal inequality of those who can become pregnant, hence subverting the equal protection clause.

Further, and more terribly, the opinion ignores Black feminists and intersectionality theorists and their fundamental claims for the rights of Black womxn to control their bodies. These feminists point out that descendants of the enslaved are subject to multiple, intersecting forms of discrimination and control over their bodies through more limited access to health and maternal care in general. Hence, for me the analogy between *Dobbs* and *Brown* is historically twisted. Rather than correcting a historical wrong, *Dobbs* reinstates a form of legally condoned servitude to those who can become pregnant.[1]

1. Greta would like to thank Laura Borchert for research support, Stefanie Rück for proofreading, Andrew Gross for insightful editing, and Andy Majeske for initiating this exchange.

AM: Amartya Sen, who has an essay appearing in this volume, proposes in his book *The Idea of Justice* (Harvard UP, 2008) that it is impossible to reach any sort of universal agreement on the meaning of justice because competing conceptions of justice are equally valid, and there is no agreement on criteria for adjudicating between them. His paradigmatic example is of three children, each desiring a flute: the first child made the flute, the second is the only who knows how to play the flute, and the third child is impoverished and has no other toys (12-15).

Sen does not despair at the impossibility of arriving at a universally valid meaning for "justice." Instead he identifies an alternative context in which to deal with problems that formerly were brought to bar. The foundation upon which this alternative context rests essentially consists of an impassioned feeling that one has been treated unjustly, a passion that in effect Sen proposes to be both universal and timeless. Sen introduces the concept in *The Idea of Justice* by alluding to Charles Dickens's *Great Expectations* and to Pip's statement that "there is nothing so finely perceived and finely felt, as injustice" (vii). Our sense of justice might be particular, but the feeling of injustice is universal.

Sen wants to shift the focus from finding universal criteria of justice to taking impassioned feelings about injustice as the fundamental building block. You advocate shifting from law and literature to legality and affect, basing some of your arguments about the difference between these fields of study on Jhering's conception of *Rechtsgefühle*. Do you see a connection here?

GO: Through the Law and Literature event you organized at John Jay College of Criminal Justice in 2012, I had the pleasure of hearing Sen speak and reading his *The Idea of Justice*. Yet in all humility, I have not engaged with Sen adequately enough to draw his work into conversation with the very many theorists and models of legal subjectivity that I draw on in the book in order to describe what I call the interaction between legality and *Rechtsgefühle*. I mean by that how impassioned feelings about law and justice influence whatever people think of or feel law to be, and how this combination creates peoples' sense of their legal identities.

For Jhering and other theorists who describe *Rechtsgefühl*—a passionate feeling about law and justice—this is a personal and individual emotion, on the one hand, as it was for Jhering in a series of law cases that he lost against a former servant. The violation of one's *Rechtsgefühl*, as Jhering asserts, is like the physical pain of childbirth or like having a broken limb. The violation of one's sense of jus-

tice and the law feels physically painful. This comes close, I think, to your allusion *sensu* Sen to dear suffering Pip. Yet Jhering also came up with the idea of *Rechtsgefühl* because he, as a law professor trained in the application of Roman law and abstract legal norms, discovered an inconsistency in existent property law that he felt could only be remedied by recognizing how personal interests are inherent to legal processes. There are several different readings of *Rechtsgefühl*. One says that the impetus to change is inherent to the development and reform of existing legal systems, and, another, posits that *Rechtsgefühl* is something felt by a wronged individual or a group who feels unfairly treated. I believe there is room for both meanings. I explore these meanings in a new book with Thorsten Keiser and Franz Reimer, called *Feelings about Law/Justice: The Relevance of Affect to the Development of Law in Pluralistic Legal Cultures*, and in German, *Rechtsgefühle. Die Relevanz des Affektiven für die Rechtsentwicklung in pluralen Rechtskulturen* (Nomos 2023).

Where I am d'accord with Sen, as you read him, is to understand justice as not being universal. A problem with many normative ethical systems including Kant's categorical imperatives is that universal ethical mores are based on the assumption of an absolute equality between subjects, an equality that in our troubled world simply does not exist.

As important for me as your reference to *Rechtsgefühle*—legal affects—is what I see as a potential overlap between Sen's work and my readings of Eugen Ehrlich's *lived law* in the new book—that is, forms of normativity that are as or more binding than state-centered law—and which Ehrlich (1862-1922), a Jewish jurist who lived in Bukovina with numerous ethnic and language groups, simply found operating all around him. Ehrlich never wanted to define what law is, and he has often been taken to task by legal philosophers and legal sociologists for his supposed vagueness. Rather, he wanted to demonstrate what *living law* does and how it operates and to argue that jurists should be able to call on *living law* in *freier Rechtsfindung* (free findings of justice/law). (I am waiting for a real Ehrlich reception to happen in the Anglosphere. 2022 marks the centenary of Ehrlich's death, and lots of things are going on in Europe such as a conference on the relevance of his work for empirical legal methods in Paris in September this year at the Sorbonne: The Relevance of Eugen Ehrlich's Thought to Empirical Methods of Law/L'Actualité de la Pensée D'Eugen Ehrlich Pour Les Méthodes Empiriques du Droit).

AM: In your book, two of the texts you juxtapose are the preambles to the *Bavarian Integration Law* and the 2004 *EU Treaty*, which attempted to establish a *Constitution for Europe* (131-136, 166). You note in this context that such preambles resemble or reflect founding narratives, such as the mythic stories that justify the regimes and social dynamics of nation-states. Such narratives, you propose, reflect the stories used by the socially dominant group to justify and maintain their dominance, among other things. Do you consider competing narratives created by subordinate groups in an attempt to counter the dominant narrative (such as *The 1619 Project*) equally problematic in the event the subordinate group were to succeed in replacing the dominant narrative with their own when they themselves succeed in becoming the dominant group?

GO: Preambles, as Andreas von Arnauld points out, are fascinating because they assume a common tradition and work with affective rhetorical means, not only by using emotionally evocative and persuasive narratives, but also by employing tropes. One of the points I make in the book is that while Law and Narrative has become a well-received subfield not only within Law and Literature and Legal Anthropology but in Legal Theory more generally, for instance in criminal forensics and refugee law, work on metaphors and tropes in law remains quite limited. What more recent metaphor theory does is to show the haptic and instantaneous reactions that we have to metaphors such as "immigration crisis." Let's look at images and performances of work related to *The 1619 Project* please and not just the narratives.

I do not see the resistant foundational narratives supplied by *The 1619 Project* as problematic but rather as entirely needed remedies. I see this revision of the US American past as an act of legal pluralism in the widest sense, as an act of resistance against the cultural-legal status quo. The project's narratives and performances challenge this cultural-legal status quo by "rememorying"—to adapt Toni Morrison—a US American history that we had not known before. The history of slavery by those who were enslaved went largely unwritten, or it was marginalized. It certainly was not present in the history textbooks of my 1970s childhood. Hence, it has to be told now. As I describe in the book, the arts of Black Lives Matter and pro-immigration artworks project alternative narratives and tropes that countervail dominant ones in important, inaugural ways.

AM: Building on the previous question, I intuit from your book that you consider power to be the fundamental issue. Accordingly, it appears that any group that achieves dominant status will come to abuse their power and inevitably resemble in practice the previously dominant group they replaced. Another subtext of your book appears to me to be the ultimate objective at which your project aims, namely, the achievement of the universally peaceful and prosperous society of free and equal people. Assuming I have identified this goal correctly, how do you envision the move from this existing paradigm in which power is the fundamental phenomenon, and groups compete for dominance, to the universal society in which such vying for power is left behind or otherwise channeled or controlled? Will progress towards inclusiveness somehow overcome group identity dynamics, and if so, what move must be made to leave these dynamics behind, or transform them into something manageable?

GO: Let me give you some pushback here, in all love and mutual recognition, for the political philosophical project you yourself, dear Andy, are embarked on. I appreciate your book review, which is acute and sensitive in the extreme, also about the very different kinds of projects *From Law and Literature to Legality and Affect* sets out to complete. That said, I find your question preposterously large: "ultimate objective at which your project aims, namely, the achievement of the universally peaceful and prosperous society of free and equal people" and how to achieve it. This seems too vast.

I am honored that you wish for me to comment on Sen's political philosophy and his critique of the contractarian notion of universal justice. While my book is deeply political, I am not a political philosopher. Nor do I want to be.

Let me say why: I sincerely believe in "situated knowledges," as Donna Haraway teaches us, of the importance of moving beyond an ultimately colonizing form of knowledge and pretending to be omniscient or to think about experience in a totalizing way. This is an ongoing argument I have been having with a legal sociologist whose work I deeply admire and whose person I deeply care for, but to whose model of law and culture I cannot subscribe. I understand that need to provide an encompassing account of law and society in all of its various dimensions, but this seems totalizing to me and frankly hubristic.

I take on many discourses and traditions in my book: German legal history, conventional Law and Literature(s), an American Exceptionalism in scholarship that assumes that "our" Law and Literature(s) are universal ones from which everyone should profit. I also face off against a long legal historical tradition that says that

law is so varied in its sources and effects that it does not need any new interdisciplinary interventions. Thank you very much. I am working with classical narrative and trope theories and their revisions as well and with fictionality theory, affect theories, legal sociology, media theories, and material legal theory. That's enough, frankly. Let's leave philosophies of justice out of the mix.

My big projects in the book are first to provide methodologies for performing Law and Literature, Law and Media, and Law and Culture work that can also be used to interpret literature, in the traditional sense of poetry, prose, and poems. Second, I want to understand Law and Literature as in the arts of Black Lives Matter or Jacob Grimm's "On the Poetry in Law" (1815/1816) as acts of legal pluralism against dominant legal orders, as, in fact, enacting *living law*. I also wish to push back against an American Exceptionalism in scholarship that extends to who and what gets published in English. Third, I want people to take affect seriously and to not see it as incompatible with traditional forms of analysis and interpretation based in semiosis and representationalism.

I believe that understanding people's affective relations to imagined and felt law will help us to grasp our political moment. Lastly, I want Law and Literature practitioners to see their work as profoundly political and vitally important. This is then also an impassioned defense of the viability and centrality of a media-aware and affect-literate humanities education.

AM: Let me narrow the scope of the previous question a bit. Do you envision liberal democracy, in the forms presently constituted, capable of achieving the more inclusive society I see as the ultimate objective of your book? Or is liberal democracy fundamentally designed to achieve at best compromised results? That is, will the forces of inclusiveness always need to compromise with the forces of exclusiveness to a greater or lesser extent if the confrontation takes place within the context of liberal democracy? Do you see any possible resolution to this problem (if you indeed see it as a problem), or will any political solution need to look beyond the limits of the sorts of liberal democracy we experience today?

GO: Mr. Totalizing Political Philosopher—you go for it. Not me, Baby.

AM: If I am understanding the import of your book's conclusion correctly, you are suggesting that the progressive forces of inclusion should change tactics in their contest with the reactionary forces of exclusion. I gather from the main thrust of your book that in this age of social media it is necessary for progressive forces of inclusion (if they are to succeed) to identify what sorts of imaging/messaging are more affectively powerful than others, and to determine how and why the imaging/messaging produce the affects they do. In terms of what passion proves to be most powerful, you appear to acknowledge that the reactionary forces of exclusion have an advantage in affective terms in relying so heavily upon "hate." To overcome or at least to counter this advantage, the progressive forces of inclusion must also resort to hate. Am I interpreting this implicit positioning your book is taking correctly, or have I gone astray?

GO: The opening of your question takes a very black-and-white normative view of "progressive forces of inclusion" and "reactionary exclusionists" that I do not share. Nor does the book. Affective political, cultural, and legal work takes place on many different platforms and various affective levels. "Hate" is only one affect that can be successfully employed to political ends. It is not necessarily the "progressive force of inclusion's" channeling of hate that will bring about an advantage in a battle for cultural dominance, but rather, a successful appeal to an affective reaction that sticks with its audience. As I have written elsewhere: "I am pleased when anger and surprise do not win the Primary Affects award, but other modes of feeling are given room as well" (Olson and Lechner, "#Feminist"). I do not advocate resorting to hate to make performative arguments but rather responding to hate and engaging with its disruptive and transformative force.

Philology, combined with work on affect, can be used to effective political ends. This is a message I repeat a lot. Progressive forces have to articulate themselves visually, argumentatively, and by using affective means, in other words, also performatively. An example: many conservatives have honed in on the idea that they defend some nostalgic and naturalized version of THE FAMILY, which fulfils prelapsarian longings about an ordered universe in which, you know, men were men and women were women, and the kids were supposedly happy. One, this overlooks the economic causes of middle-class women's in the West having to enter the workforce post-1970 in order to pay for mortgages and in order to send children to college, and that it was not some malicious version of feminism or affirmative action that made it difficult for one wage earner to support a family of four, but post-industrialization, the move to a service economy with "femi-

nized" and lower-status work forms and more precarious work conditions. Two, the argument that the "natural family" is being destroyed due to cultural changes ignores a past in which "the" nuclear family was always more the exception than the norm.

How do we fight against this nostalgia and the resentment it gives rise to, while recognizing the powerful feelings they channel? Let's celebrate rainbow families by contrast—a metaphorical blend—that creates a visual and verbal image of queer and other non-traditional families being every bit as familiar and cozy and child friendly as the ones we know better from our Ozzie and Harriet-mediated traditions.

If I do have a message, it is to keep things simple, use haptic metaphors and clear narratives. The other part is to use narrative and trope analysis to take apart and deconstruct negative messaging. In other research and activist work I do, I have been naming catfight tropes with which feminists are currently being derided as trans- and queer phobic, as bourgeois, and as myopically white. With Laura Borchert, I have also been dissecting the way anti-trans legislation in the US and in Germany uses images of defenseless children and vulnerable women to actively harm trans and non-binary persons. We work to show that these anti-trans bills function similarly to abortion bans in that they project an image of the person whose life they seek to curtail as too immature or too unknowing to exercise agency and choice. Real debates are at issue here within feminisms and within trans and LGBTQIA movements. Yet the way these debates are framed and mediated in dominant representations serves to hurt feminists, LGBTQIA persons, and womxn alike. I want to call these tropes and messages out in order to not lose needed activist energy.

AM: At the outset of chapter 3 of your book ("The Turn to Passion in Law and Literature"), in the initial subsection entitled "The Affective Turn in Scholarship," you mention Spinoza (specifically what he does with affect in his *Ethics* in the section entitled "On the Origin and Nature of the Emotions") as the ultimate root source which underlies affect theory, as understood and applied in contemporary critical theory and academic disciplines through the lens of Deleuze (96). What do you think are the implications for affect theory, and the cause of progressive inclusionism in general, if the root source is Rousseau rather than Spinoza? My reason for asking is that your book's treatment of affect seems to me to align more closely to Rousseau's thought than Spinoza's, and I sense the implications of this difference to be both profound and disturbing. The following

quotation from a recent book gave shape to my pre-existing suspicions about this: "Distrusting the deceptions [Rousseau] believes implicit in the prescribed forms of articulate speech, he looks to tears, gestures, and inarticulate cries as the most authentic revelations of the human heart" (Storey, 153-54).

GO: Pushback, dear Andy. My sense is that you want to give Rousseau a more prominent place in the history of affect. I think of Rousseau as embedded in a culture of feeling very different from my own and the ones I know more thoroughly through familiarity with German and English Romanticisms. My knowledge of Rousseau chiefly stems from teaching the history of feminisms, queer and trans theories and activisms. In her *A Vindication of the Rights of Women* (1792), Mary Wollstonecraft criticizes Rousseau and other revolutionary philosophers for wanting to emancipate men but relegate women to a "naturalized" state of complete dependence and "unsophisticated affectations" (14-15).

The authors of *Why We Are Restless* (2021) that you quote are clearly taking Rousseau in a different direction. Yet I want to remain very wary of any ascription of greater affectivity to any minoritized group, given our Western history of plotting Reason as the opposite of Feeling. These ascriptions can be weaponized to do ideological dirty work, as they did towards women at the time of Wollstonecraft.

Each time I have taken up the new import of affect in all areas of inquiry and affect theory's various genealogies, I have been taught that there are other sources. Let's explore those histories further. The one history that extends through Deleuze and goes back to Spinoza is a very important one, and it tends to differentiate affect—preverbal sensation—from emotion. Another tradition entirely disagrees with this and historicizes culturally contingent epochs of emotion, to recognize that emotions are contextually specific and anything but universal.

AM: Could you elaborate whether, and if so how, Russia's war against Ukraine caused you to change or rethink your worldview or any theoretical position you have taken either in *From Law and Literature to Legality and Affect*, or in your other publications?

GO: No. Too big. Too totalitarian. Too masculinist.

AM: As an opening gesture in your book, you notice that "after 1800 … academic disciplines grew ever more differentiated and professionalized …." [3] This constitutes a significant impediment to activist scholars like you who engage in broadly interdisciplinary endeavors, and feel that such endeavors are necessary if social change in the direction of progressive inclusionism is to be achieved both locally and globally. You suggest therefore that this differentiation and professionalization "could use some helpful dismantling." And you urge (and implicitly recruit) your readers to be complicit with you in taking "down a few bricks from this wall." Could you expand upon your reasoning, and the justifications you see (from the perspective especially of your newly defined field of Law and Literature) for challenging the way in which academia divides itself into exclusive and isolated pockets, effectively walled off from each other, and indeed the larger world?

GO: People who, like myself, do interdisciplinary work find themselves in a conundrum. One is always an amateur, always deeply not enough a lawyer or a narratologist or a cultural theorist or an activist. One knows that one is not enough an authority and nonetheless has to push back against a sense of inadequacy or a too great respect for disciplinary boundaries that keeps one from thinking and arguing things through.

Let me give you an example. I am deeply grateful that many colleagues in law in Germany, the U.K., and the US take my background in narratology—the science of narratives—seriously enough to invite me to speak about narrative and law at their law schools. Yet I am aware of a very naggy schoolmarm habitus that creeps in when I start to question and, implicitly, also to correct, for example, the way my interlocutors use the word "narrative." So that this not be too gendered, let's say—since you mentioned Dickens before—my inner Mr. Gradgrind begins to lecture at length and not to listen. Greta's Gradgrind pontificates: "Well So and So, with your legal or social science background, actually you are using 'narrative' in a very universalistic, sloppy manner to actually mean ideology, myth, history, or underlying message. By the way, you are also failing to differentiate between 'what the story is saying' and 'how the story is being told.'"

While these insights may be valuable, I am also holding up and protecting the Borders of My Own Discipline jealously as well as my small area of expertise. I am also defending the various hazing rituals with and in the academe by which I came to inhabit the tiny bit of dressed up authority that I now so temporarily possess.

What people like Claudia Lieb do in Germany in discussing the beginnings of *Romanistik* (Romance Studies) and *Germanistik* (German Studies) in literature and in law is to show how the professionalization and differentiation of the disciplines was done for particular reasons—nationalistic, defensive, ideological, and practical ones. Yet these differentiations have also led to a lack of communication and, often, regretfully, to a tendency to deride whomever borrows from another discipline without, however, having gone through that discipline's hazing rituals and forms of accreditation.

I find these moves to be counterproductive. As stated, I understand philological readings of legal-political phenomena and the form-function readings of texts that can also occur in law schools to be the basis for needed political work when they are combined with affect theory and media awareness. Understanding just how political our work is can be deeply empowering for future Law and Literature practitioners.

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About the Authors

Andrew Majeske is an NASJ editor, an Associate Professor at John Jay College of Criminal Justice (CUNY, New York), and an Adjunct Professor of Law at McGeorge School of Law (University of the Pacific, California).He is author of *Equity in English Renaissance Literature* (Routledge, 2006), as well as numerous articles ranging over a number of areas of interest. He is also an editor and contributor to *Justice Women and Power in English Renaissance Drama* (FDU Press, 2009).

Greta Olson is Professor of English and American Literary and Cultural Studies at the University of Giessen, Germany. She is a general editor of the European Journal of English Studies (EJES), and, with Jeanne Gaakeer, the co-founder of the European Network for Law and Literature. Greta aims to facilitate work on the nexus between political and artistic practice and academic analysis. Her most recent book *From Law and Literature to Legality and Affect* was published by Oxford University Press in 2022.

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