

A Review of Greta Olson's forthcoming book

with a sneak preview of issue 73: Literature, Law, and the Idea of Justice

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NASJ has decided to publish this review of Greta Olson's new book, *From Law and Literature to Legality and Affect* (Oxford University Press) in advance of Issue 73. The review also appears in advance of Olson's book. Our intent here is to give a sneak preview of both the special issue (scheduled to appear in November 2022) and the book (scheduled to appear in October 2022) and to highlight the significance of law and literature as a field of inquiry.

The review is below. The special issue it will be a part of leads off with an essay by Harvard Professor and Nobel Prize winner Amartya Sen, who has contributed his essay "Law and Ideas of Justice," which further develops themes introduced in his book *The Idea of Justice* (Harvard UP 2008). Indirectly responding to Sen's essay, and directly challenging the fundamental premises which underlie Sen's thoughts, is the late George Anastaplo's "Justice and Community, Ancient and Modern"—also part of the issue. Andrew Majeske provides a critical introduction along with the essay, "Amartya Sen & George Anastaplo on Literature, Law, and the Idea of Justice," exploring how these two key figures present two of the most fundamental (and diametrically opposed) ideas about justice at play in contemporary debates.

Other essays appearing in the issue will include a contribution by the noted law and literature scholar Brook Thomas, "Defenders of Racial Justice: The Law and Literature Partnership of Albion W. Tourgée and Samuel F. Phillips." James McBride's "Walter Benjamin's *Critique of Violence*: The State, Police Violence, and Black Lives Matter" turns to a key twentieth-century theorist to help make sense of one of the most important social and political movements of our time. The other essays and reviews touch on significant aspects of law, literature, justice, and the limits of justice. We hope NASJ's open access format will help bring these vital ideas and debates in law and literature to a broader audience.

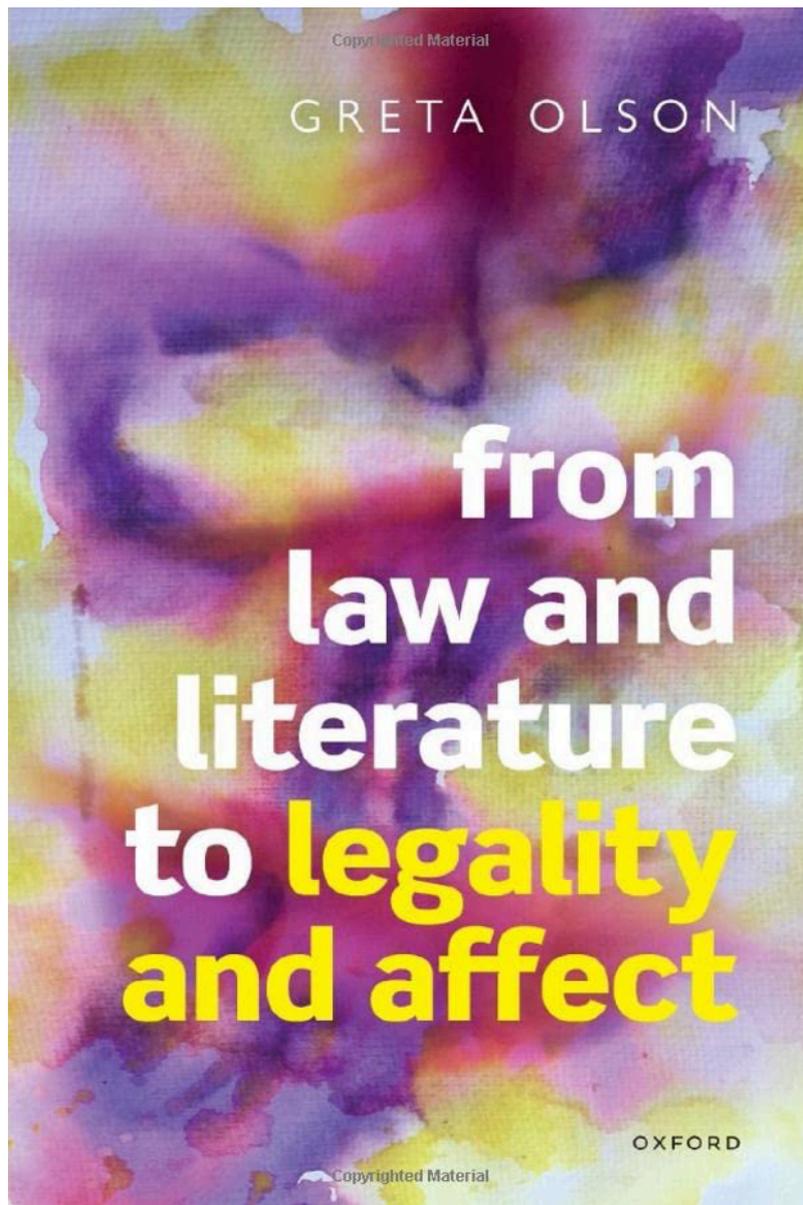


Figure 1: Review of *From Law and Literature to Legality and Affect* (Oxford UP, 2022)

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 *Rechtsgeföhle*, 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 [utilizing *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.



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