From Law and Literature to Legality and Affect
LAW AND LITERATURE

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From Law and Literature to Legality and Affect

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Beloved mother and so very much more
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## Contents

Introduction: Expanding the Scope of Law and Literature – Unpacking Cultural-Legal Issues 1

I. The Pluralization of Law and Literature 25

II. Law Has Gone Pop: Embracing Popular Legality 64

III. The Turn to Passion in Law and Literature 96

IV. Law and Literature as Legal Pluralism 125

V. Why Should We Care about the Future of Law and Literature? 177

Bibliography 191

Author Index 215

Subject Index 217
Introduction
Expanding the Scope of Law and Literature – Unpacking Cultural-Legal Issues

The Case for Law and Literature: Present Methods, Future Aims

In Germany, where I live, acts of right-wing terrorist violence are on the rise. These acts prove particularly troubling in a country that has cultivated a culture of remembrance, collective responsibility, and Vergangenheitsbewältigung (coming to terms with the past) so that Germans may never forget their responsibility for the Holocaust, Nazi-era crimes, or Germany’s role in World War II. In 2019, the pro-immigration politician Walter Lübcke was assassinated in front of his home near Kassel. During the same year, on Yom Kippur, a massacre of worshippers at a synagogue in Halle was only narrowly averted. Streaming his actions online, the attacker denied the Holocaust, and blamed feminists, mass immigration, and “the Jew” for the decline of the West. In February 2020, another lone gunman opened fire in two shisha bars in the city of Hanau, killing nine people and, later, his mother and himself. Like the Halle extremist, he posted online, calling for the annihilation of all “foreigners.”

These attacks have occurred against the background of the recent success of the extreme right-wing party Alternative for Germany in national elections. Although Germany was seen as a model within the EU and the world for practicing generous asylum politics with its Willkommenskultur (culture of welcome) and admission of over one million refugees in 2015, an increase in hate crimes against refugees, migrants, and those who were taken to be non-ethnic Germans was registered soon afterwards. With slogans like “Germany for Germans” and simultaneous calls to retreat from EU institutions and laws, ethnonationalism has been accompanied by, if not identical with, a rise in nativist and isolationist political ambitions as well as a return to traditionalist gender ideals. The Alternative for Germany party

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calls for an end to gender discourse and gender-equitable politics. In an argument for eugenically motivated ethnic exclusionism, the party has also suggested that a supposed increase in the number of severely disabled persons living in Germany has been caused by the “inbreeding” of migrant families.2

Simultaneously, however, proclaiming one’s pro-immigration sentiments has become a sign of political right-mindedness. A vast number of Germans from all walks of life actively participated in fulfilling the spirit of Angela Merkel’s 2015 statement “Wir schaffen das” regarding the influx of refugees. Merkel’s exhortation, “We can accomplish this,” succeeded in encouraging citizens to help to find housing, places in schoolroom classes, and language courses for the more than a million non-German speakers who entered the country during a short period of time. In a related move, new political groups like Pulse of Europe were initiated within Germany to publicly support pro-immigration and integrationist politics and to celebrate European unity and a pan-European identity.

Two images function to illustrate competing sentiments about how refugees should be thought of and treated in Germany. Both images have appeared in public places in Germany, at demonstrations and online, and both are now being worn as slogans on clothing. In a visual shorthand not unlike metaphoric transfer, a pro-immigration image and slogan that became common in Germany in the new millennium, “Refugees Welcome” (Figure 0.1), was turned on its head in “Rapefugees Not Welcome” (Figure 0.2). Originating in an American road sign from 1990, the positive image was adapted as a warning against the dangers posed by supposedly hypersexual, violent male refugees. The power of these images to elicit feelings about a contentious issue and to speak to their legal-cultural environment, using visual and verbal means to do so, opens up the central arguments about Law and Literature that this book intends to make.

Fig. 0.1 “Refugees Welcome.” Available at https://refugeeswelcomecampus.files.wordpress.com/2015/07/refugees-welcome.png.

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2 In March 2018, Alternative for Germany formally requested that the Bundestag give an account of the alleged increase in the numbers of severely disabled people living in Germany since 2012, and that it account for the causes of the disabilities since 2012, and determine how many of these disabilities were caused by marriage within a single family, and how many cases of this cohort involved persons with a migration background, and how many of these individuals did not possess German citizenship. The implication was that the influx of migrants since 2012 had led to an inordinate rise in the numbers of disabled persons. Alice Weidel and Alexander Gauland, “Kleine Anfrage der Abgeordneten Nicole Höchst, Franziska Geminder, Jürgen Pohl, Verena Hartmann und der Fraktion der AfD,” Deutscher Bundestag, 22 Mar. 2018.
Introduction

First, Law and Literature is not an empty academic exercise that has little value for legal practice or in legal education. Rather, its analytical methods can be used to unpack how images function and to understand the effects they have when people interact with them. If these methods are expanded to take in people’s subjective relations to law, as this book advocates, then Law and Literature can also be used to grasp vexing sociolegal issues. Second, the Literature half of the Law and Literature dyad is not about correcting what is wrong about the practice of law with a complicating narrative or visual supplement. Literature and other aesthetic artifacts and images are not exclusively politically progressive. They can also be propagandistic and function to foster social inequalities. Nor does dealing with literature and the arts necessarily further people’s moral educations. The image “Rapefugees Not Welcome” attests to this. Third, the barrier between the humanities and social sciences that grew up after 1800, when for a variety of reasons academic disciplines grew ever more differentiated and professionalized, could use some helpful dismantling. Let’s take down a few bricks from that wall. This book speaks for the integration of the legal in the cultural and the aesthetic, and argues for a cultural-legal education that demonstrates the connections and overlaps between them.

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We need the methods of an expanded Law and Literature practice to unpack images like those in Figures 0.1 and 0.2 to understand how they function to cement feelings about immigration. Both images aggressively reduce the variety of refugees in Germany to simplistic clichés. Figure 0.1 depicts a humanitarian scenario, intended to elicit sympathy for refugees. It has become a badge of honor for politically progressive Germans, and no bathroom at the university where I teach is without several stickers on the walls featuring this logo. Yet the image and accompanying words also reduce refugee experience to the process of flight, and gender the three depicted figures in a simplistic manner. The father forges ahead. The mother cares for the female child by pulling her along behind her. The girl’s flying pigtails signal her helplessness and frailty, just as they were originally intended to warn drivers on the California–Mexico border to take care of people, and particularly young children, running across Interstate 5 to gain entrance to the United States. Further, the sale of t-shirts, hoodies, and other pieces of clothing with the “Refugees Welcome” logo commodifies the plight of the very refugees that the logo works to advocate for politically.

The image in Figure 0.2 combines the figures of the woman and the girl into one person. The affectively resonant image of the pig-tailed girl has now been replaced by an adult, long-haired woman who is no longer being pulled along by her mother but is actively fleeing from assault. The young woman’s askew arms and legs and flowing hair signal her fear as she runs from three male pursuers bearing weapons that look like bombs and a knife. One of these male figures wears what appears to be a thobe, or a caftan, suggesting that he, the violent pursuer, is Muslim and/or Arab. The visual grammar suggests that these Muslim rapists and potential terrorists will attack the helpless woman unless the viewer steps in to save her.

Current issues such as the rise of anti-migration sentiment and ethnonationalism in Germany, or the new currency of blatant racism and misogyny in my country of origin, the United States, are mediated through widely disseminated and often highly reductive narremes—minimal narrative units—and tropes, such as those transmitted through “Rapefugees Not Welcome.” Most often, this dissemination occurs in popular medial forms, where anxieties about sociolegal issues are negotiated using fictional means. For instance, in a very popular German television series named Danni Lowinski (2010–14), a single-woman lawyer with a working-class background and a lot of attitude helps a Catholic–Muslim couple in Cologne to become remarried after the Muslim husband has pronounced talaq three times.

She does this while simultaneously entering into a legally binding partnership agreement with her closest woman friend. (Same-sex marriage was not legal in Germany until 2017.) Their partnership ceremony occurs against the expressed will of the presiding local official, who wants to defend the sanctity of heterosexual marriage. In the space of two consecutive episodes, social concerns about the validity of queer marriage as well as anxieties about the increased recognition of Sharia law as an alternative source of legal authority in German family law are explored. As in a Shakespearean comedy in which two couples’ mishaps in love are juxtaposed, both stories are brought to a humorous, if highly unrealistic, resolution in just 90 minutes of Danni Lowinski.

Tropes and narremes like the ones in the Danni Lowinski dramedy or in the “Rapefugees” logo need to be analyzed, I propose, by addressing what I see as often unconscious responses to law and legal regimes. I am referring to an affective sense of what Sharia law or same-sex marriage means for one’s own life, or a feeling of what it means to be German or American, and to those often unconsciously experienced forces that make one feel more or less German or European or American. These are part of people’s Rechtsgefühle, their impassioned feelings about law as legality. Let me offer an initial introduction of these concepts while pointing out that they will be explicated more fully in the pages to come. I will then describe how these terms relate to the critical repositioning of Law and Literature I propose.

Recht has a double meaning in German and denotes both “rightness,” in the sense of justice, and “law”; Gefühle means “feelings.” As an illustration of how Rechtsgefühle function, I want to look briefly at a massive demonstration against coronavirus restrictions that took place in August 2020 in Berlin. Most protesters expressed their vehement opposition to virus-related health restrictions such as having to wear masks on public transportation, in schools, and in stores. Protesters’ signs equated health measures with an encroaching dictatorship. Some protested what they see as the threat of mandatory vaccinations. A minority sported German Empire flags and anti-state insignia of the far-right Reichsbürger (Reich Citizens) movement, a fringe group that rejects the legitimacy of the current German state altogether, insisting that it is a puppet for the Allied Forces that occupy a still existing German empire. One small group of protesters tried to break into the Parliament building, while many others chanted “Wir sind das Volk.” This appeal for democratic representation is historically resonant in Germany, because it was used in the German Democratic Republic just before the fall of the Berlin Wall. Responding to the threat of potential brutality by the Volkspolizei—the so-called people’s police—in the GDR’s dictatorship, protesters chanted “We are the people,” and this chant has more recently been co-opted by anti-immigration groups.⁶

⁶ I offer a more complete history of the use of this phrase in Ch. IV.
Protests against corona restrictions in Germany tend to baffle outside observers, because Germany did comparatively well in controlling the spread of the new coronavirus and in limiting the number of deaths resulting from Covid-19. Yet the fervor of protesters sporting signs calling to “Stop the Corona Dictatorship” and citing the Articles of the Basic Law (the German constitution) as grounds for eliminating corona-related restrictions speaks for the highly affective manner in which people relate to what they experience to be the law. I call these relations Rechtsgefühle. On the one hand, protesters’ Rechtsgefühle concerned their resistance to legally enforced health measures such as fines for not wearing masks. On the other hand, they protested because of their impassioned belief that their basic rights are being infringed, and that they have stronger claims to interpreting these basic rights correctly than does the state. I argue that people’s subjective attitudes toward what they feel to be the law have to be incorporated into understanding how law functions in practice, and also in terms of creating legal identities. The inclusion of an awareness of people’s affective relations to law represents a major innovation in Law and Literature work that this book documents. I will contextualize this innovation with reference to early German legal sociological work on living law and Rechtsgefühle, to the American legal-consciousness movement, and to affect theory.

“Legality” is not meant here in its more typical meaning of something that is allowed for or demanded by law or conforms to a legal framework. I do not mean Kelsen’s “conformity” to “the legal rule,” or the “control by rules” that Hart names as relating “to the requirements of justice.” Rather, I use “legality” in an inclusive sense that goes far beyond an allegiance to state-made ordinances and laws in two distinct ways. First, I use “legality” to mean the totality of what people perceive to be binding norms. Legality includes individuals’ and groups’ Rechtsgefühle, that is, people’s impassioned feelings about their legal environments, as expressed by those protesters in Berlin who equated coronavirus-related health restrictions with fascism. Legality is then whatever people believe to be “lawful.” This notion of legality takes in a pluralistic understanding of law, which includes what Eugen Ehrlich termed “living law,” or the codes of behavior and rules for ordering conflicts that precede and extend beyond book law. What is perceived as law in the sense of legality includes norms not stated in legal prohibitions and protections.

I define “legality” in a second, inclusive sense to denote all expressions of the legal, such as those in images and sculptures relating to law, as well as in courtrooms.

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and monuments. People take in many things as having to do with law, including the pro- and anti-refugee images at the beginning of this book. Legality encompasses fictional representations of law in movies and television. Forms of legality can be found in the ways in which law resonates in and through all kinds of media and modalities. Law is disseminated in sounds and images as well as in narratives, metaphors, and performances. Expressions of law as legality have traditionally been inscribed in stone or words or images. Yet they can also be found in instances of what this book calls popular legality, as in legal television, or in online communities and their discussions of legal-political events.

I wish to clearly differentiate my use of “legality” from what Robert Cover called nomos so as to avoid potential misunderstandings. Cover’s nomos, meaning the “normative universe” in which all people reside, explicated law as taking place within a larger context that is determined by “the narratives that locate it and give it meaning.”10 Underlying myths and narratives enable communities to interpret their laws and “to live in” their respective worldly and legal contexts successfully.11 I wholly agree with Cover that law is a culturally embedded process that makes recourse to implicit cultural narratives in order to make sense of the world and its norms as well as to shore up law’s legitimacy. Indeed, Cover’s understanding of “jurisgenesis” relates closely to my thesis that Law and Literature is an exercise in legal pluralist interpretation (a point I will come back to).12 Yet “legality,” as I use it, differs from Cover’s nomos in two ways. First, Cover does not define what he means by “narrative,” and uses it to refer to types of literary genres, various foundational texts, and to what will later in this book be described as “validity narratives.” As I will come back to in Chapter I’s discussion of new directions in Law and Literature, an undifferentiated use of “narrative” characterizes the majority of current Law and Narrative work.13 Yet the vague use of the term is not helpful in understanding the specific properties and functions of narrative elements in legal texts and legal interpretation. Second, narratives are just one part of the visual, medial, and affective elements that make up legality—the totality of what people take law to be—and which elicit various kinds of Rechtsgefühle. Third, and finally, against previous discussions of legal cultures, I would argue that there is not just one nomos of myths and narratives that underlie and are in some sense indivisible from law. Rather, a variety of competing nomoi exist within a given legal system. These nomoi

12 Cover, “The Supreme Court,” 16.
13 See Simon Stern, “Narrative in Legal Text: Judicial Opinions and Their Narratives,” in Narrative and Metaphor in the Law, ed. Michael Hanne and Robert Weisberg (Cambridge: Cambridge University Press, 2018), 121–39: ‘legal scholars often speak of ‘narratives’ when they mean something else—such as images, conceptions, representations, or ideologies. Frequently, the label means simply that an interpretation is about to follow—the implication being that only narratives call for interpretation, but once the license to interpret has been secured, questions of narrative do not command any further interest” (124). See also the further discussion of this point in Ch. I.
are in a constant state of evolution, collapse, and contestation, since members of a given legal order have radically different experiences of that order, depending on how legitimately or illegitimately it responds to or ignores their concerns. Legality, as I understand it, takes in the reality of radically opposed legal identities within a given legal environment. In the next chapter, I propose a model to explain how individuals and collectives create legal identities through the ebb and flow of their Rechtsgefühle in response to the narratives and images and tropes of legality with which they interact.

The tools of Law and Literature are necessary for understanding all of the various expressions of law as legality. These are in the first case philological methods such as narratological, tropic, and generic analysis along with legal comparatism—methods of Law and Literature that have been practiced variously in different legal settings. To a lesser degree, these tools also involve visual analysis, and need to be expanded through the addition of a critical media studies focus. This includes what has until now been more the purview of Law and Media Studies as well as Law and Popular Culture. Additionally, a media-savvy discourse analysis must be applied to those relatively few, often highly affectively resonant, court cases and legal decisions that receive a great deal of popular press coverage. To this end, I offer a triangular model (see Figure 1.1) for undertaking analysis in the context of Law and Literature. The points of the triangle, Production, Textual Analysis, and Ethnography, provide a visualization for the practitioner of how to treat the object of analysis inclusively. The case studies described in Chapters II, III, and IV then demonstrate how this model can be used in practice.

This book argues that the discussion of whether the interdisciplinary project called Law and Literature has reached its demise does not help us to address urgent current sociolegal issues.¹⁴ In what has become a canonical text within the field, Julie Stone Peters historicized the three phases of Law and Literature in an essay for the PMLA, described legal and literary practitioners’ confrontation with the receding Real of each other’s home disciplines, and announced the end of the interdisciplinary project. In response, Richard Weisberg as well as others penned a number of rousing defenses of the field.¹⁵ This exchange has become an important waymark in histories of Law and Literature, a signpost for historicizing at least the U.S. strand of Law and Literature. The question driving this discussion as well as its aftermath is whether the interdisciplinary project of using law and literature to interrogate each other has reached the limits of its usefulness. Given various critiques

¹⁴ When referring to Law and Literature as an interdisciplinary project and a field of study, I use initial capital letters, also when referring to one of the two halves of this dyad. To introduce new terminology and concepts I use bold print.

of the project as it stands and expansions to Law and Literature’s previous objects of analysis and methods, a related discussion concerns whether an altered Law and Literature should now be called something else, such as Law and Culture, Law and the Humanities, Law and Narrative, or Literature and Human Rights.

I wish to rethink Law and Literature as a method and theory for understanding the relationship between legality and affect. This entails the interdisciplinary project adopting an inclusive approach to legal texts and cultural-legal phenomena such as the sexist and bigoted anti-immigration sentiment expressed in the “Rapefugees Not Welcome” logo. There are strategic reasons for retaining the “Law and Literature” name while rethinking the dyad as Legality and Affect—one of the major arguments of this book. These reasons include the institutional legitimizing factor of the interdisciplinary field’s now having a recognized 50-year history and a canon of seminal texts. Law and Literature practitioners profit from the increasing recognition of the field in Europe, and elsewhere. Under Law and Literature’s usual name, this includes, for example, Sri Lanka, Brazil, Columbia, Australia, Canada, and Nigeria. Making a strong case for the field, I argue that the traditional methods of Law and Literature, including an expanded form of narrative studies, are invaluable in addressing current sociolegal phenomena, such as the anti-corona restriction protests in Berlin or the protests in America regarding police brutality toward Black individuals. The methods can also be used to illuminate past instances in which the prevailing normative order stood at odds with people’s sense of what legal authority should be. The next step Law and Literature needs to take as an interdisciplinary enterprise is to widen its scope to address the various expressions of law as legality, particularly in popular media, and individuals’ and groups’ subjective senses of the legal, in their Rechtsgefühle.¹⁶

We practitioners need to draw on several developments in the field of Law and Literature to address the issues of our historical moment. These include in the first place a pluralization of Law in Literature in terms of the field’s methods and objects of analysis. Yet before outlining where the interdisciplinary project has gone and why it needs to embrace a more self-confident and metacritical perspective in relation to its goals and its capacity for conducting nuanced analysis of much more than literature, I want to introduce a working definition of Law and Literature and note where the project began.

Law and Literature comprises a variety of critical interventions in law and legal phenomena that are made using literature or literary means.¹⁷ This can include

¹⁶ Note that Rechtsgefühle should not be understood as a synonym for Affect in relation to Legality. Individual and group Rechtsgefühle—impassioned feelings about legal environments—are only one aspect of law’s complex network of affective relations. The relations of Law to Affect are explored in Ch. III.

reading legal texts and processes by employing literary and philological methods. In this form, Law and Literature involves adopting narrative, linguistic, semiotic, and metaphor analysis to comprehend how legal texts and their attendant processes actually function. As in narratological analysis, minimal units of the narrative—or the multimedial text or the sociolegal process—are isolated and interpreted in terms of their specific functions. More frequently, however, interventions into the legal have been made by juxtaposing literary texts with legal ones to uncover the complex contexts of legal decisions or those processes that tend to complicate any clean narrative about the rational application of legal concepts and interpretive guidelines in a given legal scenario. A typical example of Law and Literature analysis proceeds by placing a punitive legal judgment or an unethical interpretation of law by legal actors next to an “equitable” literary narrative that demonstrates contingency and context rather than neat application of precedent or legal method, as during the Vichy regime in France (1940–44), when the French state collaborated with Nazi Germany in capturing Jews, immigrants, and other “undesirables.”¹⁸ Such juxtapositions involve highlighting the ways in which legal reasoning and process can serve to inflict suffering and to enforce inequitable forms of social control.

Another variety of Law and Literature calls for an ethics of legal writing and adjudication that will lend legal texts a poetic quality to create new meanings. Up to the present, narrative and rhetorical approaches to Law and Literature remain the most widely practiced methodologies. My argument in these pages is that we need to build on these methods by attending to specific developments such as the increasing importance of social media interactions in creating people’s subjective feelings about legality, and the importance of affect. This book offers a model for understanding subjective responses to legality by demonstrating how people interact with medial expressions of law in reporting, social media, and fictional renderings, and it gives an overview of work on law and affect. In addition to paying more attention to media and affect, we practitioners of Law and Literature must modify our narratological analyses by rendering them as “thick” and historically contingent as possible.

In its most commonly recognized form, Law and Literature began in the United States. The origins of the post-1970 Law and Literature movement in the States were the product of a contested moment regarding legal teaching and legal decision-making in a primarily common-law legal system. Recalling this moment of origin—although one might also call on several competing histories—is to follow Fredric Jameson’s much-quoted injunction, “Always historicize!”¹⁹ In the current context, this means remembering those factors that led to and influenced


new academic movements. During this period, the Law and Economics move-
ment as championed by scholars such as Richard Posner, with its emphasis on
rational choice theory as a basis for making social policy, was seen by legal teach-
ers such as James Boyd White as obscuring the socially transformative potential
of legal language and interpretation. Further, the conservativism, indeed the
judicial activism, of the Rehnquist Supreme Court was viewed as requiring a crit-
ical counterpoint in legal teaching and writing. Law and Literature presented a
less political method for addressing issues of social justice than the more radical
Critical Legal Studies, with its more explicit class and racial-political critiques.
Intended to restore a lived ethics to legal practice and legal education, American
Law and Literature focused on the drama of the adversarial trial as presented in
literature and thus perhaps also reproduced what has been called the “adversarial
legalism” of American legal culture. Thereby, the centrality of the Constitution
and the Bill of Rights to public debates about sociocultural issues was emphasized.
Battles remain ongoing regarding the preferred mode of constitutional inter-
pretation, including pragmatic, originalist, and textualist options. The prevailing
interpretive mode has clear consequences for the application of the Constitution to
topics such as legal personhood and the right to speech, as in recent decisions like
Citizens United v. Federal Election Commission, 558 U.S. 310 (2010), on abortion,
gay marriage, and voting and immigration rights.

In American Law and Literature scholarship, central topics include the contest
between individual rights and the force of law, the alternative claims to rights made
by the Constitution versus the Declaration of Independence, and the ongoing so-
cial inequalities that result from the legacy of slavery, Jim Crow, and systemic racial
and ethnic discrimination. Yet these issues prove peripheral in other legal envi-
ronments. One outgrowth of Law and Literature scholarship from its American
institutional beginnings has been to actively recall pre-1970 histories of Law and
Literature scholarship that arose in Continental Europe and elsewhere, but were
subsumed within other disciplines such as Legal Philosophy and the Sociology

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20 The following descriptions summarize Greta Olson and Martin Kayman, “From ‘Law-and-
Literature’ to ‘Law, Literature and Language’: A Comparative Approach,” European Journal of English
Studies 11, no. 1 (2007): 1–15; Greta Olson, “Visions and Revisions of Law and Literature,” IASLonline,
Olson, “Law Is Not Turgid and Literature Not Soft and Fleshy: Gendering and Heteronormativity in
21 Sanford Levinson, “Law as Literature,” in Interpreting Law and Literature: A Hermeneutic Reader,
ed. Sanford Levinson and Steven Mailloux (Evanston, IL: Northwestern University Press, 1988), 155–
73.
search in English and American Literature 18, ed. Brook Thomas (Tübingen: Gunter Narr, 2002), 1–20,
6–7; Monika Fludernik and Greta Olson, In the Grip of the Law: Trials, Prisons, and the Space Between
of Law. Descriptions of German, French, Sri Lankan, Dutch, Brazilian, Nigerian, and British Law and Literature(s), amongst others, reveal how specific legal environments display a highly diverse set of local preoccupations and varying cultural-political concerns. They differ from the cultural-legal concerns expressed in American scholarship, and speak for Law and Literature’s diversification and plural histories. Not necessarily called “Law and Literature,” European and other, non-global northern developments demonstrate that the critical questioning of institutionalized legal norms and procedures that has been a hallmark of American Law and Literature has been carried out in different ways outside of the United States.

Current forms of Law and Literature have come to comprise a very generous sense of “Literature” and “the literary.” Visual texts, sculptures, and spaces and attendant forms of analysis are now employed, just as narrative literature once was, to interrogate all that is legal. This includes a move to diversify objects of analysis in a process that I regard as a decanonization of the field. Law and Literature scholars originally engaged with non-legal texts, in the strict sense, such as the Bible, a fairly narrow selection of Shakespearean plays, and the nineteenth-century Victorian and late Victorian novel as manifested particularly in the works of Charles Dickens and Henry James. Now Law and Literature analysis has grown much broader, with interactive video games and Fifty Shades of Grey featuring as “literary” texts in one recent Law and Literature conference. The original canon was overwhelmingly Anglophone, with Kafka and Camus along with the Old Testament featuring as lone exemptions that were generally treated in translation. Further, the emphasis was on Literature as the locus of the good and the ethical, and this Literature was often presented as Law’s feminizing and domesticating counterpart.

As the next chapter illustrates, newer foci in Law and Literature concern popular media and visual texts as well as material objects and social phenomena like crowd control. Law and Literature now encompasses an ever-growing corpus of non-Anglophone and non-primarily narrative texts, including poetry, science fiction, children’s literature, and non-exclusively verbal cultural artifacts, such as paintings, emblems, films, television series, opera, visual objects, sculptures, and music. Law and Literature also considers material phenomena, for example, files and courtroom technologies like the use of the camera, public spaces and architecture, and sound and silence. Researchers investigate changing communication patterns in web-based technologies, and how interactions with digital media alter the ways feelings about legality are produced. The original emphasis on canonical literary and heavily narrative legal texts—Supreme Court opinions, political speeches with legal content—has been expanded to include a far larger corpus of potential objects of analysis. This diversification has brought with it a move from what I view as the nearly exclusive, semantically based emphasis on content.
and the reliance on a methodology based broadly on linguistic and philological methods, to an embrace of a panoply of interpretive techniques. These include methods drawn from Visual Studies, the New Materialism, Film and Television Studies, and critical media analysis. Currently, then, more traditional linguistically and narrative-based methods of analysis coexist with non-narrative and multimodal ones. In an expanded sense, Law and Literature encompasses any number of aesthetic interventions into the legal.

For non-legal actors, the transmission of ideas about law largely occurs through media, including the reportage on relatively few, viscerally exciting, more often than not criminal trials that takes place in traditional news media and in interactive exchanges about these trials in social media. Fictional or fictionalized television series concerning law contribute largely as well. I argue that people’s affective relationships to law are largely determined by their unconscious interactions with the stories and images with which current topics such as queer, trans, and asylum rights as well as European integration are conveyed. These relationships are explored in this book in the already mentioned concept of Rechtsgefühle, as impassioned feelings about law and justice. Rechtsgefühle contribute centrally to people’s legal consciousness and their sense of having a legal identity. As I translate the term, “Rechtsgefühle” denotes feelings about legality, law in the widest sense, and the general rightness or wrongness of a legal environment. To a large extent, feelings about law arise through interactions with fictional popular cultural vehicles such as series about lawyers, police procedurals, and other law-related programs in legal television. The argument for a recognition of the affective power of lex populi, “literally ‘people’s law’ or, more loosely, ‘pop law,’” to borrow William MacNeil’s useful term (and Richard Sherwin’s before him), leads me to advocate the study of popular legality. Recognizing the importance of popular legality entails critically revising theories of law and media that are based in cultivation theory. This includes the so-called CSI effect.

The CSI effect has a narrow and a broad definition. It relates to the idea that popular media representations of legal processes—as in the many derivatives of the CSI television series—distort audiences’ understandings of how legal processes

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25 In the following chapters, I describe applications of these methods in newer Law and Literature in depth. At present, I would like to mention applications of Cornelia Vismann’s inaugural work on law, materiality, and visuality in Fabian Steinhauer’s Tumblr Account: https://fabiansteinhauer.tumblr.com/archive and his Vom Scheiden. Geschichte und Theorie einer juristischen Kulturtechnik. (Berlin: Duncker & Humblot, 2014). For applications of film studies, see Anne Wagner and Le Cheng, Law, Cinema, and the Ill City: Imagining Justice and Order in Real and Fictional Cities (Abingdon: Routledge, 2019). For cultural media analysis, see Cassandra Sharp and Marett Leiboff, Cultural Legal Studies: Law’s Popular Cultures and the Metamorphosis of Law (Abingdon: Routledge, 2016), and for an overview of recent developments, Simon Stern, Maksymilian Del Mar, and Bernadette Meyler (eds), The Oxford Handbook of Law and Humanities (New York: Oxford University Press, 2020).

actually operate. In its narrower meaning, the CSI effect has been said to influence jury members’ attitudes about how judges, lawyers, and expert witnesses should behave and has particularly led to expectations that incontrovertible forensic evidence should be produced in criminal trials. Although claims about the importance of the CSI effect have been largely refuted, it remains a recurrent motif in much sociolegal scholarship. Real Law stands in danger of constantly being perverted by the falsified stories being told about it, and the naive media user is positioned as a dupe.

The larger definition of the CSI effect refers, on the one hand, to media-produced false impressions about legal processes. On the other, it relates to the argument that the ubiquity of representations of common-law courtrooms featuring highly dramatic criminal cases in popular media leads those who live in Roman-law-based settings, where there is no jury, to erroneously expect that a jury should be present in the court. This so-called Hollywoodization or Americanization of law results in witnesses and plaintiffs referring to the presiding judge or judges as “Your Honor” and expecting lawyers for the defense and the state prosecutor to yell at one another. To develop a study of law as legality that encompasses an awareness of the importance of media interaction, Law and Literature practitioners have to move beyond a deterministic view of media use. This pessimistic attitude toward mass media suggests that dominant messages from media producers are poured into users and audiences as into empty vessels, causing them to reproduce those attitudes on a one-to-one basis. This influence leads to notions about media’s perversion of law that are expressed in terms like “lexitainment,” “the CSI effect,” and “pop law,” when used in a derogatory sense.

Contrary to this view, Stuart Hall and other cultural critics have shown that media usage and interpretation are always co-determined by users’ material conditions and ideological standpoints as well as by the experiences of the groups with which these people identify. Often, media users maintain highly resistant and/or negotiated relationships to the dominant messages that are transmitted medially,