

***Memory, Imagination, Justice: Intersections of Law and Literature*, David Gurnham, Ashgate Publishing Ltd, Farnham, 2009, 230 pages (ISBN 978-0-75467-103-9)**

The sub-field of law and literature tends to be described as one that is ‘evolving’. Perhaps this is a polite way of saying that its methods and findings are still suspect; or perhaps it reveals one of the main attributes of the field, which is a distinct and continuing openness in its methods of inquiry. Binder and Weisberg’s large tome, *Literary Criticisms of Law* (2000) is over ten years old now, but it remains a keystone in providing both a grounding genealogy and a contemporary map of the field, while also demonstrating this continuing openness. There are two aspects of the ‘evolving’ methods of law and literature described by Binder and Weisberg that speak to the ‘intersections’ Gurnham cites in his subtitle: first, the *creative* aspect of the endeavour, in which writers make connections between the domains of law and literature in order to explore a particular theme; and second, the *critical* potential of the method, where interdisciplinary reading is used to develop a critical practice concerning the study of the law. In *Memory, Imagination and Justice*, Gurnham provides new insight into the relationships between literature and legal justice- thematising his approach through exploration of memory and imagination at the junction of law and literature.

The author’s method represents a distinctive contribution to the field. For example, Binder and Weisberg have described the use of imagination in this field as a ‘meaning-making function that pervades social life’ (5), rather than being confined to the domain of creative writers. Disjunct of imagination from a necessary association with literature thereby opens the law up to being interpreted as a site of imagination. Throughout the book, Gurnham employs imagination as a key methodological figure in this way; but in Part Three, imagination plays a *substantive* role too, and here Gurnham looks particularly at the negative capacity of literature, in both law and literature, to ‘generate fear and anxiety’ (3).

The author focuses on particular moments of crisis in law and literature as a way to structure his exploration of the deployment of memory and imagination in achieving different kinds of justice. In the law Gurnham turns to the issues of provocation (Chapters One and Two), crimes of violence and indecency against children (Chapters Three and Four), and laws governing genetics and embryonic research (Chapters Seven and Eight). These moments of legal crisis are produced in part by the ways in which they reveal conflicts in social and moral norms. Gurnham provides close readings of an eclectic range of literary texts that speak to these themes at these points of legal crisis. Chapters One and Two examine legal and moral values in remembering past wrongs, comparing modern laws of homicide and punishment with the themes of retaliation and retribution in Shakespeare, Kafka and Euripides. In exploring this connection, Gurnham demonstrates that memory and imagination are ‘very much part of a legal scholar’s toolbox’ (4), referencing the idea of justice as the seeking of a repayment of a debt that goes back to Aristotle. Chapter Three concerns the state’s justification for its infliction of violence in regimes of punishment; taking Foucault’s *Discipline and Punishment* as a starting point, Gurnham examines modern imprisonment through the lens of Kafka’s *In the Penal Colony* to arrive at an alternative view to Foucault’s of the symbolic aspect of a punishment that extends beyond the life of the prisoner.

In Part Two of the book (Chapters Four to Six), the author uses the figure of the taboo and the relation of ambivalence to examine the law's governance of children, and the literary domain of fairytales. Chapter Four examines a number of versions of *Little Red Riding Hood*; Gurnham argues that Red Riding Hood's sudden confrontation with violence and death are so outside the ordinary that they may be experienced as taboos, and so instantiate an ambivalent experience of both dread and desire. Chapter Five takes this reading of ambivalence as a starting point to examine social and legal anxieties concerning the control of the photographic images of Tierney Gearon. Chapter Six concerns the hypocrisy and conflict of a society in which there is acute anxiety around the topic of violence against children, while children remain the only members of society who can lawfully be assaulted.

In Part Three, the idea of taboo is used to examine scientific discourses regarding genetic enhancement and the treatment of embryos in research. The final two chapters are critical of commentators who condemn the possibility that human life can be altered by technology. Chapter Seven examines a notion of justice upon which Gurnham sees this condemnation to be built—the association of justice with the integrity of the body, and of injustice with bodily disconnection, pain and dismemberment. Here, the author draws a connection between contemporary science fiction such as Atwood's *Oryx and Crake* and older classics such as *Brave New World* and even Shakespeare's *Titus Andronicus*. Each text represents the fragility of justice by reference to a vulnerable human body—presenting the physical human body as a metaphor for universal justice.

Overall, the author argues that referable processes of memory and imagination in relation to relative value connect study of law and literature. But these similarities form more than an interesting corollary. Gurnham demonstrates that there is more than a single logic present in the law, and more than one system of value. In deciding how to distribute loss for example, and upon whom the loss should fall, courts have recourse to other, explicit forms of value, such as the quasi-moral idea of duties, as well as unstated, implicit systems, such as norms. The law's forms, languages and structures have their own history and agency, and to reduce them to an effect of one system of value or another is to flatten the contradictions, ambiguities and movement of the common law. One of the strengths of Gurnham's book is to show the role of imagination in creating and maintaining these logics. Social norms, the social imaginary, cultural symbols and language are all necessarily part of the law—all these make the law a complicated site of intersecting forces. Analysing these factors is an exercise that is not merely interesting; it is important because the ways in which we describe the law have normative effect. Further, it illuminates spaces of contradiction where the law's smooth logic seems to falter; these potentially become spaces of possibility, from which to pursue projects of social justice.

As can be seen from this overview, Gurnham explores a great number of themes and problematics, from violence and social norms to a number of affective states such as shame, guilt, remorse and anger. In Chapter Five for example, innocence is used to explore the intersection between laws that try to regulate images and treatment of children, and the ambivalent management of childhood sexuality in fairy stories. Gurnham concludes that the injustice and ambivalence of law in this area has much to do not only with norms and culture, but more specifically with language: that the '*language* of innocence and corruption has much to answer for in warping cultural and social attitudes towards images of children' (131, emphasis added). Fairytales that take on innocence, re-read through the lens of the taboo, can provide lessons for justice (and the law) in regulating innocence.

In this way, memory and imagination operate not as overarching and organising themes, but more as keywords that are themselves generative. Thus, in Part Two, memory leads to an exploration of taboo, dread and desire via Freud, and becomes the vehicle to interpret the law's ambivalence concerning violence, pornography and children. In Part Three, memory leads to an investigation of the nostalgia of conservative bioethicists, who refer back to a mythic and imagined past that resists the 'artificiality' of contemporary science. The sheer breadth of these associations, themes and readings, as well as the range of texts considered, is both a strength and limitation of the book. There are points when the reader needs greater depth of analysis at the expense of this breadth—for example, an elaboration of the author's insight into the law's ambivalence concerning the control of children as a problem of the language of innocence. However, limitations in the exploration of theme are made up for in the innovative methodologies employed across the book—the readings provided are eclectic, creative and interesting, and offer, as Gurnham points out, 'no unified theory of justice, law or morality' but rather 'creative effects' that raise 'provocative questions for further debate and discussion' (9). The generative nature of this method—and even the unlikelihood of some of the intersections thereby generated—makes *Memory, Imagination, Justice* a thought-provoking and productive reading experience.

Honni van Rijswijk, Lecturer, Faculty of Law,
University of Technology, Sydney

References

- Binder G and Weisberg R (2000) *Literary Criticisms of Law*, Princeton University Press, Princeton
- Foucault M (1995) *Discipline and Punishment: The Birth of a Prison*, Vintage, London
- Kafka F (1996) *In the Penal Colony*, Penguin, London