

# POWER AND LEGITIMACY

LAW, CULTURE, AND LITERATURE



ANNE QUÉMA

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*Law, Culture, and Literature*

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Nicole Brossard, *Langues obscures*

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# POWER AND LEGITIMACY

Law, Culture, and Literature



## Introduction

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In the decade preceding the outbreak of the Second World War, a young man is accused of a crime on the basis of a single act of narration by a young female adolescent. In Ian McEwan's *Atonement* (2001), Briony's tale of Turner's victimization of her sister Cecilia and of the rape of her cousin Lola can be read as an act of usurpation of reality through the imposition of a single narrative, which the child wields like an incontrovertible means of control over glimpsed events. If Briony succeeds in convincing her relatives and law's representatives of the authority of her statements, it is not so much because of her talents for impersonation and tale-telling as that her tale captures and invokes some of the major values and norms governing the social microcosm of pre-war England that McEwan's novel stages. As a working-class, fatherless boy, dependent on an upper-class family's charity for his education, Turner is bound to be accused of the crime he has not committed. As soon as Briony tells her tale, the economic and cultural elements that form the social fabric of the lower- and upper-class characters fall into place and override Turner's and Cecilia's version of the events.

Thus, Turner's destiny is merely the materialization of a political *fatum* written in the institutions, practices, and bodies of Neville Chamberlain's England. Briony's presentation of the facts coheres with the dominant mythos of the society to which she belongs. As Briony invokes a wild body lashing out and inflicting its lubricity upon helpless virginal bodies, the law materializes and authorizes the heteronormative and political sociodicy that Briony's narrative has legitimized. Turner is condemned to a two-year sentence in Wandsworth Prison before he leaves for the front and ends up stranded on the beaches of Dunkirk. Briony spends the remainder of her life trying to atone for the injustice of her words and her acts.

At the centre of my reflection is the notion that as human beings, we seek to legitimize the social world and others through symbolic activities that are constitutive of a social organization and normative practices as well as productive of agonistic relations of social power. To develop this argument, I draw on Judith Butler's and Pierre Bourdieu's theories of social power, which both offer ways of conceptualizing the relationship between matter and meaning. In the elaboration of their respective theories, Bourdieu and Butler describe a social world where the emergence and sustenance of social governance occur at the heart of fundamental processes of meaning.<sup>1</sup> That symbolic representation engenders the social world is not just an assumption in their visions; it is an object of persistent demonstration. Not only is the self the materialization of beliefs and principles into a habitus, or the material effect of discursive and regulating norms, but, in both cases, the extreme mode of relationship between the socially constituted self and the symbolic organization of the social world is violence and injury.

The question of symbolic violence lies at the origins of Western philosophy, looming large in the *Republic*, where Plato establishes a social narrative based on fundamental axioms derived from a metaphysical system that has political implications for the organization of civic life and the community. In his critique, which betrays fascination for and resorts to censorship, Plato reveals the powerful role of art but also of symbolic systems of values, be they moral, political, or philosophical. Plato approaches the problem by devising an educational system that can shape future citizens according to the best divine and human qualities. Crucial to his reflection on power is the relation that he sees between the configuration of a social narrative and the determination of who has authority to legitimize the processes of representation. This agon between the constitution of the social world and symbolic power remains at the heart of the contemporary polis, whether we consider centripetal forms of state power or the daily activities of social agents in various social fields.

In the social competition for political ascendancy, not all fields and symbolic activities are equally positioned. In particular, what Bourdieu refers to as cultural or symbolic capital is measured by the performative efficacy of symbolic representations in the social world, their practices, and structures. For him, "the form par excellence of the socially instituted and officially recognized symbolic power of construction is the legal authority, law being the objectification of the dominant vision recognized as legitimate, or, to put it another way, of the legitimate vision

of the world, the ortho-doxy, guaranteed by the State."<sup>2</sup> Law seems to have the stronger performative ability to match words with deeds or, at the very least, to make its prescriptive utterances an unquestionable and legitimate means of social regulation. In fact, it is expected of the law to act according to its legal statutes, *obiter dicta*, and legal schedules even though the transition from the principles of legislation to the application of legal decisions is not as smooth as might be expected.

In contrast, art seems to wield a lesser symbolic power to the extent that its symbolic mediation does not function as an unquestionable and legitimate means of social regulation. Distinguishing between law and literature, Anne Barron cautions that "we need to tailor our theoretical frameworks to the specificities of the institution with which we are primarily engaged: that of law. Law is not literature, or art, or poetry, or even primarily a 'system of meaning,' though it verges on positivist heresy now to point this out. Law is a system of *prescriptions* which performs a particular function and is oriented towards a particular conception of legitimacy."<sup>3</sup> Furthermore, the symbolic capital of art is volatile, and the claim that it can achieve social efficacy is fraught with theoretical difficulties and historical examples of failure to live up to the claim. The debate is characterized by various claims and practices.

For instance, Plato's indictment of art in his musings on the creation of an ideal state is an unmistakable indication of the extent to which art as symbolic mediation and communication is suspected of political power. The persistent belief in this power is exemplified when Ngũgĩ wa Thiong'o states, "Political authoritarianism is terrified of the power of the word that has become flesh. It loves the word that has been dislodged from the flesh."<sup>4</sup> Or, countering Plato, Hélène Cixous argues that "in a manner that is strictly specific and reserved to writing, I think – I have always said it, I am reaffirming it – that the writers who are conscious are guardians, not only of the *res publica*, the common wealth, which is only one aspect of their work, but above all – it is their role, it is their mission – they are the guardians of language, that is to say of the richness of language, of its freedom, of its strangeness, strangeness."<sup>5</sup> Historically, the attempt by the communist regimes of the Soviet Union and China to enlist creative energies testifies equally to this potential power. From sacral music to painting and sculpture, art was also the mainstay of Christian political empires in Western Europe. Whether ousted or regimented, art is clearly something to lay one's hands on. However, the power of art to effect social and political change can seem at best ephemeral and at worst illusory. Diego Rivera remained

powerless when in 1934 the managers of the Rockefeller Center ordered his politically offensive murals to be destroyed, while rock concerts to fight against AIDS and poverty in Africa have had limited effects on complex economic and geopolitical structures and practices of power.

The law-and-literature debate is inscribed in this dynamic of authoritative claims to legitimacy through symbolic power. Prominent in the historical evolution of the movement have been the two major claims – explicit or implicit – that the humanities offer a moral shield against legal manifestations of power and/or that literature acts as a subversive means of shattering law's aspiration to totality.<sup>6</sup> Consider Ian Ward's advocacy of what he calls "the active nature of literature": thus, "this 'doing' ambition has two components: first it seeks to educate, and second it seeks to present a socio-political agenda."<sup>7</sup> On this basis, he assigns to literature the pragmatic and performative role of "reconstituting the community."<sup>8</sup>

In another instance, Martha Nussbaum defends the literary imagination as "an essential ingredient of an ethical stance that asks us to concern ourselves with the good of other people whose lives are distant from our own."<sup>9</sup> In discussing which novels suit this purpose best, Nussbaum qualifies her general statement. "Many popular works entice the reader through crude sentiments and the evocation of fantasies that may involve the dehumanization of others. Ethical assessment of the novels themselves, in conversation both with other readers and with the arguments of moral and political theory, is therefore necessary if the contribution of novels is to be politically fruitful. We are seeking, overall, the best fit between our considered moral and political judgments and the insights offered by our reading."<sup>10</sup> That the study of literature is expected to play an ethical and educational role implies that one ascribes to it a didactic role. This claim leads directly into Platonic territory, for the pronouncement that literature always has a moral value will inexorably veer off into a discussion of the suitability and candidacy of texts: which texts best educate the polis? Good literature does not necessarily equate with the ethical standards of the day for the mere reason that nobody will agree on the definition of good literature. In addition, texts that are morally offensive – that is, by the moral standards of the society within which they were produced – have provided some of the best grounds for ethical inquiry.

The ascription of a subversive function to literature is exemplified by Shoshana Felman's analyses of law and literature. On the one hand, Felman seeks to destabilize the epistemological boundaries between

law and literature by analysing them as two narratives of trauma, "two enigmas of emotional and physical destruction, two human responses to the shock of an unbearable reality of death and pain, and two linguistic acts of cultural and of social intervention."<sup>11</sup> On the other hand, in examining the law's unconscious repetition of sociopolitical traumas, she implicitly ascribes to literature a capacity to upset the law and its repressive effects. "Law is a language of abbreviation, of limitation and totalization. Art is a language of infinity and of the irreducibility of fragments, a language of embodiment, incarnation, and of embodied incantation or endless rhythmic *repetition*. Because it is by definition a discipline of limits, law distances the Holocaust; art brings it closer."<sup>12</sup> In the critical practice of law and literature, this analytical move is crucial for demonstrating the agonistic and heterogeneous relations among rhetorical fields and their political impact. But the practice becomes problematic when it ascribes to the literary text a universal ethos that is actually gainsaid by textual patterns of a political unconscious that may reinforce the very norms that the law legitimates and that jurors enact in their deliberations. As I see it, the problem is not so much whether literature has the capacity to subvert as whether we should ascribe to it an intrinsically subversive function and thereby create a hierarchy with subversion as the major jurisdictional criterion for the production, legitimacy, and effects of literature.<sup>13</sup>

If, however, we consider law and literature as social practices with varying performative effects of symbolic power and authoritative means of legitimizing, then we may be able to reconfigure the terms of their relationship without necessarily reproducing the various binaries that lock each field into hypostatized positions.<sup>14</sup> Law's symbolic power, or what various critics have identified as the rhetorical, poetic, literary, dialogical, or aesthetic dimension of law, is buttressed by the binding effects of its utterances, which give it the authority to legislate norms of being and doing things.<sup>15</sup> However, and to go back to Barron's distinction, while the notion that the law is a prescriptive system characterized by a particular conception of legitimacy is accurate, it does not take into account the complexities surrounding the performative process of legal utterances. That law functions as an institution masks the fact that its symbolic power derives not solely from its legitimizing authority but also from the assumption that the values under which its utterances are cloaked speak to the values that its addressees also perform through social structures and economic practices.<sup>16</sup>



Thus, the effects of law's institutional authority will spell normalization if not social coercion, but they can also aid and abet social aspirations for transformation depending on the social and economic contexts of its utterances and practices. Conversely, the imaginary and mythopoetic nature of literature is no insurance against the moral or political validity of the particular social *nomos* it may represent. As in the case of legalized social norms, there is no intrinsic value attached to the social process of narration, whose significance will remain determined by its historical, political, and economic context. Literature participates in social poesis either by legitimizing existing norms through its representations, dismantling and demystifying them, or contributing to the social imagination with unthought-of forms of being, relationships, and practices that will be communicated to readers, who themselves define and are defined by the cultural sphere where social values are minted, stamped, and circulated.<sup>17</sup>

The pairing of law and literature derives from a literary and legal past in Western culture when both fields sought to establish themselves as disciplines of knowledge and truth. After years of legal and cultural criticism, it is timely to consider that law and literature constitute themselves as fields of symbolic power vying with other social practices for recognition and social authority and, as such, are potentially implicated in the exercise of symbolic violence in their production of social meaning.<sup>18</sup> So rather than lingering with the polarization between law and literature, it is productive to envisage the polis as a site of social poesis in which law and literature engage to create norms of being and doing things while seeking to legitimate these norms through performative effects of authority. Law and literature interact at the level of discursive norms to the extent that, as modes of symbolization and communication, they share, swap, reconfigure, and disfigure beliefs and principles functioning as a normative substratum in constant evolution.<sup>19</sup> In this context, I propose to draw on the law-and-literature debate but also to re-inscribe it in the broader context of the agonistic processes of social poesis that social agents generate as they vie for the legitimacy of their symbolic power and practices.

To examine this agon for legitimacy through symbolic agency, I have opened generic borders and disciplinary gates by selecting the fields of jurisprudence, philosophy, statutory law, and literature. Criss-crossing disciplinary borders and claiming hospitality in different fields of knowledge without settling in one or another, my argument moves from feminist and materialist critical analyses of the law, analytical philosophy of the law, and political science to statutory family