

## Editorial

As every June, we are proud to present a new issue of NoFo. NoFo 13 includes articles dealing with the politics of aesthetics in painting; comparative reasoning in law and film studies; a new legal archive of images in the post-9/11 cultural landscape; discourses of deflection and responsibility-avoidance in official torture reports; gendered construction of vaccination campaigns and medical governance; and the continued, though changing, relevance of religion in the area known as charity law. In addition, we are publishing two book reviews, one dealing with the ethical responsibility to listen, and be just, to stories of atrocity, and another on the intersection of street art and criminal law. In sum, the breadth of this volume attests to our continued commitment to interdisciplinary research and to the importance of law and legal studies being open to it.

Here is a short summary of the articles in NoFo 13. Desmond Manderson's 'Here and Now: From "Aestheticizing Politics" to "Politicizing Art"' takes as its point of departure Benjamin's celebrated 1936 essay, 'The Work of Art in the Age of its Mechanical Reproducibility', and draws it into a dialogue with two exemplary events that occurred around the same time: An opinionated debate in 1935 concerning the Mexican mural movement—most notably in the work of Diego Rivera—and the Paris World's Fair of 1937. Both these episodes, Manderson suggests, invite us to reconsider any simplistic opposition between 'fascism' and 'communism', the former characterized by 'aestheticizing politics' and the latter by 'politicizing art'. The true distinction, he argues, lies in how the work of art relates to the 'here and now' [*Jetztzeit*], a term first used by Benjamin in 'The Work of Art', and then in 'The Concept of History'.

Manderson explains the difference as follows: On the one hand, the ideological appropriation of art involves situating political representations in a mythological framework, in a logic of eternity that attempts to shield political claims from scrutiny or context, where even the work of as fine an artist as Diego Rivera fell too often into this trap. On the other hand, art that resists that ideological appropriation works precisely in the opposite way, testing political mythology against its precise contexts and consequences, thus enabling art to hold politics to account rather than simply exult in it. All this would have been apparent to a *flâneur* trawling the Champs-de-Mars in Paris in 1937, Manderson surmises, for it was not just the grandiose pretensions of Soviets and fascists that were on display there. In the Pavilion of

the Spanish Republic stood the greatest piece of political art of the era—Picasso's *Guernica*.

Moving from painting to film, Geoffrey Samuel asks the general question of the comparability of reasoning processes in law and film studies. In 'The Paradigm Case: Is Reasoning and Writing in Film studies Comparable To (or With) Reasoning and Writing in Law?' Samuel takes on a task that has not yet attracted much academic writing, seeking to elucidate the actual forms of reasoning employed by film critics and academics. For Samuel, the comparative challenge lies in the fact that reading and writing about movies presents issues significantly different from those encountered in law. In particular, law tends to operate within what he calls the authority paradigm, that is, the fact that legal scholars are not free to disregard the authoritative texts of law, which also imposes limits on the kind of arguments that can be used in presenting a case and in justifying a legal decision. In contrast, film scholars do not operate within the same paradigm, which means that a much wider range of arguments is likely to be found in their texts. Nevertheless, the schemes of intelligibility employed in the social sciences are applicable as much to legal reasoning as to critical analysis in cinema studies. These schemes provide, Samuel suggests, another *tertium comparationis*.

Focusing on the mutual benefits that a comparative undertaking may have for both jurists and film scholars, Samuel analyzes the role of the *persona*, the *anima*, and the *image* in Alfred Hitchcock's *Vertigo* and in various legal cases, also singling out the essential role of the audience, which is arguably eclipsed in legal studies by the authority paradigm.

The next two articles also interrogate the images and cultural underpinnings of law and legal language, situating their analysis in the post 9/11 context. In her article 'Law as Record: the Death of Osama bin Laden,' Jothie Rajah focuses on the mediatized record of bin Laden's death, and the contestation surrounding it, as a way to reflect more generally on the changing conditions of law's record—the practices of receiving, disseminating, and archiving law. Rajah contends that law's public face—i.e., its record—appears to have been displaced. Thus, principles and practices that used to represent law, such as human rights and public judicial proceedings, have been displaced by what is invoked as 'national security,' of which the secrecy of the Guantanamo tribunals seems emblematic. In this context, it makes sense to ask: how is law represented and made visible today?

Rajah suggests that, even as law's traditional representations have receded, indelible displays construct legal knowledge in ways that have been pivotal to the militarization of global culture. Rajah examines law's 'popular' record through a critical analysis of the burial at sea of a fictional bin Laden-like character enacted in the popular television series, *Homeland*, and the main photograph relating to bin Laden's killing, the 'situation room.' Rajah urges an approach to law as record as a way to revitalize contemporary legal and political engagements.

Kati Nieminen's 'Forever Again: How Discursive Strategies Re-Legitimize Torture in the US Senate Select Committee's "Torture Report" and the CIA's Response'

analyzes the report of the Senate committee set up to investigate allegations of torture in secret detention facilities after 9/11. Nieminen contends that, while the report straightforwardly condemns ‘enhanced interrogation techniques’ and their use by the CIA, a critical discursive analysis unveils a much darker reality. In particular, Nieminen shows how legal argumentation is used in various ways, in both the Committee report and in the CIA’s response to it, to deflect or avoid responsibility for torture. In doing so, the discourse reveals a phenomenon that Scott Veitch describes as law’s irresponsibility, namely, the way law and legal institutions, generally seen as society’s key modes of asserting and defining responsibility, are in fact central in organizing the opposite when faced with extensive human rights violations and other large-scale harms. Nieminen provides an analytical framework both to identify and classify certain discursive strategies for responsibility-avoidance in cases of torture, while showing how legal language might contribute to the recurrence of such practices despite the declaration ‘never again’.

The two remaining articles take us to the Australian context, examining discursive constructions of gender in public health vaccination programs and the role of religion in modern charity law. In her article ‘Writing Contagion as Cancer: Law, Gender and HPV Vaccination in Australia’, Joanne Stagg-Taylor examines the gendered discourses of health and contagion around vaccination programs for the human papillomavirus (HPV) in Australia. Stagg-Taylor argues that HPV vaccination programs are based upon patriarchal concepts of women who, as potential reservoirs of disease, must be regulated and registered to protect both themselves and wider society from the risks of contagion and cancer. The article examines the ways in which ‘HPV governance’ obliges women to internalize a constant risk-state which casts their bodies as inherently unruly and pathological. Stagg-Taylor argues that these legislative schemes require women to become complicit in perceptions of themselves as risky, and in a constant state of self-surveillance, in order to be able to obtain health protection.

Juliet Chevalier-Watts’s ‘Charity Law and Religion: A Dinosaur in the Modern World’ critically examines whether, in the face of modern secularism, the advancement of religion continues to be a fundamental basis of charity law—namely, the area of law that recognizes special treatment for trusts constituted for ‘charitable purposes’. Chevalier-Watts explains that the legal meaning of charity derives from an 1891 case, where Lord Macnaghten stated four different heads that could benefit from this consideration, including the advancement of religion. Through an analysis of selected key cases from Australia, New Zealand, England and Wales, the article examines the roots of charity law in the traditional Judeo-Christian notion of religion, where salvation for the soul was purported for generous charitable gifts, and finds a reticence in contemporary courts to provide a universal definition of religion. In spite of this, charity law continues to accept the advancement of religion as an appropriate charitable purpose on the assumption that ‘any religion is at least likely to be better than none’. As a result, regardless of the changing societal status of religion in modern societies, the advancement of religion is still relevant in this area of law.

The issue closes with two book reviews: Linda Ross Meyer reviews Jill Stauffer's 'Ethical Loneliness: The Injustice of Not Being Heard' (2015) and Preeti Dhaliwal reviews Alison Young's 'Street Art, Public City: Law, Crime and the Urban Imagination' (2014).

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