

Mapping Law and Performance: Reflections on the Dilemmas of an Interdisciplinary Conjunction 

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Abstract and Keywords

In the past decade or so, there has been a substantial body of work in law and humanities in which “performance” serves as a key word, an umbrella term for a highly diverse set of inquiries: the examination of trials as theater, courtroom testimony, improvisatory judicial interpretation, embodied cognition, “acoustic jurisprudence,” adversarial agonism, physiognomic credibility, video representation, symbolic “speech,” police encounters, terrorism, the production of legal identities, and more. This chapter explores the meaning of “performance” in such studies, and recounts the author’s attempts to map the terrain: to identify the separate kinds of inquiry that make up the study of law and performance; to offer a taxonomic overview of the whole. It describes the challenges the author encountered in attempting to do so, and what these reveal of the issues facing the study of law and performance. The last section reflects on some of the risks of interdisciplinary study generally, and the potential benefits that might accrue to law and performance if it resists becoming a “field” and remains, instead, a contingent conjunction.

Keywords: performance, performativity, theatricality, interdisciplinary, disciplinary

IT is September 27, 2018. I click on the link for C-Span, and there is a man with furled brow, alternately weeping, sniffing, and shouting: “my family’s been destroyed, ... destroyed”; “thanks to [you], I may never teach again”; “thanks to [you], I may never ... coach again,” repeatedly interrupting while bellowing “let me finish,” his voice quavering with tears and rising in rage. The Senate Judiciary Committee will soon vote on his fitness to sit on the Supreme Court of the United States. Brett Kavanaugh will almost certainly be our next Supreme Court Justice: we will know before I have finished writing this chapter. How he says what he says, his tone, facial expressions, body language, gestures, emotional affect could determine the outcome of the hearings, and thus the composition of the court. What the senators and the public see at these hearings, in this room, before this audience, in these few days may drastically alter the lives of untold numbers of people for generations to come (and far longer), determining who will grow richer and who

Mapping Law and Performance: Reflections on the Dilemmas of an Interdisciplinary Conjunction

will grow poorer, who will be protected and whose lives will be shattered. Performance here may, in effect, change the shape of American law.

In the past decade or so, the term “performance” has begun to show up in law and humanities work with increasing frequency. As a doctrinal term of art, the word had always, of course, had a significant place in law: for instance, in contract law or as a measure of institutional success or failure (in assessments of judiciary or police performance, for example). It began to appear in a broader sense in humanistic legal studies in the last decades of the twentieth century: in the late 1970s and 1980s as a way of describing legal speech (it was “performative” because it enacted things through language); and in the 1990s as a way of describing the formation and thus contingency of legal identities that had once seemed natural (gender, race, or marriage, for instance, were “performative,” (p. 200) produced through legal categories and enacted under the shadow of law). But only in the past decade or so has there been a substantial body of work in law and humanities in which “performance” serves as a more varied keyword, an umbrella term (often joined by “theatricality”) for a highly diverse set of inquiries: the examination of trials as theater, courtroom testimony, improvisatory judicial interpretation, embodied cognition, “acoustic jurisprudence,” adversarial agonism, physiognomic credibility, video representation, symbolic “speech,” police encounters, terrorism, the production of legal identities, and much much more.¹

11.1 What Is “Performance” in Performance Studies?

In these new iterations, the word derives much of its purchase and analytic power from concepts and methodologies developed in performance studies. However, despite the fact that performance studies is now nearly half a century old, the meaning of the field’s keyword and its parameters remain somewhat murky. Those who founded performance studies in (roughly) the late 1970s initially had the view that, to justify the field’s institutional autonomy, it was important to define its objects and distinguish them from those of seemingly similar fields, most notably theater studies, literature, and (to a lesser extent) anthropology: performance was not text (as in literary studies), and not mere aesthetic mimesis (as in theater studies), and not social structures or process (as in anthropology), but “showing doing” (as Richard Schechner famously described it).²

In “showing doing,” performance was a kind of “restored” or “twice-behaved” behavior, Schechner explained: its demonstrative nature gave it a certain “as if” or subjunctive quality, reflecting self-conscious reproduction of a social or ritual script.³ At the same time, performance was (paradoxically) not capable of reproduction because it was, by definition, live, not mechanically reproducible (as literature, film, or images were). As late as 1993, in a famous definition of “performance” for the purposes of performance studies, Peggy Phelan declared: “Performance’s only life is in the present. [It] cannot be (p. 201) saved, recorded, documented, or otherwise participate in the circulation of representations of representations: once it does so, it becomes something other than performance.”⁴

Mapping Law and Performance: Reflections on the Dilemmas of an Interdisciplinary Conjunction

The focus on live (rather than mediated) objects dictated certain methodological constraints. Performance studies scholars were, like anthropologists, to do fieldwork, viewing the performances they wrote about in situ and real time: otherwise they would be merely studying the media that represented them. Thus, the field dealt largely with the present—performance that scholars had seen live—not with historical performance. “Performance” (as understood by the field) was therefore necessarily delimited: a thing that took place in local time and space.

Meanwhile, the term “performativity” began to enter the humanities: at first, in the late 1970s and 1980s, through Derrida’s critique of J. L. Austin’s account of linguistic “performatives”; then, in the 1990s, through Judith Butler’s account of the performativity of gender.⁵ For Derrida, all forms of speech were “performatives”: enacting but also endlessly deferring their meaning. For Butler, “performativity” was not merely everyday role-playing (as it was, arguably, for Erving Goffman), but at the heart of identity (gender, sexual, and more): it was the thing that produced the “I” itself. Arguably, the concept of “performativity” in both senses built on the poststructuralist account of the constructedness of history and culture, translating its temporality: constructedness was largely something that had happened in the past; performativity was ongoing and continuous. With its bearing on both past and present, the concept of “performativity” became, in the 1990s, key to a broad critique of culture, most notably the critique of the production of identity but with wide-ranging applicability, facilitating its dissemination into various fields in the humanities.

Schechner had always understood “the performance of everyday life” as an instance of the twice-behaved behavior that was the object of the field. But it was only in the 1990s that “performativity” became central to performance studies. Since “performativity” was often covert, more being than showing (however ontologically contingent such being might be), the objects of performance studies no longer really had to “show” in any obvious way. All being was, in a sense, a form of showing. As ontological fact rather than merely event, “performance” and “performativity” were also clearly things that happened everywhere and all the time. Since “performance” could designate something as temporally and spatially specific as a suicide bombing or as diffuse as the ongoing performance of gender, one could study it as a phenomenon that happened across unbounded time and space. This required reconsidering performance studies’ implicit preference for studying live events. Phelan famously renounced her initial definition of performance fairly quickly, and others elaborated.⁶ With the disappearance of liveness as a limit on what counted as “performance,” there was really no bar to studying (p. 202) *representations* of performance: in video and audio, texts and images. Interpreting texts and images meant that historical events were also within the field’s purview.⁷ Perhaps there was no need after all to strictly distinguish the field from media studies, film studies, music, art history, literature, history, or, in fact, theater studies.

Although Schechner had described the field as “between theatre and anthropology,”⁸ performance studies had initially striven to distance itself from theater studies and distinguish its objects. Where theater was fake, performance was real. Where theater was pre-

Mapping Law and Performance: Reflections on the Dilemmas of an Interdisciplinary Conjunction

ciously aesthetic and fundamentally bourgeois, performance was anti-aesthetic, transcending class. Where theater was mere entertainment, performance was *efficacious*: it made things happen. Interpreting theater merely propped up a dying institution; identifying performativity was a political act. However, some people noticed that it was often hard to distinguish “performance” from “theatricality,” which, after all, was also a means of “showing doing,” a fundamentally live set of embodied practices and events. In fact, while the term “theatricality” had had historically negative associations (artifice, affectation, ostentation, excess, melodrama, narcissistic attention-seeking, histrionics, hysteria),⁹ it could also serve as an important critical term. Brechtian theatricality, for instance, could do much the same work as the Alienation Effect (or, in fact, “performativity”), serving to reveal the mechanisms of reality production so that one could set about changing them. Samuel Weber similarly used the term at once negatively, to describe the phenomenon of late modern capitalist mass media, with their mesmeric power to crush action and generate ceaseless desire, and positively, to critique that phenomenon.¹⁰ In fact, the connection with theatricality was implicit in Butler’s very development of “performativity” as a concept. For Butler, theatricality could be a tool for the exposure of performativity, “a resignifying practice [that] contest[ed] the terms of [a norm’s] legitimacy,” allowing for “subversion,” a “*working [of] the weakness in the norm.*” The drag performer (for instance) could use theatricality to “*mim[e] ... discursive convention[s]*” and “*rende[r] [them] hyperbolic,*” thereby “*revers[ing]*” them. Theatricality thus became a practice not of compulsory repetition (as in the performance of normative gender) but of *citation*, a kind of citation of norms that rendered them visible and thus “resignif[ied]” them.¹¹

(p. 203) As “theatricality” began to garner more critical attention (in part with the revival of its critical edge), performance studies began to merge (institutionally at least) with theater studies: in the 1990s, traditionalist theater scholars complained that performance studies was taking over the American Society for Theatre Research conference; by the beginning of the twenty-first century, such complaints had virtually disappeared, as “theater” departments became departments of “theater and performance studies.” Merging the two fields could be intellectually productive: theater studies had interpretative and historical tools valuable to the study of performance generally; examining the relationship between theater proper and social or cultural performance deepened the significance of theater as an institution. But the merger’s value was also institutional: universities were cutting humanities departments, but they were reluctant to cut theater (it provided, well, *theater*), so the merger helped to ensure the survival of performance studies as a field.

Performance studies was always, necessarily, an interdisciplinary enterprise. But its expansion to include “performativity,” “theatricality,” and a vast variety of objects in different media, framed in diverse kinds of space and time, situated in relationship to their interpreters in a variety of ways, some only marginally about showing and more about being, has brought with it an interdisciplinary capaciousness that the field’s originators may not have envisioned: studying performance, one is not limited by conditions of production or reception. One can, in fact, study virtually anything. That has, somewhat surprisingly, ended up being one of the keys to its success. If performance studies lost much of its dis-

tinctiveness, it turned out that legitimacy was not in fact to be found in distinctiveness (as performance scholars may have once thought), but in the portability of its key terms, its cross-disciplinary mobility, in a sense, the expansion of its empire.

11.2 Parsing Law and Performance: Tripartite Schemes, Venn Diagrams, and Other Sketchy Experiments

Meanwhile, law and literature was similarly expanding its domain, at once developing institutionally (with journals and conferences) and extending its purview to include a multitude of objects—texts that were neither literary nor legal in the narrow sense, video, images, cultural events—and employing a multitude of disciplinary methodologies. As the new century began, many law and literature scholars were feeling impatient with the limitations of the word “literature” (an impatience with the dominance of text-based criticism similar to that in cultural and performance studies in the late twentieth century), and were urging still wider interdisciplinarity: the field should give up the term “literature” (said some) and lead the way toward the broader field of “law, culture, and the humanities.” In an essay in *New Approaches to Law and Literature* (2017), Caleb Smith declared such an interdisciplinary future already upon us: “For better or for worse,” (p. 204) writes Smith, “[o]ver the past decade or so, legal scholars interested in the critical humanities have not limited themselves to literature or literary theory, and literary critics interested in legal matters have found resources in fields (history, sociology, philosophy) beyond the law.”¹²

In his contribution to the same collection, Austin Sarat—perhaps the most prominent promoter of interdisciplinary (humanistic and social scientific) legal studies—argued, like Smith, that the “brightest future” for law and literature lay, in fact, in “pushing the boundaries of law and literary study ... beyond the humanities,” and, indeed, beyond culture. He identified this new interdisciplinary entity—beyond humanities and culture—as “law as performance.” Law as performance, he explained, brings “literary and cultural analysis together with social studies of the way law performs in a variety of domains, from the appellate court to the cop on the beat, from stories about law in great literature to moments when law is silent.” The study of law as performance, he wrote, engages “scholarship on theatre, dance, music, ritual, carnival, and spectacle, and draw[s] on work in linguistics, anthropology, sociology, and theatre history.” It avoids “privileging the word over the world or the world over the word,” attending to “text, ... context, role, and action, ... staging, symbolization, [and] audience.” It recognizes that legal practices are actions in the world and, at the same time, “meaning-making processes.”¹³

A decade ago, a friend asked me to explain “the field of law and performance,” and I responded: “it’s not a field!” Reading Sarat’s essay, I thought: actually, the *eminence* of interdisciplinary legal studies not only says “it’s a field” but that it’s the new and improved, bigger and better law and humanities, the most ultra-interdisciplinary of them all. I had

Mapping Law and Performance: Reflections on the Dilemmas of an Interdisciplinary Conjunction

been writing on this conjunction for the past decade or so: exploring historical legal events and practices through the lens of performance; attempting to demonstrate methods for the interpretation of legal staging, movement, gesture, affect, constructed space, temporal sequencing, and more; suggesting the importance of performance consciousness to legal history. And my own contribution to the volume was, in fact, about the distinction between law-and-literature and law-as-performance (with a particular focus on what it meant to study law not just “and” but “as” performance).¹⁴ So Sarat’s announcement was *excellent* news (thought I, in a moment of vainglory). I was invited soon after to write on performance for this collection, and, since it was a “handbook,” it seemed to demand something more general than a description of my own particular project or the kind of narrowly focused historical study that I had offered (p. 205) elsewhere.¹⁵ It seemed to me that I should instead try, before anything else, to explain law and performance as a whole, describing the meaning of the conjunction for law and humanities generally.

For lack of a better place to start, I decided to begin with definitions: what were “law” and “performance,” and what was the “and” that conjoined them? Skipping over “law” (on the grounds that it was unwise to tackle the question to which more-or-less two thousand years of jurisprudence had been dedicated, at least for the moment), I turned to the “and,” the axis point between law and performance. To try to get to some kind of understanding of what it might mean, I began to scribble down some lists, starting by translating the “and” into three different prepositions, borrowed from law and literature’s classification of its own project. It looked like this:

Law in Performance (the *representation* of law, primarily in aesthetic performance): theater, dance, ritual, carnival, protest, etc.

Law of Performance (the legal *regulation* of performance): regulation of theater, expressive action, obscenity, religious attire, performance copyright, identity, etc.

Law as Performance (the *enactment* of law through performance): trials, policing, public punishment, etc.

This was not as clear as I had hoped. The prepositions refused to behave as they did in law and literature. “Law in literature” and “law as literature” seemed reasonably distinct from each other. But because of the predominantly non-aesthetic meaning that “performance” now has for academics in the humanities, “law in performance” seemed to evoke not aesthetic representations but events and practices in courtrooms and other legal spaces. So “law in performance” seemed hard to distinguish from “law as performance.” To distinguish the two, I would have to explain that by “law in performance,” I meant the study of aesthetic objects. My scheme would read “law in performance but what I really mean is aesthetic objects,” “law of performance but what I really mean is legal texts,” “law as performance which is different from law in performance although they sound the same.” This was not really the succinct tripartite scheme I had in mind. Moreover, there was a third arena on which much law-and-performance work had focused: studies of the effect of law on the performance of everyday life (what Joshua Chambers-Letson identi-

Mapping Law and Performance: Reflections on the Dilemmas of an Interdisciplinary Conjunction

fies as “the quotidian”).¹⁶ If what I was really attempting to do was to distinguish performance in different socio-institutional spheres, my scheme should say so. I tried again.

(p. 206)

The Aesthetic (representations of law through aesthetic performance): theater, dance, ritual, carnival, etc.

The Legal (legal events, practices, and interpretation as performance): trials, policing, or the creation of judicial opinions or decisions, etc.

The Quotidian (the performance of everyday life under law): the performance of identity, or other forms of quotidian or daily living “before the law.”

This scheme had some defects: it did not clearly, for instance, identify the specifically legal in the first and third categories. But it was pithier. And it highlighted just how different aesthetic representations, legal events and practices, or just being “oneself” (for instance) could be from one another.

This highlighting of distinctions seemed a virtue of the scheme, but perhaps also a problem to be confronted. Many of the studies I had read argued (explicitly or implicitly) that these different kinds of performance were linked in various ways, or existed on a continuum: for instance, theatrical performances and legal decisions dealing with performance reflected similar social assumptions; or legal events shaped the performance of identity. But “performance” seemed to mean very different things in each of these domains. Was “performance”—in theatrical performances, in performatives in legal texts and decisions, in identity production, and elsewhere—a unified thing with a single identity? Before I could understand the “and,” it seemed necessary to understand “performance.” In an attempt to do this, I went back to Sarat’s description of the emerging field of law as performance. The field, he said, would include: “scholarship on theatre, dance, music, ritual, carnival, and spectacle” (check!); “cop on the beat” (check!); “the appellate court” (check! at least for the hearings); “stories about law in great literature” (wait a minute, how is this different from law and literature?); “moments when law is silent” (what?)

I was later to discover what he meant by “moments when law is silent.”¹⁷ But then I thought: can everything that law ignores (for instance, heartbreak, just to take one devastating experience for which law offers us no compensation) really be understood as a “momen[t] when law is silent” and thus as a part of law? And even if we can cast law’s silences as part of law (just as the white spaces in a negative are a necessary part of the image), what justifies treating such silences as *moments*? or treating an absence as an instance of performance? I went back to the folder I kept of articles on law and performance. Reading them, I found performing texts, performing doctrines, performing legal concepts, above all, performing identity. These performing texts, doctrines, concepts, and identities were rarely represented as embodied things localized in any specific place and time: they were almost always diffuse abstractions, part of the conceptual (p. 207) atmos-

Mapping Law and Performance: Reflections on the Dilemmas of an Interdisciplinary Conjunction

phere or *Zeitgeist*, ideologies, categories, rhetorical habits. Did everything perform all the time, even the invisible, the immaterial, the abstract? Even absence itself? And if so, was the study of law as *performance* in any way distinct from (for instance) the study of legal concepts or doctrines, which was (of course) the purview of the most traditional kind of legal study? Was “performance” in such studies really just another word for thinking about the world as process, or understanding being as always in a state of becoming (as twentieth-century phenomenology envisioned it)? Was it, then, simply a fancy word for (effectively) every kind of doing and being?

I thought back to the early days of performance studies, when the field had attempted to distinguish performance from other things by identifying its special features. I decided to try to determine whether “performance” was in fact a particular kind of thing. I would do this by looking at instances of “performance” in recent studies of law and performance to see whether they were marked by any of the special features that performance studies had initially identified as distinguishing performance from other kinds of things (“showing doing,” embodiment, liveness, etc.) As I jotted down notes, I saw that each of the different instances of “performance” I encountered engaged in a different combination of those features. Puzzling over how to represent these, I thought: I know, a Venn diagram! Surely that would be very systematic and thorough. The experiment looked like this (Figure 11.1):



Figure 11.1 “Performance”?

(p. 208) Fortunately, no one was demanding hard science here: the result was impressionistic (to say the least); the diagram restricted me to yet another tripartite scheme, one that seemed even more spurious than the others; I found myself moving the contents from one segment to another, and then another, in a futile attempt at philosophical exactitude in my distributional scheme. (The question mark was a belated addition expressive of diagrammatic despair.) The only thing that did seem clear was that many things that scholars identified as “performance” were in the peripheries or could not easily be placed anywhere in the diagram: judicial interpretation (whose analysis invariably focused on words and ideas rather than the judge in the courtroom); the production of the discipli-

Mapping Law and Performance: Reflections on the Dilemmas of an Interdisciplinary Conjunction

nary self; certain legal concepts such as spatio-temporality, sovereignty, identity; “stories about law in great literature”; “moments when law is silent.”

As I looked more closely at the studies that my diagram represented, I began to notice that one could, in fact, often substitute certain words for “performance” or “performative” (“becoming,” “doing,” “creating,” “transformative,” “productive”)—or simply delete the words “performance” or “performative”—without much loss of meaning. The further I looked, the more I began to wonder whether the word “performance” offered any added value. Many studies used “performance” as an initial provocation but in fact offered no performance analysis. They contained extended analysis of texts, politics, law, historical injustice, all of which touched tangentially on a performance, or performance as a concept. But most, while interested in embodiment as an *idea*, seemed largely uninterested in actual embodiment (in bodies doing things in space and time); most, while interested in concepts of spectatorship, seemed largely uninterested in concretely realized moments of spectatorship. Overwhelmed by lengthy political and ethical discussions, performance often seemed to disappear.

My own recent experience gave me a glimpse into how this might happen. I had briefly toyed with the idea of writing about performance in the Kavanaugh Senate Confirmation hearings, made a few notes, and then given up. In the hearings, performance clearly mattered. But that was not news to anyone: not to humanities academics; not to the media; not, in fact, to Kavanaugh himself, who had declared (in a classic moment of legal antitheatricity), “this is a circus!” I had a lot to say about the significance of the hearings. But I—a scholar of performance and theater—had embarrassingly little to say specifically about performance (insofar as performance was distinct from everything else), or at least little to say that everyone didn’t already know. I did still believe that studying performance was key to understanding law, in all its fullness. I theoretically had useful tools for doing so. But perhaps not all events and practices in which performance mattered to law were worthy of *performance* analysis per se, rather than analysis of politics, law, media, socioeconomics (etc.). Performance might be important to the event itself. But performance *analysis* might be of only marginal interest.

Did we need the concept of performance to study such events? People in theater and performance studies departments were subject to an institutional demand that they (p. 209) write about performance. But, while they often included descriptions of aesthetic performances (theater, performance art, street spectacle), their essays seemed dominated by discussions of structures of culture and rhetoric, law, politics, or power, without demonstrating that performance was a thing whose specific characteristics might matter to law or a distinctive way of understanding legal texts, events, or practices. People in law schools were differently situated in relation to the field. Subject to an institutional demand that they write about doctrine, they wanted to write about performance: cutting-edge, radical, so much less boring than doctrine. But they seemed to quickly run out of things to say about any actual performances. Performance was interesting, but there was

Mapping Law and Performance: Reflections on the Dilemmas of an Interdisciplinary Conjunction

so much more to say about structures of culture and rhetoric, law, politics, or power, and, yes, even doctrine.

Different desires, emerging from different fields, seemed to produce the same result: essays in which “performance” served as a provocation, idea, or running theme but in which *performances* in legal domains were not the object of close or sustained analysis. At the same time, despite this shared tendency to slip away from performance interpretation into discussion of structures of culture (etc.), essays emerging from different fields also seemed in some ways radically different from one another. Curious about those differences, I decided to try an experiment: hire someone to compile some two dozen articles that seemed to deal with law and performance (from a humanities perspective) and anonymize them. I would then try to guess the author’s principal discipline.

As it turned out, the task was almost too easy. Style was a giveaway. So were the essays’ objects of analysis (theater, dance, or performance art versus technical constitutional interpretation, for instance). And so, notably, were the essays’ endings. These revealed essential differences in norms for the narrative shape, arc, or telos of a piece of writing, and (perhaps more significantly) its payoff. They seemed to reflect unwritten rules: what one might call (following Derrida) the laws of disciplinary genre.¹⁸ The shorthand (and grossly reductive) version of these laws is as follows. If you are a law professor, you must end with a clever claim significant to the interpretation of doctrine, suggesting a concrete change in judicial interpretation or legislation. If you are a professor of literature or performance, you must end by either celebrating popular or persecuted performance as an expression of political resistance or highlighting injustice (perhaps with an element of irony), but you must not propose narrow or concrete policy changes, for these would imply that policy tweaks might be sufficient to redressing injustice and would trivialize the moral gravity of what you have shown. If you are a professor of history, your interpretation must turn the reigning orthodoxy on its head, but you must never, *never* suggest that your historical analysis has the least use for the present. (I exaggerate for effect, but nevertheless.) In all three fields, any other conclusion would be disqualifying.

(p. 210) 11.3 Disciplinary Captivity/Interdisciplinary Pathologies

That semester, as I scanned yet another English Department dissertation with four chapters dutifully analyzing a literary text (at least two canonical), skimmed yet another law review article with a neat policy proposal tacked onto the end, reviewed yet another submission to a performance studies journal describing the scholar’s subject position and bodily fluids (again, I exaggerate for effect, but nevertheless), I thought: interdisciplinarity triumphant? Who are we kidding? In her contribution to *New Directions in Law and Literature* (the 2017 collection that she and Elizabeth Anker edited and in which Smith’s and Sarat’s essays also appear), Bernadette Meyler writes that the “aspiration to put aside disciplinary boundaries [has] not ... proved entirely feasible.”¹⁹ Looking at implicit institu-

Mapping Law and Performance: Reflections on the Dilemmas of an Interdisciplinary Conjunction

tional decrees (in John McKenzie's words, "Perform or Else!"),²⁰ "not ... entirely" seems a vast understatement.

Meyler's main point, however, is not merely that we are trapped in disciplinarity but (surprisingly, from a co-editor of *New Directions in Law and Literature* and the *Oxford Handbook of Law and Humanities*) that this may in fact be a good thing. Disciplines, Meyler argues, are "engines" of knowledge, but also productive "impediments." Looking across at another field may spur desire ("I want what she's having!"), but disciplinary boundaries block the possibility of complete merger, of one field dissolving into another. We are, it seems, mating in disciplinary captivity, a captivity that makes us look at not just one other field but often at several, longing to turn a *folie à deux* into a *ménage à trois* (in an irrepressible polyandry). Perverse as this may be, it is, in Meyler's account, in fact productive for thought and knowledge: triangular desire (or, theoretically, quadrangular or pentangular, though one has only so much stamina ...) makes disciplines dynamic. The "attraction of fields for each other waxes and wanes": one day I may long for history, but another day for law, and still another day for law's romance with history. The spurring of desire, its blocking, its transference or displacement (and more) creates a "dynamism," argues Meyler, that "advances the possibilities for new births of knowledge."²¹ It could be argued that disciplinary *boundaries* are not essential to the dynamic play of disciplines. But the frustrated desire of *amours impossibles* certainly helps.

Foucault transformed "discipline" into a dirty word: a prime target of postmodern contempt. More than one generation of humanities scholars (mine among them) has been trained to think that discipline and disciplinarity are bad. We are so accustomed to believing in the virtues of "transgressing" disciplinary borders ("transgression" is always good, "boundaries" always bad) that we have forgotten to question whether such (p. 211) transgression is always, in all circumstances, a virtue, and whether it does not sometimes also produce certain deformations. I remain committed to the view that the study of law as performance is important to understanding law generally, and that interdisciplinary work generally is valuable. But recognizing the value of interdisciplinarity does not preclude also recognizing its potential problems. What follows are musings on some of these: problems, or pathologies, to which interdisciplines are especially susceptible, some of which are illustrated by my ruminations on law and performance in the previous section. None is perhaps unique to interdisciplinarity. And each problem I describe might be seen, from another perspective, as in fact a strength. But they are dangers for interdisciplinary study: bad things that can happen to good marriages (no aspersions on the institution of marriage necessarily intended).

First, *sham interdisciplinarity*. My "guess-their-discipline" experiment revealed the fact that, while we may declare our liberty in work that crosses disciplines, disciplines bind us in myriad ways. (The job market and tenure are two of the most palpable.) However newly created, once instituted, disciplines become machines whose norms tend to march on, even, sometimes, when no one in the room thinks they should. (Anyone who has been to a faculty meeting knows what I mean.) It is a sociological truism to point out that institutions reproduce themselves by rewarding conformity, but it is one of those truisms that

Mapping Law and Performance: Reflections on the Dilemmas of an Interdisciplinary Conjunction

happens to be true: academic rewards and plaudits rarely come from defying the norms of one's discipline. (What appears brilliant defiance may in fact simply be a counter-norm: tenured professors are allowed to write radical treatises, or even popular books of certain kinds: yes to popular history or detective fiction; no to romance fiction, self-improvement, advertising copy, or porn, except of course radical feminist porn, which is okay.) So, we must ask ourselves: what are the limits of interdisciplinarity? Is what we call interdisciplinarity really just an illusion (as I once suggested law and literature's interdisciplinarity was)? Are we deluding ourselves?

Second, sham interdisciplinarity's corollary: *interpretive mimicry*. Those who defend distinctive disciplines often argue that only disciplines can properly teach rigor by training their graduate students in the field's established methodologies. It is tempting to mock the methodology police, agents of "discipline" and "training": they are not the mavericks but the disciples (so to speak), those who cannot see past narrow-minded disciplinary conventions. I have done so myself. The benefits of disciplinary methodology, however, can become suddenly visible when one comes upon a scholar from another field attempting the pirouettes and arabesques of one's own, but in ways that seem flat-footed imitation. Interdisciplinarity often produces precisely such mimic interpretative moves. One tries on another field's interpretative devices, one deploys its critics and its buzzwords in a kind of bravado, "I can do that too." But one can't always, or not without more practice. And the buzzwords, often already old and exhausted in the donor field, are reduced still further in the recipient field. In a disciplinary dyad, each field recycles the other's tired ideas, ... in caricature. Looking hard and long at one's own disciplinary objects, repeatedly trying out and assessing the discipline's methodologies for interpreting them, one comes to be able to perceive many otherwise invisible truths in a small thing, so that a single object can yield a multitude of surprises, of hidden depths (depths (p. 212) that are, surface reading tells us, to be found even in surfaces if one knows how to look). If we are to learn to see in a particular way, or understand how a particular thing works, we must take our time. Interdisciplinarity does not always allow us to do so.

Third, *object blur*. One of the payoffs of twentieth- and twenty-first-century interdisciplinarity has been a critical perspective on a field's key term that challenges conventional conceptions and broadens its meaning. For instance, religion: the early twentieth-century theologian Paul Tillich argued that one could use the word "religion" in a narrow sense, denoting institutionalized religions such as Christianity, Islam, and Judaism, or a broad sense, denoting whatever had ultimate value.²² If the struggle for human rights was, for instance, one's ultimate value, one might consider it "religion." Thus, philosophers, political theorists, those who studied aesthetics—not just theologians—could be experts on "religion." This was a project of critique: only the narrow-minded would understand religion in the narrow sense. But it was also a project of recuperation: it redeemed "religion" from the taint of particularism and sectarian prejudice by generalizing it. Religion, generalized, was to be abstracted from its history of murderous violence.

Mapping Law and Performance: Reflections on the Dilemmas of an Interdisciplinary Conjunction

We tend to think that, by broadening our key disciplinary terms, we can free ourselves from their limitations in the name of cultural critique. When Butler (via Althusser and Lacan) explains that we are all “hailed” by law (interpellated by the law of ideology, the Law of the Father, the laws of normativity), this expansive sense of “law” becomes a tool for the exposure of its insidious reach. “Law” in this broad sense names all the powers that bind us.²³ But perhaps in this broad account of “law,” something is lost: recognition of the specific power of the institution (different in rather significant respects from the “law” that determines our entry into the Lacanian Symbolic), and recognition of the specific ways we might intervene in that specific power, even if we are helpless before the Symbolic. Similarly, “performance”: when the term comes to denote all behavior, practices, processes, constructs, rhetorical expressions, all social formations, all meaning, all being, we may lose the power to say something about what performance in the narrow sense (overt and embodied “showing doing,” a unique practice different from other kinds of behavior) achieves.

Fourth, *values flattening*. Disciplines bear with them a set of values (implicit or explicit) about what scholarship and teaching are for. Behind these lie a set of views about the ultimate good. For Meyler, the virtue of disciplinary difference is that (however triangulated, frustrated, resisted) it produces change. But perhaps sometimes our old differences, affirmed, are in fact goods in themselves. Norms about what counts as the appropriate ending for a scholarly article may be irritatingly narrow-minded. But if we were somehow to escape them into a kind of freeform interdisciplinarity, we would lose the ability to ask one another why you do it this way and I do it that way, to set one (p. 213) norm against another, to remind ourselves (through those differences) why we are engaged in the academic enterprise in the first place. I say “I,” not “you.” Because it may just be that I think mine is better than yours.

Finally, *rapid obsolescence*. In his essay promoting the multidisciplinary study of law and performance, Sarat describes the shift from “charisma” to “routinization” that can overtake once-exciting areas of study. He speculates that such a shift has taken place in law and literature (quoting Richard Abel on a similar shift in law and society): at first, the field had a magical power to inspire devotion, but after a few decades, it had begun to “ru[n] so smoothly along familiar tracks that the questions and answers ha[d] begun to sound a comfortable, but rather boring ‘clackety-clack.’ ”²⁴ All fields have periods of routinization. All fields have moments in which world-shattering critical insights turn out to have mutated, horribly and irreversibly, into cliché. But interdisciplinary formations are perhaps particularly prone to such routinization because, while they seem more capacious than single disciplines (two fields in one!), their focus on a particular axis—the crossing point of two disciplines—often actually limits their scope. Some interdisciplinary enterprises do retain their freshness, perhaps because they conjoin multiple methodologies acting on a wide and important field of objects in which scholars with very different perspectives have an interest. But others form around a limited set of ideas (often linked to those buzzwords or phrases so easily transferred through interpretative mimicry), ideas that start to become mechanical, soon grow irritatingly predictable, and then turn into the butt of academic satire. When that happens, the interdiscipline begins to lose its

purchase, eventually melting away and leaving institutional husks behind it: centers that no one visits; majors that have no courses. Not all (field) marriages are meant to last.

11.4 Conclusion

I hope that the study of law and performance lasts, at the very least as a set of ongoing and richly varied, mutually informing explorations. It does not need to be a “field” to do so. In fact, perhaps a strategic disciplinarity—the embrace of disciplinary difference for analysis and values clarification, a pause in the conjunction’s drive toward formal interdisciplinarity—may strengthen rather than weaken the work that emerges from it. Perhaps, as a corollary, it would be liberating to acknowledge that different kinds of performance in different domains (the aesthetic, the legal, and the quotidian) are, in fact, really *different*, and do not need to be yoked together into a single narrative showing the coherence of the field. Perhaps such a disaggregation—resisting the ossification of claims about the mutual constitution of aesthetic, legal, and quotidian performance—could prevent the study of law and performance from devolving into the routinization and eventual obsolescence that befalls so many disciplinary conjunctions. I hope that, (p. 214) in fact, my tripartite schemes will soon be outdated, not because the conjunction law-and-performance has disappeared, but because it will continue to surprise me in its revelations, innovations, transmutations, and resistance to routinization. I hope that I don’t yet know its future shape.

But, a final thought (in case I have not contradicted myself sufficiently). As I face with growing alarm the likelihood that *Obergefell v. Hodges* will be overturned, ending (or radically limiting) gay marriage, I think that perhaps what became most routinized—most endlessly recapitulated—in law and performance over the past quarter century has been its most important contribution so far: the repeated assertion that legal identities and concepts are produced performatively, that the self is produced through a performative iteration that the law affirms, guarantees, indeed often demands. Perhaps it was the repetition of this assertion—echoed in classroom after classroom, infusing itself from scholarship into the mainstream press until one felt one really *had* had enough of “performativity”—that played a central role in making *Obergefell v. Hodges* possible. Perhaps the entrenched view that only marriage between people of the opposite sex was natural and the absolutist gender distinction that guaranteed that idea were defeated by trickle-down performativity. In the humanities, we tend to presume that innovation is our primary value: we teach our students (even our undergraduates) to “say something new,” to “make an original contribution to scholarship,” to avoid critical commonplaces. And yet, it is arguably repetition of a truth—the reiteration of ideas until they have become commonplace (even flagrant clichés)—that brings social and political change. The current political atmosphere reminds us how quickly such truths can disappear, and how much we may need such repetition.

Further Reading

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(p. 215) Reed, Alan. *Theatre & Law*. London: Palgrave, 2016.

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Notes:

(¹) For some examples, see "Further Reading" and Subha Mukherji's chapter, "Facing Justice: Evidence, Legibility, and Pensiveness in the Early Modern Imagination"; Marett Leiboff's chapter, "Challenging the Legal Self Through Performance"; Panu Minkkinen's chapter, "Agonism, Democracy, and Law"; Ellen Spolsky's chapter, "The Gap Between Fairness and Law: *Hamlet* and Equity from a Cognitive Perspective"; Timothy Hyde's chapter, "Boundaries, Walls, Envelopes, Rooms, and Other Spatialities of Law"; Mariana

Mapping Law and Performance: Reflections on the Dilemmas of an Interdisciplinary Conjunction

Valverde's chapter, "Spacetime in/and Law"; and Bennett Capers's chapter, "Video as Text/Archive"; all in this volume.

(²) "'Showing doing' is performing: pointing to, underlining, and displaying doing." "The underlying notion is that any action that is framed, enacted, presented, highlighted, or displayed is a performance." Richard Schechner, *Performance Studies: An Introduction*, 3rd ed. (New York: Routledge, 2013), 28, 2.

(³) Schechner, "Restoration of Behavior," *Between Theater and Anthropology* (Philadelphia: University of Pennsylvania Press, 1985), 35, 37, 52.

(⁴) Peggy Phelan, *Unmarked: The Politics of Performance* (New York: Routledge, 1993), 146.

(⁵) The classic texts are: J. L. Austin, *How to Do Things with Words* (Cambridge: Harvard University Press, 1962); Jacques Derrida, "Signature Event Context," *Glyph 1* (1977): 172–197; and Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 1990).

(⁶) See, for instance, Philip Auslander, "The Performativity of Performance Documentation," *PAJ: A Journal of Performance and Art [PAJ 84]* 28 (2006): 1–10.

(⁷) See, for instance, Joseph Roach, *Cities of the Dead: Circum-Atlantic Performance* (New York: Columbia University Press, 1996). There have subsequently been important theoretical reflections on the field's historicity, most notably Diana Taylor, *The Archive and the Repertoire: Performing Cultural Memory in the Americas* (Durham, NC: Duke University Press, 2003); and Rebecca Schneider, *Performing Remains: Art and War in Times of Theatrical Reenactment* (New York: Routledge, 2011).

(⁸) Schechner, *Between Theater & Anthropology* (Philadelphia: University of Pennsylvania Press, 1985).

(⁹) Jonas Barish, *The Antitheatrical Prejudice* (Berkeley: University of California Press, 1981). For an excellent discussion of "theatricality," see Tracy C. Davis and Thomas Postlewait, "Introduction," in *Theatricality*, ed. Tracy C. Davis and Thomas Postlewait (Cambridge: Cambridge University Press, 2003), 1–39.

(¹⁰) Samuel Weber, *Theatricality as Medium* (New York: Fordham University Press, 2004).

(¹¹) Judith Butler, *Bodies That Matter: On the Discursive Limits of Sex* (New York: Routledge, 2011), 177, 181.

(¹²) Caleb Smith, "Who Wouldn't Want to Be a Person? Histories of the Present in Law and Literature," in *New Directions in Law and Literature*, ed. Elizabeth Anker and Bernadette Meyler (New York: Routledge, 2017), 46–56, 47–48.

Mapping Law and Performance: Reflections on the Dilemmas of an Interdisciplinary Conjunction

(¹³) Austin Sarat, "From Charisma to Routinization and Beyond: Speculations on the Future of the Study of Law and Literature," in *New Directions in Law and Literature*, ed. Anker and Meyler, 59–67, 64–65.

(¹⁴) Julie Stone Peters, "Law as Performance: Historical Interpretation, Objects, Lexicons, and Other Methodological Problems," in *New Directions in Law and Literature*, ed. Anker and Meyler, 193–209.

(¹⁵) See, for instance, Julie Stone Peters, "Staging the Last Judgment in the Trial of Charles I," *Representations* 143 (Summer 2018): 1–35; "Penitentiary Performances: Spectators, Affecting Scenes, and Terrible Apparitions in the Nineteenth-Century Model Prison," in *Law and Performance*, ed. Austin Sarat, Lawrence Douglas, and Martha Merrill Umphrey (Amherst: University of Massachusetts Press, 2018), 18–67; "Theatrocracy Unwired: Legal Performance in the Modern Mediasphere," *Law & Literature* 26 (2014): 31–64; and "Theatricality, Legalism, and the Scenography of Suffering in the Trial of Warren Hastings and Richard Brinsley Sheridan's *Pizarro*," *Law & Literature* 18 (2006): 15–45.

(¹⁶) Joshua Chambers-Letson, *A Race So Different: Performance and Law in Asian America* (New York: New York University Press, 2013), 6.

(¹⁷) Sarat is clearly referring to an essay in his coedited collection: Lara D. Nielsen's "Freedom with Silence: Cryptoanalytics and the *Differend* in the Afterlives of Legal Things," in *Law and Performance*, ed. Austin Sarat et al. (Amherst: University of Massachusetts Press, 2018), 156–206, in which Nielsen discusses disappearances in Mexico, and the artists and publics who use "silence" as a resource for bringing into focus "the durability of the law's administrative and bureaucratic operations as things that are hidden in plain sight, even as they are rerouted" (*ibid.*, 160).

(¹⁸) See Jacques Derrida, "The Law of Genre," trans. Avital Ronell, *Critical Inquiry* 7 (1980): 55–81.

(¹⁹) Bernadette Meyler, "Law, Literature, and History: The Love Triangle," in *New Directions in Law and Literature*, ed. Anker and Meyler, 160–175, 160.

(²⁰) John McKenzie, *Perform or Else! From Discipline to Performance* (New York: Routledge, 2001).

(²¹) Meyler, "Law, Literature, and History," 161.

(²²) Paul Tillich, *My Search for Absolutes* (New York: Simon and Schuster, 1967). See Nathaniel Berman, "'In a Place Parallel to God: The Draft, the Demonic, and the Conscientious Cubist,'" *Journal of Law and Religion*, 32:2 (2017), 311–339.

(²³) See, for instance, her discussion in Judith Butler, *The Psychic Life of Power: Theories in Subjection* (Stanford, CA: Stanford University Press, 1997), 83–105.

(²⁴) Sarat, "From Charisma to Routinization and Beyond," 59.

Mapping Law and Performance: Reflections on the Dilemmas of an Interdisciplinary Conjunction

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