



Recensión

Kangaroo Courts and The Rule of Law. The Legacy of Modernism

**Desmond Manderson,
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Desmond Manderson's brilliant work, *Kangaroo Courts and The Rule of Law. The Legacy of Modernism* is a thorough, perceptive and deep critique of the *Law and Literature* movement. It provides us with many issues for discussion and it is a source for a healthy debate and intellectual exchange of philosophical arguments. I will develop in my review the five most striking aspects I found in Manderson's interesting work:

1. Critique of *Law and Literature*
2. Criticism of the justice of the outlaw
3. Criticism of the link between objectivity and modernism
4. Novel and Morals
5. Justice, Polarity and contradiction

1. Critique of *Law and Literature*

Manderson points out a "*Concentration on message and substance, a salvific belief in the capacity of literature to cure law*" (Chapter 2). The contribution of literature to the collective imagination is linked (among others) with the essence of literature; fantasy, an essential aspect to literature itself. First of all, Literature, as specific art, follows its own rules. In this sense, fantasy and imagination are the first inherently literary virtues of Literature. Vladimir Nabokov (1982), a modernist author, affirmed that every literary work, apart from narrative itself, must include other features as "charm" and "morality".

Manderson claims that *the idea that art can complete the law is a romantic fantasy* (Chapter 2). Literature complements the legal view from its own rationality. The question is *how* can it serve the Rule of Law. In any case, it must be pointed out that this complementation must be done only without denying the proper essence of literature itself. In his approach, Manderson claims that *Literature is a site of questions not of answers. Justice might be reconfigured not as an object of closure but a process, and experience and an opening* (Chapter 2). Literature could be a site

of questioning of different things... as well as a place where the reader finds the answers to questions he or she has in his mind. The limitation of literature only to the former could imply maybe the reduction of any literary work's virtues.

It is true that literary work as Manderson suggests, it must not necessarily affirm the end point of the question. It could be a starting point and a questioning of why things are the way they are. But a literary work can also fully illuminate different aspects linked to the Rule of Law. As Tolkien said, literary work can be a *subcreation*, where the author is able to create parallel worlds of enormous wealth. The field of vision can be expanded through imagination, there is a way for the widening of the subjectivity and therefore of perceptions of Justice and law that could be brought to real life. As Colin Wilson (1975) suggests, the literary work has through the imagination, the ability to extend the "angle of the camera which means the mind".

To despise the Platonic dimension of life, a tradition that goes back to Homer, with its implicit symbolic world could be an error. Whether the platonic "hidden or symbolic world" is objective or a mere human projection, is something we are not interested in now, since we are only considering the existence of this idealistic dimension of the human being and its enormous potential through literature. The radical denial of that "platonic world" corresponds to the rooting of an *episteme* linked to a reductionist idea of reason, the Cartesian reason that identifies the "being" with "thinking". However, other philosophers of reason as David Hume or Adam Smith defended the relevance of the imagination and empathy as inherent parts to rational analysis. Smith's theory of the "*impartial spectator*" describes an entity that observes the mind from outside and is able to imagine the thinking body as observed, denying the Cartesian equivalence between "being" and "thought". This vision or imagination operation avoids the identification of the self with thought, saving him from the alienation or the false consciousness. Consequently, the literary work will be a "closing" or "opening" space, it depends on the circumstance and the valuation carried out by the impartial spectator that the reader has created through his imagination. Therefore this valuation would be unpredictable from a prior rational opinion.

2. Criticism of Outlaw justice

In his approach about *Outlaw Justice* represented in heroes like Superman or the characters of the Wild West, the author says that "*The dream of a unique decision-maker responding only to the immediate problem (...) is deeply rooted in the Western tradition by the image of Christ*" (Chapter 3). It is very common in American popular culture, the appearance of comic's superhero (*Superman, Batman, Thor, Flash*, among many others...), that have in common some supernatural powers superior to ordinary human capabilities, such as throwing energy beams, flying, superhuman strength, invulnerability, telepathy, telekinesis, etc. I agree with Manderson when he links this artistic representation to Christianity. I differ however, on the bias the author attributes to the Justice of the superhero and that his religious, platonic or romantic origin necessarily excludes a modern dimension of the idea of Justice.

The hero who represents an outlaw Justice does not represent the dream of substituting society in decision-making on justice. Neither does the hero distrust the democratic institutions as a way of applying justice. If we would thoroughly analyse many of them, we could see that they possess a secret identity (a double identity or *alter ego*), a civil identity, pretending to be ordinary people, and a superhero one, as in the case of Clark Kent (*Superman*) or Peter Parker (*Spiderman*). This implies their

incarnation in ordinary people. Their representation in the story is not that of a character linked to an idea of absolute power in the terms in which Tolkien characterized the *Dark Lord Sauron*, the will to power and to subdue the world under a single command, representation in short of 20th century's totalitarianisms.

Paradoxically the essential feature of the superheroes is that they should arrive on the back of their strength, which is the humility of knowing that his power does not belong to them and that they have it only for some purpose: to defend the weak or even the democratic system itself from the attacks of his enemies, as recently showed in the film maker Christopher Nolan with his last trilogy on Batman. It is true as Manderson says, that it is a struggle on the fringes of the law, but only to defend the same principles defended by the law. This disinterested fight in the defence of the weak is always placed under a structure of moral values like generosity, sacrifice, self-control, or piety. This archetype, recently renewed by Christopher Nolan onto a postmodern society context is really rich.

In any case, the danger that the superhero could become "decision-maker" of the lives of others is from this approach, a danger to discard. The superhero does not change the political or legal structure; there is no political ambition under his actions. Far from it, as Christopher Nolan's Batman (*The Dark Knight*, 2008), bears with the blame of politicians in a conscious way, and makes it so that the democratic system can survive, not to legitimize himself for the replacement of a corrupt political class. Nolan places the superhero in the political conditions of crisis of values of a postmodernist society although it does not correspond to the subject of this debate.

The outlaw doesn't try to build an intellectually coherent system for society, he only show us the virtues represented by his character. Comic stories as well as films stress the story of the character of the hero, they do not highlight his philosophical conclusions. As an example of this we could take the unforgettable "*The man who shot Liberty Valance (1962)*" that displays the dialectical tension between the law and the outlaw and the strengths and weaknesses inherent to a hero of flesh and blood in a prodigious way, and represents a useful art work to understand the history of the United States.

This Outlaw Justice is far above the manichean scheme that is often attributed frequently from different academic approaches: it designates a platonic, aesthetic and symbolic truth of the human being that deploys its effects beyond the consequences of written law. From this symbolic and narrative perspective, this Outlaw Justice comes to us through the springs of sensitivity, the door that the *episteme* develops. Paradoxically the superhero does not dictate us unique or simplistic solutions to complex problems, just as a "Saviour of democracy" would do (this is not Batman's function but Joker's), but to show us in a platonic way our responsibility towards the values as human beings.

3. Criticism of the link between objectivity and modernist writers

Manderson considers that: "*The Great War destroyed literature's over confident regard for its universality and objectivity. (Ulysses, The Wasteland). Dickens, Tolstoy, Balzac...art too objective, altogether too omniscient for that; whatever failings they explore are their characters, not their own. (...) Kangaroo is an attempt to engage with literary, political and psychological modernism*" (Chapter 3). Writers such as Dickens or Balzac belong to modernity also and it could be arguable that they did not understand the modern world in the same way as James Joyce or T.S. Eliot did. Eliot (1932) cites in one of his essays the triple Aristotelian Unity that any novel or play should have (unit of time, situation and place) and the ending own



monologue of Joyce's *Ulysses* is rooted, as the modernist critic Wyndham Lewis points out, in the transcript of the inner dialogues of *Jingle* (one of the main characters of the novel) in Charles Dickens's *The Picwick Papers* masterpiece.

It is true that Eliot's and Joyce's novels as Manderson points out, imply a leap forward in representing a fractured conscience, but their literary works represent at the same time both reality of continuity and rupture, quality also shown in Fiodor Dostoevski (contemporary to Dickens, Balzac or Tolstoy), the modern master in the representation of the divided human being, the consequences of nihilism on the character and the effect of anxiety derived from the lack of answers to the big questions of the human being.

Manderson points out that *The Wasteland* and *Ulysses* marked a break with literary tradition...*Kangaroo is in this way* (Chapter 4). As I said above both novels marked a forward leap but it is a leap as a result of a natural literary evolution in the framework of an artistic tradition. In this sense, the novels represent rupture and continuity at the same time. Literary movements are the result of the evolution of a tradition as consequence of processes of social change, which does not necessarily imply a negation to the core elements of those traditions. It is clear as Manderson expresses that these authors broke with the past and renewed the value of literature in a different social context, but this break did not imply that they ignored the permanent characteristics that any literary work must have.

In relation to literary work in a modern context Manderson says that *Style is the soul of the work, as show the modernists (...) One of modernism's distinctive features was its rejection of the focus on plot and its pursuit instead of what one might call the eternal recurrence of play and form and the priority of voice over event*" (Chapter 2). Manderson separates plot and style, but we could consider that style and plot are two aspects of the same unit. The author narrates some facts, and not others, as a result of his own subjectivity, and he carries out his work with his personal style. The act of writing is an empirical operation and to separate the written event from author's style represents an idealistic dissociation that could be a projection of the mind. As Robert Louis Stevenson (1881) pointed out: *The best that can be offered by the best writer of prose is to show us the development of the idea and the stylistic pattern proceed hand in hand.*

From his approach Manderson says: *As a novelist Lawrence is a psychoanalyst (...) Defoe and Fielding has always set psychology against philosophy or history and this opposition forms part of the distinct register of truth it has??? claimed* (Chapter 4). The modern world is also present in an author prior to Lawrence as Dostoevski, who represents a *canon* of psychological novel as Freud or Nietzsche recognized. Again we must highlight that action and character (psychology) are two parts of the same unit. One of the leading representatives of this assertion is Daniel Defoe, who developed through his novels the political and epistemological program of the politician and scientist John Locke. On this framework, the psychological descriptions are not necessary in the story since the characters express themselves psychologically and morally through the event they face. When the characters act, they are manifesting their character and in that way we get to know them. The stroke, the gesture, the movement of the character describes him or her psychologically. The psychological features are distilled from actions taken in the story.

This is an aesthetic approach with roots in the Enlightenment and developed by Adam Smith (1762) in his classes on Art and Literature, whereby the description of particular facts is the essential part of a narration in which the characters are

reflected. This interpretive scheme would be years later studied and especially esteemed deeply by thinkers such as Gilles Deleuze (1977) developing the importance of the epistemology of the Anglo-American novel, or writers such as Jorge Luis Borges who developed a theory about the smithian scheme on Robert Louis Stevenson's works (Balderstone: 1985).

4. Novel and morals

Manderson disserts about the conflictive relation between novel and morals: *The novel is the greatest instrument of relativity* (Chapter 7) or *To reduce literature to a moral lesson is a failure, literature is a journey, an activity and a process. Literature is a mode of doing justice* (Chapter 2). The Novel could be an instrument of relativity as Manderson expresses but also of completeness. It is true that novels question reality but they complete it at the same time. As mentioned before, literature can be a journey as well as a result. Morality is an intrinsic part of the literary work, insofar as it is always connected to a subjectivity expressed in relation to some values, whatever they are. The dissociation of moral and narrative may be the result of the thinking that while you do not want to link a literary work to any given moral code (which is a completely acceptable question), you might as well want to link it to a given moral code (and this is an equally acceptable thing to do). But it is hardly acceptable from a rational point to hold that literary work could be carried out in absolute disregard of any moral code (whatever this code should be).

Morality is inseparable from the action because the event, a core part of the plot, is the support in which moral action is reflected. Scottish enlightened philosophers as David Hume, Adam Smith and Dugald Stewart defended precisely the narrative as a suitable support for epistemological and moral theorizing analysis. As Manderson expresses, it is true that the novel should not be limited to a moral lesson: *A novel is not a moral treatise like Martha Nussbaum points out in Poetic Justice. Lawrence's novel does not tell us what he thought about politics and justice; it shows us what he learnt about them* (Chapter 8). But when characters act and as they act, they are being defined morally, whether they want to or not; that is why morality is inextricably linked to character. Hence Justice is genealogically linked to morals, it cannot be otherwise. Robert Louis Stevenson (1881) expresses the union between narrative and morals when he says: *The body of contemporary literature touches in the minds of men the springs of thought and kindness, and supports them on their way to what is true and right.*

5. Justice, Polarity, contradiction and deconstruction

Manderson says: *Human experience is maintained and nurtured by contradiction. Lawrence rejected the synthetic urge of the romantics, the dialectic dream of progress and inclusion (...) Conflict for Lawrence was productive but interminable* (Chapter 8). I partly agree with Manderson when he says that conflict is endless, but this does not imply that human beings cannot place the value of Justice above the process itself. A very important part of the process that Manderson mentions is to be able to achieve Justice with resolution despite that "partiality" of the process. Our consciousness expands with the historical evolution.

The author defends a perspective of polarity in Lawrence when he claims that *[t]his notion of polarity is a rejection of unity* (Chapter 8). Dissociation is not from my point of view, a necessary condition (choice) of polarity, but unity of opposites. Again, the duality arises from the unity. The polarity is not a denial of the unity. There is a unity of opposites, but there is unity.



We have a paradox in this reasoning. Eventhough such a duality (polarity) described by Manderson does not have to involve a final choice, it still needs a consistent and regular decision, which is also precarious (when a judge takes a judicial decision, he or she is "doing justice" like it or not). As Manderson says: *We cannot choose between the constitutive opposites that tug at us, but neither can we find a balance, a mean, or a dialectical synthesis between them* (Chapter 8). We cannot make a synthesis, but we must make a choice to achieve Justice. Justice is not a synthesis, it is a decision, it implies taking a stance, deciding on a particular issue.

Finally, Manderson reclaims Derrida's concept of *difference*: *The movement of deconstruction, the movement of différance destabilises both terms of an opposition without our ever being able to abandon or resolve either one* (Chapter 8). We could object to this argument by saying that the exercise of deconstruction is not a thought apart from reality (obviously). Deconstruction does not "observe" reality, deconstruction "resolves" into reality. What is deconstruction's resolution? Not to resolve. And by not resolving, it resolves, it is also positioned in an orientation to Justice. The resolution of deconstruction in the framework of Rule of Law is a "no resolving" answer.

Manderson develops this idea of polarity: *Polarity recognises the tension between our legal and interpretative goals rather than giving us a way to trump them. It is not a circuit-breaker: it is, as Lawrence showed so beautifully, a circuit maker (...). The value of the rule of law, therefore, does not lie in the decision itself, which is of necessity unsettled and partial, but in the doubt and the challenge that comes before it and the public discourse of reason-giving and argument that comes after it.* *What is important for the rule of law is the endless polarity that forces us to keep deciding. Conversation is the soul of justice. And finally: The notion of justice-beyond-the-rules is not a new foundation or a perfected authority, but quite the opposite. And justice is that which is never satisfied* (Chapter 8).

The Derridian focus derives from Althusser's poststructuralist approach in which ideology is considered *ahistorical* and like the Freudian unconscious, it is eternal. For Althusser, this is not a way to false consciousness but rather a normal relationship of individuals with society. The ideology is the imaginary relationship (it happens in the mind) of the subjects with their social relations. The poststructuralist approach is a specific approach. We could even see on it some similarities to the Platonic framework. If we would consider the novel as *the greatest instrument of relativity* (chapter 7) we must relativize every link of narrative with any ideological approach, including the poststructuralist one, as the author does in relation to New Romanticism or Positivism. So we could fall into the same mistake of linking narrative to a specific intellectual approach and linking narrative not to relativization but to ideological certainty.

Derrida's statement (*justice is that which is never satisfied*) may be true if we would consider "Justice" as the outcome of an operation of subordination to a series of rational precepts. I agree with Manderson when he says that deconstruction can be an act of Justice. But it could only be in a given situation. To defend that justice must be the product of a deconstruction process of a system of laws could imply that Justice is the consequence of a mere procedural operation. But experience shows us that Justice is a more complex issue than the mere application of a rational-intellectual resource such as deconstruction. According to Derrida, Justice demands an answer but we cannot reach it. This may be incompatible with Justice since this must always be applied. Reality denies somehow Derrida's claim, since it shows us that there are legal decisions that respond to Justice (There are fair judgments as

well as unfair). This is an inexorable reality. And whoever applies justice is always destined to take a stand. Justice has an irreversible character.

The author defends the application of this rational framework to the field of *Law and Literature*. It is obvious that Literature provides some virtues to law. And to reach them we must respect the own features of Literature as fantasy, imagination as well as the Platonic and Aristotelian tradition, which is in the root of our Western civilization. The extension of deconstruction to the field of "Justice" could suppose the danger of boosting the "moral loop" in which the postmodern society is involved. More and more people reaffirm an "autonomous morals", even closed to reason, as something immutable. In this scheme, reason is denatured since the link of reason with values as "good", "truth" of "Justice" is denied. The problem of the Derridian framework might be that it could help to reproduce that postmodern "moral loop". A postmodern ethical scheme where *doxa* (opinion) is the new-age Goddess who dispenses with the *episteme* (knowledge) and the *arete* (truth).

To treat values in the context of the postmodern and individualistic society forces us to uncover some of its inconsistencies, in which too often many people "pray to the God of Relativism". "The Nietzschean tradition uses the strategy of denying the concept of the "Christian" or "Platonic" good to reaffirm his own version of good, confusing the different incarnations, individual and social good with historical development" which is change, but also, permanence and continuity as we have mentioned before. Values, like other aspects of human life, are in permanent struggle, and with the application of deconstruction to the world of values we run the risk of reducing the value of "values". *If we weaken the value of the value, we give way to strength some other values which claimed the force that we deny to the former* (Lizarralde, 2013). Literature is primarily *source and nurture of vitality through the imagination*. We should not renounce it in relation to values.

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