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Beyond Forensic Poetry: Lyric and Legal Languages in Contemporary Poems

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Guido Mattia Gallerani (University of Bologna)

I. INTRODUCTION: POETRY IN A LEGAL WORLD

Literary studies act as a useful resource for Law and Literature studies in relation to the linguistic foundations of law. Many contributions confirm the necessity of highlighting the rhetorical strategies and narrative expression of legal arguments, which are often based on narrative examples and figures of speech.¹ Richard Weisberg notoriously claimed that “we cannot abstract from the legal utterance a scintilla of ‘meaning’ that is not itself conveyed through the linguistic medium itself.”² This link between literature and law in relation to linguistic strategies could give an inspirational role to poetry, though only few pioneering scholars have attempted to make such a connection.

I follow the few and remarkable exceptions, such as Birthe Christ’s and Stephanie Mueller’s work,³ which do not consider poetry as a subtopic of the fiction – as it happens not just in the field of Law and Literature, but also in most of the

1 For an example of the way in which poetry is actually being used in the courtroom, see Kieran Dolin, ‘Introduction to law and literature: walking the boundary with Robert Frost and the Supreme Court’, in *A Critical Introduction to Law and Literature* (Cambridge, Cambridge UP, 2007), pp. 1-16.

2 Richard Weisberg, *Poethics: And Other Strategies of Law and Literature* (New York, Columbia UP, 1992), p. 251.

3 See Birthe Christ and Stephanie Mueller, ‘Introduction: Towards a Legal Poetics’, in Birthe Christ and Stephanie Mueller, eds., *Amerikastudien/American Studies* (Special Issue: Poetry and Law), 62.2 (2017), pp. 149-168. Considering that “the field’s increasing emphasis on narrative as analytical category precluded any sustained investigation of the relationship between law and poetry [...] lyric or otherwise”, the authors give a new and important impulse on Law and Poetry specially based on

current theoretical debates about poetry.⁴ I propose that poetry's real contribution to Law and Literature studies is in discussing the validity of both languages – the lyric and the legal discourse. This can be displayed only by giving a special consideration to lyrical and non-narrative features of poems.⁵ Indeed, the special place of poetry can be seen not only in the form of 'objective' poetry – aimed at giving a report of both private and social lives beyond the limits of subjective categorizations –, but also in recent lyric poems where legal topics such as crime scenes and detective investigation, and the language of courtrooms, are equally included as a performance.

The scholars who consider poetry in our field often focus on its potential to illustrate, as narrative often does, the whole experience encompassed within a single legal event, all that which is necessarily discarded in the condensed structure of legal reports.⁶ For instance, a chapter is expressly dedicated to "Poetry and the Law" in Jahan Ramazani's *Poetry and Its Others*. Ramazani focuses on a series of English language poems that address different legal topics:

"recent work that reconsiders poetry within a broader, similarly pluralized and theory-informed field of literary and cultural studies" (p. 156).

4 In contrast with *narratological* interpretations of the lyric, see Jonathan Culler, 'Lyric Words, not Worlds', *Journal of Literary Theory* (Special Issue: Theories of Lyric), 11.1 (2017), pp. 32-39. As the editors of this special issue claim, "narratological approaches tend to see lyric as a defective or residual form of the narrative mode" (Introduction, p. 1). Culler contrasts the view of lyric sequences as a series of related poems in which a rudimentary plot may be discerned and insists on "the general priority of the ritualistic dimension" (p. 6).

5 For another discussion of poetry and law that also resists the focus on narrative, see David Llyod, 'Nomos and Lyric: On Poetry and Justice', *Law, Culture and the Humanities*, published online November 24, 2017, DOI: 10.1177/1743872117740647.

6 Since James Boyd White's *The Legal Imagination. Studies in the Nature of Legal Thought and Expression* (Boston, Little, Brown and Company, 1973), poetry has made few appearances in the field.

Poetry [...] resembles the law in its precision, narratives, and suasive rhetoric, but its extravagant open-endedness, even in its aesthetically finished state, encompasses narratives and counternarratives, logic and illogic, guilt and innocence; it brings together history and imaginative fancy, the quest for redemption and the acknowledgment of irredeemable loss. Poetry can seek to address (“O”) and perhaps even redress (“owe”) history of unimaginable death and cruelty, extending the reach of justice well into the past and making use of poetry’s elasticity and multifariousness to reopen what may have seemed a shut case.⁷

More than the fact that poetry has the capability of illuminating each particular case, which – as legal language – would otherwise remain within the legal sphere, I am interested in developing the “counter-narrative” tension to which Ramazani briefly alludes. I think that lyrical distinction from the narrative can help us to understand the specific contribution of poetry, above all the non-narrative one, in the field of Law and Literature studies.

I show that we can reconsider lyric poetry in Law and Literature studies because in lyrical poetry does not prevail a narrative representation of the law, but a

Or, as Richard Posner points out, one can think that “relatively few short poems take law as their theme”. See Richard Posner, *Law and Literature* (Cambridge, MA, Harvard UP, 2009), 3rd ed., p. 191.

⁷ Jahan Ramazani, ‘Poetry and the Law’, in *Poetry and Its Others: News, Prayer, Song, and the Dialogue of Genres* (Chicago, The University of Chicago P, 2014), p. 59.

relationship that is mainly linguistic and dialogic, between lyric poetry and the language of the law themselves. In this respect, among others and debated interpretation of the lyric discourse, I prefer starting from the definition drawn by Jonathan Culler. As Culler proposes, “possibilities for an alternative model that treats lyric as fundamentally nonmimetic, nonfictional, a distinctive linguistic event, can be drawn from classical conceptions of lyric as encomiastic or epideictic discourse— discourse of praise or blame, articulating values, not a species of fiction”.⁸ Culler’s definition allows reconsidering lyric poetry as a linguistic event rather than a representation of an event.

Through this signification, we can highlight three main contributions of lyric poetry to Law and Literature studies. We can interpret Culler’s model as a “persona/speaker” approach in which the author and the voice in the poem are not identical. The lyric performance is played by the reader “who, as soon as he enters the lyric, is no longer a reader but rather an utterer, saying the words of the poem *in propria persona*, internally and with proprietary feeling”.⁹ The limits of the romantic theory of lyric as a subjective discourse – expression of an individual facing the law as something objective – are overcome by a non-identity that leads us to focus on the linguistic event occurred in the poems instead of the individual expression of an author. The interpretation of the lyric poetry as an epideictic discourse helps us to understand the quality of this relationship between lyric and legal discourse. This

⁸ Jonathan Culler, *Theory of the Lyric* (Cambridge, MA, Harvard UP, 2015), p. 7.

relation neither is typically represented as a fictional situation nor is subsumed by an autobiographical ego, but is grasped as a performative event of the language itself. As the legal language is included in the lyric discourse (by a system of rhymes, rhythms, sound patterns and versification), this one questions readers about the validity, the pertinence and the co-existence in human language of both linguistic events, instead of showing and representing the limits of law as performed every day in our world.

I selected four books of poems that allow us to consider this relation analytically, and especially considering the contamination of lyric with several subtopics of legal literature or discourse: detective story, legal interrogation, criminal confession and legal proceedings. Apropos of this linguistic contamination, I stress the *difference* between the lyric poetry that contains some legal discourse and the legal discourse included in some objective poetic reports, which can be foresighted as examples of non-lyric but *forensic* poetry.

In order to contextualize properly the forensic poetry, which is concerned with the representation of legal matters (generally, legal cases), the anti-formalist debate about law is of the greatest help. The forensic poetry finds in the legal anti-formalism some philosophical premise and expresses continuity with the representational account of society taken by the realistic tendency. This anti-formalist approach, which underlined the importance of social conditions in the legal interpretation,

⁹ Claudia Hillebrandt et al., 'Introduction', *Journal of Literary Theory* (Special Issue: Theories of Lyric), 11.1 (2017), p. 4.

originated in late 19th-century Germany (with Rudolf von Jhering, Julius von Kirchmann and Hermann Kantorowicz) and spread rapidly in France (through the work of François Gény, Léon Duguit and Maurice Hauriou) then in the whole Europe. In Italy, Benedetto Croce would propose that the legal interpreter is endowed with a creative function, replacing the established model of the legal interpreter as one who simply applies the abstract norms of the law within a juridical context.¹⁰

The realists' anti-formalist proposal to go beyond the use of *case method* in Common Law will reach its apex in the United States, in the works of Oliver Wendell Holmes, a contemporary of the French legal authors mentioned above, and later of Roscoe Pound. According to the realists, the case method leads to the creation of a substantial body of legal cases which, once embedded with a normative feature, took on the weight of legal rules and formalistic principles in the judgment process.¹¹ Legal realism allows us to interpret law as a mirror of the current social structure, to view it as something that both reflects and stabilizes the social system.

However, the process is inherently contradictory: while social law runs on the basis of a collective regulation, the very effort to set off collective criteria and standards creates a contrast with the uniqueness of any individual, his personal

¹⁰ See Benedetto Croce, *Riduzione della filosofia del diritto alla filosofia dell'economia* (1907) and Norberto Bobbio, *Dalla struttura alla funzione. Nuovi studi di teoria generale del diritto* (Milano, Edizioni di Comunità, 1977), cited in Renato Treves, *Sociologia del diritto. Origini, ricerche, problemi* (Torino, Einaudi, 2002), p. 129.

¹¹ See Morton White, *Social Thought in America: The Revolt Against Formalism* (New York, Viking, 1949) and Karl Llewellyn, *Jurisprudence. Realism in Theory and Practice* (Chicago, The University of Chicago P, 1962).

history and behavior. The forensic poetry is the literary attempt that grows inside this ambiguity and tries to reduce the gap between the individual backgrounds and their social abstraction.

II. CONTEMPORARY POETRY READS THE LAW

Some lawyers, like Edgar Lee Masters, Charles Reznikoff and Wallace Stevens, had become famous poets. Indeed, modernist poetry represents an original attempt to reference the legal world in order to describe social relations. Charles Reznikoff's *Testimony: The United States (1885-1915), Recitative*, which draws on United States court records between 1885 - 1915, is undoubtedly the most preeminent poetic work to be so deeply inspired by the legal sphere. In his first notes, Reznikoff declares that his poems are "based on law reports of the several states".¹² However, in reading the poems one notices how law functions primarily as a general pretext within the volume. The poems are divided into chapters ("Domestic Scene," "Property," "Boys and Girls," "Negroes" and so on) which introduce different characters – both suspects and lawyers – whom are called by name. The geographical setting is not specified, if not in the main sections (chapters) with expressions such as "The North" or "The South." Reznikoff describes several types of crimes, but law reports are not

¹² Charles Reznikoff, *Testimony: The United States (1885–1915), Recitative* (Santa Barbara: Black Sparrow Press, 1978–1979), cover. This last edition in two volumes reproduces the first two books, published in the 1960s and devoted respectively to the period 1885–1890 and 1891–1900, with the addition of the remaining interval 1900–1915.

directly referenced in the episodes, leaving the style to create a narrative and descriptive scene based on those reports. Here are two examples:

It was nearly daylight when she gave birth to the child,

lying on the quilt

he had doubled up for her.

He put the child on his left arm

and took it out of the room,

and she could hear the splashing of the water.

When he came back

she asked him where the child was.

He replied: "Out of there – in the water."

He punched up the fire

and returned with an armload of wood

and the child,

and put the dead child into the fire.

She said: "O John, don't!"

He did not reply

but turned to her and smile.¹³

*

The Negro was dead
when the doctors examined him.
They found upon his belly
bruises:
he died, the doctors said, of peritonitis.
[...]
He was not treated by a doctor, the jailer, or anybody:
just put into the jail and left there to die.
The doctor who saw him first – on a Monday –
did nothing for him
and said he would not die for his beating;
but he did die of it on Wednesday.¹⁴

As a member of the Modernist Objective Movement, Reznikoff opts for a descriptive mimesis of events in which law reports and their legal language provide a kind of un-subjective model for representing crimes, victims and culprits. This approach could be described as a form of “forensic realism,” an attempt to give a realistic effect to fictional texts through references to police procedures and scientific investigations. There is a similar police inquiry in the crime scene of the first poem, which contains the reported actions and dialogues of two characters, the wife and

13 Reznikoff, *Testimony: The United States*, p. 13.

14 Reznikoff, *Testimony: The United States*, p. 33.

the husband. Similarly, in the second poem the figure of a doctor, a scientific authority, introduces a reference to forensic medicine. In short, Reznikoff uses legal sources in order to create a social background for his literary objectivity, but the interpretation of those crimes is aimed at providing a critical perspective on some aspects of American society, such as violence and the alienation of certain categories of people, by using individual characters.

Wallace Stevens is another modernist poet whose legal profession infiltrates his poetry, though its presence is not evident at first glance. Thomas Grey reveals how Stevens acts as both a philosophical poet and, in an implicit manner, a pragmatist legal theorist.¹⁵ Lawrence Joseph is one of a group of contemporary poets whose work includes the indirect presence of legal references. Joseph has a devotion to objectively describing the urban landscape not unlike Reznikoff's. However, his integration of an original subjective point of view makes the identification of legal references throughout his poetry more complicated.¹⁶ The same can be said of Wallace Stevens. In the accounting of recent poets dealing with legal language, one can finally remember the recent controversy generated by Kenneth Goldsmith's reading of Michael Brown autopsy report as a poem,¹⁷ but his operation involves the

¹⁵ See Thomas Grey, *The Wallace Stevens Case: Law and the Practice of Poetry* (Cambridge, MA, Harvard UP, 1991).

¹⁶ Joseph Lawrence, *Codes, Precepts, Biases, and Taboos: Poems 1973–1993* (New York: Farrar, Straus and Giroux, 2005). However, his book of prose *Lawyerland* (New York: Farrar, Straus and Giroux, 1997) represents legal specialties and their practitioners in detail.

¹⁷ Kenneth Goldsmith, *The Body of Michel Brown*, performance at Brown University, March 2015. For the following debate, see David Kaufmann, 'The Author as Collector: Kenneth Goldsmith's Aestheticism', in *Reading Uncreative Writing: Conceptualism, Expression, and the Lyric* (Cham, CH, Palgrave Macmillan, 2017), pp. 13-38 and p. 78.

performative orality of poetry rather than a lyric performance – in fact, his oral reading transforms a legal text into a poem.

My conclusion is that a *forensic* poetry does not distinguish itself from the narrative in the accounting of legal topics and their presence within the text, especially in the effort to *represent* the social context and individual circumstances of any single case. Reznikoff's poems work as well as the language of law works.

Generally speaking, the language of law, when considered as a mirror of a specific social background, has no interest in delivering a complex reading of the situation, but rather in clarifying, organizing and resolving any intricate relations into a coherent set of actions, expressions and meanings that can lead to a final legal adjudication. Individual details are suppressed in the linguistic and narrative shaping of the law, precisely because the "legal rationales" control the appearance of individual details and accommodate or eliminate them from the legal presentation in order to motivate a conclusion. As Simon Stern explains, the movement from conflict to litigation to resolution involves a process in which the participants select certain details to describe to their lawyers, the lawyers select certain details to present in court, and the judge selects certain details to set out in the judgment.¹⁸ The process of adjudication involves the refinement of all details in order to abolish any non-functional particular and transcend the individual experience. As such, individual experiences are transformed into a legal precedent and, in Common Law, come to

govern the law as a set of consistent principled rules. The same happens to Reznikoff's characters, because they are fictionally shaped by certain details along the narrative presentation in order to outreach their individual cases and stands as critical examples of social values and disvalues.

In conclusion, a question may arise in considering poetry within the current Law and Literature field. Can the language of poetry truly escape the temptation to represent individual cases in a narrative form – in the same way that legal language inevitably adapts each single case to the forensic procedure – and, then, make them suitable for a poetic and lyrical purpose? This article will focus on Cornelius Eady, Frédéric Boyer, Maurizio Cucchi and Corrado Benigni because at times legal discourse and lyrical language coexist in their poems as two interconnected discourses. Their poems show not just how a specific poetic form – the lyric discourse – avoids the representation of legal cases in narrative sequences and background's explanation, but also how both the linguistic creation of stereotypes by the law, which operates generalization from such individualities, and the lyric discourse as a performance are clearly oriented towards an inter-subjective and social communication. This latest feature becomes more and more visible when the two discourses are blending together,¹⁹ and they especially work as far as the discourse keeps distance from individual details and utterer's personification.

18 For a structural description of the narratives of the law, see Simon Stern, 'Narrative in the Legal Text: Judicial Opinions and Their Narratives', in Michael Hanne and Robert Weisberg, eds., *Narrative and Metaphor in the Law* (Cambridge, Cambridge UP, 2018), pp. 121-139.

19 Deborah Nelson's nuance about the "powerful relationship between the Supreme Court's fashioning of a right to privacy and the extravagant self-disclosures of the confessional poets" teaches

A poem cycle by Cornelius Eady is based on a real case in which a certain Mrs. Susan Smith – availing herself of the widespread racial stereotypes adopted by her community – accuses a black man of having kidnapped her children, whom she had earlier drowned herself.²⁰ Eady's collection of poems, *Brutal Imagination* (2001), could appear as a detective story disguised in a sequence of several poems. The book does not fall into a romantic definition of the lyric either: Eady renounces his own voice as lyrical ego and instead gives it to the nonexistent accused man. He constructs the book following the development of the woman's imagination, which produces and identifies a black man as the unknown assassin.²¹

Nevertheless, through the book, the voice who is speaking complicates the coordinates of its fictional identification, as it is expressed in the very first lines by the incertitude of the black man about himself:

Mr.____, who lives in ____

South Caroline,

Of average height

us to think legal and lyrical practices as bound together within a specific social context. See Deborah Nelson, *Pursuing Privacy in Cold War America* (New York, Columbia University Press, 2002), p. xiv.

20 Many political comments about the trial were also a result of its coinciding with the Congressional elections, held a few days later in 1994. See Sage Heintzman, 'Going Somewhere: Maternal Infanticide and the Ethics of Judgment', in Paul J. Heald, ed., *Literature and Legal Problem Solving: Law and Literature as Ethical Discourse* (Durham, NC, Carolina Academic P, 1998), pp. 74-75.

21 Cornelius Eady, 'Who Am I?' in *Brutal Imagination* (New York, Putnam 2001); in *Hardheaded Weather: New and Selected Poems* (New York, Putnam, 2008), p. 181: "We roll sleepless through the dark streets, but inside / The cab is lit with brutal imagination."

And a certain weight
Who may or may not
Believe in any of the
Basic recognized religions

[...]

I signed or didn't sign the register.

I took or didn't take the key from his hand.

He looked or forgot to look

[...]

Did I say I was traveling with kids?

Who slept that night

In the untouched beds?²²

Not only the black man is introduced by a description (cfr. the rhyme *average height : certain weight*) as vague as his uncertainty in the woman's mind, but also these verses reiterates an utterer through a repetition of opposite claims ("I did / I did not") and doubts concerning past events and actions. The identity of the black man cannot be represented in detail; his presentation does not illuminate any individual background or description, personal data and traits; thus the discourse cannot be developed in a narrative situation or personal setting. Nevertheless, his voice gains a ritualistic presence – a performative dimension in communication – as

a positive result of his aborted existence and non-consistency in representation. His discourse – of uncommitted crimes – cannot entail a customary legal trial, in contrast to a typical detective story. On the contrary, the repetition of his linguistic mark – the first-person “I” – runs as a lyric activator, not in the sense of any authorial or fictional sign of identification, but as a lyrical effect derived from the continuous interrogation that is brought into the reading itself. The ritual of the black man who repeats “I” is taken on by the reader, who inevitably experiences the speech and the words of the *other*, the scapegoat and social outcast that gets the right to speak only here. In that sense, the poem functions as an epideictic discourse that blames social stereotypes and their uses in communication (in legal situations too) because the lyric discourse directly shows the non-consistency and unreliability of the situation during its utterance and performance.

The performative function is prominent in respect of any fictional or individual identification, also because the first-person utterer is prone to adapt to the several characters of a detective story. This *Ur*-lyrical ego is multiperspective:

I’m a black man, which means,

In Susan’s case,

That I pour out of a shadow

At a traffic light,

But I’m also a mother

22 Eady, ‘Sightings’, in *Brutal Imagination*, p. 181.

But I'm black, and we both know

The law.²³

The last three verses indicate two possible references (the woman and the black man) by the repetition of the same assertion (*I'm*), but their separation – fostered by the adversative clause (*but*) – is subsumed in the second hemistich of the penultimate verse, which also accounts for a shared pronoun and existence.²⁴ The first-plural pronoun's appearance just in front of *the law* – isolating the word in the single and last significant verse – is indicative.

The language of the law literally enters as a police interrogation conducted on the woman. In the poem 'What the Sheriff Suspects,' the "I" enters into the sheriff's mind and sees the woman in a new light through the eyes of the black man: "Now he wonders / Why he's never noticed the way Susan's body can't sit still, / My accent rising from her alibi".²⁵ The *alibi* – as a legal metaphor for the lyric function of the "mouth" – claims for a hierarchy between the woman and the lyric discourse of the black-man. The alibi as a linguistic construction fosters the portrait of the law as a discourse. From the very first verses of the book, we know that the black man is an alibi: "Susan Smith has invented me because / Nobody else in town will do what /

23 Eady, 'The Law', in *Brutal Imagination*, p. 185.

24 In the final verses of the book, both the black man and Mrs. Smith share the possessive pronoun, combining to create a unique criminal identity: "She only has me, / After she removes our hands / From our ears." (Eady, 'Birthing', in *Brutal Imagination*, p. 202).

25 Eady, *Brutal Imagination*, p. 192.

She needs me to do".²⁶ Because he is an alibi, the black-man has the sole linguistic existence. The "I" admits that function: "I am not the hero of this piece. / I am only a stray thought, a solution".²⁷ In short, the police or the detective interrogation cannot entail a narrative sequence clearing the identity of the black man as a character and a determining element in order to solve the crime of the detective story. His voice subsumes the tone of the interrogation and turns back it on himself. In a poem with the telling title, 'What I'm Made Of', the lyric discourse expressly stages the quality of his existence within the book:

But what do I breathe out?

Parchment, ink, low growls, the

Blank gap between words.

[...]

But I am water, pebble,

Silt and gravity,

Evidence under her nail.²⁸

Rimes such as *growls : words* stress the performative function of the lyric discourse as an accusation against his interrogation on himself. This linguistic protestation refers both to the lyric utterance – unable to give unity and autonomous representation to

²⁶ Eady, 'My Heart', in *Brutal Imagination*, pp. 179-180.

²⁷ Eady, 'Composite', in *Brutal Imagination*, p. 187.

the black man – and to linguistic construction of the law entered in the lyric discourse, such as the social stereotypes in communication, those coming not just from the woman’s mind, but also from the legal and police interrogation process. The community follows the woman’s use of racial stereotypes and indeed chases after the black man. But Eady transforms the legal investigation in a personal interrogation of the black man. If the lyric performance of the “I” presents an epideictic accusation directed at the stereotypes in communication, also the status of the lyric discourse is interrogated throughout. The metaphorical field of the poem, in the above lines, is clear. Because the black man is made of writing, reticence and silence, his lyric discourse remains within the performative dimension, the one of material reading – between *ink* and *parchment* – and voice, as a corporal element related to the body, just as the woman’s nail. Lyric discourse speaks out, although it has no body but the one of the reader who can perform it.

In *Le Goût du suicide lent* (1999) the French writer Frédéric Boyer experiments with the topics derived from the *noir* genre, presenting them using lyric forms, such as decisive metric pattern and rhyme sequences. This lyric style uses characteristic examples of legal interrogation whose presence in journalistic reports have led them to become common in social speech, but gives them a ritualistic dimension thanks to lyric disposition of verses.

28 Eady, *Brutal Imagination*, pp. 191-2.

The book's central theme is announced in its title, an ambivalent and contradictory combination of the violent act of suicide and the French word for "taste" (the title can be tentatively translated as "The Taste of Slow Suicide"). Boyer's poem provokes "slower" reading and inspires a deeper experience of reflection about bloodshed and death that stands in strong contrast with the faster and more superficial narration of such events in newspapers. It can also be interpreted as a counter-narrative response, which involves the readers' reaction in its portrayal, rather than the "objective" insight of Reznikoff's *Testimony*.²⁹ In short, the lyric performance involves readers in experiencing a different dimension of legal discourses found in everyday communication, which is included in the journalist report of legal reconstructions and sentences.

In contrast to what we have seen in *Brutal Imagination*, Boyer's cycle of poems has nothing to do with the epideictic function against everyday stereotypes. Of his own poetry he confesses:

je ne suis jamais tranquille
parce que j'ai rempli ce chant
de la cruauté des familles.³⁰

²⁹ See Jan Baetens, 'Frédéric Boyer, le détournement comme quête du sens', *Pour en finir avec la poésie dite minimaliste* (Bruxelles, Les impressions nouvelles, 2014), pp. 45-67, who outlines the difference between Boyer's *détournement* ("diversion") of reportorial clichés of crime scenes and the objective perspective that Reznikoff adopts for his remodeling of trials.

³⁰ Frédéric Boyer, *Le Goût du suicide lent* (Paris, Pol, 1999), p. 118.

Here Boyer defines his work as a chant, reconsidering the musical origin of poetry. These verses appear after Boyer's own translation of the same lines into English: "I'm never quiet / for with family cruelty / I have filled that lyric."³¹ The preceding English verses reveal the lyric origin of the chants. Boyer's intention is to challenge traditional lyric style with non-lyrical content; in this case, with criminal situations and subsequent legal interrogation. The result is, however, far from melodramatic, i.e. there is no preemptive identification with the victims. There is not a lyrical ego identifiable with victims, murderers or alter-egos of the author. Instead, the epideictic function of Boyer's lyric poetry aims at involving readers into a peculiar performance of the legal interrogation. As Jan Baetens claims in his article against the minimalist style in contemporary Francophone poetry, *Le Goût du suicide lent* presents an attempt to create an anti-commercial and anti-propaganda poetry by diverting from the collective reading of crimes provided by mass media.³²

Boyer's strategy takes on the apparent perspective of an unemotional and unexpressive discourse, which reiterates the same fictive order established in both "bourgeois" courts and newspapers. However, here the lyric discourse provided by the utterer changes the reader's experience of the judgmental tone. For example, the legal interrogation – intended as the general event when a judge interrogates the suspect – does not follow the typical legal discourse of the practitioners in the

31 Boyer, *Le Goût du suicide lent*, p. 117.

32 Baetens, 'Frédéric Boyer, le détournement comme quête du sens,' p. 45 and 48. By *poésie minimaliste*, Baetens means a style that privileges words over syntax, visual order over temporal and logical order, combined with the reduction of punctuation until arriving at the solitary isolation of a word within a page, and a mode of presentation which strives toward the Essence of meaning.

courtroom. In a long poem in which Boyer writes about the infanticide and the subsequent suicide of the mother, the judge interrogates a criminal appearing before the court:

Vous vous appelez Rose quelque chose
a demandé le juge
vous reconnaissez avoir c'est bien ça
Abattu d'une balle dans la tête
du calibre 12
vos deux enfants chéris
C'était pendant leur sommeil dans
votre maison du Dourdu
à Lampaul-Guimilau
Dans la nuit vous avez tenté
de mettre fin à ce que vous disiez
être votre enfer
Et vous jetant dans la mer
on vous a retrouvée
couchée sur la pierre³³

³³ Boyer, *Le Goût du suicide lent*, p. 12.

Your name is Rose something / asked the judge / you acknowledge that you
have that's it / Shot in the head / caliber 12 / your two beloved children / It was
while they were sleeping in / your house on the banks of Dourdu / in Lampaul-
Guimilau / In the night you tried / to end what you said / was your hell / And
jumping into the sea / we found you / lying on the stone (My translation)

The investigation of the criminal's identity is not so crucial for the adjudication, as well as the fictional identification of the judge. The uncertainty is on Rose's surname, a "something" that leaves her without a complete identification. The syntax and punctuation are scattered and reveal a discourse different from a narrative and legal reconstruction of the criminal event's background. She could be any woman in any similar case. Even the discourse appears to be reported indirectly by another voice, which ascribes to the judge ("*a demandé le juge*") the interrogation that follows.

Also in another poem Boyer considers a group of women as victims of a serial murderer: "All blondes / raped then / cut into pieces / dispersed in the same / district."³⁴ It is said that they "Have nothing in common / we finally know / that is when / they are killed / that they are joined together / they become confused."³⁵

These poems stress the event of the legal investigation as such, isolating and emphasizing the meaning of single words in verses: words and objects that are

34 "Toutes blondes / violées puis / découpées en morceaux / dispersés dans le même / quartier" (Boyer, *Le Goût du suicide lent*, my translation, p. 27).

35 "N'ont rien en commun / finalement l'apprenons / c'est à ce moment / qu'en les tuant on / les unit / les confond" (Boyer, *Le Goût du suicide lent*, my translation, p. 35).

central for legal evidence (such as a gun) do not permit to find a personal motive for any criminal event. The legal interrogation instead reveals to readers a meaning that has a transcendental value compared with the referential status of everyday communication. The entire interrogation appears as the adjudication in the afterlife rather than a legal exhibit.

Differently from Dante's model, in Boyer's book the afterlife judgment does not entail a *legal* narrative in which the reader can find the representative characters of the culture of his time and a judgment of them. The common reader participates in a sort of public trial every day in newspapers, in which individualities are subsumed and generalized as elements of the representation of the law as a social discourse. Boyer's poems perform a lyric discourse where the utterer acts as a proxy for the public, which continues to interrogate itself about criminal actions even when these crimes cannot be prosecuted anymore by any court. In this respect, lyric poetry has irremediably lost any narrative function of legal contextualization of individual reasons or characters. Readers are left alone with the words of the crime and the issue to give a meaning to these tragic events: they are called to adjudicate situations, which are presented in a legal language, without the common narrative reconstruction that the social reading usually provides for them. Lyric discourse asks readers to re-perform differently in their private reading what they have already read in the public domain, and does not provide them with a socially acceptable set of values embedded in a common representation of the crime.

The Italian poet Maurizio Cucchi employs the mode of the legal confession in his book, *Il disperso* ("The Missing," 1976). The book is made of lyric poems, which borrow some expressions typical of police procedure in the examination of a mysterious disappearance and transfer them into a sort of lyrical ego confession.

Here I will focus on the singular insight of the legal confession and adjudication of guilt through an examination of the notion of the reasonable person in the context of legal theory. Some legal affairs are based on the model of the reasonable person since his inauguration in 1837 (with some similarities founded in the Roman Law) in association of law of torts: "negligence arises from doing an act that a reasonable person would not do under the circumstances, or from failing to do an act that a reasonable person would do".³⁶ In short, it provides a means of measuring human actions against the norm of what a reasonable person would do in certain circumstances. Today it has several applications, such as with contract law, where the reasonable person helps to set standards for both the formation and interpretation of contracts.³⁷ The concept of the reasonable person has also an Italian counterpart in the juridical concept of the *bonus pater familias*, who comes to represent (art. 1176 of the Civil Code) the "uomo medio" (the average man) within the contemporary Italian system.³⁸ Several scholars point out the fictional

³⁶ Alan D. Miller and Ronen Perry, 'The Reasonable Person', *New York University Law Review*, 87.2 (2012), p. 325.

³⁷ John Gardner, 'The Many Faces of the Reasonable Person', *The Law Quarterly Review*, 131 (October 2015), p. 563.

³⁸ On the origins of the "reasonable person" (and that figure's relation to the *bonus pater familias*), see Simon Stern, 'R. v. Jones: The Origins of the Reasonable Person', in Philip Handler, Henry Mares and Ian Williams, eds., *Landmark Cases in Criminal Law* (Oxford, Hart P, 2017), pp. 59-79.

presumption of a model that has to set an external, objective and uniform standard of human behavior.³⁹

According to John Gardner, this concept is used to set standards in so many corners of the law that it is natural to think that these standards must be legal in nature. However, Gardner shows that they are actually extralegal standards as “the law is often tempted to rein him in, to circumscribe in various ways the free play of his judgment.”⁴⁰ Surreptitiously overreaching its objective premise, the model has often been introduced on the basis of what an average person does in a precise social and historical background. For example, Gardner explains that “if the reasonable person often ends up giving effect to a male standard of justification that is not because he sets a male standard of justification. It is because he sets no particular standard of justification.”⁴¹ The “reasonable person”, once known as “reasonable man”, has helped to reinforce or uphold stereotypes, not because it merely serves to mask, for instance, the maleness of the standard, but because it promotes standards of justification that are not themselves set by the law. As a product of bourgeois values and social structures, this model tends to mask its own historical nature, its non-legal standards of justification, although it is actually prone to change in

39 In their article on Law and Poetry, Eberle and Grossfel expressly interpret the reasonable person as a literary fiction in legal theory. See Edward J. Eberle and Bernhard Grossfel, ‘Law and Poetry’, *Roger Williams University Law Review*, 11.2 (Winter 2006), p. 399.

40 Gardner, ‘The Many Faces of the Reasonable Person’, p. 565.

41 Gardner, ‘The Many Faces of the Reasonable Person’, p. 567.

agreement with historical evolution and set new standards according to social changes.⁴²

Moreover, Alan Miller and Ronen Perry trace the idea of the reasonable person of average intelligence and behavior to the positivist concept of *l'homme moyen* – the statistical conception of an average man developed in the 19th century by French philosopher Adolphe Quetelet – with whom an actual person can be compared.⁴³ As an empirical estimation, the “average man” is born from the statistical aggregates of society; he is constructed from a derivative sample of individual conduct drawn from observations of society. As such, the reasonable person standard is linked to extra-legal standards that are socially shaped by individuals.

Although it is possible to grasp in Eady’s black man a reasonable person standard disguised as a racial stereotype, which is used to run the process of detective investigation, Cucchi allows me to show how lyric poetry reveals the impossibility of representing individualities as average and statistical standards. Even when individuals are shaped by the legal discourse, the lyric structure prevents them from the process of adjudication. At the beginning, the book can be interpreted as a real detective investigation. In the preamble, the initial voice examines some clues, including the victim’s body, his broken glasses, and his

⁴² For instance, Mark Schoenfield claims that the reasonable man carries out an important function during the establishment of Common Law for the development of modern capitalism and the individualistic spirit. See Mark Schoenfield, ‘Romantic Justice: Law, Literature, and Individuality’, in Jon Klancher, ed., *A Concise Companion to the Romantic Age* (Malden, MA, Wiley-Blackwell, 2009), p. 130.

⁴³ Miller and Perry, ‘The Reasonable Person’, p. 370.

briefcase. Cucchi describes them as if they were arranged for a postmortem examination:

Certo non solo la cartella
piantata lì, appoggiata all'angolo,
allo zoccolo. Sgonfia a metà, coi manici
in disordine. Ma lui stesso, l'artefice,
supino (riverso) la bocca spalancata,
i piedi incrociati sulla sedia, gli occhiali
in terra, rotti...⁴⁴

Of course not only the folder / left there, leaning against the corner, / against
the base. Deflated in half, / with the handles in disorder. But he, the architect, /
on his back (lying) his mouth wide-opened, / his feet crossed on the chair, his
glasses / on the ground, broken... (My translation)

If a possible violent death has occurred, there must be a guilty party. Nevertheless, the lyric discourse does not form a clear identity for the utterer and “detective” on the scene. As the first poem of the book, ‘La casa, gli estranei, i parenti prossimi,’ (“Home, strangers, relatives”) immediately shows, the aim is to deepen the mystery

⁴⁴ Maurizio Cucchi, *Il disperso* (Milano, Mondadori, 1976), in *Poesie (1965-2000)* (Milano, Mondadori, 2001), p. 9.

within a lyric discourse rather than solve it as a narrative sequence of causes.

Accordingly, the investigation presents its own contradictions:

È morto per un infarto (o per un incidente stradale, per un malore
per via di un sasso): sì va bene, ma ci sarà
pure un colpevole, un responsabile
diretto, qualcuno che l'ha fatto fuori.⁴⁵

He died of a heart attack (or a car accident, from an illness // because of a
stone): Yes okay, but there must also be / a culprit, someone who is responsible,
/ someone who took him out. (My translation)

The poem combines different events, relating them to a guilt part not established yet. The cause of death is uncertain. A heart attack, a stroke or a car crash are suggested as being possible causes. A clear autobiographical or fictional utterer ultimately lacks in his appearance as well as the narrative sequence of events is confused and seem not to be possibly reconstructed. Finally, the use of oral pattern (*sì va bene*) claims for giving another role to an external voice. In a sort of dialogue, someone like the reader claims for a narrative resolution of the mystery and the necessity to end with a final meaning. The book is divided by two opposite discourse: on the one hand, the lyric and the epideictic discourse of praise on a death person (the father) – as it is

illustrated by the emotional description of personal belonging; on the other hand, a narrative tension, which aims at finding a cause for that death – this latter takes on the mode of a legal interrogation.

In the following verses, the lyrical ego appears as the primary suspect of the crime, in a monologue included in the sequence as a sort of legal interrogation and confession. Even though he publicly tries to clear himself of blame, he no longer appears innocent:

E io

rosso di colpa, mezzo scemo, coi capelli

già quasi tagliati a zero

a giustificarmi come segue: “Ma io non c’entro,

io non ho fatto niente... l’infarto... lo sa bene...”

E mi toccavo i bottoni della giacca.⁴⁶

And I / blushing with guilt, quite dimwitted, my head already / almost shaved /
justifying myself as follows: “But I have nothing to do with it / I did not do
anything... the heart attack... you know...” / And meanwhile I was touching
the buttons of my coat. (My translation)

45 Cucchi, *Il disperso*, p. 12.

46 Cucchi, *Il disperso*, p. 13.

We cannot establish whether the victim's death was natural or violent; the logical sequence of events and culpability are lost. Due to this very ambiguity, the lyrical ego can speak as the accused and the prosecutor at the same time. This discourse is not a legal process leading to the truth about the mysterious disappearance or to a clear identity of the missing person. The lyric voice brings the legal interrogation into the lyric discourse itself and turns the epideictic discourse away from the "praise of the death" in order to finally direct it on the lyrical ego himself. Thus, the lyric discourse becomes an act of self-blaming.

Without the clear backdrop of the crime-scene, Cucchi shows us an utterer who – even when equipped with a legal and rational language – is unable to both reconstruct a narrative background of his individual actions and accommodate his actual culpability within the average standard of judgment. The lyric discourse shows to readers the impossible absolution for the lyrical ego, within a lyric poetry that cannot set standards of justification helping that process.

The collection of the lawyer poet Corrado Benigni, *Tribunale della mente* ("Tribunal of the Mind," 2012) is another instance in which the legal world contaminates that of poetry. The midsection, fittingly entitled *Figure* ("Figures"), dedicates poems to some of the court's common list of characters. The judge, the accused, the lawyer and the attorney form a sort of anthropological framework that highlights the questionable meaning of the law.

Rather than being the result of a reification of human nature, Benigni's representation of the law is a space of discourse that is strictly linked to our emotions and obsessions, especially to our sense of impotence vis-à-vis the inability to change mankind and the world. Benigni depicts the law as an inherently contradictory language; one which in shaping an autonomous reality directly reveals – when studied in its internal structures – its own contradictions. We find numerous examples in several poems. For instance, when the judge closely observes the law he realizes his own powerlessness in front of the rules of justice:

Non c'è colpevolezza senza prova, qui
dove assoluzione e delitto hanno lo stesso movente.⁴⁷

Reato o peccato, siamo tutti parte. Comunque.

[...]

Tempo senza voce che scrivi la sentenza,
nulla corregge nulla.

Un vizio di forma forse ci salverà.⁴⁸

47 This verse cites a song from the popular Italian songwriter Fabrizio De André entitled *Canzone del padre* ("Father's Song"), in which a son converses with a judge about his father: "So I became my father / killed in a previous dream / the court has given me confidence / murder and acquittal, the same motive" ("Così son diventato mio padre / ucciso in un sogno precedente / il tribunale mi ha dato fiducia / assoluzione e delitto, lo stesso movente", my translation).

48 Corrado Benigni, *Tribunale della mente* (Novara, Interlinea, 2012), p. 38. In the section *Sentetiae*, the judge appears again. Having initially been more involved in the legal procedure, he concludes with the same existential acknowledgement about the painful truth that other characters have expressed: "The judge read the verdict: 'sentence postponed'. But the court is still sitting, the report is not written [...] What is the truth, Your Honor? [...] / The pain is the truth, everything else is uncertain [...] / Words now hand us over to the evidence" ("Il giudice legge la sentenza: "Pena sospesa." Eppure nessuna udienza è tolta, nessun verbale è redatto [...] Che cos'è la verità, giudice?

There is no guilt without evidence, here / where acquittal and murder have the same motive. / Crime or sin, we are all part of this. In any case. / [...] / Voiceless time writing the verdict, / nothing fixes anything. / A defect of form will save us perhaps. (My translation)

The judge confesses that there is no difference between the motives for the crime and those which lead to the defendant being acquitted because, paradoxically, the evidence constitutes an autonomous code that runs without the direct intervention of the judge. The evidence only responds to the self-ruling syntax of the law. Final rulings implacably strike us with written formulas, such as that of the judge delivering a sentence. In this respect, the poem emphasizes the sententious tone of the law by the isolation of certain phrases in a single verse. For example, the poem ends with a single verse carrying a phrase, in analogy with the single defect of form, which appears to be the last hope of salvation within the legal procedure and discourse.

In *Sententiae*, a section of the book composed purely of prose poems, Benigni insists on the difference between personal perception of time and the duration of legal process: “Witnesses for ourselves, no one is innocent. Without arbiter or impartiality, we will be judged – on the side of the target –. Waiting is the only

[...] Il dolore è verità, tutto il resto è dubbio [...] La parola ora ci consegna all’evidenza”, Benigni, *Tribunale della mente*, my translation, p. 21).

alibi.”⁴⁹ According to Benigni, not only the defect of form, but also the mere fact of waiting for a judgment takes us into the private court where doubt prevails and the relevance of justice itself is called into question. In this respect, the law perpetuates delay rather than producing definite and conclusive sentences. Legal decisions are left suspended and instill a sense of laziness, inactivity, and lassitude. The structure of poems reflects his claims, by forming prose sequences without a narrative plot, a background description or a temporal order for the events.

Previously, in the first section of the book, *Onere della prova* (“Burden of Proof”), the witness also serves as a parallel figure to the judge, just as the convict overlaps with the figure of the victim. Benigni claims that the witness is powerless in the face of the law, even if he is in theory the sole guardian of the real truth before the court and the only one capable of guiding its judgment. Ironically, the witness lacks sensorial perception. He is blind and deaf:

Il testimone non vede né sente nulla.
Solo l’attesa qui ha forza di legge:
siedi davanti alla soglia,
non c’è via di scampo
da questa giustizia che sa solo se stessa.
Ma ci sarà una pista, dentro o di fuori,

⁴⁹ “Testimoni di noi stessi, nessuno è innocente. Senza arbitrio né imparzialità saremo giudicati – dalla parte del bersaglio –. L’attesa è il solo alibi” (Benigni, *Tribunale della mente*, my translation, p.

un indizio da seguire,

bisognerà pur chiederselo:

quale uguaglianza davanti alla legge?

Nel cardine di una norma ruota la verità.⁵⁰

The witness did not see or hear anything. / Just waiting here has the force of
law: / sit in front of the threshold, / there is no way out / from this justice that
knows only itself. / But there will be a lead, inside or outside, / a clue to follow,
/ we must ask anyway: / what equality is there before the law? / The truth turns
in the linchpin of a norm. (My translation)

The witness summons us to suspend any judgment, finding his own alibi in the postponement of every deposition and decision. Like this witness, we continue to seek evidence of truth, and hope that it can be the grounds for the principle of equality before the law. But the law only acknowledges its own operational rules. In order to understand the relationship between the law and the truth, Benigni insists on a more direct questioning of legal language compared to that of the other poets discussed above. This can also appear as a meta-commentary of the legal language within the poem. While Eady, Boyer and Cucchi deal with the law as a

26).

⁵⁰ Benigni, *Tribunale della mente*, p. 15.

social discourse, Benigni considers the law from the point of view of its peculiar linguistic structure.

Just to give another example, innocence is not linked to the facts, but to appearances that must be deciphered like a form of language. In the following verses, the gaze of the accused bespeaks innocence, while other evidence has brought him to court and now indicates that he is possibly guilty. The moral status of innocence opposes the legal analysis of evidence, such as DNA:

Un'impronta ti inchiederà
il Dna di un passo dimenticato,
lasciato senza veglia.
Quanti indizi nell'innocenza dello sguardo,
nel più cristiano dei volti.⁵¹

A fingerprint will nail you / the DNA of a forgotten step, / left with no
vigilance. / How many clues lie in the innocence of the look, / in the most
Christian of faces. (My translation)

Mistrust in the law is expressed, at the stylistic level in the book, through a reoccurring combination of legal and lyric vocabulary, which underlines the centrality of words in both poetry and law. Both involve a process of writing and are

susceptible to different social readings and interpretations. Like poetry and literature, law is a language that is manipulated by the agents of legal discourse, creating an impasse for the pursuit of the truth. As such, truth can only be revealed through the absence of words, through silence. Truth must avoid the exactness of the final word – the final judgment cannot exist, as it is claimed elsewhere: “No truth is entirely truth [...] renounce to the rule of certitude / a white wall will identify our faces.”⁵²

Moreover, the lyrical ego fails to differentiate himself from the culprit or the witness, such as in the case of Cucchi. The Christian face – a paradigm for the search of innocence and absolution in the poem previously quoted – confronts a white wall: it is not just an encounter with the barrier of the law, a sort of threshold beyond which lies justice, but rather with a language in which the culprit or the sinner mirrors himself/herself.⁵³ This is not an external reference – a background – that leads to a process of legal or moral adjudication.

In conclusion, Benigni demonstrates how the requirements of legal proceedings create a set of verbal standards that must be followed by everyone involved in a trial. However, neither lyric poetry nor legal discourse can account for individual experiences anymore, because the values that they should express, such as truth and

51 Benigni, *Tribunale della mente*, p. 44.

52 “Nessuna verità è interamente verità [...] rinuncia alla regola della certezza / una parete bianca riconoscerà i nostri volti” (Benigni, *Tribunale della mente*, my translation, p. 79).

53 Even if “the inseparability of laws and walls was recognized by the ancient Greeks” (see Dolin, *A Critical Introduction to Law and Literature*, p. 6), in this particular case Benigni, in the construction of the entire book, has rather in mind Joseph Kafka’s parable “Before the Law”, with its “locked door”.

justice, remain intangible in a subjective or forensic representation. Lyric and legal discourses appear together as a meta-commentary that does not set any external reference for their meaning, but just a performance of languages within a social community.

III. CONCLUSION: THE ALIENATED MARGINS OF LYRIC POETRY AND LAW

The main aim of lyric poetry is not to foresee the social implications of single legal decisions or to expand the singular legal case to the social surroundings of the law. Rather these poems represent the linguistic event in which lyric and legal discourse experience mutual alienation: they are both alienated from the narrative construction of a social identity for the individual subject, considered as respectively an *object* arranged into the legal discourse by a statistical process and the *agent* of the lyric discourse by means of a linguistic performance. In this sense, the quality of the relationship of both languages in their poetic contamination shows the real relationship that literature has with society as a whole, at least when we consider the law as a social construction. This relationship does not lead to a sort of moral opposition of an individualistic language to the bourgeois system – as it would be if we would interpret the lyric discourse as a romantic expressiveness facing the whole objective world. Simply, the lyric discourse does not contribute to the narrative representation of social background from a realistic forensic perspective.

In the introduction, I discussed that the narrative shaping of the law suppresses individual details, but narrative discourse – the forensic poetry – can give them back

to the legal representation and depict the social background of individual situations. On the contrary, lyric poetry escapes representing individual cases in a narrative form because its discourse surpasses the lyrical ego and the romantic poetic of subjective expressiveness. Even a personal background for the lyrical ego becomes inappropriate when he tries to elaborate narratively a private discourse such as a confession, as *Il disperso* reveals, or an accusation, as *Brutal Imagination* shows.

Moreover, the epideictic function embedded in the lyric poetry fosters a critique of the intersection between social language and law, especially regarding social language's presence in the law, such as the cases of racial stereotypes (*Brutal Imagination*), legal reports in newspapers (*Le Goût du suicide lent*), and statistical conception of the man (*Il disperso*). Finally, as lyric poetry does not give necessarily a representation of the law, it can interrogate the linguistic foundation of the law as a social discourse of a community. Lyric poems do the same in different contexts, considering civil topics or transcendental meanings. But this aspect appears particularly relevant in *Tribunale della mente*.

Lyric poetry reveals the use of stereotyped and statistical models by the legal discourse, but at the same time the lyric discourse (more or less dependently from the legal one within these poems) acknowledges its inability of being a representational discourse. An utterer performs a discourse in order to praise or blame the society, the law, or him/herself, but the lyric discursive form makes the lyrical ego less individually contextualized and represented than strategically created to be a linguistic event.

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