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# In quest of sense. The way towards an Aesthetics of Law through Law and Humanities

M. Paola Mittica

## Abstract

In the context of an epistemological revolution that subverts traditional juridical science, placing “feeling” at the center of the reflection also on the *homo juridicus*, Aesthetics opens a path to a more complex elaboration of sense that guides human behavior. The general goal of this article is to contribute to the development of an Aesthetics of Law that uses Law and Humanities as a methodology addressed primarily to jurists to experience sense.

More specifically, my first aim is to clarify the concepts of sense and form that interest us, by holding together both the rational qualities and the affective and sensory feelings of human intelligence that influence the experience of living. Secondly, I intend to highlight the link between Ethics and Aesthetics and between feeling and law, to approach legal norm as an aesthetic object, as a form open to the quest for sense, where the quest for sense is a search for justice and the common good. Finally, I propose an exercise of Law and Humanities, imagining two encounters experienced in front of the *Annunciation* by Beato Angelico and the *Annunciation of Mary* by Rainer Maria Rilke, respectively, to show how jurists can cultivate their sensibilities through contact with artworks.

## 1. Theoretical Framework

It is known that Law and Humanities owes its affirmation to what has gone down in history as the “cultural turn” in law and legal studies.<sup>1</sup> Starting from the 70s, this “turn” led to a vision of law as a cultural product,<sup>2</sup> a language among others,<sup>3</sup> a founding story<sup>4</sup> or a narrative<sup>5</sup>, contributing in a very meaningful way to make a place for a cultural analysis of law.<sup>6</sup> In this great epistemological revolution, an important part has been played by the many orientations in the field of human sciences that have intersected legal studies. It is enough to think of the development of the sociology of law<sup>7</sup> and ethnomethodology<sup>8</sup>, the influence of interpretive anthropology<sup>9</sup>, not to mention the enormous work of Critical Legal Studies.<sup>10</sup>

If, on the one hand, the cultural perspective has made it possible to respond to the “call to context” addressed to law and legal studies, providing new keys to understand the various worlds of life characterized by symbolic mediation, on the other hand, it should be specified that the approach of Law and Humanities has been constantly characterized by the ability to question even the most complex dimensions of the sense that guides human behavior. The same transdisciplinarity and the recurring forays into the various fields of humanistic knowledge have, in fact, added new and important sensibilities to research. I refer in particular to the attention paid to the potential of using emotions as cognitive and decision-making centers of the human being;<sup>11</sup> to the great debates on empathy;<sup>12</sup> to the need to become aware of the weight of both positive

and negative emotions in situations, actions, and judgments;<sup>13</sup> to the importance of knowing how to manage these “motions”, especially when one has the power to determine the existential conditions of another, as happens to the jurist.<sup>14</sup> A similar significance has been given to the senses in recent years. After some pioneering works, research is, in fact, becoming increasingly interested in the “sensing law,” by focussing on issues that concern both how people approach law through the senses and how this understanding modifies their relationship with the law and, conversely, the way in which law treats what is perceived through sensations and formulated into language.<sup>15</sup>

Law and Humanities has therefore opened up a path by which all the intellectual, affective and perceptual components and resources of the human being can be unified in such a way as to provide an integrated understanding of how individuals access their experience and elaborate sense to order their existence, observing the law as a further articulation of this sense.<sup>16</sup> We can thus understand the need, frequently expressed in recent years by many scholars interested in Law and Humanities, to develop an Aesthetics of Law from the broader perspective of Aesthetics that can provide a theoretical framework of reference for the analysis of legal forms. It is an Aesthetic that reconnects to Ethics. These studies, in fact, particularly in Italy, in spite of their different approaches, have as a common starting point the re-establishment of the deep roots linking law and ethics, and aim to develop an aesthetic statute of law on this basis.<sup>17</sup>

Within this framework, it is now necessary to address some fundamental questions in order to carry out an important inversion of perspective. First of all, we have to reach an agreement concerning the ideas of “man”, “human experience”, and “context” in which human beings “come into existence” and realize themselves. Then, on this basis, we should formulate the concepts of form and sense that interest us, by taking into account both the rational qualities and the affective and sensory feelings of human intelligence that influence the experience of living. These are questions that, once answered, will give us the opportunity to approach law as an aesthetic object – whether expressed in a rule, a law, a regulation or a sentence – as a form open to the quest for sense, where the quest for sense is a search for justice and the common good.

## **2. “C’est du moment que nous sentons que nous sommes”**

The human being is an indistinctly cultural and natural being. Even without going into the different aspects of the complex relationship between nature and culture, which traditionally affects the debate on anthropology, we can accept the well-established thesis that culture is one of the natural resources of man: a possibility that has guaranteed man a certain evolutionary success, albeit with its costs.<sup>18</sup>

This thesis is an important starting point for defining the quality of human beings and the context in which they live their experiences. It is a matter of fact that man learns, understands and acts drawing from, more or less consciously, all the components of his being (reasons that combine rationality and sensibilities, imagination and science, individual temperament and social conventions, spontaneous behavior and normativity...), and also that culture is the exclusive context of his experience, within which he finds the sense and the forms to access and regenerate his worlds of life.<sup>19</sup>

The question is basically how we approach knowledge. We cannot continue to develop science by relying on methods that are still based on positivism. Moreover, we have long known that human knowledge is reflexive; that we have no possibility of distinguishing between the subject and the object of knowledge; that, by favoring rationality as a resource, we devote only part of our cognitive abilities to what we decide to define as “science”. We also know, now, that pulsions,

emotions or passions, and sensations are channels of access to experience that move us in an immediate way before our rational faculties intervene and, whether we like it or not, these can seriously influence our judgment with important consequences on our behavior. Hence, we are conscious that we cannot shirk the task of taking them into account in order to prevent their negative effects. What we still have to understand is how to use their cognitive potential.

Concerning culture, as the exclusive context of our experience, the problem is to assume, intimately, the fact that, for man, there does not exist a “beyond” beyond culture. The evolution of man is all in the continuous regeneration of culture which many anthropologists define as “second nature”, through which human beings build their worlds of life.<sup>20</sup> Culture is the space of sense: a space of crystallized meanings in forms, but also of sense that is forming.<sup>21</sup> Every human motion takes on sense and form starting from culture and through culture. And since our most strategic thoughts, as well as our affectivity or our fears or bad feelings, are poured into the forms of culture, this “text” unceasingly rewritten by men is the only place where we can find “the said”, “the unsaid” and “what could be said” that we learn from experience. Culture, therefore, is reality and not only representation, and the sense enclosed in its forms or in what is being formed cannot be compressed in the meaning, nor in a more or less articulated expression of the sign.

In order to achieve the desired change of perspective, it is necessary both to adopt an “integral and integrated” idea of man and retrieve from culture those texts that best lend themselves to an elaboration of methodology able to understand his reality.

Regarding the first point, the lesson of Ricoeur is very clear. When he says that “[T]he re-conquest of the Cogito must be complete”,<sup>22</sup> he alludes to the need to overcome any subdivision or parcelization in our ability to understand in order to conceive that, in man, there is no intelligence less intelligent than another, but many different intelligences, and in its quest for sense, human thought must be able to draw on all of them. If the idea of man is anchored to that of the sentient being, we have to change what must be understood by “sentient”. Here the logic excluding the distinctions between rational and irrational, mind and body, light and shadow, conscious and unconscious disappears definitively: Ricoeur specifies that in the sense of the Cogito “we can only discover the body and the involuntary that it sustains.”<sup>23</sup> That is to say that we must regain our ability to know through every quality of our “being body” including the involuntary: an ability that the body nourishes which does not always surface to our conscience, which lives underground, and which probably moves us by influencing our evaluations and actions even when they appear to us as “rational.” “The body *makes room* for existence [...] *is the being of existence*”, as synthesized by Nancy.<sup>24</sup>

Neither the primacy of the ontological on the cognitive nor vice versa of the cognitive on the ontological is to be sought: Ricoeur says that the integral experience of Cogito “taken as a whole, includes ‘I desire,’ ‘I can,’ ‘I intend,’ and in a general way, my existence as a body”.<sup>25</sup>

A thread of precious shadow that contrasts the blinding light of the progress of pure eighteenth-century Enlightenment thought comes to mind. It is the discordant voice of Cabanis, a French physician and philosopher, who suggested replacing Cartesian Cogito with sensibility. According to Cabanis, the nexus that underlies human nature is not between existence and thought, but between existence and sensibility: “*c’est du moment que nous sentons que nous sommes*” is his famous motto. In his view, sensibility, which involves all aspects of feeling, is the primary energy, the founding force of living and is the living materiality of the “*organisation physique*”, that is, corporeity.<sup>26</sup> This is a valuable lesson not only because it reminds us that man is essentially his own organism, but also because it clarifies that sensibility, which is the first engine of the body, is involved in every access of man to experience, and each kind of sensibility – whatever the quality of its intelligence – is always an expression of corporeity.

After all, if the whole experience of Cogito encompasses existence as a body, man knows, evaluates and interacts through his body. In other words, man is his body: affections, sensations, and thoughts are one and the same. It means that our being-in-the-world, in relationship with the environment and other human beings is affected by “all” the information that comes to us from our life context: variables that depend on the physical environment, on our perceptions, on the interpretation that we give them, and which determine our emotions, passions, our judgment and the way in which we orient ourselves.

As for the second point, it is sufficient to think of what has been said by James Boyd White,<sup>27</sup> who, in bringing back all the dimensions of our existence to the “life of language,” reduces the pervasiveness of scientific discourse in order to retake language to a more articulated and immediate relationship with the reality of human life. Thus, he makes it clear that, in the course of daily life, both at the individual and collective level, sense takes form among rational analyses, social practices, accidental cases, in the merger of languages and meanings. Consequently, all the efforts of science to distinguish, define, separate or reduce sense are worthless. The reality of the human world can only be fathomed through its complexity: through the cultural forms that encompass the sense that orients the individual – and that the individual orients – even in their less explicable components. For this reason, we need to learn to find sense by not reducing it to the conventional content of meanings, but to grasp forms in everything they have to say to us, even if it confuses and bewilders us: understanding sense even by not explaining it. After all, what drives us to seek ever new reasons and allows us to rebuild constantly our worlds of life is precisely this which presents itself as unpredictable, unimaginable, inexplicable.

Sense and meaning are therefore not synonyms. Sense cannot be reduced to meaning. As soon as we have been able to determine sense, it is no longer sense, but just the meaning that we have agreed upon. Sense is rather an aspiration, which makes us tend towards a “comprehensibility outside any linguistic-discursive argument and any philosophical-specialist theming”<sup>28</sup> and which, we can only conceive through a new, already transformed, form.

Meaning thus appears in the forms in explicit or explicable contents, while the quest for sense takes place in the openness that forms can elicit in whoever relies on an understanding that surpasses explanation.

If this is the perspective that we adopt, to the question: “which idea of man” we must answer the “Existing man”,<sup>29</sup> since we are interested in man as a being who never ceases the search for sense, and welcomes the continuous transformation that experience brings about.

The Existing is the man who employs all his cognitive resources, such as sensibilities and rationality, who is conscious of himself and of what surrounds him, even of what he cannot explain, but who is willing to understand this as his own limitation. The very ability to live the limit is what allows the Existing to conceive the opening of a potentially infinite space of sense, albeit indecipherable; that is, to feel the mystery: to grasp, in the countless disseminated forms in his lifeworlds, the possibility to find sense beyond mere meaning.

We could say that the Existing is like a hunter who chases sense through forms.<sup>30</sup> But this hunt is without a prey. In lingering in the forms, which are also thresholds on himself, he is able to tend towards an “openness of sense”: to perceive, on this border, the presence of something that is “Other” than himself and what he already knows, and to lend himself, through this movement, to the transformation that the confrontation with the Other provokes in him. Thus, the Existing reformulates forms and creates the world, while the hunting territory moves, from time to time, in the continuous regeneration of culture. There is no prey because there is no form in which sense

can be exhausted. We can follow its tracks, chase it through the forms and try to understand it in the changes it produces in them, but our understanding can never be complete. The authentic experience consists of the quest for sense in the movement of this transformation, that the Existing knows how to grasp.

### **3. The awareness of the Other**

The search for sense takes place in the confrontation with the Other. We experience the Other in everything that surrounds us. The sense that opens from the forms always retains the trace of an original otherness that places us in tension. The Other is what cannot be reduced to an object of our knowledge but, in its claim to be understood, instead moves the quest for sense.

The encounter with the Other has two fundamental implications for human awareness: on the one hand, the understanding of the endlessness of the quest for sense, which man learns by the impossibility of escaping the original otherness of forms; on the other hand, the acknowledgment of his boundary condition in access to the world, which is also revealed in the knowledge of oneself, since the inaccessible disclosed by the Other reveals the inaccessible that is in everyone when confronted with oneself.

It goes without saying that the fallacy of the value which is attributed so overwhelmingly to identity. Identity is a resulting construct that human beings derive from the processes of socialization and their placement in the world of conventions.

The Existing has no identity but otherness. Therefore, he builds the world with awareness. Because he understands it, he relates to what is Other, letting it remain in its otherness, without trying to reduce it to objective knowledge, well aware that externality of the Other is the only objective fact.

The Other, we said, is in every articulation of sense, that is in every form, but the matter becomes more complex when the Other embodies “the other human being,” since it involves the very possibility of the human relationship, which in order to exist needs the mutual recognition in the otherness.

In the relationship, two human beings recognize themselves as “Other of Other”. Each accepts the Other's mystery, its inexhaustibility. The Other prevents the tendency to “catalogue” by drawing on previous knowledge, subverts the mental habit to reduce, simplify, and typify. Most of all, the Other demands attention to what is elusive in oneself. In other words, the limit that emerges from the Other's presence replicates in everyone and reverberates within the relationship, leading to a consciousness that understanding overcomes the possibility of knowing and explaining. On this basis, respect is born: as respect for the Other individual who is before me and who is reflected in the respect that I owe to myself. Any human relationship that wants to be authentic cannot ignore it. If the bond is to be contracted in the awareness of the limit by both parties, then the assumption of responsibility for the Other, with all that derives from it, will also be authentic.

The rest is the world. That is to say that the relationship will take place— as always in the context of culture— through the building of continuous mediations of sense, common narratives, shareable orders, which are the forms of the world. With the difference that if the relationship is between Existing men, the quality of the forms that they will leave in their search for sense will have an expressive potential able to activate, in an integrated way, human intelligence because those forms will have welcomed otherness.

Clearly, we are already in the field of ethics, since the commitment to learn what we are, with respect for our and Others' otherness, and to take charge of the Other and of the relationship with

the Other is the foundation of the common good and of social bond. Ethics feeds on the quest for sense that moves in this space “between” Others. It is not so much a question of identifying universal values and observing them, but rather of finding oneself in the search for the good of the Other in everyday life, in concrete actions, at the level of the individual’s commitment, because every decision, any behavior, even that which could not possibly seem more isolated, has an impact on the perception of the common good and on the life of the community.

#### **4. From Ethics to Aesthetics**

Thus, Ethics presents itself first of all as an invitation addressed to man to understand himself. That is to say that Ethics asks man not to be afraid to discover his own weaknesses, perversions, instincts, and emotions, because facing the fear of existence does not also mean to lose himself,<sup>31</sup> but to activate his sensibilities as a resource to recognize and approach other human beings.

The warning imprinted in large letters on the pediment of the temple of Apollo in Delphi, “Know thyself”, is perhaps the greatest testimony of practical wisdom compared to any previous wise statement ever made, when it was not surprising to come across Existing men. Not everyone remembers, however, that this indication is followed by a further invitation to moderation: “Nothing in excess” that is clearly addressed to community life.

“Know thyself” is therefore accompanied by the indication of the limit as its necessary corollary. It is not possible to know any truth of existence. To know oneself is to learn “to know oneself for what one is or can be,” but at the same time also for who one is: Existing man, a hunter of sense who tends into the forms finding their measure in the otherness and learns self-respect through the Other and respect for the Other.

In this awareness resides the essence and origin of ethical behavior aimed at finding the most suitable forms to regulate community life, measures for coexistence that are constantly reformulated, rules to strengthen social solidarity or to mediate conflicts.

From the ethical point of view, the quest for sense becomes, therefore, “sharing” if not also “agreement.” And if it is true that every elaboration of sense is destined to crystallize in a form, it is also true that a good mediation – from which comes a form in which to recognize each other – can become a space of understanding in which anyone can arrive closer to the Other, thanks to an intelligence that can also feel and lead one to take responsibility for oneself and for the Other.

Maintaining the openness required by Ethics needs sensitive intelligence. Only if the One and the Other are able to recognize themselves in their common humanity in an integrated way, is it possible to hope that the intimacy shared in this belonging allows the mutual feeling of compassion to grow among human beings who know they are limited, which is the basis of political friendship.

It may be said then that Ethics and Aesthetics are, in short, two perspectives of the same path along which the search for sense takes place.

We have only to observe, even superficially, the use that is made of the term “sense” in our language (and I specifically refer to Italian and English) to understand how these two approaches are indistinguishable. “Sense” can refer to sensoriality of perception (sight, hearing, taste, smell, touch, and other somatic senses); to a general physical sensation (feeling hungry, well-being or malaise, lightness or heaviness, etc.) or a sentimental mood (sense of nostalgia, sadness, emptiness, joy, regret, etc.). In the meaning of “towards” or “direction,” the term is used in mathematics, but also in the lexicon of road traffic regulations. When connected to an abstract concept or an ideal vision, the term “sense” expresses a deep understanding (e.g. the sense of life, or the “ratio legis”), while with respect to a context of life ordered by meanings and values the

capability of discernment (between real and unreal, good and evil, beautiful and ugly, convenient and inconvenient, etc.). In the relational sphere, “sense” (of shame, dignity, modesty, fear, gratitude, hatred, resentment, compassion, etc.) is employed to define a feeling that directs behavior.

The term “sense” is therefore related to “senses”, “feelings”, “moods” but also to “directions”, “decisions” or “orientations.” And since in our language there lies the truth of our world, the fact of having traced all these connections back to the word “sense” may mean that human beings, with their actions, rules, and plans, are always involved in a sense that is a broad feeling which pervades every form of their world.

To conclude, there is no distance between the ethical and the aesthetic invitation. Whoever intends to behave ethically needs intelligence of feeling and, therefore, aesthetic sensibility if the Other is to be approached.

## 5. Feeling law

Even the quest for the sense in the field of law should respond to this invitation. The problem is how to cool emotions and passions, without impeding at the same time an open-minded discussion of the potentiality of the sensible resources of our intelligence.

Current criticism by theoreticians of the passions claims that legal matters are constantly traversed by passions, emotions or feelings; that, as much as the legal science refuses to admit it, the juridical response is also often emotional and passionate if not even exposed to the influence of perceptions; that, at times, sensibilities are even activated strategically, as occurs in “soft law” for example.

In this great work of revelation, a significant contribution is provided by literature, like other artistic genres, which, in its ability to represent the world of the law without the obligation of protecting itself from feeling, brings out all its emotional nuances.

On the subject of passions, as was recently pointed out by Ost,<sup>32</sup> it is even possible to make an inventory of them by distinguishing between passions which are moderated by the law and those which have an effect on the law. Concerning the latter, in particular, the Belgian philosopher of law emphasizes which passions can be ignited by the excessive love of law. He considers then judges who become executioners not to mention avengers, or those who blindly believe in the system as the perfect machine; legislators overtaken by a “legislative fever” who see in the law the way to salvation, or consider it the only foundation of civilization and end up stifling spontaneous law; bureaucrats who compensate for their own insignificance by extolling the “letter of the law” through zealous verbatim application of the law; and finally the scholars themselves, those teachers of law who have become fossilized in their repetition or exaltation of their share of knowledge of the discipline. Alongside the “excessive love” for the law, there may also be “excessive diffidence” in the law. Ost underlines how rejection, terror, and the desire to live outside the law may also become equally pathological passions which influence the law by way of dodging it.

The same is true for sensorial feeling. Once again literature can be called upon to reveal how the influence of perception in the overall process of definition of sense can also be applied in the field of law, and, consequently, in the formulation of a judgment of an action both in the production and application of the law, and integrate our idea of law as a fact of reasoning, feeling, and more generally of the body in its entirety.

In brief, the quest for sense should come about as an aware action also in the field of law in order to understand more deeply the norms, gain a more correct insight into their positive and negative consequences and conceive their form as transformation. We could discern and direct our actions through a constant critique of current laws and by envisaging new rules focusing on otherness, with the aim to restore to law its regulatory function and protection of community life.

Above all things, through juridical forms, the quest for sense becomes a quest for justice. When the bond between Others is broken, mediation of sense becomes ever more urgent. Since the relation with Others is lost, the quest for justice must aspire to a new formulation of existing together. There exists a form of justice like “reciprocity” that, according to Giuliani, is a criterion of solution for all the issues related to the levelling of an equilibrium: in the rectification of a wrong, in exchange, in politics and even in friendship.<sup>33</sup>

Space, here, is always that of limit. This quest is, however, more difficult because there is an excess to be reduced and a new limit to be established without the closure of a new form. The secret core of the new agreement lies in the awareness of *measure*: “no excess” because judgment is highlighting the unfinished, impotent and perennially insufficient moment of the life of the law.<sup>34</sup> Here more than ever does the form remain taut until feeling can be achieved and the enigma of the Other understood.

It may be that the parts of the relationship endeavor to meet each other by trying to re-mediate a different order of sense and again re-find their stand in the Other’s limit. More often than not, there is a need for a mediator: someone who embodies the idea of a third way. In any case, only who is able to be like the Existing man can restore the bond, and the form of justice will only be fulfilled when the opposing parties have reached a mutual affective agreement.

It is not a question of who wins or loses or of punishing the perpetrator to the satisfaction of the victim or the injured party. The new form, in order to be “just” or “good sense”, must also take into account the feeling of who loses or is punished, and for whoever wins or has been injured it must achieve com-prehension of the Other. In this way, justice admits its own limits and the social bond acquires a more solid foundation. On the other hand, Cananzi is right when he states with Ricoeur that to judge is not to decide but to understand.<sup>35</sup> Similarly, the Existing, like Ricoeur’s *capable/fallible* man, is the one responsible for the account he gives of himself and the Other, aware of the limit of his actions: *capable* because he knows he is *fallible*, and thanks to this awareness is able to remain within his limit, containing the human arbitrariness. As Cananzi reminds us, the limit is not so much the border beyond which it is impossible to proceed, but rather the very condition of proceeding of man and sense.<sup>36</sup>

“Justice will exist when it has been done” we could say. Only when we are aware that it has been shown, will we be able to understand that justice has been done, when the right measure has been found. Justice will surprise us, in astonishment and feeling. Not only because we will be given an explanation, but because we will feel good. Justice will be done when we “feel” that peace has been accomplished, that everything has returned to measure, that the solution “fits”, because the new reasons have found their place within us. And since the event of justice triggers an opening which exceeds the very value of the solution expressed, justice once again places itself beyond the form in which it occurred, by becoming a further possibility of sense, thanks to the sentiments that such an opening has allowed.

## 6. The reason for art

Although every cultural form can act as a vehicle in the quest for sense, artistic forms may be considered better than others since they allow us to tend ourselves within the space of limit.



Thanks to their originality – the ability to subvert canons, demonstrate the unthinkable and astonish – forms involved in the artistic context constitute the best human forge of sense. As such, they trigger the transformation of sense both in the author who is in quest of the artistic form and in whoever approaches the work of art, and, in time, in the cultural context.

If art intercepts the transformative movement of sense, the work of art is the form which preserves the evidence of it, and as such is *rhythmos*, an open and changing form.<sup>37</sup> Like a canal, the work of art puts us in touch with the original and incessant search for sense. In the work of art, sense is revealed, but only partially: from the form we reach for something inexplicable, the mystery we know but cannot express. The work of art “occurs” in astonishment, as Maldiney says.<sup>38</sup> And it is astonishment for all; for the artist who finds the form, and for whoever comes across it.

This is the reason for art, since, compared to other forms, the work of art obliges us to leave aside the ordinary and abandon the well-tested paths of decodification in favour of paths in which sense is expressed not only in a conceptual but also in an affective and sensorial way. Thanks to the originality, unforeseeable impact and involvement of its form, the work of art heightens the sense by amplifying our cognitive ability and allowing us to risk the inexplicable to speculate on our understanding. It is the Existing’s favourite hunting ground.

We are all potential hunters of sense, all Existing men. Author or beholder of the work of art are both hunters, with the difference that the artist, besides having made the search for form his life work, is more expert in expressing sense by using feeling. When beholding a work of art, its form always retains the possibility of an opening for everyone, regardless of spatial, temporal and cultural constraints. Indeed, it is not the canons that make art universal but rather the fact that a work of art has the power to move what we have defined as authentic experience, by opening up a bridge for a comparison with otherness.

The work of art is both an ethical and aesthetic object as it provides access to the understanding of human limits and their relations, allowing us mutual recognition and respect.<sup>39</sup>

While he is beholding the *Death of the Virgin* by Caravaggio, Nancy states that: “come in and see”, the canvas beckons to us: “Here, (the) painting is our access to the fact that we do not accede - either to the inside or to the outside of ourselves. Thus, we exist. This painting paints the threshold of existence. In these conditions, to paint does not mean to represent, but simply to pose ground, the texture, and the pigment of the threshold”.<sup>40</sup> The French philosopher is referring neither to a precise temporal or cultural context nor a privileged interlocutor. The invitation is more a request to let oneself be transported by the form of the artwork on the threshold of oneself, too, and to cease explanations or attempts to understand the invisible Other.

Other scholars confirm that art is necessary in order not to lose the sense above all in what remains enigmatic in the form.<sup>41</sup> Without art, then, we would lose the possibility to express and communicate everything that knowledge cannot say. We may add that without education to art we would lose a precious opportunity to take care of community life.

But how can we approach art?

The Aesthetic would suggest allowing ourselves to get caught up in the work of art; let the work of art find us. In order to access an aesthetic experience, we do not necessarily need the input of the historian or the critic of art.<sup>42</sup> Undoubtedly, the knowledge required to decipher the canons used in the formal creation of an artwork, or to contextualize its historical-culture background is extremely helpful, but only to better approach the limit in which to grasp what remains a mystery of the art work. The quest for sense is entirely within our possibility to make an active and conscious use of feeling.

The real question is if we are able to enter the open space of the artwork.

During a visit to the Convent of San Marco in Florence, as ordinary beholders, we find ourselves in front of the *Annunciation* by Beato Angelico (see the image below [source internet]). Immediately the reference to the myth of the Virgin Mary, a well-known story widely disseminated in our tradition, is congenial to us.

A closer look allows us an awareness of the perfect geometry of the use of space, the chromatic equilibrium with which the painter portrays the scene. A deeper knowledge of the history of art would enable us to contextualize the artwork and grasp, for example, its importance for Renaissance culture.

Usually, we would be ready to go further but decide, instead, to take another look at the fresco forgetting fifteenth-century Florence and Beato Angelico. Thus, we notice that the portico, inside which the scene is unfolding, is a well-defined space compared to the internal garden which we imagine extends well beyond the frame. The gap (Jullien could say *écart*)<sup>43</sup> between outside and inside is emphasized by the light illuminating the scene which, arriving from on high outside, would seem to indicate a further delimitation, which we can believe to be between the human and the divine. The boundary is further expressed in Mary's encounter with the sacred world through the announcement revealed to her by the Angel Gabriel. The light, the confined space, the proximity of the two figures turn the portico into a physical place in which to unveil this moment of intimacy between the two.



On the threshold of her human limit, this young maiden opens up to the unknown Other embodied in the angel to receive her destiny. The meeting is hers alone. The narration is precise and recognizable. Nevertheless, in Beato Angelico's garden, together with Mary and Gabriel, we are also present, alert and tended towards an opening of unexpected sense. It is then that we perceive the extent of the garden thanks to a fence which closes it off. A stylistic choice? Yes, it may be. What it is not is a typical dividing wall of a noble house that we recognize from fifteenth century architecture; indeed, the space we glimpse in the background is not completely closed. Beyond the fence are some trees opening into another boundary, this time a garden with bushes, inviting us to feel that the quest for sense could continue ad infinitum.

Thus far the experience of an ordinary beholder who, having found an opening in the form, is beginning to understand what it means to search for sense, but he is still not an expert hunter. The ability to "see the invisible" is quite another thing.

Not that an angel entered (realize this), scared her. Just as others would not startle if a ray of sunlight or the moon at night busied itself in the room, the form in which an angel walked, did not scare her;

she barely had an idea that this stay was  
difficult for angels. [...]  
It did not scare her that he entered,  
but that he was so utterly present, the angel,  
bearing a young man's face, and turned to her;  
that his gaze and hers, looking up to him, collided  
as if everything outside had become empty,  
and everything that millions saw, did, wore  
became condensed in them: only her and him;  
Seeing and seen, nowhere else except in this very spot  
- see, that scares, and both startled.

These verses are taken from *Annunciation to Mary* by Rainer Maria Rilke.<sup>44</sup>

Rilke is standing on the threshold of the picture and himself. He silently observes the play of light which reveals the room and allows himself to be transported by its movement. He closes his eyes in order to tend towards the invisible, as Nancy would say<sup>45</sup>.

Voilà. In the space which opens up to him there appears a young girl who, unaware of angels, comes across the gaze of another young man. The space all around is empty. In the silence there no longer exists the story of the Virgin Mary and the Archangel Gabriel, just as Rilke's time and space no longer exist. *Nowhere else except in this very spot*. In no other time if not now. The attention, the senses, the sense: everything focusses on the meeting permeated by the mystery that *millions of other gazes have searched and reached for and borne*. Then, suddenly, that story and that fresco come up so close to us that they become our gaze, our tenderness.

Rilke fathoms the sense until he reaches the Other and restores to us the most authentic and original feeling that marks this encounter: fear. Ancestral, savage, authentic fear. We feel it, it is ours. A very human fear which invades, without, however, terrorizing us. What keeps it at bay is the measure carefully imparted in each verse; the sense of a measure which we may now also capture in the proportions and composure of the fresco. Thus, it is a fear that does not paralyze, but which invites us to act carefully and gently, which, as for Mary and Gabriel, may be enveloped by delicacy and measure. A fear that is mutual, intimate and everyone's, but which does not translate into a refusal to meet, to approach with gentleness and respect, or assume responsibility for the other who approaches us. Our comprehension thus reaches ethics. What, as an untrained beholder, we did not see in Beato Angelico's fresco, is provided by Rilke through the transformative flow of sense which crosses forms, offering us a further fragment, a further little piece towards an understanding of the quality of the encounter with the Other.

All of this brings to light what the aesthetic experience consists of. Learning art is learning how to look into the invisible, remaining in silence until our thoughts listen to other sensibilities; taking all the time it needs to make an opening for comprehension beyond meanings, and, in the awareness that we in our turn are being drawn towards the quest for sense, we can construct new forms with the attention necessary not to impede the quest of another hunter. They will no doubt be less "rhythmical" than the forms produced by the poet or other artists, but what matters is that they maintain the feeling of measure which is at the heart of both aesthetics and ethics.

## **7. A little note to conclude on a possible Existing jurist**

In conclusion, the forms we imagine and would wish to be involved in every juridical action have the same quality as works of art. We are talking about norms made with art. Norms, whose form could be an expression of a measure which, captured from sensible intelligence, reaches ethics.

Certainly, unlike the work of art, the legal text has a binding character. No matter how creative and imaginative the jurist may be, he must respect the confines imposed by a system of measures designed to conserve and guarantee respect for the general principles that derive from mediations of sense (claims, political discourses, individual or traditional narratives) which constitute the basis of the social bond. If it were not so, the quest for justice would degenerate into injustice by betraying common ideas and values laid down in the texts of charters of fundamental rights.

The binding character of the juridical text is not, however, to be considered as an impediment to its comparison with a work of art. Quite the opposite. Since the jurist can in no way exceed the text, he finds himself obliged to pay the same attention and respect which any other work of art would demand of him.

The jurist may then be like the Existing man, looking at the invisible which the norm opens to his sensibility, in the quest for “good sense”. The problem is to find the right measure. For the judge it is the quest for justice, for the legislator the quest is to create order for the world; the bureaucrat, instead, seeks to adapt the forms to the situation. The quest, however, involves everyone in the unfolding of their life. Given that the norm “made with art” may go beyond specialized legal culture, it can open up a path towards comprehension also for the ordinary citizen because it is able to leave a trail of sense that each of us can catch sight of and follow with our own sensibilities.

Therefore, if we can conceive the quest for the sense of law and its justice in aesthetic terms, then as jurists we ought to work towards improving our abilities to “feel”. From this point of view, a humanistic re-education through Law and Humanities is the right way. Success will depend on our capacity to recognize our fragilities and make a serious attempt to head, through an Aesthetics of Law, towards an “integral and integrated” vision of knowledge and of our being-in-the-world.

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<sup>1</sup> Cf. Greta Olson, “Futures of Law and Literature. A Preliminary Overview from a Culturalist Perspective,” in *Recht und Literatur im Zwischenraum/Law and Literature In-Between: Aktuelle inter- und transdisziplinäre Zugänge/Contemporary Inter- and Transdisciplinary Approaches*, eds C. Hiebaum, S. Knaller and D. Pichler (Bielefeld: Transcript, 2015): 37-69.

<sup>2</sup> Cf. Guyora Binder and Richard Weisberg, *Literary Criticism of Law* (Princeton N.J.: Princeton University Press, 2000).

<sup>3</sup> Cf. James Boyd White, “Establishing relations between law and other forms of thought and language,” *Erasmus Law Review* 1, no. 3 (2008): 3-22; Alberto Vespaziani, “Towards a Hermeneutical Approach to Legal Metaphor,” in *Human Rights, Language and Law*, eds. Thomas Bustamante and Oche Onazi (Stuttgart: Franz Steiner Verlag und Nomos, 2012): 79-92.

<sup>4</sup> Cf. Robert Cover, “The Supreme Court, 1982 Term – Foreword: Nomos and Narrative,” *Harvard Law Review* 97, no. 4 (1983): 4-68; Robin West, “Communities, Texts, and Law: Reflections on the Law and Literature Movement,” *Yale Journal of Law & the Humanities* 1, no. 1 (1989): 129-56; François Ost, *Raconter la loi. Aux sources de l’imaginaire juridique* (Paris: Odile Jacob, 2004); M. Paola Mittica, “The Heart of Law,” *No Foundations: An Interdisciplinary Journal of Law and Justice*, Special Number on Law’s Justice. A Law and Humanities Perspective 9 (2012): 97-118.

<sup>5</sup> Cf. Anthony G. Amsterdam and Jerome Bruner, *Minding the Law* (Cambridge Ma.: Harvard University Press, 2002); Flora Di Donato, *The Analysis of Legal Cases. A Narrative Approach* (London-New York: Routledge, 2019).

<sup>6</sup> Cf. Patricia Ewick and Susan Silbey, *The Common Place of Law: Stories of Popular Legal Consciousness* (Chicago: University of Chicago Press, 1998).

<sup>7</sup> Lynn Mather, “Law and Society,” in *The Oxford Handbook of Political Science*, ed. Robert E. Goodin (New York: Oxford University Press, Online Publication Date: Sep 2013 DOI: 10.1093/oxfordhb/9780199604456.013.0015).

<sup>8</sup> Cf. Harold Garfinkel, *Studies in Ethnomethodology* (Englewood Cliffs: Prentice-Hall, 1967).

<sup>9</sup> Cf. Clifford Geertz, *The Interpretation of Cultures: Selected Essays* (New York: Basic Books, 1973).

- <sup>10</sup> Gary Minda, *Postmodern Legal Movements. Law and Jurisprudence at Century's End* (New York: New York University Press, 1995).
- <sup>11</sup> Cf. Antonio Damasio, *Descartes' Error. 10th Anniversary edition*, with a new author preface (Penguin Random House, 2005).
- <sup>12</sup> Cf. Amy Coplan and Peter Goldie, eds., *Empathy: Philosophical and Psychological Perspectives* (New York: Oxford University Press, 2011).
- <sup>13</sup> Martha C. Nussbaum, *Upheavals of Thought. The intelligence of emotions* (Cambridge: Cambridge University Press, 2012).
- <sup>14</sup> Toni M. Massaro, "Empathy, Legal Storytelling, and the Rule of Law: New Words, Old Wounds?" *Michigan Law Review* 87 (1989): 2099; Marianne Constable, *Just Silences: The Limits and Possibilities of Modern Law* (Princeton N.J.: Princeton University Press, 2005); Martin L. Hoffman, "Empathy, Justice, and the Law," in *Empathy: Philosophical and Psychological Perspectives* ed. Amy Coplan and Peter Goldie (New York: Oxford University Press, 2011), 230-254; Mortimer N. S. Sellers, ed., *Law, Reason, and Emotion* (Cambridge: Cambridge University Press, 2017); François Ost, *Le droit, objet de passions?* (Bruxelles: Académie royale de Belgique, 2018).
- <sup>15</sup> Cf. Lionel Bently and Leo Finn, eds., *Law and the Senses: Sensational Jurisprudence*, (London: Pluto Press, 1996); Alan Hyde, *Bodies of Law* (Princeton N.J.: Princeton University Press, 1997); David Howes and Constance Classen, eds., *Ways of Sensing. Understanding the Senses In Society* (London-New York: Routledge, 2013); Sheryl N. Hamilton, Diana Majury, Dawn Moore and Neil Sargent, eds, *Sensing Law* (London-New York: Routledge, 2017); Andrea Pavoni, Danilo Mandic, Caterina Nirta and Andreas Philippopoulos-Mihalopoulos, eds., *TASTE*, (London: University of Westminster Press, 2018); Ead., *SEE*, (London: University of Westminster Press, 2018); Caterina Nirta, Danilo Mandic, Andrea Pavoni and Andreas Philippopoulos-Mihalopoulos, eds., *Touch*, (London: University of Westminster Press, 2020).
- <sup>16</sup> Cf. Patricia Branco and Valerio Nitrato Izzo, "Intersections in Law, Culture and the Humanities," *Revista Crítica de Ciências Sociais*, 112 (2017): 45-72.
- <sup>17</sup> Paolo Heritier, *Estetica giuridica Vol. 1. Primi elementi. Dalla Globalizzazione alla secolarizzazione, Vol. 2. A partire da Legendre. Il fondamento finzionale del diritto positivo* (Torino: Giappichelli, 2012); Id. "Law and Image: Towards a Theory in Nomograms," in *Law, Culture and Visual Studies*, ed. Richard K. Sherwin and Anne Wagner (Dordrecht-Heidelberg-New York-London: Springer, 2014), 25-48; Daniele Cananzi, *Percorsi ermeneutici di filosofia del diritto* (Giappichelli: Torino, 2016); Id. *Estetica del diritto. Sul fondamento geologico del giuridico* (Giappichelli: Torino, 2017); Claudius Messner, "Now This: On the Gradual Production of Justice Whilst Doing Law and Music," *International Journal for the Semiotics of Law* 31 (2018): 187-214; Id. "Il diritto, il linguaggio, la musica. Riflessioni sullo statuto estetico del diritto," in *Multimodal argumentation, Pluralism and images in law – Studies on argumentation & legal philosophy/3*, eds. Maurizio Manzin, Federico Puppo and Serena Tomasi (Trento: Università degli Studi di Trento, 2018): 317- 342; M. Paola Mittica, "Ritmo e trasformazione. Sulla via dell'estetica giuridica," *Materiali per una storia della cultura giuridica* XLVII, no. 1 (2017): 67-85; Id. "Senso del sentire. Law and Humanities ed Estetica giuridica," *Rivista di Filosofia del diritto* VIII, no. 2 (2019): 441-456.
- <sup>18</sup> Francesco Remotti, *Culture. From complexity to impoverishment* (Roma-Bari: Laterza, 2019<sup>6</sup>).
- <sup>19</sup> Cf. Jerome Bruner, *Acts of Meaning* (Cambridge Ma.: Harvard University Press, 1990).
- <sup>20</sup> Cf. Arnold Gehlen, *Man: His Nature and Place in the World* New York (New York: Columbia University Press, 1980); Clifford Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology* (New York: Basic Books, 1983); Francesco Remotti, *Culture. From complexity to impoverishment* (Roma-Bari: Laterza, 2019<sup>6</sup>).
- <sup>21</sup> Luigi Pareyson, *Estetica. Teoria della formatività* (Torino: Edizioni di «Filosofia», 1954).
- <sup>22</sup> Cf. Paul Ricoeur, *Freedom and Nature: The Voluntary and the Involuntary* (Evanston, Ill.: Northwestern University Press, 1966): 9.
- <sup>23</sup> Ibidem.
- <sup>24</sup> Cf. Jean-Luc Nancy, *Corpus* (New York: Fordham University Press, 2008): 15.
- <sup>25</sup> Cf. Paul Ricoeur, *Freedom and Nature: The Voluntary and the Involuntary* (Evanston, Ill.: Northwestern University Press, 1966): 9.
- <sup>26</sup> Sergio Moravia, "The Enlightenment and the Sciences of Man," *History of Science* 18, no. 1 (1980): 247-268.
- <sup>27</sup> James Boyd White, *When Words Lose Their Meaning: Constitutions and Reconstitutions of Language, Character, and Community* (University of Chicago Press: Chicago, 1984).
- <sup>28</sup> Cf. Aldo Masullo, *Patricità e indifferenza* (Genova: Il melangolo, 2003): 50-51.
- <sup>29</sup> Henri Maldiney, "L'esthétique des rythmes," in *Regard, Parole, Espace* (Paris: Les éditions du Cerf, 2012): 201-230.
- <sup>30</sup> Cf. Roberto Calasso, *The Celestial Hunter* (London: Penguin, 2020).
- <sup>31</sup> Cf. Franco Crespi, *Imparare ad esistere* (Roma: Donzelli, 1994): 41.
- <sup>32</sup> François Ost, *Le droit, objet de passions?* (Bruxelles: Académie royale de Belgique, 2018).

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<sup>33</sup> Paolo Heritier, "Giustizia affettiva, metodo retorico, neuroscienze: un itinerario tra Aristotele e Vico a partire da Alessandro Giuliani," in *Deontologia del fondamento* (Torino: Giappichelli, 2016), 91-134.

<sup>34</sup> Cf. Daniele Cananzi, *Estetica del diritto. Sul fondamento geologico del giuridico* (Giappichelli: Torino, 2017): 15.

<sup>35</sup> Ibidem.

<sup>36</sup> Ivi: 65.

<sup>37</sup> M. Paola Mittica, "Ritmo e trasformazione. Sulla via dell'estetica giuridica," *Materiali per una storia della cultura giuridica* XLVII, no. 1 (2017): 67-85.

<sup>38</sup> Henri Maldiney, "L'esthétique des rythmes," in *Regard, Parole, Espace* (Paris: Les éditions du Cerf, 2012): 201-230.

<sup>39</sup> Cf. Angelo Andreotti, *Il nascosto dell'opera. Frammenti sull'eticità dell'arte* (Ancona: Italic, 2018).

<sup>40</sup> Cf. Jean-Luc Nancy, *The Muses* (Redwood CA: Stanford University Press, 1996): 60,61.

<sup>41</sup> Cf. Sergio Givone, *Prima lezione di estetica* (Roma-Bari: Laterza, 2003).

<sup>42</sup> Cf. Henri Focillon, *The Life of Form in Art* (Cambridge, MA London: Zone Books, 1992).

<sup>43</sup> François Jullien, *L'écart et l'entre* (Paris: Galilée, 2012).

<sup>44</sup> Rainer Maria Rilke, *Annunciation to Mary in The Life of the Virgin Mary: A Cycle of Poems*, translation by Christine McNeill's (Dublin: Dedalus Press, 2003). We don't know if he really wrote this poem inspired by Beato Angelico's fresco, but he seems to have this image in his eyes.

<sup>45</sup> Jean-Luc Nancy, *The Muses* (Redwood CA: Stanford University Press, 1996).

**M. Paola Mittica** is Full Professor in Philosophy and Sociology of Law at the Law Department - University of Urbino. She coordinates the ISLL - Italian Society for Law and Literature with Carla Faralli (University of Bologna). She is interested in problematical aspects of the origin and essence of formal and informal law, taken from ancient Greek sources. She has written on the *Odyssey*, the *Oresteia*, the value of *mousiké* at the origin of Western legal culture and on other issues. In recent years she has been dealing with the intersections between Law, Aesthetics and Law and Humanities.