

# Thinking Through the Body of the Law.

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(EDS)

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'The title names and guarantees the identity, the unity and the boundaries of the original work which it entitles...A sort of intrigue is already apparent in a title which names the law...'  
(Derrida 1992a:188-9).

Through: 1. In at one end, side, or surface, and out at the other...7.  
having finished successfully: to get through an examination...12.  
All the way...14. From the beginning to the end...17 having completed an action, process, etc.. (The Macquarie Dictionary).

**T**hinking Through the Body of the Law (1996) is a pathbreaking book which should presage further works of its kind. While the essays are more diverse than coherent, there is a general attempt to supplement Critical Legal Studies, Feminist Jurisprudence and Critical Race Theories' re-conceptualisation of the Law as something other than an isolated practice of objective and impartial rules. The authors question our understanding of ethics, embodiment, the social and law/justice. In doing so they present us with an inspiring range of trajectories which call for further research. In this respect, the title of the book sets an overly ambitious agenda. The title performatively asserts that the 'thinking' that is done in this book accomplishes a 'thinking through the body of the law.' This presumes a movement involving destination and arrival; parameters which seem both an impossibility and an undesirability given the subject. To re-conceptualise ethics, embodiment and law-justice, as Patton attests in the book, requires us to find 'new forms' (p.59) that will not be known in advance of the process nor be final in their 'specific determinations.' (p.59)

The cover of the book displays part of a naked upper torso that has been tattooed on the shoulder with an image of blind Justice. The image is framed by a large blue border, the bottom right hand side of which names the contributors. Over this blue border and on top of the flesh of the figure, the title of the book, *Thinking Through the Body of the Law* passes. The title/cover poses a series of juxtaposed paradoxes that are taken up and elaborated in the individual essays. For instance, 'body,' 'law' and 'justice' sit uneasily together in terms of their traditional conception and also in the ways they have been re-written in the work of post-modernism and post-structuralism. The Law, as conventionally understood, alludes to a series of rules, norms, statutes and common law—a body of principles perhaps, but having nothing to do with corporeality. As the editors point out in the Introduction, such a definition elides the ways in which different kinds of bodies are implicated in, produced by, and subjected through the law and are necessary for its maintenance (p.xvii). The title/cover performs what the individual essays elaborate, namely that the Law may be represented as a series of principles yet it is fundamentally implicated in modes of embodiment. Graphically the cover of the text emphasises this by marking the flesh with a typical icon of the law, blind Justice. As (an image of a) tattoo, blind Justice marks the human body depicted, becoming part of that flesh, and also, as a recognisable icon of the Law, it carries a citational history of the values attributed to the Law as impartial finder of fact. Given the context of the book, this image necessarily cites the names of Nietzsche, Foucault, Kafka, de Certeau, to name a few, all of whom are concerned with the ways in which the law is quite literally inscribed on bodies—once again adding to our understanding of the law as corporeal.

The relationship between image and word is paradoxical for another reason. In the blue frame surrounding the image of Justice(made)flesh, the cover names the book's contributors, the majority of whom are recognisable as having been substantially influenced by Derrida. It would therefore seem at first paradoxical that the figure of Justice references visually a title about the Law, for as Derrida has said, 'Law (droit) is not justice' (Derrida 1992b:16). Yet the title *Thinking Through the Body of the Law*, as discussed above, implies a subversion of the law as droit and also of any notion of (blind)Justice-law as impartial and objective. Thus, one of the main aims of the book is to reconceive our notions of justice and re-write those who have theorised these concepts. In this vein Cheah and Grosz offer us a 'corporeal justice' (p.25) theoretically based on the supplementing of Derrida's notion of difference with Foucault's understanding of power (see chapter 1).

The title also generates another paradox in its juxtaposition of 'thinking' and 'through.' Thinking is conventionally constructed as an attribute of the mind; a disembodied function. Yet coupled with the word 'through' the title performatively questions any easy mind/body dualism. We are here forced to understand 'thought' as some kind of action or movement that is necessarily embodied. Many of the essays in the book grapple with issues to do with law and justice in relation to embodiment, and offer us a radical inversion of the traditional hierarchisation of the mind over the body, suggesting that 'justice and the law may be understood not as functions of the mind but as functions of the body' (p.7).

Gatens' essay in particular takes up these concerns in her rethinking of law, responsibility and embodiment through a Spinozist framework. Spinoza offers us a radical monism in which the 'mind is the idea of the body'. This conception of the 'body' is based on a radical relationality (p.28) which gives rise to a new understanding of 'responsibility.' For Spinoza, actions can only be deemed just or unjust in relation to a complex polity (p.30) which will be developed in particular historical and political contexts (p.37). If individual actions are related to a larger body as on this model, such actions must be read in relation to and reflect the polity (p.38). Gatens argues that traditional conceptions of responsibility as individualistic, need to be re-examined. Instead of simply punishing the individual, one must also look for the 'social and structural causes of such behaviour' (p.38). This would involve undertaking an analysis of the historical and social constitution of the social body, the principles and practices upon which its laws and social conventions have been established, and what exclusionary practices it is based upon. Instead of viewing the criminal as an abhorrent individual, an embodied rational society—rather than one based on utility and capture—would need to take responsibility for the ways in which a society's laws and practices embody such behaviour (p.39). Gatens' analysis seems particularly pertinent in relation to the invariable disproportionate representation of women as victims of violent crime and men as perpetrators of such crimes. This attests to the lack of success that incarceration has on changing these fundamental relations between the sexes. Following Gatens' argument, the relative stability of the offender/victim positions vis-a-vis sex, means that we need to look closely at the kinds of structural and social practices that are embodied in our socius that make such behaviour 'possible'.

Gatens' re-conceptualisation of responsibility and the body politic undermines conventional representations of the Law as an isolated series of rules and practices. Indeed, many of the contributors emphasise the impossibili-

ty of clearly demarcating the Law from other forms of practices, institutions and bodies. Two essays in particular—Threadgold’s and Kennedy’s—reveal the ways in which the law is informed by and produced in other practices and knowledges. This ultimately throws into question any attempts by the law to demarcate its boundaries from the ‘extra-legal’. Threadgold demonstrates that the case of Jimmy Governor enmeshed with the discourses that were circulating in the late nineteenth-century about nationalism, race and gender. Kennedy examines the famous trial of John Hinckely (would-be assassin of President Reagan) by framing her discussion within an analysis of ‘popular’ accounts of insanity. Martin Scorsese’s movie *Taxi Driver* informs the defence’s trial tactics, with parts of the film being played within the courtroom, and most importantly an analogy being drawn between Hinckely and Bickle (the main character in *Taxi Driver*). Unlike Scorsese’s precedent, *Psycho*, where a psychiatric diagnosis of insanity concludes the film and effectively restores order to the world, *Taxi Driver* does not mime this moment of (ficto)medico-legal closure. Kennedy argues that the defence’s use of this film, with its hiatus of medico-legal resolution, enabled ‘popular knowledge’ to absolve Hinckley of (legal) responsibility for the assassination. The jury’s acquittal, Kennedy contends, reflected the constructing nature of popular knowledge within the realm of the courtroom as well as undermining the ‘doctor’s and lawyer’s will to truth’ (p.206).

As a whole the book offers the reader a diverse range of essays around the issues of embodiment, law and ethics. These essays build upon and go beyond the work of Critical Legal Theory, Critical Race Theory and Feminist Jurisprudence. In doing so they continue the process of rethinking the body of the law. In this sense it would seem to me that the title with its performative injunction of ‘thinking through,’ is somewhat over-ambitious. Indeed, perhaps this is graphically recognised by the cover. *Blind-Justice* maintains her integrity while the human-body is a mere forequarter; the *Thinking Through* caresses the neck and extends beyond these bodies, as it must, and journeys into uncharted territories of blue...

## REFERENCES

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