

The Moving Experience of Legal Education

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The courts are all shut up; the public offices lie in a hot sleep. Westminster Hall itself is a shady solitude where nightingales might sing, and a tenderer class of suitors than is usually found there, walk. (Charles Dickens, *Bleak House*, chapter 19)

Legal education has a special problem at its core and the duty of legal educators is to alert learners to the problem and to join them in the task of overcoming it. The special problem of legal education is that the fundamental ideas of law are predominantly stationary or tending to the static, while the essential ideas of education are predominantly moving or tending to motion. The stationary ideas of the law include ‘statute’, ‘*stare decisis*’ (i.e. case precedent), ‘standing’ to appear in court, ‘statements’, ‘estate’, legal ‘status’ and ‘constitution.’ The moving ideas of education include ‘pedagogy’, ‘motivation’ and, of course, ‘education’ itself means to ‘lead out.’ The law’s preference for stability, orthodoxy and repetition has tended to produce teaching practices that favour ‘inculcation’ (which means, etymologically, to dig ones heels in) in place of true education of the sort that leads students into new territories where they can appreciate new views. To learn when walking, and to learn by walking, has a respectable pedigree. The fact that Aristotle’s students acquired the label *peripatetikos* indicates that Aristotle walked as he taught, and, by the same token, that teaching took place in the covered walkway (the *peripatos* – a colonnade, literally a ‘surrounding

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patio') (Thompson 1955: 12) which, somewhat like a medieval cloister, framed the open courtyard garden of the Lyceum. It was here that Aristotle founded his 'university'; the first true university it has been argued (Thompson 1955: 16). In this paper I will focus on my undergraduate module in 'Law and Literature' to demonstrate how I use movement, within enclosed spaces and in the open air, with a view to moving hearts and motivating minds. The module is concerned with law *as* literature (legal language as constitutive rhetoric, to echo the language of James Boyd White (1984)) and it examines law as literature in part by engaging with law *in* creative literary works and by enabling the students to submit creative writing in addition to an end-of-term examination. (Each piece of creative writing engages with an aspect of law or justice, broadly conceived, and takes the form of a poem, a drama or a short work of prose fiction such as a fable or fairy tale. It attracts up to one-fifth of the total grade marks available in the module. I have written elsewhere on the special challenges of assessing the students' creative work: Watt, 2009b).

How many law students begin their educational journey like Alice in Wonderland?

Alice opened the door and found that it led into a small passage, not much larger than a rathole – she knelt down and looked along the passage into the loveliest garden you ever saw. How she longed to get out of the dark hall, and wander about among those beds of bright flowers and those cool fountains, but she could not even get her head through the doorway. (Lewis Carroll, *Alice's Adventures in Wonderland*, 1865)

Let us hope that at the end of their degree courses our students will have discovered, as Alice discovered, that in the end ‘very few things indeed were really impossible’? Franz Kafka wrote a haunting fable about the inability of a citizen to gain access through a door to the law (Kafka 1916). For law students and law teachers the problem is sometimes felt as keenly from the other side. How are we to move out once we are in? From the moment that the law school ‘induction day’ or ‘induction week’ channels us into law, our minds are shaped in such a way (if not swelled to such a size) that we find it hard to step outside the texts and terrain of law. In-duction that channels us into law’s texts and law’s spaces can so easily become the enemy of ex-duction (that is, ‘education’) which would conduct us out into new territories and new ways of learning. A healthy society depends as much upon egress from the law as upon access to it. If lawyers do not move within and without the sanctum of the law, and move bodily and not merely mentally, we can hardly expect to achieve a meaningful practical connection between law and wider society. A movement such as this must start by stirring up our static ideas of legal education.

Walking to law and literature

The central problem of an education based on experience is to select the kind of present experiences that live fruitfully and creatively in subsequent experiences. (John Dewey, *Experience and Education*, 1938, 28)

Walking is an excellent candidate to be the kind of experience that lives fruitfully, creatively and repeatedly. Of course not everyone has the physical capacity to walk, but everybody engages in some equivalent experience of self-motivation. We

cannot all walk, but we all have our own way of going for a walk. Walking is enriching on so many levels. Walking is first and foremost a challenge to power. So much so, that it has long been a favoured vehicle of organised political protest; consider, for instance, the famous ‘March on Washington for Jobs and Freedom’ which Dr Martin Luther King led in 1963. In our car-dominated culture even a simple stroll can seem like social sedition. I normally bicycle to work, but on those rare occasions when I walk to work through the rural and suburban landscape surrounding the University campus, it is a palpably empowering experience; I sense, as cars pass me by, that I am in part empowered at the direct expense of systems and institutions of power. To walk is to be free. Even in prison, to walk is one of the few freedoms which never, or very rarely, fails outright. In her book *Wanderlust*, Rebecca Solnit observes that: ‘[t]he new millennium arrived as a dialect between secrecy and openness; between consolidation and dispersal of power; between privatization and public ownership, power and life, and walking has as ever been on the side of the latter’ (Solnit 2001: xi). If we learn to walk well, that is, with the eyes of our mind wide open, we learn to live well. We become attuned to ourselves because, as Solnit says, walking ‘is the intentional act closest to the unwilling rhythms of the body, to breathing and the beating of the heart’ and ‘[w]hile walking, the body and the mind can work together, so that thinking becomes almost a physical, rhythmic act’ (Solnit 2001: 5, xv).

The physical act of walking is by its nature inherently educative, and not only because it pumps a steady flow of oxygen to the brain. Walking is a primal and perennial teacher. Even in its mother’s womb, the embryo learns from the law of gravity and from the regulation of the mother’s heartbeat and from the andante rhythm of the mother’s step – the rhythm of the walk moderates the law of gravity and the regulatory

heartbeat to perform a sort of equitable music – the first harmonious variations on a code. When the child reaches the age of being able to walk on its own two feet, the educational possibilities expand exponentially – there is potential to explore, to stumble, to trip, to balance, to pace, to pause, to tip-toe and to stretch and to take great strides. Walking brings all the senses into contact with new experiences. There is also, underlying it all, an educational quality intrinsic to walking that is as inherent as gravity, pulse and the sense of footsteps *en ventre sa mere*, for the fact is that normal pedestrian progress requires us to walk by means of balanced oppositions: the left foot advances with the right hand, the left hand advances with the right foot. This so-called ‘cross-lateral motion’ is said to exercise, not merely the arms and legs, but also the trans-hemispherical capacity of the brain. As Carla Hannaford writes in her book *Smart Moves*:

Cross lateral movements...work both sides of the body evenly and involve coordinated movements of both eyes, both ears, both hands and both feet as well as balanced core muscles. When both eyes, both ears, both hands and feet are being used equally, the corpus callosum orchestrating these processes between the two hemispheres becomes more fully developed. Because both hemispheres and all four lobes are activated, cognition function is heightened and ease of learning increases. (Hannaford 2005: 92, compare Blakemore 2003)

For students in a law and literature module, the trans-hemispherical benefits of walking might have a special bearing on the processes of creative writing; for psychologists have observed that ‘artistic creativity in general benefits from

interhemispheric collaboration' ([Bogen](#) 1969, see also Kane 2004). In his study of *Romantic Writing and Pedestrian Travel*, Robin Jarvis observes that the hypnotic rhythm of walking promotes 'introspection and concentrated creative thought' and that '[t]his enhanced mental excitation is possible because walking has a remarkable ability to purge the mind of its habitual, everyday clutter' (Jarvis 2007: 68). To such general benefits of the walking process one can add the benefits of natural light, which frequently accompany pedestrian activity – most especially when walking outside or on a sunny day. To illuminate the eye with natural light is one good way to illuminate the brain (Dunn et al. 1985, Graetz 2006). Studies have concluded that cool-white artificial light produces a correspondingly frigid atmosphere (Rosenfeld-Rosenfeld 1977: 169), and that artificial light can be in various ways biologically detrimental (Ott 1964, Seagers 1963, Wurtman 1968). One study that compared the different effects of natural light and cool-white fluorescent light on undergraduate students concluded that natural light was (somewhat paradoxically, perhaps) at the same time more stimulating and more relaxing than artificial light (Kleiber 1973). Then there is the spatial aspect of walking. Unless one walks on the spot, walking involves displacement. Thus walking is highly apt to embody the educational journey from one place to another. Solnit, again:

the rhythm of walking generates a kind of rhythm of thinking, and the passage through a landscape echoes or stimulates the passage through a series of thoughts. This creates an odd consonance between internal and external passage, one that suggests that the mind is also a landscape of sorts and that walking is one way to traverse it. A new thought often seems like a feature of the landscape

that was there all along, as though thinking were traveling rather than making.
(Solnit 2001: 5-6, compare Anderson 2004)

Jarvis has something similar in mind when he refers to the capacity of pedestrian travel to produce a mental set (of impressions and memories) which may be described as a 'progressional ordering of reality' (Jarvis 2007: 69). There is, in this sense, a legislative quality to a walk which, because it is constantly moving and stirring itself, is quite unlike the nature of a legal statute. Correspondent with this legislative quality of a walk, there is a literary quality. De Certeau, in his *Practice of Everyday Life*, observes that 'the walking of passers-by offers a series of turns (tours) and detours that can be compared to "turns of phrase" or "stylistic figures"' (De Certeau 1984: 100).

My module in law and literature begins with a walk from the social science building, where the law school is psychically and psychologically located, to another campus, which just happens to be the site of the department of education. I accompany my students on a walk away from the law school, which is a way of walking from a certain sense of the institution of law. It is not, however, a move away from law; but, rather, a move to a different type of law – a move to law and literature, and the walk is an embodied metaphor for the journey. I have been able to incorporate a number of useful lessons and learning experiences into the walk from the law school to the teaching space on the other campus; or, to put it better, I have been able to discover a number of lessons that were already intrinsic to the exercise and environment of the walk. For one thing, it has enabled us to explore the problematic idea of pedagogy. It has always troubled me that the modern educational ideal continues to be expressed in the language of slavery. The *paedagogus* was the household slave who in Ancient

Greece, and later Rome, had responsibility for his master's children and accompanied them to and from school. On the walk from law to law *and* literature we resist any notion that the students are to be led like children or that the tutor is to be made a beast of burden to carry them ([Watt 2006](#)). Our destination on the other campus is the 'Reinvention Centre', which is a studio-style learning space that has been recognised by the Higher Education Funding Council to be a 'Centre for Excellence in Teaching and Learning' ('CETL'). I must confess that, for all the benefits which the walk bestows, it was the practical contingency of *having* to travel to the 'Reinvention Centre' that prompted me to use a collective walk as an opportunity to elucidate and explore the philosophy, ethics and aims of the Law and Literature module. The contingent, practical reality of life is the best of tutors. There is hardly a more basic fact of life than the fact that one must start *here*, if one is to get *there*. If necessity is the mother of invention, then contingency is the father of imagination.

Metaphor – the Walk Home

Students come to the study of a law degree as rounded, creative, expressive beings and many do so with a love of, and some expertise in, creative literature. However, law degrees do not always, and some do not ever, encourage students to fulfil this aspect of their characters and desires. The walk with which the law and literature module begins is therefore, in some sense, a walk back home. Finding one's way back home can be a testing trial. The experience of Alice in Wonderland is testimony to that. It will sometimes involve a walk on the wild side, as Little Red Riding Hood discovered on the way to her grandmother's home in the woods. Appropriately, then, the first substantial stories with which the module engages are the pre-literary stories of the oral

tradition: including fairy tales, fables and myths – how many of these were tales about homecoming or tales for homecoming? The main focus of the module, though, is upon the capacity of rhetoric to constitute language and the capacity of language, in turn, to constitute thought. Central to constitutive rhetoric, and core to the module, is the trope – literally ‘the move’ – of metaphor. Etymologically, metaphor is a meta-ferry which carries us from one place to another, although I prefer to think of it as bridge which maintains a constant connection between abstractions (for example, ‘love’) and tangible reality (for example, ‘a red, red rose’) (Watt 2009a). The vehicle of a metaphor is one that takes us from the remote, nameless and general to the contiguous, familiar and particular. Because it is a bridge to that which is concrete and that which is close, metaphor can be considered to be a route home. It is this metaphorical dimension of the poet’s art which is especially brought to mind by the words of Theseus in Shakespeare’s *A Midsummer Night’s Dream*:

The poet’s eye, in fine frenzy rolling,
Doth glance from heaven to earth, from earth to heaven;
And as imagination bodies forth
The forms of things unknown, the poet’s pen
Turns them to shapes and gives to airy nothing
A local habitation and a name. (5.1.13)

The walk from the School of Law to the space devoted to the exploration of law and literature is metaphor, and it is *a* metaphor, and it incorporates discrete opportunities for the appreciation of the rhetorical (including metaphorical) foundations of legal language and legal thought. Steven L. Winter offers insights to illuminate this particular path:

Basic experiences common to the human organism *motivate*, that is, make sense of, the *source-path-goal* schema and the *Life is a Journey* metaphor. This concept of motivation has nothing to do with subjective intent, but rather refers to that which makes meaning possible. Because the human mind understands new input in terms of and by comparison to existing knowledge, the cognitive process begins with unmediated, directly encountered experience. Meaning is elaborated by imaginative extension of this experience to understand and conceptualize other, more abstract domains. Thus, the experience of moving through space toward a goal makes it possible to conceptualize the *source-path-goal* schema and to understand the *path* and *journey* metaphors and the more abstract domains, like *purpose* and *life*, that they structure. The concept of motivation is a central component of cognitive theory; it expresses the process by which meaning and knowledge are made possible, but not determined, by prior experience. It yields a sense of knowledge and meaning as neither arbitrary nor determinate, but rather as systematic and imaginative. (Winter 1989: 1133)²

The student traveller has only to open his eyes and to open her mind in order to see that the world is written in signs which speak to us. For the distinctly Augustinian-Platonic theologian Giovanni di Fidanza ('St Bonaventure') (c.1221 –1274), the everyday objects of ocular attention are 'offered to us as a sign from heaven, as a means toward the discovery of God' (St Bonaventure 1960). Jean Jacques Rousseau read the same signs to a different end. He thought to read truth 'not in books written by your

² Footnote in original omitted.

fellow-creatures, who are liars, but in nature, which never lies' ([Rousseau](#) 1913). For us, they are the signposts to a more critical understanding of law and a more concrete appreciation of law's future and our place in it.

Here, then, is a typical walk from a room in the law school, into the corridor, into the courtyard, down the path, past the tree, under the bridge, near the lamppost, past the wall, between the streams, alongside the playing field, to University House, via the car park, onto the main road, with its road signs, through the woods, until, finally, we move inside. The walk is a moving gallery of scenes, and it is best presented as such here. It should be fast-paced and only briefly in focus. It should produce a shifting sequence of images in the mind. Image stimulates imagination and imagination makes the image. A similar belief formed part of John Dewey's 'pedagogic creed':

I believe that the image is the great instrument of instruction ... I believe that much of the time and attention now given to the preparation and presentation of lessons might be more wisely and profitably expended in training the [student's] power of imagery and in seeing to it that [the student] was continually forming definite, vivid, and growing images of the various subjects with which [the student] comes in contact... ([Dewey](#) 1897)

The most appropriate thing to do at this stage is to direct the reader to an uncaptioned and in that sense uncaptured slideshow of some key sites through which the walk is strung. This is one way to walk beyond the text. The reader who wants to abandon reading can view a sequence of scenes [online](#).³ The reader who wants to go

³ Accessible at www2.warwick.ac.uk/fac/soc/law/staff/academic/watt/educationaljourney.doc [accessed: 5.9.11].

beyond text by teasing open the textile, to reveal the spaces within, might stay here and forgive me if I describe the walk in the rambling style that it deserves. In the paragraphs which follow I try to describe the walk in a way that does not contain it. The module in law and literature calls for an element of creative writing, so I have included lines broken from a poem – ‘*Jus Spatiandi*’ – which is not yet written.

The Room

‘Snowed in; snowed under; sealed by salary within a cell’ (‘Jus Spatiandi’)

The office – the officer, that which is official. The first sign, the first signifier of the law, is that we are sealed in our cells. The last is that we end in chambers.

The Corridor

*‘galleries – long narrow rooms like corridors, though often leading nowhere’ (Rebecca Solnit, *Wanderlust*, 2001: 86)*

The corridor should be the careering place, a place to run. But it is ordained we shall not run in corridors – not run indoors at all. It is ordained that career is status. And those who run here, run like rats in rabbit holes, down dead ends, blind turns and all for dreaming of *un pot d’or*.

The Door

‘Shylock: What, are there masques? Hear you me, Jessica: Lock up my doors’

(Shakespeare, *The Merchant of Venice*)

The door to the law school parts like opposing teeth; pearly PVC, grinning like a Cheshire cat. We recall that the imagination of Alice could open a door which the rights of Kafka's countryman could not. The door to the law school is an ambiguous portal.

Courtyard

'the enclosed garden had been, since the Song of Songs, a metaphor for the female body' (Solnit 2001: 87)

After the maze of corridors, it is a relief to feel the relative freedom of the courtyard, with its trimmed triangle of grass and strange erotic statue and a tree or two. Is it permitted to walk on the grass? We do, and we defy any regulatory spy. The walls surround us and appear to glance through many glass eyes, but they are blind and we are unchallenged. It is freedom, but in a faculty's frame.

Pathway

'What Heaven has conferred is called The Nature; an accordance with this nature is called The Path of duty; the regulation of this path is called Instruction. The path may not be left for an instant. If it could be left, it would not be the path' (Confucius).

The path of law is paved with what and passes how? Is it a straight path? Direct. Right. True. Is it superimposed upon nature? Does it bend and weave like text around the objects of everyday life? At the edges, the enthusiasm of nature is uncurbed.

The Tree

'The pave upvaults with knots and slow gymnastic torts' (*Jus Spatiandi*)

The tree has branches like the law and it has deep roots which sustain even when they cannot be seen. The tree is for the most part dead wood, but there is a thin layer of life below its broken skin which lives to grow and to accommodate, or to destroy, as it stretches to water and light. It has smart clothes and dirty feet.

The Bridge

The bridge is high which links the library to the concourse of science. We understand and under pass. We do not cross this bridge. It crosses over us. All understanding must be a relation to a bridge or bond. In law and literature is the bridge the 'and' or mere ampersand?

The Streetlamp

Streetlamps sleep like laws. Bright line rules lie in dormant filaments. In the dark the law radiates unnatural regulation.

The Wall

A tall wall is a great commitment of bricks. It is a foundation and dependency. It is a regulation of hard edges and soft mortar. We can scale walls. They are always perfectly balanced between this side and that, and it is always a fancy to suppose that there can be an inside or an outside to a wall. There might be an inside and an outside to a building, but the limits of the building, its walls, are always neutral and disregarding. The only inside of a wall is the gut of the mortar and the brick. This is where the door lives and it too has neither in nor out. Forgive the wall, for it keeps the possibility of a door.

The Streams

'Generally speaking, there can be no ownership or right of property in the running water of a stream...' (Wisdom, *Law of Watercourses*, 1962: 11)

Here on either side of the path are the twin inducements of two straight-edged shallow channels. Artificial rivers like old law and equity streaming through different courts in different corners of Westminster Hall. And the water is justice. Ever humble, ever lowering itself to the lowest level, ever wanting to move. And, like equity, slowly, surely, melting and mollifying the strict edges of the right-angled stones.

The Playing Field

'In Hebrew...justice is associated with the sibling words for level ground and uprightness – miyshor and meyshar...' (Watt, *Equity Stirring*, 2009: 153)

Level playing fields are always made by violence and violence ever plays there. The great edifice of law is always built on the level of some flat battle field. In law, war becomes another sort of game.

University House

And here is an edifice of law and equity. The great abstract generality of a universe, turned into a house of work, never quite a home, and a glass house at that, potted with waxy plants and the pottering sound of heels on tiles.

The Car Park

'He entered a garden, steadied himself against a motor-car that he found in it...' (E. M. Forster, *Howards End*)

Cars run as rivers do and stagnate in pools. The motor and all motivation arrests in the parking lot of law. Set out in excellent squares of bright-line rules. But we see a sign that speaks with moving irony of the law which allows 'No parking.' "He won't move on," says the constable calmly, with a slight professional hitch of his neck.'

(Charles Dickens, *Bleak House*)

The Road and the Sign

'Road signs have two key features: the configuration of the network to which they belong and the freedom of its users to move about in it' (Georges Jean, *Signs, Symbols and Ciphers*, 1999)

The main road is as long and straight as any corridor of law. So open and yet so constraining. A very deadly stream and a gallery of warning signs. Like the law, it is a grey scale of accidents and it is paved with infinite possibilities for death and other progress.

The Woods

'O lead me to the wide-extended walks...there with th' enchanted round I walk / The regulated wild' (James Thomson, 'The Seasons', c.1734)

We wander off the road and path and negotiate the beautiful inconvenience of trees. We know we are near our journey's end when we have peeled back all the signs to this. Two trees: Life, and the Knowledge of Good and Evil.

Moving Inside

Finally we move inside. This is not the end of motion, but the beginning of a new movement. Inner space is open to exploration and interpretation every bit as stimulating as that which we have enjoyed in outer space. Moving inside is, though, quite literally, another story for another time (see Monk et al. 2011).

Appreciating the Aesthetic

In the course of preparing this paper I discovered an article which, by its title, held out great promise to teach me something valuable and, as it is now said, ‘on topic.’ The authors of ‘Moving beyond the classroom: accommodating the changing pedagogy of higher education’ ([Jamieson](#) et al. 2005: 17) pose some essential questions:

What is the role of the university campus environment as more active, student-centered approaches to teaching and learning are taken up? What types of ‘classrooms’ need to be developed to facilitate the pedagogical trends that are emerging in higher education? How can we break with traditional approaches to designing on- campus learning environments in order to enhance the quality of student learning?

The authors provide a range of insightful and stimulating answers to these questions. For example, they are surely right to suggest that: ‘When the spaces outside the classroom are layered for the diverse ways in which students learn, they cease to exist as paths and become “learning spaces” in their own right’ ([Jamieson](#) et al. 2005: 19). And yet, for all its appeal and for its many pleasant layers, it was ultimately an uncomfortable read. Perhaps I am too sensitive, like the princess who was disturbed by

the pea lying at the bottom of the layers of mattresses on her bed, but it is the small signs which so often betray the big picture. The pea in this particular bed is the suggestion that ‘outdoor or garden spaces that once largely served an aesthetic function might become active learning environments’ ([Jamieson](#) et al. 2005: 21). The problem with this suggestion is that it implicitly denigrates the aesthetic function (not least by calling it a ‘function’) by contrasting it with a future hoped-for utility function; at the very least, it denigrates the potential for aesthetic appreciation to be an ‘active learning experience’ in its own right. Consider how starkly this attitude contrasts with John Dewey’s insights into the uplifting potential of an aesthetic experience:

...the esthetic is no intruder in experience from without, whether by way of idle luxury or transcendent ideality, but...it is the clarified and intensified development of traits that belong to every normally complete experience.
(Dewey 2005: 48)

We have all let a pea slip beneath our mattresses at some point or other, and it must be acknowledged that the authors of ‘Moving beyond the classroom: accommodating the changing pedagogy of higher education’ are well-intentioned, but if we are to open up the learning experience and motivate learners, it is crucially important that our species of language and thought is compatible with the educative enterprise we are involved in. There is little point in moving beyond the formulaic frames of the classroom if our project is to frame and formulate the world beyond.

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