Editorial

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Focus: Law and Literature in the Era of the Digital Condition, an Introduction

> Fully imagined cultural futures were the luxury of another day, one in which 'now' was of some greater duration. For us, of course, things can change so abruptly, so violently, so profoundly, that futures like our grandparents' have insufficient 'now' to stand on. We have no future because our present is too volatile.
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The opening quotes were written by William Gibson, a science fiction author and ingenious futurist thinker, who famously coined the term "cyberspace" and left an imprint on the imagination of generations. Gibson, in his entire literary corpus, especially in *Pattern Recognition*,[1] the 2003 novel from which these quotes are taken, expressed a vision that is proving increasingly apposite. It is the vision of a society where traditional modes of meaning-making are becoming disrupted and obsolete, and are being rapidly replaced by new ways of understanding the world, reaching decisions and operating. Contemporary changes are indeed profound, sudden, and in many ways violent. Over time, it seems that the Gibsonian vision captured the nature of humanity's virtual present, missed by utopian thinkers who predicted quite a different digital future.

One of these early cyber-thinkers, John Perry Barlow, formulated a cyber-utopian manifesto in 1996, naming it 'A Declaration of the Independence of Cyberspace'.[2] Barlow published the manifesto in response to early attempts by the

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1 William Gibson, *Pattern Recognition* (New-York: G. P. Putnam's Sons, 2003) (The quotes are from pages 60–61).

2 John Perry Barlow, "A Declaration of the Independence of Cyberspace" *Duke Law and Technology Review* 18 (2019): 5–7.

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American government to regulate cyberspace, suggesting a vision of cyberspace as a democratic-egalitarian space, free from intervention, control and manipulation by governments and oligarchs.[3] The law, Barlow predicted, will be redundant in this utopic future. For example, Property law will no longer exist in cyberspace, since in the new free space "[n]o law can be successfully imposed on a huge population that does not morally support it".[4]

Today, almost 30 years after these utopian notions were outlined, it becomes apparent that another path was taken. Law is far from becoming obsolete, yet it seems to be on the cusp of profound change. It appears that the technological breakthrough that carries the potential to initiate the most substantial impact is Artificial Intelligence (AI). AI, now an easily accessible tool, is currently stirring up reality as a fundamental breakthrough and a game changer in almost any field of knowledge. Of course, in literature and popular culture in general, the notion of AI is not new. As often transpires, the poetic imagination 'knew' humanity would be in this place, and provided various pertaining narratives, many of them dystopian. And here we are, at a point in time when reality to our great dread or excitement, is catching up with literary ingenuity.

A brief glance into the distant cultural past might be useful at this point. The earliest theory of poetics is to be found in Aristotle's *Poetics*, written sometime in the middle of the fourth century BC. *Poetics* is the first known full-scale effort to systemize the mechanisms by which different genres of poetry are created. All kinds of poetry, clarifies Aristotle, "are all in their general conception modes of imitation."[5] The instinct of imitation, Aristotle goes on, "is implanted in man from childhood."[6]

To imitate, one has firstly to recognize a pattern. Recognized patterns are the building stones of poetic rules. In this millennium, humanity managed to impart the ability to recognize patterns and to imitate an algorithm, thus transforming it into a poetic entity, capable of generating meaning focused on a certain end and targeted to a certain audience.

Artificial Intelligence products may sometimes be poetic failures, seeming like a comic miss. Such was the inability of earlier AI programs to adequately represent the human palm, adding or subtracting fingers, or posing them in strange positions. But humans also produce poetic failures. A poetic failure can be corrected, and AI seems to be a fast learner, rapidly correcting its failures. Algorithms already recognize

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3 John Perry Barlow, "Is Cyberspace Still Anti-Sovereign" *California Magazine* (April 2006) https://web.archive.org/web/20180210082120/https://alumni.berkeley.edu/california-magazine/march-april-2006-can-we-know-everything/cyberspace-still-anti-sovereign.

4 John Perry Barlow, "The Economy of Ideas" Wired (Mar. 1, 1994).

5 Aristotle, *The Poetics of Aristotle*, (S. H. Butcher, trans., London: MacMillan and co., 1895), 7.

6 Aristotle, *Poetics*, p. 15.

patterns and imitate the way we come up with stories, generate narratives, write legal rulings, and interpret norms. This ability will become more and more honed and sophisticated.

Many questions arise. Will the new intelligence, for which the term "artificial" is much too simplistic, be able to evoke powerful emotional imprint that certain poetic utterances evoke? What future awaits the law in an algorithmic flooded environment? Law is, of course, a poetic action in this sense, an action that raises the same question – is the law merely a system of rules, or does it necessitate an additional element, which in order to exist requires emotional depths and human life experience?

At the dawn of the new millennium, William Gibson pinpointed the central role of pattern recognition in the emerging cyberspace. Cayce Pollard, the protagonist of *Pattern Recognition*, has a unique talent for perceiving emerging patterns, especially ones that seem at first unrelated. This talent enables her to reveal the trends and directions that can be mass produced and consumed, thus generate massive profits for companies.

Homo sapiens is about pattern recognition which is both a gift and a trap, tells us one of Gibson's characters. Yet the trap is much more dangerous than the one Cayce manages to escape from – being a trend forecaster for evil companies. The more ominous trap transpires when Homo Sapiens delegates the human ability to recognize and imitate patterns to the non-human.

The ability to recognize patterns, linked to narrative cognizance, poetic and analytical skills and a wide-ranging and expansive imagination, underlines most fields of human knowledge and discourse. Law, too, is fundamentally based on these capabilities. Human ability to identify narrative patterns has been instrumental to law since its inception. What will transpire in an era when the ability to recognize patterns is handed over from human consciousness to artificial intelligence, and how will this transfer affect the law?

The five papers in this *Polemos Focus* illuminate five different areas in which these traditional conceptions of the law are being challenged.

Vagias Karavas' and Suad Salihu's "The Legal Subject in the Society of Singularities: Prolegomena to the Legal Type of Personalized Law" analyzes the suggestion to construct 'personal law' in which legal persona will be reconstructed through analysis of behavior and preferences. Thus, a tailor-made, personalized law will be achieved. "New methods for analyzing data", explain the writers, "make it possible to reach levels of descriptive and diagnostic accuracy previously unattainable for human cognition. Laws … had to tolerate rough commands, which resulted in bias, waste, suboptimal behavior, and unnecessary losses. These laws are now ripe, with the advent of Big Data, to be redesigned and reflect the large amounts of data that computers can sort and classify."

The idea of personalized law challenges traditional concepts of unified, one-size-fits-all legal and societal norms, and ignites ideas regarding reconfiguration of Rule of law-AI relations. Personalized laws based on AI analysis of big data might evolve. The very idea of personalized law based on AI analysis of big data takes pattern recognition to a whole new level. Gift or trap (or maybe both, as the writers argue), personalized law is an altogether very different concept than our current idea of what is law and how it should be applied.

Kim Barker's paper, "Online Violence as a Digital Condition: A New Cultural Habit?" explores the ubiquitous violence within the internet, and the impotence of law in face of this emerging cultural menace: "What is particularly clear as some of the dust settles around the new legal regimes, is that where discussions relating to regulating online platforms, this means regulating the high-level aspects, and imposing duties on platforms, all while leaving the platforms themselves to address issues relating to content. In such circumstances, generalised, prevalent violence is likely to continue to proliferate online spaces. As such, given the exposure to it, and the prevalent of it, it is all but impossible to see beyond suggestions that generalised violence is a new condition, and all but a new cultural habit".

Once again, one very basic feature of the law is being cast in doubt. Since the social-contract philosophers of early enlightenment, it is almost a given that the basic function of law is to protect individuals from violence. Barker shows that in cyber-space a pre-contractual state emerges, in which the on-line existence seems to be, paraphrasing Hobbes, nasty and brutish. The magnitude and velocities of aggressive content as described by Barker, manifests yet again Gibson's reflection re the looming violent and profound changes the digital condition arises. As the paper elaborates, the change is too rapid to be regulated by law, leaving digital citizens shieldless and vulnerable, until new protections evolve.

Daniella Zlotnik Raz's "The Poetics of Digital Children and Designing Online Democratic Deliberations" offers a somewhat more expectant view of cyberspace, highlighting its potential to host a designed digital hub in which children can meet and deliberate, enhancing their capabilities and their potential as future citizens in an open and democratic society.

As put by Zlotnik Raz, "Children also regard digital access and engagement as a human right and recognize that the digital environment provides them with a space to express their opinions, political views and participate in decision-making. This makes digital civic engagement, including participation in deliberative processes, especially suited for children." As exciting as this future may be (and Zlotnik-Raz does not neglect to highlight the dangers in the new digital meeting spaces, turning children into 'Zombies'), the idea challenges basic societal concepts, especially the monopoly of adults on political participation and democratic deliberation. The writer employs insights borrowed from the field of poetics in order to suggest

multidimensional modifications. "Uunderstanding online deliberative poetics is essential when considering the inclusion of children in online deliberations," claims the author, and explains that poetic design of video-conferencing platforms should encompass "*features that facilitate both group and individual engagement*." In addition she elaborates how the establishment of a designated digital hub for child deliberation online is also required.

Our paper, "Video Conferencing Platforms (VCPs) and the Cohesive Distinctiveness of Legal Proceedings" examines how legal poetics is changed, or even distorted, by the use of Video Conferencing Platforms (VCPs) to perform court hearings. As these hearings, in a post COVID-19 world are already integrated into the legal system, the *Cohesive Distinctiveness* of the legal procedure is threatened. As the paper elaborates, resisting the technological change and aiming to preserve the old traditions of legal poetics is not a feasible option. The other option is internalizing VCP, while finding ways for generating *cohesive distinctiveness* in VCP conducted legal proceeding. A more elastic legal system, very different from the one we know, and based on other principles might be established: "What is called for is the creation of a new system of legal poetics, maintaining essential elements of the pre-digital poetics, which may lead to an innovative kind of legal representations, in which the *cohesive distinctiveness* of the legal process will not be reduced, but relocated."

Again, a gift or a trap, or maybe both? Vagias Karavas and Suad Salihu conclude with suggesting that "the question we should ask ourselves… is not how we can escape this trap, but how we can recapture it and use it for new purposes and the creation of new worlds." It seems that the essence of this suggestion echoes in all the papers comprising this focus.

In a similar vein, Paola Carbone underscores the crucial role of ethical, social, and cultural factors alongside technical expertise to address the emerging challenges in our digital age. Rooted in Renaissance principles of human dignity and autonomy, her article posits that it is not anachronistic to remind that providing universal access to digital tools and skills is a fundamental right of citizenship – essential for full participation in our interconnected world. By examining initiatives such as Uruguay's Ceibal program and digital literary works, she highlights both the progress made and the obstacles that remain in efforts to democratize technology. A key figure in this narrative is the "digital humanist," an individual who melds tech-savvy know-how with ethical awareness and responsibility to safeguard individual and collective dignity. She highlights how humanistic values can guide ethical digital integration, while invoking William Gibson's reflections on the "gift and trap" of pattern recognition to emphasize their continued relevance. Although AI is reshaping our notions of law, creativity, and community, the overarching imperative – protecting human dignity through critical engagement – remains a cornerstone for shaping our shared future.